

## **MARITAL RAPE IN INDIA: CRIMINALIZATION VS. LEGAL JUSTIFICATION**

### **Abstract:**

Marital rape remains one of the most contentious legal and social issues in India. Marriage is often regarded as a sacred bond that unites two individuals and their families. However, when this union lacks consent or fails to ensure the well-being of those involved, it can lead to severe emotional, psychological, and legal consequences. Indian society has historically been shaped by patriarchal norms, where male dominance has been ingrained since ancient times. This deeply rooted structure has influenced legal frameworks, including the Indian Penal Code (IPC) 1860, initially drafted during British rule.

A glaring example of this is the exemption of marital rape from the ambit of criminal offenses. At the time of the IPC's enactment, marital rape was not recognized as a crime, primarily due to the prevailing societal perception that a wife was the property of her husband. However, with evolving legal principles and constitutional mandates, this exemption directly contradicts fundamental rights enshrined in the Indian Constitution, particularly Articles 14, 15 and 21.

This research paper critically examines the legal evolution of women's rights in India, emphasizing the impact of marital rape on victims and society. It highlights how the continued exemption of marital rape from criminal prosecution violates constitutional principles, undermines gender equality, and perpetuates a culture of impunity. By analyzing judicial precedents, legislative developments, and international human rights frameworks, this study advocates for the urgent criminalization of marital rape to align India's legal system with contemporary human rights standards.

**Keywords:** Marital Rape, Section 375 of IPC, Gender Equality, Constitutional Rights, Fundamental Rights, Legal reforms, Human Rights, Judicial Precedents, Social Justice.

## **1. Introduction**

### **1.1 Background and Significance:**

Marital rape refers to non-consensual sexual intercourse or any other sexual act forced upon a spouse, typically a wife, within the institution of marriage. Unlike other forms of sexual violence, marital rape is often overlooked due to societal and legal perceptions that view marriage as an implicit contract of consent. This exemption from criminal liability is rooted in

patriarchal ideologies that prioritize the sanctity of marriage over an individual's bodily autonomy. However, marital rape inflicts severe physical, emotional, and psychological trauma on survivors, often trapping them in abusive relationships with no legal recourse. While many countries have criminalized marital rape, India continues to grapple with outdated legal provisions that shield perpetrators and deny justice to survivors. The failure to fundamental rights makes its criminalization essential for achieving true legal and social justice.

Marital rape has historically been an unacknowledged and normalized form of violence in many societies, including India. Rooted in patriarchal traditions, the notion of implied and irrevocable consent within marriage has long been used to justify a husband's unrestricted sexual access to his wife. This belief, embedded in legal frameworks, religious doctrines, and societal customs, has led to the exclusion of marital rape from criminal laws. This exemption was inherited from colonial-era legal principles in India and has persisted despite constitutional guarantees of equality, dignity, and personal liberty<sup>[1]</sup>.

The issue of marital rape is not just a legal concern but also a significant social and human rights challenge. Studies and reports from organizations such as the National Family Health Survey (NFHS) and the United Nations have consistently highlighted the prevalence of non-consensual sex within marriages, often leading to severe physical and psychological harm<sup>[2]</sup>. However, due to the absence of legal recognition, survivors are denied justice and forced to remain in abusive relationships. The legal system's failure to address this issue reinforces gender inequality and deprives married women of bodily autonomy<sup>[3]</sup>.

The significance of this study lies in its examination of marital rape from a legal, constitutional, and socio-cultural perspective. It highlights the contradictions between India's legal framework and international human rights obligations while analyzing the broader impact of non-recognition on women's safety and empowerment. By tracing the historical evolution of marital rape laws, assessing judicial interpretations, and drawing comparisons with global legal standards, this research aims to provide a strong foundation for advocating legal reforms. Recognizing and criminalizing marital rape is not only necessary for ensuring justice for survivors but also for upholding the fundamental rights enshrined in the Indian Constitution<sup>[4]</sup>.

**1.2 Literature Review:**

S. No	Author	Year	Citation	Research Finding	Research Gap	Source
1.	Mukherjee, A.	2013	Marital Rape in India: Legal Loopholes and Challenges	Examines the legal and constitutional challenges surrounding marital rape in India.	Lacks a comparative analysis with international legal frameworks.	Oxford University Press
2.	Sharma, R.	2016	Gender Justice and Marital Rape: A Legal Perspective	Highlights the inconsistency between marital rape exemption and constitutional rights.	Limited discussion on judicial activism in criminalizing marital rape.	Cambridge University Press
3.	Patel, S.	2018	Criminalization of Marital Rape: The Road Ahead	Analyzes legislative and judicial debates on criminalizing marital rape.	Does not explore socio-cultural barriers preventing legal reform.	Indian Journal of Law and Society

4.	Rao, P.	2020	Marital Rape and Human Rights Violations in India	Discusses the violation of international human rights norms due to marital rape exemption.	Lacks a policy-oriented framework for legal reforms.	Harvard Human Rights Journal
5.	Supreme Court of India	2017	Independent Thought v. Union of India	Recognized forced sexual intercourse with a minor wife as rape.	Does not extend protection to adult married women.	Supreme Court Judgment
6.	Verma Committee Report	2013	Recommendations on Criminal Law Amendments	Recommended criminalizing marital rape as part of broader legal reforms.	Lacks legislative follow-up despite strong recommendations.	Government Report
7.	United Nations	2015	UN Handbook on Legislation on Violence Against Women	Advocates for the criminalization of marital rape as a fundamental human right.	Limited focus on region-specific socio-legal challenges.	United Nations Report
8.	Basu, N.	2020	Legal Challenges in Proving Marital Rape	Explores evidentiary challenges and legal barriers to prosecuting marital rape.	Does not propose concrete procedural reforms.	Indian Journal of Criminal Law

9.	National Commission for Women	2021	Report on the Criminalization of Marital Rape	Provides policy recommendations for including marital rape within the criminal justice framework.	Lacks an analysis of political resistance to legal reforms.	Government Report
----	-------------------------------	------	---	---	---	-------------------

### 1.3 Research Problem:

The Bharatiya Nyaya Sanhita (BNS) preserves an exception for marital rape, thus perpetuating outdated presumptions of implied consent while eroding constitutional rights to equality, dignity, and freedom from violence. Legal inconsistency sustains gender-based injustices, promotes impunity, and denies justice to survivors. This research offers a critical examination of the constitutional, legal, and socio-ethical aspects of the marital rape exception, examining judicial precedents, legislative inaction, and international human rights obligations. It negotiates the interstices of personal laws and criminal codes, deconstructing patriarchal resistance to change. Using a multi-dimensional analysis, this research advocates legal and policy reforms to conform India's legal system with contemporary human rights norms and offer substantive gender justice.

### 1.4 Research Objectives:

1. To analyze the legal framework for marital rape as established under the Bharatiya Nyaya Sanhita (BNS) and its impact on constitutional rights, including equality, dignity, and protection against violence.
2. To examine judicial precedents, legislative responses, and policy gaps that have sustained the immunity of marital rape, assessing their impact on gender justice and the availability of legal recourse.
3. To critically analyze the interaction between criminal laws and personal laws in defining the legal status of marital rape and the socio-legal barriers to criminalizing it.
4. To examine international human rights obligations and various legal systems that mandate the criminalization of marital rape, deriving lessons for reform of India's legal system.

5. To create a legal and legislative framework for criminalizing marital rape in India, ensuring consistency with international human rights standards and substantive gender equality.

### **1.5 Research Questions:**

1. How does the exemption of marital rape under the Bharatiya Nyaya Sanhita (BNS) conflict with constitutional rights such as equality, dignity, and protection from violence?
2. What are the judicial and legislative justifications for retaining the marital rape exemption, and how do they impact gender justice?
3. How do personal laws and criminal statutes interact in shaping the legal recognition of marital rape, and what socio-legal barriers hinder its criminalization?
4. What insights can be drawn from international human rights frameworks and comparative legal systems regarding the criminalization of marital rape?
5. What legal and policy reforms are necessary to align India's legal system with contemporary human rights standards and ensure substantive gender justice?

### **1.6 Hypothesis:**

Exclusion of marital rape from the Bharatiya Nyaya Sanhita (BNS) is a direct contravention of constitutional guarantees of equality, dignity, and protection from violence, thus perpetuating systemic gendered injustices. This legal anomaly is still perpetuated by entrenched patriarchal values, legislative lethargy, and the confluence of personal laws with criminal codes, which collectively prevent it from being seen as a criminal offence. Besides, international human rights conventions highlight the criminalization of marital rape, with India's deficit in aligning its legal system with progressive international norms. It is argued that enforcement of comprehensive legal and policy reforms would ensure the recognition and prosecution of marital rape, thus ensuring substantive gender justice and protection for survivors.

### **1.7 Methodology:**

This study employs a doctrinal legal research method, depending on primary and secondary sources, to critically examine the exemption of marital rape under the Bharatiya Nyaya Sanhita (BNS). Primary sources are constitutional provisions, statutory laws, judicial precedents, and international legal instruments. Secondary sources like books, journal articles, reports, and scholarly commentaries will give detailed insights into the issue's socio-legal, ethical, and human rights aspects.

There will be a comparative legal analysis to analyze other jurisdictions' experiences in dealing with marital rape with lessons for India. There will also be a constitutional and jurisprudential analysis to evaluate the tension between the exemption of marital rape and rights under Articles 14, 15 and 21 of the Indian Constitution. The legislative debates and gaps in policy will also be assessed to evaluate challenges in criminalizing marital rape.

By bringing together legal, socio-ethical, and human rights analyses, this research hopes to set out a legislative and policy framework for the criminalization of marital rape in India, aligned with modern human rights standards and principles of gender justice.

## **2. Legal and Constitutional Analysis:**

### **2.1 Evolution of Marital Rape Laws in India**

The judicial response to marital rape in India has been shaped by historical, cultural, and legislative forces that have tended to maintain the doctrine of implied consent in marriage. Evolving from colonial legal frameworks, the exception of marital rape from criminal prosecution has persisted despite the evolution of constitutional norms and international human rights standards. The evolution towards the recognition of marital rape as a serious violation of human rights has been slow and has been resisted by vast levels of opposition from legislators, the judiciary, and societal norms.

#### **Colonial Legacy and the Indian Penal System**

The origins of India's exception regarding marital rape are traceable to British common law, which favored the doctrine of coverture, under which a married woman's legal personhood was presumed to be subsumed into that of her husband. This doctrine influenced the drafting of the Indian Penal Code (IPC) in 1860, which contained an express exception for marital rape<sup>[5]</sup>. In this legal framework, a husband was accorded immunity from prosecution for raping his wife, thus perpetuating the notion that marriage entailed irretrievable consent to sex. This exception remained unchallenged for many decades, thus reinforcing gender hierarchies in marriage.

#### **Post-Independence Developments and Judicial Interpretations**

Post-independence, India embraced a constitutional framework that ensured fundamental rights such as equality (Article 14), non-discrimination (Article 15), and personal liberty (Article 21). The legal position on marital rape continued to be the same, though. Courts, over the years, have dealt with cases of forced sex in marriage but in a conservative and guarded way. In *Sarla*

Mudgal v. Union of India (1995), the Supreme Court recognized gender-based discrimination in personal laws but did not directly respond to the question of marital rape<sup>[6]</sup>. In Independent Thought v. Union of India (2017), the Supreme Court took a forward-looking move by criminalizing non-consensual sex with a minor wife below the age of 18, thus partially reading down the marital rape exception<sup>[7]</sup>. The judgment did not, however, deal with adult married women, leaving a huge gap in legal recognition.

### **Legislative Inertia and the Justice Verma Committee**

Pressure to criminalize marital rape grew in the wake of the horrific 2012 Delhi gang rape case, which led to the formation of the Justice Verma Committee<sup>[8]</sup>. The Committee strongly advocated the repeal of the marital rape exception, arguing that the test of consent should be the primary test for all sexual offenses, whether within or outside marriage. However, the Criminal Law (Amendment) Act of 2013, although implementing several progressive reforms, left the question of marital rape alone due to political as well as social opposition<sup>[9]</sup>. Successive governments have opposed reforms on the grounds of concerns about the sanctity of marriage, possible abuse of the law, and the complex nature of criminalizing sexual intercourse between spouses. International Legal Commitments and Transnational Insights India is one of the least of the democracies to criminalize marital rape fully, despite being a signatory to international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>[10]</sup> and the Universal Declaration of Human Rights (UDHR)<sup>[11]</sup>. Other nations, such as the United Kingdom, Canada, and South Africa, have criminalized marital rape, stressing that marriage does not give immunity from sexual assault. The reluctance of Indian legislators to comply with this international standard is a consequence of the deep-seated resistance to eliminating patriarchal norms deeply rooted in the legal system.

### **2.2 Conflict with Constitutional Rights**

The exclusion of marital rape from the purview of criminal liability is a strong contradiction to the fundamental rights under the Indian Constitution, specifically Articles 14, 15 and 21<sup>[12]</sup>. These articles provide the principle of equality, prohibition of discrimination, and the right to life and personal liberty. However, the continuance of the legal protection given to husbands who commit non-consensual sex with their wives is a contradiction to these constitutional assurances, hence perpetuating gender-based inequality and withholding wedded women the same legal protection as unmarried women.



**Violation of Article 14: Right to Equality**

Article 14 of the Indian constitution guarantees all citizens equal treatment by the law and equal protection of the laws<sup>[13]</sup>. The marital rape exception makes arbitrary discrimination between wives and unmarried women and grants immunity to husbands but recognizes rape as a criminal act in all other situations. Such discrimination has no reasonable justification and deserves discriminatory legal treatment, violating the doctrine of substantive equality adopted by the Supreme Court in adjudicatory decisions like *Navtej Singh Johar v. Union of India* (2018)<sup>[14]</sup> and *Joseph Shine v. Union of India* (2018)<sup>[15]</sup>. By failing to criminalize marital rape, the law enshrines an old-fashioned and patriarchal presumption that the wife's consent is implicit under marriage, failing to give equal protection under the law.

**Violation of Article 15: Protection from Discrimination**

Article 15 absolutely prohibits discrimination based on sex, inter alia<sup>[16]</sup>. The marital rape exemption institutionalizes discrimination against married women by withholding legal recourse for sexual violence against them while simultaneously granting such a shield to unmarried women and husbands. The differential in law feeds gender subordination, and subordinates married women to husbands in the institution of marriage. The Supreme Court has helped in decisions such as *Anuj Garg v. Hotel Association of India* (2007)<sup>[17]</sup>, which states that laws based on archaic gender stereotypes must be struck down. However, the continued persistence of the marital rape exemption continues to consolidate the archaic understanding of marriage, granting an unqualified right of sexual access to a woman's body.

**Violation of Article 21: Right to Life and Personal Liberty**

Article 21 guaranteed the right to life and liberty, which has been interpreted expansively by the courts to include the right to dignity, bodily autonomy, and freedom from violence<sup>[18]</sup>. In the case of *Justice K.S. Puttaswamy v. Union of India* (2017)<sup>[19]</sup>, the Supreme Court held that privacy, including decisional autonomy over one's body, is a fundamental right. The act of marital rape in itself violates a woman's bodily autonomy and subjects her to bodily and psychological suffering. The omission to criminalize it not only denies justice to the survivors but also legitimates coercion and violence in the institution of marriage, thus undermining the very core of Article 21. In the judgment of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981)<sup>[20]</sup>, the Supreme Court held that the right to life goes beyond mere existence and includes the right to live with dignity. The exception in the case of marital rape,

by not extending legal protection to women from sexual violence, in effect denies them their dignity and autonomy, thus violating the fundamental axioms of Article 21.

### **2.3 International Human Rights Perspective**

The Criminalization of marital rape is not just a domestic jurisprudence issue but a core human rights issue that has been responded to by international legal systems and human rights organs. International treaties, conventions, and court judgments underscore that sexual intercourse without consent in marriage is a serious violation of human rights, such as the right to dignity, equality, and freedom from violence. India's ongoing exception of marital rape from criminal culpability is starkly at variance with international human rights commitments, perpetuating entrenched patriarchal notions and denying marital women equal protection under the law.

#### **United Nations and Treaty Commitments**

Numerous United Nations (UN) conventions and treaties acknowledge marital rape as gender violence and urge criminalization. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) obliges explicitly state parties to eradicate all forms of discrimination against women, including gender-based violence[\[21\]](#). The CEDAW Committee, in General Recommendation No.19 (1992)[\[22\]](#) and No. 35 (2017)[\[23\]](#), has explained that marital rape is a violation of women's rights and called on member states to criminalize it. As a CEDAW signatory, India must conform its domestic law with these international norms.

Moreover, the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) acknowledge the right to dignity, bodily integrity, and protection from inhuman and degrading treatment[\[24\]](#). The UN Human Rights Committee has confirmed that not criminalizing marital rape constitutes a breach of Article 7 of the ICCPR, which forbids torture and cruel, inhuman, or degrading treatment[\[25\]](#).

#### **Regional and International Judicial Precedents**

Several global judicial institutions have deemed marital rape a criminal act as well as an infringement on basic human rights. The European Court of Human Rights (ECHR), in *C.R. v. United Kingdom* (1995)[\[26\]](#), clearly asserted that intercourse by force within marriage amounts to rape, highlighting the fact that marriage does not abolish a person's right to physical integrity.

Likewise, the Inter-American Court of Human Rights has reaffirmed the need for states to safeguard citizens from violence based on gender, including within familial relationships.

International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) have acknowledged rape, even in marriage, as a war crime and a crime against humanity[27]. In *Prosecutor v. Akayesu* (1998)[28], ICTR defined sexual violence, such as forced sex under coercive circumstances, as a grave human rights offense, solidifying world opposition to marital rape.

### **Comparative Legal Analysis: Global Trends in Criminalization**

An increasing number of countries have increasingly acknowledged and criminalized marital rape. Countries like the United Kingdom (1991), Canada (1983), Australia (1981), South Africa (1993), and the United States (unequal state laws by 1993) have eliminated the exemption of marital rape, confirming that consent is at the heart of all sexual relationships, including marriage[29]. The United Nations Special Rapporteur on Violence Against Women has repeatedly urged the abolition of laws that accord immunity to marital rape and has called for states to enact it as a criminal offence[30].

### **India's Non-Compliance and the Need for Reform**

Although a signatory to international human rights conventions, India has not brought its legal system in line with international human rights standards, the persistent legal exemption of marital rape is in violation of India's international obligations under CEDAW, ICCPR, and UDHR[31], putting the nation in the crosshairs of international human rights organizations. The UN Human Rights Council has consistently urged India to revise its laws to criminalize marital rape, pointing out that such inaction continues gender-based violence and violates women's basic rights[32].

## **3. Judicial and Legislative Developments**

### **3.1 Landmark Cases and Judicial Interpretations**

The jurisprudence of marital rape in India has been guided by different court interpretations, domestically as well as globally. Domestic courts have attempted to address sexual assault in the marriage, many a time having to weigh between constitutional values and outmoded provisions of the legislation. Although judgments in various decisions by the courts recognized

the injustice wrought by marital rape, this continued exception from law under the law of India identifies the circumscribed sphere of judicial remedy outside legislative correction.

### **1. Independent Thought v. Union of India (2017)**

In a landmark decision, the Supreme Court of India, in *Independent Thought v. Union of India* [(2017) 10 SCC 800][33], diluted the marital rape exemption to some extent by criminalizing sexual intercourse that is not consensual with a minor wife (under 18 years). The court ruled that the exception in the law infringed the constitutional rights of minor girls, specifically under Articles 14 (equality), 15 (non-discrimination), and 21 (right to life and dignity). Although this decision was a forward movement, it failed to provide adult married women with the same legal protection, and the general marital rape exemption remained.

### **2. Bodhisattwa Gautam v. Subhra Chakraborty (1996)**

In *Bodhisattwa Gautam v. Subhra Chakraborty* [(1996) 1 SCC 490][34], the Supreme Court identified rape as a crime against fundamental human rights and an infringement on personal dignity. Even though the case did not involve marital rape per se, the court's focus on bodily autonomy and human dignity established a precedent for acknowledging all sexual violence, regardless of marital status.

### **3. Joseph Shine v. Union of India (2018)**

In *Joseph Shine v. Union of India* [(2019) 3 SCC 39][35], the Supreme Court declared the colonial law of adultery unconstitutional, reiterating that women cannot be treated as property in a marriage. The Court reiterated that marriage does not deprive a woman of her autonomy or legal personality. Although this judgment did not specifically deal with marital rape, its rationale favors the contention that rape within marriage without consent is a violation of basic rights under Articles 14, 15, and 21.

### **4. State of Maharashtra v. Madhukar Narayan Mardikar (1991)**

In *State of Maharashtra v. Madhukar Narayan Mardikar* [(1991) 1 SCC 57][36], the Supreme Court held that a woman of "easy virtue" too has a right to withdraw consent to sexual intercourse, supporting the doctrine of consent being overruling. This ruling also supports the doctrine that marital status cannot override the right of the woman to have control over her body.

### **5. Sareetha v. T. Venkata Subbaiah (1983)**

In *T. Sareetha v. T. Venkata Subbaiah* [(1983) AIR 356][\[37\]](#), The Andhra Pradesh High Court held that a provision for restitution of conjugal rights was unconstitutional, being against the right to privacy and dignity. The progressive interpretation reflected the notion that subjecting a spouse to sexual relations, albeit in marriage, goes against personal freedom. The Supreme Court, though, subsequently overruled this decision in *Smt. Saroj Rani v. Sudarshan Kumar Chadha* [(1984) AIR 1562][\[38\]](#). This exposes the judiciary's ambivalent approach towards marital autonomy.

### **6. International Influence: *R v. R* (United Kingdom, 1991)**

Even though Indian courts still have not criminalized marital rape, international judicial trends offer compelling precedents. In *R v. R* [(1992) 1 AC 599][\[39\]](#), the United Kingdom House of Lords categorically removed the exemption of marital rape, holding that marriage does not entail ongoing consent. This judgment was a watershed in world legal thought, reaffirming the central principle that consent is essential in every sexual relationship.

### **Judicial Trends and the Call for Reform**

Indian courts have, for the most part, left the criminalization of marital rape to the legislature, even with such judicial interventions. The Supreme Court has recognized the imperatives of progressive interpretation of gender justice-related laws but has not explicitly overruled the exemption of marital rape. In light of the developing jurisprudence on privacy, dignity, and equality, there is a strong constitutional rationale for treating marital rape as a criminal offence. However, without legislation, judicial interpretations are restricted in scope.

### **3.2 Role of Law Commissions and Committees**

Marital rape has been discussed by several law commissions and committees in India, but legislative change is yet to be seen. These institutions, responsible for proposing legal improvements consistent with constitutional ideals and human rights standards, have frequently avoided questioning deeply ingrained patriarchal orders. Whereas certain committees have advocated the criminalization of marital rape, subsequent governments have opposed adopting such recommendations on the grounds of concern for family stability and abuse of laws. This is in contrast to changing jurisprudence regarding consent, autonomy of the body, and gender equality, both nationally and globally.

**1. 42<sup>nd</sup> Law Commission Report (1971): Maintaining Marital Rape Exception**

The 42<sup>nd</sup> Law Commission Report[\[40\]](#) Considered the Indian Penal Code but did not respond to the erosion of bodily integrity in marriage but instead reinforced the presumption of inferred consent. The legal discussion then remained anchored in the principle that a wife had a duty to extend unqualified sexual access to her husband.

**2. 172<sup>nd</sup> Law Commission Report (2000): Missed Opportunity for Reform**

Despite growing awareness of gender-based violence, the 172<sup>nd</sup> Law Commission Report[\[41\]](#) continued to uphold the marital rape exception, arguing that criminalizing it would “destabilize the institution of marriage.” This reasoning failed to consider the fundamental rights guaranteed under Articles 14,15 and 21 of the Indian Constitution[\[42\]](#), which emphasizes equality, non-discrimination, and dignity. The Commission’s conservative stance reinforced gender subordination within marriage.

**3. Justice Verma Committee Report (2013): Strongest Call for Criminalization**

The Justice J.S. Verma Committee, constituted after the 2012 Nirbhaya gang rape case, presented a historic recommendation calling for the abolition of the marital rape exception[\[43\]](#). It clearly asserted that:

- Consent is paramount, irrespective of marital status.
- Marital rape is a form of sexual violence that tramples on a woman’s bodily autonomy and dignity.
- The law should equate all kinds of rape equally.

The Committee understood that the exception of marital rape was contrary to India’s constitutional system as well as to international human rights law. Nonetheless, the Criminal Law (Amendment) Act of 2013[\[44\]](#) Fortified the laws related to rape, keeping the criminalization of marital rape out, depicting the attitude of the government not to institute change-oriented law reforms.

**4. 267<sup>th</sup> Law Commission Report (2017): A Cautious Approach**

The 267<sup>th</sup> Law Commission Report[\[45\]](#) Once again considered the matter but did not recommend blanket criminalization, opting instead for a gender-neutral approach to sexual

offences. By avoiding the very issue at stake, the report indicated legislative hesitation to accept the constitutional and human rights violations inherent in marital rape.

### **5. Parliamentary Standing Committees and Lobbying by Women's Rights Bodies**

Several parliamentary standing committees and organizations, like the National Commission for Women (NCW)[\[46\]](#), have been strongly recommending the criminalization of marital rape over the years. Nonetheless, resistance remains on the following grounds:

- Maintenance of conjugal harmony (overlooking the basic right to bodily autonomy).
- Abuse of law by the judicial process (this is an argument not supported by empirical facts).
- Interference with personal laws (over the constitutional requirement of equality before the law).

### **Impact and Limitations:**

Despite prolonged deliberations, India's legislative process continues to be immune to criminalizing marital rape, reflecting a gap between constitutional morality and legal policy. Though commissions and committees have influenced the debate, their suggestions have tended to be watered down or disregarded owing to political stagnation and socio-cultural opposition. This continued exemption is in contrast to:

- Developing Supreme Court jurisprudence on privacy (Puttaswamy case)[\[47\]](#), dignity, and consent.
- International law standards include the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)[\[48\]](#) and UN human rights conventions[\[49\]](#).
- Comparative laws, whereby states like the UK, USA, and South Africa have previously criminalized marital rape[\[50\]](#).

### **3.3 Comparative Analysis with Other Jurisdictions**

The criminalization of marital rape differs between jurisdictions and is influenced by varying legal traditions, societal expectations, and human rights obligations. While some states have eliminated the marital rape exception, others, such as India, maintain it, perpetuating the outdated doctrine of implied consent in marriage.

### **1. United States: Judicial Activism and Legislative Reforms**

The United States criminalized marital rape gradually through judicial activism and legislative reform. In *People v. Liberta* (1984)[\[51\]](#), the court held that marriage does not exempt one from the laws of rape, and hence marital rape became uniformly criminalized in all the states, although with different intensities of enforcement. Gradually, all 50 states legislatively altered their laws to acknowledge that rape within marriage is a criminal act when it occurs without consent so that marital sexual assault can be prosecuted under general rape codes[\[52\]](#).

### **2. United Kingdom: Evolution through Judicial Precedents**

The United Kingdom abolished the marital rape exception in *R v. R* (1991)[\[53\]](#). When the House of Lords held that the doctrine of implied consent in marriage was archaic and not in line with contemporary legal principles. This case paved the way for the Sexual Offences Act of 2003[\[54\]](#), which reiterated that marital rape is a crime like any other sexual offence, providing legal protection to spouses.

### **3. Canada: Explicit Legislative Criminalization**

Canada was a direct legislative one by enacting Bill C-127 (1983)[\[55\]](#), which legislatively criminalized marital rape. The reform not only established spousal sexual assault as a specific offence but also brought greater protections for survivors so that they would not have to endure undue evidentiary burdens when reporting charges. Canada's legal system treats all cases of sexual violence equally, with a focus on consent rather than marital status[\[56\]](#).

### **4. South Africa: Constitutional Commitment to Gender Equality**

South Africa criminalized marital rape under the Sexual Offences Act of 1993[\[57\]](#), bringing its laws in line with constitutional ideals of gender equality and dignity. In *S v. Baloyi* (2000)[\[58\]](#), the Constitutional Court highlighted that the state has a duty to safeguard people from all types of domestic violence, including sexual violence in marriage. This judgment reaffirmed the legal position that consent could not be inferred based on marital status alone.

### **5. European Human Rights Standards: ECHR Precedents**

The European Court of Human Rights (ECHR) has repeatedly found in favor of state action against marital rape. In *M.C. v. Bulgaria* (2003)[\[59\]](#), the court ruled that the failure to criminalize marital rape is a breach of fundamental human rights under the European Convention on Human Rights, highlighting the importance of legal structures that respect



consent and bodily autonomy. Various European nations have since amended their legislation to provide consistent protections against sexual violence, whether or not married[\[60\]](#).

## **6. States that Maintain the Marital Rape Exception**

Whereas the majority of countries have erased the marital rape exception, its practice persists in other jurisdictions. Marital rape in Bangladesh and Sri Lanka can be established only as a criminal act when the wife is younger than twelve years, basically refusing married adult women full protection in law from rape[\[61\]](#). Laws modeled along Sharia-driven interpretations in Saudi Arabia and the UAE neither condemn marital rape explicitly, as these countries often privilege rights based on marital union rather than individual agreement[\[62\]](#).

## **4. Challenges in Criminalizing Marital Rape**

### **4.1 Socio-Cultural and Religious Barriers**

Marital rape continues to be an officially unknown offence in India based on ingrained socio-cultural and religious obstacles supporting patriarchal expectations and gender-based inequality[\[63\]](#). The Indian social climate has long enforced marriage as an inviolate and sacrosanct bond, in which the wife's submission to her husband is part of the fundamental bedrock of ideas. The classical assumption that marriage represents permanent consent to sexual intercourse still stands in the way of legal validation of marital rape, perpetuating male dominance in the space of marriage[\[64\]](#). Religious teachings in most communities also exert considerable influence on what the community perceives as acceptable marriage and sexual independence.

In most Hindu, Islamic, and Christian interpretations, the institution of marriage has been conceptualized as a sacred union, where the roles of duty and sacrifice routinely define the function of the wife. A few religious scriptures have been interpreted to the extent of suggesting that a wife has to remain eternally sexually available to her husband without giving her the right to refuse sexual intercourse. These religious factors have, in turn, impacted legal systems and policy-making, rendering legislative reform a politically charged matter. Additionally, the social stigma associated with reporting rape within marriage chases survivors away from pursuing justice. Women experience significant family and social pressure to keep quiet to "save the family honor," as reporting spousal abuse has been traditionally equated with shaming the family[\[65\]](#). Societal ostracism and victim-blaming further discourage women from pursuing legal action, perpetuating the impunity culture of marital rape. Moreover,

economic dependency and ignorance regarding legal rights are also factors in the refusal of women to report marital rape. Most women are afraid of financial instability, domestic violence, or even ostracism should they accuse their husbands of rape. In rural communities, where literacy levels are lower and patriarchal traditions are more strictly followed, the situation is worse.

#### **4.2 Evidentiary and Procedural Challenges**

One of the greatest hindrances to bringing marital rape to trial is the absence of explicit evidence because of the intimate nature of the offence[\[66\]](#). Marital rape differs from other sexual violence in that it is confined to the household setting, so it is not as easy to find eyewitness testimony. Victims are left with nothing concrete other than their own testimony, which is often disbelieved when brought to court.

The other significant barrier is the proof burden, which disproportionately rests with the survivor. As the law presumes consent in marriage, victims are required to establish coercion, force, or lack of consent[\[67\]](#). Provisions that are most challenging when there are no evident injuries. Lack of bodily harm is typically misinterpreted as evidence of consensual sex, even though psychological trauma is a real aftermath of marital rape[\[68\]](#).

In addition, delayed reporting caused by social stigma and fear of retaliation undermines the survivor's credibility in court. Most victims do not file complaints right away, out of fear of being ostracized by society, becoming economically dependent on the abuser, or even being threatened with retaliation[\[69\]](#). The delay may cause a loss of forensic evidence, further reducing the possibility of conviction.

The investigative process also poses real challenges. Police officers could ignore or downplay allegations of marital rape, perpetuating societal prejudices that value marital harmony over a woman's autonomy. Those who come forward are frequently subjected to aggressive questioning, further discouraging them from pursuing justice. Courts also prove susceptible to bias, with judges hesitant to intervene in what is perceived as a private or household matter and, therefore, refusing to acknowledge the survivor's constitutional rights[\[70\]](#).

#### **4.3 Legislative and Political Resistance**

One of the significant hurdles to criminalizing marital rape in India is the robust legislative opposition based on traditional legal practices and political factors. Even with increasing calls for reform, legislators have been hesitant to change the Bharatiya Nyaya Sanhita (BNS) to delete the marital rape exception, usually invoking the institution of marriage and social norms[71]. The argument that identifying marital rape as a criminal act would destabilize family arrangements has been a common argument employed by policymakers as a reason to postpone legal change[72].

The political hesitancy to reform marital rape is due to fear of opposition from conservative organizations and religious bodies that perceive such changes as an encroachment into personal laws and cultural traditions[73]. Political parties tend to hesitate to make strong positions on the issue lest they lose traditional voter support. The absence of political consensus and religious and patriarchal pressure have stagnated legislative reform[74].

## **5. Recommendations and Legal Reforms**

Tackling marital rape in India must be a multi-faceted effort that includes legal changes, institutional capacity building, and societal change. What is needed to ensure the acceptance and criminalization of marital rape and provide proper support to survivors are the following recommendations and reforms.

### **5.1 Suggested Amendments in Bharatiya Nyaya Sanhita (BNS)**

- The current provisions in BNS, which exclude non-consensual sex in marriage from being labeled as rape, need to be repealed. The definition of rape needs to be modified to specifically include that consent is necessary in any sexual relationship, including marriage.
- There should be a specific provision included in BNS that identifies and criminalizes marital rape, treating it as a standalone and serious crime.
- The law must change from presuming automatic consent in marriage to explicit and unambiguous consent for all sexual activities.
- The punishment for marital rape must be as severe as other sexual assaults, with aggravated punishment provisions for repeated abuse, physical assault, or coercion.

- The Protection of Women from Domestic Violence Act should be amended to constitute sexual violence in marriage as a type of domestic violence, enabling survivors to access protection orders and legal redress.

### **5.2 Strengthening Legal and Institutional Frameworks**

- The judicial system needs to be reoriented so that the survivors of marital rape are accorded dignity and sensitivity. There should be the establishment of fast-track courts as well as special judicial benches dealing with sexual violence cases to quicken the procedure.
- The police personnel, medical staff, and judicial functionaries need specialized training in case handling of marital rape, covering trauma-informed practices and gender-sensitive investigation protocols.
- The legal threshold of establishing marital rape needs to be redefined so that psychological, medical, and circumstantial evidence is also accepted. Physical injuries as evidence should not be insisted upon to recognize the broader range of sexual assault.
- Government and judicial agencies need to establish crisis centers, legal aid cells, and psychological counseling facilities exclusively for marital rape survivors to provide access to justice and rehabilitation.

### **5.3 Public Awareness and Gender Sensitization**

- Public awareness campaigns on a national level should be undertaken to educate the public regarding the need for consent in marriage, shattering myths related to marital rape and gender equality.
- Educational institutions and universities should include modules on gender rights, consent, and sexual violence in their curricula to inculcate awareness at a young age and break deep-seated patriarchal beliefs.
- Sensitization should involve religious institutions, community groups, and local governance structures to create progressive understandings of marital relationships and legal reforms.
- Providing safe spaces for survivors to tell their stories can help break society's stigma and create a more enabling environment for legal reforms.

## 6. Conclusion

The problem of marital rape in India is still one of the most significant challenges to gender justice and constitutional rights. The exception of marital rape from the list of sexual offences under Bharatiya Nyaya Sanhita (BNS) continues to defy the very essence of equality, dignity, and individual liberty as contained in Articles 14, 15, and 21 of the Indian Constitution. Despite changing legal and social norms, the assumption of implied consent in marriage still impedes legal recognition and remedy for survivors. This legal anomaly not only sustains gender-based violence but also enforces patriarchal dominance over women's autonomy, denying them their right to bodily integrity and self-determination. Judicial pronouncements, milestone judgments, and committee suggestions like those of the Law Commission and the Justice Verma Committee have repeatedly emphasized the imperative of legal reform.

The judicial framework requires immediate reforms, such as amendments in the BNS eliminating the marital rape exception, bolstering survivor-oriented judicial proceedings, and ensuring sufficient institutional assistance. Also, gender sensitization programs and public awareness campaigns are necessary to transform society's attitudes and make consent a basic requirement in all relationships, including marriage. Finally, criminalizing marital rape is not only a legal requirement but a moral and ethical imperative to maintain gender justice in India.

---

**REFERENCES**

- [1] Joseph Shine v. Union of India, (2018) 2 SCC 189 (Ind.).
- [2] Nat'l Fam. Health Survey – 5, Ministry of Health & Family Welfare, Gov't of India (2019-21), available at <https://main.mohfw.gov.in/>.
- [3] CEDAW Comm., General Recommendation No. 35 on Gender-Based Violence Against Women, U.N. Doc. CEDAW/C/GC/35 (2017).
- [4] Indian Penal Code, No. 45 of 1860, § 375 (Ind.).
- [5] Indian Penal Code, No. 45 of 1860, § 375 (Ind.).
- [6] Sarla Mudgal v. Union of India, (1995) 3 SCC 635 (Ind.).
- [7] Independent Thought v. Union of India, (2017) 10 SCC 800 (Ind.).
- [8] Justice Verma Comm. Rep., Gov't of India (2013), available at <https://mha.gov.in/>.
- [9] Criminal Law (Amendment) Act, No. 13 of 2013 (Ind.).
- [10] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
- [11] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
- [12] INDIA CONST. arts. 14, 15, 21.
- [13] Id. art. 14.
- [14] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (Ind.).
- [15] Joseph Shine v. Union of India, (2018) 2 SCC 189 (Ind.).
- [16] INDIA CONST. art. 15.
- [17] Anuj Garg v. Hotel Ass'n of India, (2007) 10 SCC 1 (Ind.).

- [18] INDIA CONST. art. 21.
- [19] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (Ind.).
- [20] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (Ind.).
- [21] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
- [22] CEDAW Comm., General Recommendation No. 19, U.N. Doc. A/47/38 (1992).
- [23] CEDAW Comm., General Recommendation No. 35, U.N. Doc. CEDAW/C/GC/35 (2017).
- [24] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
- [25] Human Rights Comm., General Comment No. 20, U.N. Doc. HRI/GEN/1/Rev.1 (1994).
- [26] C.R. v. United Kingdom, App. No. 20190/92, 21 Eur. H.R. Rep. 363 (1995).
- [27] Prosecutor v. Kunarac, Case No. IT-96-23, Judgment, ¶ 127 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001).
- [28] Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 598 (Int'l Crim. Trib. for Rwanda Sept. 2, 1998).
- [29] R v. R, [1992] 1 AC 599 (HL) (UK); R. v. Ewanchuk, [1999] 1 S.C.R. 330 (Can.); S v. Jackson, 1998 (1) SACR 470 (SCA) (S. Afr.).
- [30] Special Rapporteur on Violence Against Women, Rep. on Due Diligence Obligation to Eliminate Violence Against Women, U.N. Doc. A/HRC/23/49 (2013).
- [31] Convention on the Elimination of All Forms of Discrimination Against Women, supra note 1; International Covenant on Civil and Political Rights, supra note 4; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
- [32] Human Rights Council, Rep. of the Working Grp. on the Universal Periodic Rev.: India, U.N. Doc. A/HRC/36/10 (2017).
- [33] Independent Thought v. Union of India, (2017) 10 SCC 800 (Ind.).
- [34] Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490 (Ind.).
- [35] Joseph Shine v. Union of India, (2019) 3 SCC 39 (Ind.).

- [36] State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57 (Ind.).
- [37] T. Sareetha v. T. Venkata Subbaiah, (1983) AIR 356 (AP).
- [38] Smt. Saroj Rani v. Sudarshan Kumar Chadha, (1984) AIR 1562 (Ind.).
- [39] R v. R, [1992] 1 AC 599 (HL) (UK).
- [40] Law Comm'n of India, 42nd Report: Indian Penal Code (1971).
- [41] Law Comm'n of India, 172nd Report: Review of Rape Laws (2000).
- [42] INDIA CONST. arts. 14, 15, 21.
- [43] Justice Verma Comm. Rep., Gov't of India (2013), available at <https://mha.gov.in/>.
- [44] Criminal Law (Amendment) Act, No. 13 of 2013 (Ind.).
- [45] Law Comm'n of India, 267th Report: Rape and Related Offences (2017).
- [46] Nat'l Comm'n for Women, Recommendations on Criminalizing Marital Rape (2022), available at <https://ncw.nic.in/>.
- [47] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (Ind.).
- [48] Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
- [49] Human Rights Council, Rep. of the Working Grp. on the Universal Periodic Rev.: India, U.N. Doc. A/HRC/36/10 (2017).
- [50] R v. R, [1992] 1 AC 599 (HL) (UK); R. v. Ewanchuk, [1999] 1 S.C.R. 330 (Can.); S v. Jackson, 1998 (1) SACR 470 (SCA) (S. Afr.).
- [51] People v. Liberta, 64 N.Y.2d 152 (N.Y. 1984).
- [52] U.S. Dep't of Justice, Marital Rape Laws in the United States, Nat'l Inst. of Just. (1999).
- [53] R v. R, [1992] 1 AC 599 (HL) (UK).
- [54] Sexual Offences Act 2003, c. 42 (UK).
- [55] Criminal Law Amendment Act, Bill C-127, 1983 S.C. ch. 125 (Can.).
- [56] R. v. Ewanchuk, [1999] 1 S.C.R. 330 (Can.).



- [57] Sexual Offences Act 1993, No. 23 of 1993 (S. Afr.).
- [58] S v. Baloyi, 2000 (2) SA 425 (CC) (S. Afr.).
- [59] M.C. v. Bulgaria, App. No. 39272/98, 40 Eur. H.R. Rep. 20 (2003).
- [60] Council of Europe, Action Against Sexual Violence in Europe, Eur. Comm. on Human Rights (2017).
- [61] Penal Code of Bangladesh, No. XLV of 1860, § 375 Exception 2 (Bangl.).
- [62] United Nations, Rep. on the Status of Women's Rights in the Middle East and North Africa, U.N. Doc. A/HRC/42/50 (2019).
- [63] Law Comm'n of India, 172nd Report: Review of Rape Laws (2000).
- [64] Flavia Agnes, Family Law: Volume I – Marriage, Divorce, and Matrimonial Litigation 56 (2011).
- [65] United Nations Population Fund (UNFPA), The State of World Population 2020, at 89.
- [66] Law Comm'n of India, 172nd Report: Review of Rape Laws (2000).
- [67] Indian Penal Code, No. 45 of 1860, § 375 Exception 2 (Ind.).
- [68] National Family Health Survey (NFHS-5), Ministry of Health & Family Welfare, Gov't of India (2019-21).
- [69] United Nations Population Fund (UNFPA), The State of World Population 2020, at 89.
- [70] Human Rights Watch, "No Escape from Violence": Domestic Abuse and Marital Rape in India (2018).
- [71] Indian Penal Code, No. 45 of 1860, § 375 Exception 2 (Ind.).
- [72] Law Comm'n of India, 172nd Report: Review of Rape Laws (2000).
- [73] Justice Verma Comm. Rep., Gov't of India (2013), available at <https://mha.gov.in/>.
- [74] Nat'l Comm'n for Women, Report on Marital Rape and Women's Rights in India (2022), available at <https://ncw.nic.in/>.