
BENEATH THE VEIL OF MARRIAGE: ARTICLE 21 AND THE FIGHT FOR SEXUAL AUTONOMY

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ABSTRACT

This paper critically examines the constitutional invalidity of Exception 2 to Section 375 of the Indian Penal Code, which exempts husbands from prosecution for raping their wives. Grounded in colonial-era and patriarchal notions of implied marital consent, this legal exception starkly contradicts the fundamental rights guaranteed under Article 21 of the Indian Constitution, including the rights to dignity, bodily integrity, and sexual autonomy. Through an analysis of evolving jurisprudence—particularly in cases such as *Francis Coralie Mullin*, *Suchita Srivastava*, and *Justice K.S. Puttaswamy*—the paper argues that the continued legal impunity for marital rape undermines constitutional values and violates Articles 14 and 15 by institutionalizing gender-based discrimination. Counterarguments regarding the sanctity of marriage and potential misuse are rebutted through constitutional reasoning and comparative analysis with jurisdictions that have criminalized marital rape. The study also highlights India's international obligations under CEDAW and other human rights instruments. It concludes by recommending the repeal of Exception 2, sensitization of the legal system, and expansion of civil remedies under domestic violence law. The criminalization of marital rape, therefore, is not merely a legislative reform but a constitutional necessity essential to uphold the autonomy, equality, and dignity of all women within the marital bond.

I. INTRODUCTION

Marital rape, despite its egregious violation of bodily autonomy, remains legally condoned in India *under Exception 2 to section 37 of the Indian Penal Code*, which immunizes a husband from prosecution for non-consensual sexual intercourse with his wife, provided she is not under the age of fifteen years of age. This archaic provision, rooted in colonial-era legal constructs and the patriarchal notions of implied spousal consent, reflects an entrenched normalisation of violence within the institution of marriage. It effectively subordinates a woman's autonomy and dignity to the institution of marriage, reducing her legal identity to that of a perpetual sexual subject of her husband.

The central thesis of this paper is that marital rape exemption is antithetical to the constitutional guarantee of the right of life and personal liberty enshrined under Article 21 of the Constitution of India. Jurisprudence under Article 21 has progressively expanded to encompass the right to dignity, bodily integrity, and sexual autonomy—rights which are fundamentally negated when a woman is denied legal recourse against sexual violence within marriage.

This research seeks to critically examine the constitutional infirmity of Exception 2 to Section 375 IPC through the lens of Article 21, arguing for the criminalization of marital rape as a necessary corollary to the protection of bodily integrity and human dignity. By interrogating the intersection of constitutional morality, gender justice, and evolving judicial interpretation, this paper contends that the current legal position is untenable in a rights-based democratic framework and necessitates urgent legislative reform consonant with constitutional values and international human rights norms.¹

II. CONSTITUTIONAL FRAMEWORK OF ARTICLE 21

The constitutional mandate under Article 21 of the Indian Constitution—guaranteeing the right to life and personal liberty—has witnessed an expansive and transformative interpretation through a rich body of jurisprudence rendered by the higher judiciary. Initially confined to the mere protection of life in its narrowest sense, judicial pronouncements have over time redefined the scope of Article 21 to encompass a broad spectrum of substantive rights such as

¹ Criminalization of marital rape in India: A legal and Social Perspective, The Amikus Qriae (2024), <https://theamikusqriae.com/criminalization-of-marital-rape-in-india-a-legal-and-social-perspective/> (last visited Jun 4, 2025).

dignity, privacy, bodily autonomy, and decisional freedom. These concepts are central to the legal discourse advocating for the criminalization of marital rape, as they underscore the inviolability of individual autonomy within all spheres of life, including the institution of marriage.

In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)*, the Supreme Court laid the groundwork for a dignity-centric interpretation of Article 21, holding that the right to life is not merely the right to survive or exist but the right to live with human dignity. The Court emphasized that any act that deprives a person of dignity and autonomy, even within private domains, violates the fundamental guarantees of Article 21. This was a seminal development, signalling a departure from purely procedural interpretations of personal liberty toward a more humanistic, rights-based jurisprudence.²

This interpretative expansion was further crystallized in *Suchita Srivastava v. Chandigarh Administration (2009)*, wherein the Court explicitly acknowledged that sexual and reproductive autonomy is an integral part of personal liberty under Article 21. The recognition of a woman's decisional sovereignty over her own body—particularly in matters involving reproductive choice—was held to be central to her autonomy and human dignity. This decision not only recognized women as autonomous agents but also set a constitutional precedent that decisional autonomy in matters of sexual relations cannot be presumed to be extinguished by the institution of marriage.

The doctrine of bodily integrity, an intrinsic facet of the right to privacy under Article 21, was further reinforced in *State of Karnataka v. Krishnappa (2000)*. The Court unequivocally stated that sexual violence constitutes an egregious violation of a woman's bodily sanctity and right to privacy. It recognized that sexual violence—irrespective of the relationship between the perpetrator and the victim—inflicts profound psychological and physical harm, undermining the constitutional vision of dignified existence.

This trajectory culminated in the landmark judgment of *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*, wherein a nine-judge constitutional bench unanimously reaffirmed that privacy is a constitutionally protected right, embedded within Article 21. Importantly, the Court

² Admin., Criminalising marital rape: A dilemma Jus Corpus (2022), <https://www.juscorpus.com/criminalising-marital-rape-a-dilemma/> (last visited Jun 4, 2025).

held that privacy includes not only spatial and informational privacy but also bodily and decisional privacy, including the right to make intimate personal choices without fear of coercion or intrusion. The right to bodily self-determination was thus recognized as sacrosanct—a recognition that necessarily extends to the marital domain.³

Against this constitutional backdrop, Exception 2 to Section 375 IPC, which immunizes a husband from prosecution for non-consensual sexual intercourse with his wife, stands as a glaring anomaly. This legal exception operates to derogate a married woman's right to bodily autonomy and decisional integrity, thereby rendering her a subordinate constitutional subject. The *doctrine of implied or irrevocable consent within marriage*—rooted in the now-outdated "*doctrine of coverture*"—is both jurisprudentially infirm and constitutionally untenable. It negates the fundamental right to give or withhold consent, a right that has been judicially recognized as active, voluntary, informed, and revocable.

Moreover, such a provision offends *Article 14 of the Constitution*, which guarantees equality before the law and equal protection of the laws. By creating an unjustifiable classification between married and unmarried women, the law perpetuates a regime of invidious discrimination, undermining the principle of substantive gender equality. Similarly, it contravenes *Article 15(1)*, which prohibits discrimination on the grounds of sex, as it institutionally reinforces patriarchal norms that deprive women of equal protection against sexual violence based solely on marital status.

The argument for criminalizing marital rape, therefore, transcends the domain of statutory reform. It is a constitutional imperative, rooted in the foundational values of dignity, equality, and personal liberty. The continued legal impunity granted to marital rape not only perpetuates violence but also erodes the legitimacy of constitutional governance, as it tolerates a regime wherein women are denied the full realization of their fundamental rights.

The criminalization of marital rape is not a discretionary legislative reform but a constitutional necessity. Any legal regime that condones non-consensual intercourse within marriage is a flagrant affront to the core principles of Article 21, read harmoniously with Articles 14 and 15. The Indian state must act decisively to abolish this unconstitutional exception and affirm its

³ admin1 & admin1, Act of rape punishable but marital relationship is different: HC - current affairs Current Affairs - NEXT IAS (2022), <https://www.nextias.com/ca/current-affairs/11-01-2022/act-of-rape-punishable-but-marital-relationship-is-different-hc> (last visited Jun 4, 2025).

commitment to safeguarding the bodily integrity and human dignity of every individual, including within the institution of marriage.⁴

III. MARITAL RAPE AND VIOLATION OF ARTICLE 21

The constitutional architecture of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, has evolved through expansive judicial interpretation to encompass fundamental human entitlements such as dignity, bodily integrity, sexual autonomy, and mental well-being. Within this normative framework, the legal immunity afforded to marital rape under Exception 2 to Section 375 of the Indian Penal Code stands in direct contravention of constitutional morality and is incompatible with the rights regime guaranteed to all citizens, irrespective of their marital status.

A. Right to Refuse Non-Consensual Sex

The right to refuse sexual intercourse, even within the institution of marriage, flows directly from the principles of bodily autonomy and sexual privacy enshrined in Article 21. To deny a woman the legal right to withhold consent is to reduce her to a mere object of conjugal entitlement, thereby stripping her of agency and bodily sovereignty. In *Independent Thought v. Union of India* (2017), the Supreme Court took a significant step forward by reading down Exception 2 to Section 375, to exclude wives under the age of eighteen from its protective ambit. While this ruling was confined to minor wives, it represents a vital judicial acknowledgment that forced sexual intercourse within marriage can amount to rape, and that the sanctity of consent does not evaporate upon marriage.

The Court, in that case, emphasized the importance of harmonizing statutory law with constitutional guarantees. The recognition that a minor wife is entitled to the same protection against sexual violence as any other woman underscores the broader constitutional principle that marriage does not extinguish a woman's right to autonomy or dignity. The logical extension of this reasoning mandates a uniform application of this protection to all women, regardless of

⁴ Challenges to the marital rape exception: Day 1: The law is patriarchal and violates the fundamental rights of married women, argue petitioners, Supreme Court Observer (2024), <https://www.scobserver.in/reports/challenges-to-the-marital-rape-exception-day-1-the-law-is-patriarchal-and-violates-the-fundamental-rights-of-married-women-argue-petitioners/> (last visited Jun 4, 2025).

age or marital status.⁵

B. Psychological and Physical Harm

The consequences of non-consensual intercourse within marriage are neither trivial nor purely physical. Marital rape inflicts profound psychological trauma, emotional degradation, and long-term mental health consequences. Victims often suffer from depression, anxiety, post-traumatic stress disorder, and a shattered sense of self-worth. These psychological injuries, in conjunction with potential physical harm, unequivocally violate the right to health and holistic well-being, which has been read into Article 21 by a catena of judicial precedents.

The jurisprudence developed in *P. Rathinam v. Union of India* (1994) and *Bandhua Mukti Morcha v. Union of India* (1984) reiterates that the right to life includes the right to live with dignity, free from exploitation and suffering. By perpetuating an environment where a woman's physical autonomy can be violated with impunity by her spouse, the law effectively sanctions an exception to her fundamental right to a dignified existence.⁶

C. Dignity in Modern Marriages

The historical underpinnings of marital rape immunity are rooted in the archaic and patriarchal "doctrine of coverture," a colonial relic that presumed the legal identity of a woman to be subsumed by that of her husband upon marriage. This doctrine treated wives as chattel with no independent agency, rendering them legally incapable of refusing conjugal relations. In stark contrast, contemporary constitutional values envisage marriage as a partnership of equals, premised upon mutual respect, consent, and individual dignity.

Modern matrimonial jurisprudence, as reflected in decisions such as *Joseph Shine v. Union of India* (2018), which decriminalized adultery, and *Navtej Singh Johar v. Union of India* (2018), which decriminalized consensual same-sex relations, reveals the judiciary's commitment to recognizing autonomy and consent as foundational to intimate relationships. These judgments reject patriarchal structures in favour of egalitarianism and individual freedom, reinforcing the

⁵ Samridhi M, Law on marital rape in India CLATalogue (2024), <https://www.lawctopus.com/clatalogue/clatpg/marital-rape-in-india/> (last visited Jun 4, 2025).

⁶ Singh A and Infanta mercy, 'Criminalisation of Marital Rape in India' (SSRN, 10 November 2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602053 accessed 4 June 2025

idea that intimate partnerships must conform to constitutional morality.

To perpetuate a legal framework that permits non-consensual sex within marriage is to undermine the very essence of such egalitarianism. It sustains a discriminatory distinction that treats a married woman as a subject rather than a rights-bearing individual, thereby rendering her unequal in the eyes of the law.

The constitutional imperative under Article 21, when harmonized with Articles 14 and 15, mandates the criminalization of marital rape. The continued existence of Exception 2 to Section 375 is a jurisprudential anomaly that derogates from the ideals of dignity, autonomy, and equality. It is not merely a legislative omission but a constitutional failure that perpetuates gendered subordination within the most intimate sphere of human existence.

In a constitutional democracy committed to the rule of law and fundamental rights, the bodily integrity of every individual, including a married woman, must be inviolable. Criminalizing marital rape is not merely a social or moral reform—it is a constitutional necessity. It is the only legally and ethically tenable response to an enduring injustice that compromises the sanctity of consent and the dignity of women within the matrimonial bond.⁷

IV. COUNTERARGUMENTS AND REBUTTALS

While the constitutional mandate for criminalizing marital rape is compelling, detractors often invoke arguments grounded in notions of the sanctity of marriage and the potential for misuse of the legal process. However, a critical examination of these assertions, viewed through the lens of constitutional jurisprudence and legal reasoning, reveals their inherent fallacies and their incompatibility with the fundamental rights guaranteed under Article 21 of the Indian Constitution.⁸

A. The “Sanctity of Marriage” Argument

One of the most frequently advanced arguments against the criminalization of marital rape is the alleged threat it poses to the "sanctity" or stability of the matrimonial institution. Proponents

⁷ Singh A and Infanta mercy, ‘Criminalisation of Marital Rape in India’ (SSRN, 10 November 2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602053 accessed 4 June 2025

⁸ Diva Rai, Importance of criminalizing marital rape in India iPleaders (2020), <https://blog.ipleaders.in/importance-criminalizing-marital-rape-india/> (last visited Jun 4, 2025).

of this view posit that criminalizing non-consensual intercourse within marriage would intrude upon the private realm of marital relations and could lead to the disintegration of familial structures.

This argument, however, is deeply flawed. The notion that marriage can serve as a shield for acts of violence and coercion is constitutionally indefensible. The right to privacy, as delineated in *Justice K.S. Puttaswamy v. Union of India* (2017), is a right of the individual—not of institutions. Privacy does not extend to shielding criminal acts or derogations of fundamental rights. To the contrary, the Constitution envisages privacy as a safeguard against state and non-state encroachments upon individual autonomy, including those that occur within the intimate confines of marriage.

Furthermore, the sanctity of marriage cannot be preserved by institutionalizing subjugation or normalizing sexual violence. A marital bond founded upon coercion, fear, or forced intercourse is antithetical to the constitutional vision of dignity and equality. As the Supreme Court held in *Joseph Shine v. Union of India* (2018), constitutional morality must prevail over social morality. It follows that the state has a compelling interest in ensuring that marriages reflect mutual respect and consent, not legal impunity for violations of bodily autonomy.⁹

B. The Spectre of Misuse

Another oft-cited concern is the potential for the misuse of a law criminalizing marital rape. Critics argue that the criminalization could lead to frivolous or malicious prosecutions, weaponizing the criminal justice system in matrimonial disputes.

This concern, while not entirely without merit, is overstated and does not withstand constitutional scrutiny when measured against the magnitude and gravity of harm caused by marital rape. Every legal provision is susceptible to misuse to some extent, yet this possibility does not justify the denial of legal recognition to genuine victims of egregious violations. The Indian legal system has already evolved robust procedural safeguards under the *Code of Criminal Procedure* and the *Indian Evidence Act* to protect against false allegations—such as the presumption of innocence, the requirement of proof beyond reasonable doubt, and judicial

⁹ Challenge to the marital rape exception, Supreme Court Observer (2024), <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception/> (last visited Jun 4, 2025).

discretion in granting bail.

The mere potential for misuse cannot eclipse the urgent need to recognize and redress the real and continuing violation of a married woman's bodily integrity. The Supreme Court has consistently held that the rights of victims cannot be subordinated to the speculative risk of abuse of process. In *Lalita Kumari v. Government of Uttar Pradesh (2013)*, the Court underscored the duty of the state to provide effective mechanisms for redressal of genuine grievances, particularly in cases involving violence against women.

Moreover, legal systems must be calibrated not only to deter wrongful prosecutions but also to affirmatively protect vulnerable populations. In balancing the competing interests, the principle of *salus populi suprema lex*—the welfare of the people is the highest law—requires that the fundamental rights of women, particularly their rights to life, dignity, and bodily integrity under Article 21, must prevail.

Arguments invoking the sanctity of marriage or potential misuse of law cannot serve as constitutional justifications for continued legal immunity to marital rape. The right to bodily integrity, decisional autonomy, and sexual privacy—central tenets of Article 21—are not extinguished by the act of marriage. They persist as inalienable rights deserving of equal protection under the law.

To uphold constitutional fidelity, legislative inertia must yield to the pressing imperative of criminalizing marital rape. The Indian Constitution does not tolerate violence under the guise of intimacy, nor does it privilege institutional sanctity over individual liberty. The law must reflect this enduring constitutional commitment.¹⁰

V. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

The Indian legal exception that exempts marital rape from criminal sanction stands in stark contrast to established global norms and international human rights jurisprudence. As constitutional democracies around the world move towards the recognition of sexual autonomy and bodily integrity as non-negotiable human rights, India's persistence with Exception 2 to Section 375 of the Indian Penal Code has drawn severe criticism both domestically and

¹⁰ admin1 & admin1, Act of rape punishable but marital relationship is different: HC - current affairs Current Affairs - NEXT IAS (2022), <https://www.nextias.com/ca/current-affairs/11-01-2022/act-of-rape-punishable-but-marital-relationship-is-different-hc> (last visited Jun 4, 2025).

globally. The evolving landscape of comparative constitutional law and binding international human rights obligations necessitates a reconsideration of India's current legal position.

A. Global Trends in Criminalization of Marital Rape

Over 150 countries worldwide, including jurisdictions with shared common law heritage such as the United Kingdom, the United States, Canada, Australia, and South Africa, have unequivocally criminalized marital rape. These nations have discarded the archaic and patriarchal assumption of irrevocable spousal consent, replacing it with legal frameworks grounded in the principles of consent, autonomy, and gender equality.

The United Kingdom formally abolished the marital rape exemption in *R v. R [1991] UKHL 12*, where the House of Lords declared that a husband could be prosecuted for raping his wife, thereby affirming that marriage does not nullify a woman's right to bodily integrity and sexual autonomy. Similarly, courts across various U.S. states have consistently held that spousal immunity in rape laws is constitutionally infirm, violating equal protection and due process guarantees under the Fourteenth Amendment.

South Africa, through its *Criminal Law (Sexual Offences and Related Matters) Amendment Act*, has provided comprehensive recognition to all non-consensual sexual acts as punishable offences, regardless of the marital relationship between the perpetrator and the victim. These reforms reflect a common consensus that the right to dignity and sexual autonomy cannot be contractually or institutionally waived, even within the sanctity of marriage.

Such global practices are not merely persuasive but underscore the normative universality of bodily integrity as a fundamental right—a position that India, as a constitutional democracy and a member of the international human rights regime, can no longer ignore without democratic and moral cost.¹¹

B. International Human Rights Obligations

India is a signatory to several international treaties and conventions that explicitly call for the

¹¹ Maddie Giles, Till consent do us part: The marital rape exception and India's constitutional deficit - LSE human rights LSE Human Rights - A student-led blog from LSE Human Rights (2025), <https://blogs.lse.ac.uk/humanrights/2025/01/14/till-consent-do-us-part-the-marital-rape-exception-and-indias-constitutional-deficit/> (last visited Jun 4, 2025)

protection of women's rights against all forms of violence, including marital rape. The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, ratified by India in 1993, unequivocally mandates state parties to eliminate discrimination against women in all spheres, including within the family and marriage. *General Recommendation No. 19 and 35 issued by the CEDAW Committee* interpret gender-based violence, including marital rape, as a form of discrimination under the Convention.

Further, various United Nations Special Rapporteurs, including those on violence against women and on torture, have repeatedly urged the Indian government to remove the legal exception that immunizes marital rape. These bodies have argued that failure to criminalize such acts constitutes a breach of India's obligations under international human rights law, particularly in ensuring access to justice, equality before the law, and the right to live free from violence.

The *UN Declaration on the Elimination of Violence Against Women (1993)* further obligates states to adopt legislative measures that recognize all forms of sexual violence, including those occurring in intimate relationships, as punishable offences. Continued inaction on the part of the Indian state not only undermines its international standing but erodes the credibility of its commitment to gender justice.

Comparative and international legal frameworks provide overwhelming support for the proposition that marital rape must be criminalized as a matter of legal and moral necessity. The convergence of global legal norms and international obligations articulates a shared understanding that bodily integrity and sexual autonomy are universal human rights that transcend marital status.

The Indian Constitution, particularly Article 21, must be interpreted in harmony with these evolving global standards and the progressive jurisprudence of domestic courts. The retention of the marital rape exception is a constitutional aberration that places India at odds with its own constitutional ethos and international obligations. The imperative to criminalize marital rape is not merely a matter of aligning with global trends—it is a matter of fulfilling the promise of dignity, liberty, and justice enshrined in the Constitution of India.¹²

¹² Maddie Giles, Till consent do us part: The marital rape exception and India's constitutional deficit - LSE human rights LSE Human Rights - A student-led blog from LSE Human Rights (2025),

VI. LEGAL REFORMS AND RECOMMENDATIONS

The continued validity of Exception 2 to Section 375 of the Indian Penal Code, which effectively exempts a husband from prosecution for raping his wife, remains a glaring inconsistency within the Indian criminal justice system. This provision stands in stark violation of the fundamental rights enshrined under Article 21 of the Constitution, including the right to bodily integrity, sexual autonomy, and dignity. A robust legislative and institutional response is imperative not only to bring the statutory law in conformity with constitutional mandates but also to ensure the effective realization of gender justice.

A. Statutory Reform: Repeal of Exception 2 to Section 375 IPC

The foremost and non-negotiable legislative imperative is the amendment of Section 375 of the Indian Penal Code to remove Exception 2, which currently provides de facto immunity to a husband from being prosecuted for non-consensual sexual intercourse with his wife. The retention of this exception constitutes a legal fiction that negates the constitutional recognition of individual bodily autonomy within marriage.

The exception is rooted in colonial-era jurisprudence and reflects an obsolete patriarchal understanding that marriage entails irrevocable consent to sexual relations. This doctrine is fundamentally incompatible with the evolving jurisprudence under Article 21, as affirmed in cases such as *Justice K.S. Puttaswamy v. Union of India* (2017) and *Suchita Srivastava v. Chandigarh Administration* (2009), which emphasized the centrality of consent and autonomy in personal liberty.

The removal of Exception 2 would eliminate the unconstitutional classification between married and unmarried women, thereby ensuring equal protection of law under Article 14 and non-discrimination under Article 15. Such an amendment must be supplemented by precise statutory language that reaffirms the importance of consent in all sexual acts, irrespective of the relationship between the parties.¹³

<https://blogs.lse.ac.uk/humanrights/2025/01/14/till-consent-do-us-part-the-marital-rape-exception-and-indias-constitutional-deficit/> (last visited Jun 4, 2025)

¹³ Singh A and Infanta mercy, 'Criminalisation of Marital Rape in India' (SSRN, 10 November 2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602053 accessed 4 June 2025

B. Sensitization of Judicial and Law Enforcement Institutions

The criminalization of marital rape, however, cannot be effective in isolation from institutional reform and capacity-building within the justice delivery system. One of the foremost challenges to enforcement is the prevalence of gender-insensitive attitudes among law enforcement officers, prosecutors, and members of the judiciary.

It is therefore imperative to establish mandatory sensitization and training modules for police personnel, prosecutors, magistrates, and judges on issues pertaining to gender, trauma-informed approaches, and the constitutional imperative of upholding bodily autonomy and dignity. The training curriculum must be grounded in human rights jurisprudence, contemporary psychological insights, and best practices in victim-centric adjudication.

In addition, institutional guidelines and protocols must be developed to ensure that survivors of marital rape are treated with respect, empathy, and confidentiality. The creation of specialized investigative and prosecutorial units equipped to handle such cases would further bolster victim confidence and promote effective enforcement.

C. Strengthening Civil Remedies under Domestic Violence Jurisprudence

Alongside criminal prosecution, a comprehensive civil remedy framework is essential to address the multifaceted harms caused by marital rape, including emotional, psychological, and economic consequences. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) must be expanded and rigorously enforced to encompass psychological and emotional abuse resulting from coerced sexual acts within marriage.

Courts should be empowered to grant protective orders, compensation, and psychological rehabilitation for survivors, recognizing that non-consensual sex within marriage constitutes not only physical abuse but also a form of sustained psychological trauma. The evidentiary and procedural mechanisms under the PWDVA must be streamlined to minimize re-victimization, and adequate resources must be allocated for shelter homes, legal aid, and mental health services.

The constitutional right to life and personal liberty under Article 21 is not a hollow abstraction—it mandates the state to protect the dignity, autonomy, and bodily integrity of all individuals, including within the intimate confines of marriage. To that end, repealing

Exception 2 to Section 375 IPC, sensitizing legal institutions, and enhancing civil remedies under the domestic violence framework are urgent and indispensable measures.

India, as a constitutional democracy committed to justice and equality, must act decisively to eliminate the legal tolerance of sexual violence within marriage. Only then can the constitutional promise of a life with dignity, free from fear and coercion, be meaningfully realized for all women—regardless of their marital status.¹⁴

VII. CONCLUSION

The continued recognition of the marital rape exemption under Exception 2 to Section 375 of the Indian Penal Code is an anachronistic vestige of patriarchal legal thought, founded on antiquated doctrines such as the notion of implied and irrevocable consent within matrimony. This legal fiction is fundamentally incompatible with the constitutional guarantees enshrined in Article 21 of the Indian Constitution, which affirms the right to life, dignity, personal liberty, sexual autonomy, and bodily integrity.

Constitutional jurisprudence has evolved to acknowledge that dignity and autonomy are inalienable, and the sanctity of consent cannot be extinguished by the institution of marriage. The exemption not only perpetuates gendered inequality but also institutionalizes a regime of coercion and impunity that offends the very core of constitutional morality.

Criminalization of marital rape is thus not a matter of mere statutory reform—it is a constitutional imperative. It is essential to harmonize penal laws with the lived realities of women and the evolving contours of fundamental rights jurisprudence. Upholding bodily sovereignty, ensuring gender equality, and affirming a woman's right to decisional autonomy within the marital sphere are constitutional obligations, not optional considerations. The state must act to abolish this legal anomaly and fortify the dignity and rights of all women, thereby reaffirming its fidelity to constitutional values and the rule of law.¹⁵

¹⁴ Maddie Giles, *Till consent do us part: The marital rape exception and India's constitutional deficit* - LSE human rights LSE Human Rights - A student-led blog from LSE Human Rights (2025), <https://blogs.lse.ac.uk/humanrights/2025/01/14/till-consent-do-us-part-the-marital-rape-exception-and-indias-constitutional-deficit/> (last visited Jun 4, 2025)

¹⁵ Singh A and Infanta mercy, 'Criminalisation of Marital Rape in India' (SSRN, 10 November 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4602053> accessed 4 June 2025

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