
FROM SACRED VOWS TO LEGAL LOOPHOLES: THE BATTLE TO CRIMINALIZE MARITAL RAPE

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"Marriage is not a license to impose one's will upon another; love respects boundaries, and consent is its cornerstone."

ABSTRACT

The basis of marriage, an institution that always was regarded as sacred and entrenched in our society, is intimacy, fidelity, and respect. But when it is used to excuse violence and cover up abuse as acceptable under the guise of marital privilege, this honourable position is warped. The concept of conjugal rights is frequently employed to minimise, deny, or normalise marital rape, which is an especially horrible example. Due to the presumption of irrevocable consent at marriage, husbands are frequently shielded from rape charges against their wives in many legal systems around the world, including India. This is a worrying exception.

The exception to marital rape is a blatant violation of married women's fundamental human rights to bodily autonomy and dignity and reveals a pervasive patriarchal bias in legal and social norms. There is a lot of opposition to India's efforts to make marital rape a crime because lawmakers are reluctant to get involved in what they consider "private matters," and cultural and religious groups value marriage's inviolability over the welfare of the individual. The complex relationship between the idea of a sacred marriage and the legal loopholes that permit domestic abuse is examined critically in this essay. This research intends to tackle this injustice by examining the sociopolitical, constitutional, and historical foundations of the marital rape exception, considering the narratives of survivors, and identifying opportunities for meaningful legal change.

Historical Roots and Religious Constructs: The Sanctity of Marriage Versus Bodily Autonomy

The legislative immunity of marital rape traces its origins to long historical patriarchal attitudes that considered women as their husbands' property. Marriage was never considered by history to be a union of two equals but more so a contract where the wife gave up her legal personality and sexuality to her husband. This was eloquently expressed by England's Chief Justice, Sir Matthew Hale, who wrote in 1736, "*the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up to her husband*" (Hale, 1736). This became part of common law and was later adopted by colonial legal codes, including the one for British India.

Religious doctrine in many cultures has further consolidated this viewpoint. For instance, Hindu dharma has multiple interpretations that support the dharma of pativrata (the idea that a woman's duty to her husband is to always be sexually available to him, and if she cannot fulfil this expectation, it is seen as moral failing) (Chakravarti, 1993). But, likewise, although some more liberal Islamic scholars would disagree, in some conservative interpretations of Islamic law, a wife's refusal to sexual relations with her husband is malinterpreted to mean refuting divine will (Engineer, 2008).

In India, Victorian moral codes and patriarchal values were adopted during the colonial period and infused into legal systems that persisted after independence. For example, Section 375 of the Indian Penal Code (IPC) of 1860 specifically excluded forced intercourse by a husband from the definition of rape if the wife was over a certain age—initially 10 years, later changed to 15, and finally to 18. This exemption reflects the colonial government's priorities to uphold the patriarchal institution of marriage rather than prioritizing the safety of individuals who occupy it (Agnes, 1999).

Marital rape remains one of the most unreported forms of violence against women due to the historical narrative's continued impact on contemporary laws and social beliefs.

Legal Silences: Mapping the Global and Indian Legal Frameworks on Marital Rape

India's legal response to marital rape is in stark contrast to both the continued legislative silence in the country and international human rights case law. It is becoming increasingly recognized

that protecting women's rights to equality, bodily integrity and dignity would involve criminalizing marital rape. According to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), "Marital rape should be criminalised as a form of gender-based violence," and called on member states to examine the laws that facilitate impunity in marriage (CEDAW, 2017). The United Kingdom (1991), Canada (1983), South Africa (1993), and Nepal (2002) have criminalized marital rape, since marriage does not mean absolute consent.

India, however, remains an outlier. Section 375 of the Indian Penal Code continues to include an exception stating that sexual intercourse by a man with his wife, if she is not under eighteen years of age, is not rape. This marital rape exception upholds the archaic belief that a wife's consent is presumed once she enters the institution of marriage. Courts in India have acknowledged the limitations of this position—most notably in *Independent Thought v. Union of India* (2017), where the Supreme Court read down the exception for minors, stating that forced sex with a wife aged 15 to 18 would constitute rape (Supreme Court of India, 2017). However, the broader marital rape exception for adult women remains intact.

Legal disputes incubated within this framework have reached the Delhi High Court and, in a split decision in 2022, have been unfurled, which itself reflects judicial ambivalence. While Justice Hari Shankar did not affirm the violation given the legislative permission and social implications, Justice Rajiv Shakdher agreed with the statement of the applicant's legal team that the exception of marital rape violates Articles 14, 15, and 21 of the Constitution (Delhi High Court, 2022). It is a strong illustration of how the judiciary in India struggles to reconcile deep-seated socio-cultural conventions with constitutional morality.

In addition, the Indian government has continuously opposed calls for reform. The state has claimed that making marital rape a crime could "destabilise the institution of marriage" and result in "misuse of law" in affidavits filed with courts and discussed in parliament (Ministry of Home Affairs, 2012). This logic shows a systemic disregard for the rights of women to be free from patriarchal control when, as a country, India ratified international human rights treaties giving the right to protection from all kinds of violence, regardless of marital status.

The legal silence surrounding marital rape in India stands in stark contrast to the evolving global consensus. While many countries move toward recognizing the autonomy and dignity of all individuals within marriage, Indian law continues to enshrine a doctrine of ownership

over consent, effectively legitimizing sexual violence in the most intimate of spaces.

Voices from the Shadows: Survivor Testimonies and the Culture of Silence

Due to the private context of marriage, an institution, valued and protected by social conventions and the law, marital rape remains one of the least visible forms of gender-based violence. Victims of marital rape, because of fears of stigma, disbelief, and even retaliation, often find themselves trapped in silence. Their lived experiences reveal how deeply patriarchal structures, combined with systemic apathy, work to suppress their voices and obstruct justice.

Numerous qualitative studies and field reports document the pervasive fear and helplessness faced by women subjected to non-consensual sex within marriage. Six percent of currently married women in India reported sexual violence by their spouse, according to a National Family Health Survey (NFHS-5, 2019–21) study. Experts agree, however, that the actual number is significantly higher because of underreporting due to stigma and social pressures (International Institute for Population Sciences, 2021). Survivors often report being blamed for inciting the violence, told it is a "husband's right", or warned that speaking up would "bring shame on the family" or "destroy the family's honour."

Sharma (2020) found that police officers will often dismiss the accounts of women and suggest that they "adjust for the family" or discourage them from lodging any complaint. Many survivors also cite economic dependency, fear of abandonment, and concern for their children's future as reasons for staying silent. Survivors express profound emotional trauma—feelings of worthlessness, depression, and anxiety—yet lack access to psychological support and legal aid.

Even when women are courageous enough to seek help, the legal system has serious barriers, according to grassroots organisations that support survivors. Police often refuse to file First Information Reports (FIRs) because there is no clear criminal law prohibiting marital rape; courts also often refuse to consider petitions when there is no legal aid (Majumdar, 2018). Survivors also tend to be marginalized by the absence of protections like fast-track courts, counselling and shelter homes.

Religious and cultural leaders also play a role in perpetuating silence. Women are often counseled to endure the abuse as a test of devotion, or to consult elders rather than approach the law (UN Women, 2018). This societal pressure creates an environment in which survivors

internalize blame and distrust formal systems of justice.

Despite these challenges, survivor narratives have increasingly surfaced through feminist campaigns, social media, and public interest litigation. Movements like #MeTooIndia have emboldened women to speak out against sexual violence, including within marriage. Legal scholars and activists argue that amplifying survivor voices is essential to dismantling myths around marital rape and reframing consent as ongoing, revocable, and intrinsic to human dignity (Menon, 2016).

These accounts serve as strong critiques of all that is wrong with a system that prioritizes the silencing of survivors and protections for offenders, not as simply the narratives of violence. To form informed, compassionate, and rights informed reforms that will ensure survivors are heard, believed, and supported, it is vital to understand the experiences of survivors.

Constitutional Contradictions: Consent, Equality, and the Marital Rape Exception

Indian law remains a challenge to constitutional commitments to equality, individual liberty and dignity due to the ongoing exception of marital rape to Indian law. By excusing forced sexual acts undertaken within a marriage, the state indirectly supports the violation of fundamental rights, undermining both the letter and spirit of constitutional protections.

Under Article 21 of the Constitution of India, every individual has the right to life and personal liberty, which has been interpreted by the courts to expand upon the right to privacy, bodily integrity, and dignity (*Maneka Gandhi v. Union of India*, 1978). The key components of the right to life: body autonomy and self-determination are being wholly violated by sex that is forced by marriage. Survivors are treated as objects rather than equal adults in a marriage because they do not have the ability to consent or decline sexual advances.

The right to equal protection under the law and the right to equality before the law are protected by Article 14. The marital rape exception specifically serves to treat husbands differently than anyone else who commits a sexual assault and that provision creates a legally arbitrary distinction between the spousal relationship and any other person relationship. This discrimination, on its face, amounts to indirect discrimination as it establishes a class of women who are legally considered to be suffering in "notional" or "de facto" service of spousal relationships (*Vishaka v. State of Rajasthan*, 1997). Married women are treated like second-

class citizens since they do not receive the same protections from sexual assault as other people.

Article 15 prohibits discrimination based on sex. The notion that consent given by a wife is irrevocable is derived from outdated gender norms which perceive wives as subservient to their husbands. The marital rape exception and its inherent sanctioning of violence against women through the sanctioning of ownership and patriarchal control over a woman's body, is even further exacerbated by the ability of the state to intervene or opt out of intervening and abstracting the reality that women face and live with in marriage. Feminist scholars argue either by the mere existence of statutory exclusions, the perpetuation of statutory exclusions, or the allowance for state discretion, perpetuates gender inequity and is an example of institutional processes (Baxi, 1995).

Furthermore, the law is required to incorporate values of justice, equality and liberty instead of social or religious mores that support or affirm discriminatory norms when speaking about constitutional morality, a new concept emergent from the basic structure doctrine (Navtej Singh Johar v. Union of India, 2018). When the judiciary is hesitant to strike down the marital rape exception for fear of "social backlash," it runs the risk of subordinating constitutional morality to the will of the majority, which undermines the transformative potential of the law.

The paradox is clear: India's domestic legal system continues to enable abusers by claiming marital privacy as the justification, despite having agreed to international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates a state's obligation to protect women from violence (CEDAW, 1979). Survivors have few options and are obligated to navigate a system that accepts violence in marriage while providing protections elsewhere. In light of these constitutional contradictions, legal reform is imperative. Repealing the marital rape exception would not only align statutory law with fundamental rights but also reaffirm the principle that marriage cannot be a license for abuse. Recognizing marital rape as a crime is essential to upholding the dignity, equality, and freedom that the Constitution promises to every individual—irrespective of marital status.

Towards Reform: The Role of Judiciary, Civil Society, and Legislative Will

Criminalising marital rape requires a holistic approach that includes legislative reform, judicial activism, and ongoing engagement from civil society. While change has been slow and controversial, discussions, court cases, and campaigns in recent years illustrate that a rights-

based democracy cannot accept silence, and allow impunity to go unchallenged.

Judicial Engagement

Even though the decision was not conclusive, the judiciary has played a significant role in raising awareness of marital rape. The judiciary has proved it is willing to utilize a broad reading of constitutional protections for vulnerable groups when it has been progressive in the *Independent Thought v. Union of India* (2017), invalidating the exception to marital rape for minor wives (Supreme Court of India, 2017). The Supreme Court of India similarly decriminalised adultery and demonstrated that marriage cannot pirouette in subjugation inequality and rights violations in *Joseph Shine v. Union of India* (2018) overturning Section 497 of the IPC (Supreme Court of India, 2018). The Court rulings suggest that constitutional morality will demonstrate to be a reliable or accurate guide in relation to discriminatory clauses, and advocates are yet still beseeching the courts to extend this rationale to marital rape.

Civil Society Advocacy

Human rights collectives, feminist organisations, and non-governmental organisations have been the leaders behind influencing public perceptions of marital rape. They are collecting testimonies from survivor, reaching out to legislatures, and raising the profile of the issue through campaigns including "Stop Marital Rape" and petitions including RIT Foundation v. Union of India (2022) which gives visibility to the social concern (Delhi High Court, 2022). These organisations have been creating impact by raising awareness that marital rape is also found in rural and disadvantaged communities, where it was assumed it does not happen. They are helping to cover important gaps from state backed processes by offering counselling and legal and rehabilitation support.

Legislative Will and Policy Recommendations

Legislative reform remains sluggish despite wider public and judicial awareness. When confronted with demands to strictly prohibit marital rape, legislators frequently raise concerns surrounding "misuse" of the law or cultural backlash. However, expert recommendations have emphasized that constitutional rights and necessary protections cannot be secondary to abuse concerns (National Commission for Women, 2021). The recommendations for reform included:

1. **Repealing the marital rape exception** in Section 375 of the IPC to explicitly recognize non-consensual sexual acts within marriage as criminal offenses.
2. **Strengthening survivor-centric procedures**, including mandatory registration of FIRs, confidential medical and psychological support, and protection from retaliation.
3. **Training police and judiciary** to sensitively handle cases of domestic and sexual violence.
4. **Incorporating consent education** in public health and legal literacy campaigns to dismantle patriarchal myths around marriage and sexual availability.
5. **Ensuring coordination with international commitments**, such as CEDAW and Sustainable Development Goals (SDGs), to align domestic laws with global human rights standards.

The conversation has started to move from discussing if marital rape occurs, to discussing how society responds to marital rape. Criminalisation represents an assertion that marriage does not trump individual liberties or constitutional rights, and is not only punitive. The reform proposals grounded in equality, justice, and sympathy must also oppose established biases in order to pave the way for a more accountable legal framework.

Conclusion

The battle to criminalize marital rape is a conflict between established social norms and the legal foundations of fundamental rights. Cultural and religious narratives have historically sanctioned sexual violence within marriage, and an atmosphere of systemic impunity has resulted in the erosion of women's rights, autonomy, and dignity within an institution meant to symbolize protection and partnership. This contradiction is understood and maintained in legal systems, especially in India where the sanctity of marriage is prioritized over the physical integrity and autonomy of married women, and consent is often taken for granted. However, as this paper has explained, Article 14 guarantees everyone's equality; Articles 15 prohibits discrimination by the State on the grounds of sex; Article 21 protects the right to live with dignity; and these entrenched exemptions are both outdated and unjustifiable.

The urgency for reform is underscored by the voices of survivors who once were restrained for

a long time by stigma and fear. Clearly, the testimony of survivors reveals structural neglect, social exclusion, and psychic pain where they strived for justice. Civil society has mobilised to expose structural violence perpetuated in marriage, and court interventions have created opportunities for constitutional reasoning. Yet, survivors remain entangled in the cycles of abuse and silence that only strong legislative measures can disrupt.

Criminalizing marital rape is not an attack on marriage—it is a reaffirmation that consent is ongoing, personal, and revocable. It is a recognition that dignity and bodily autonomy are not privileges granted by marriage but rights inherent to every individual. Aligning the law with constitutional morality and international human rights obligations is essential to building a more just society—one where sacred vows are no longer used as shields for abuse, and where every person's voice is heard, believed, and respected.

The way forward demands courage, empathy, and a collective commitment to dismantling patriarchy in both law and society. Only then can the promise of equality, freedom, and dignity be realized for all.

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