
BREAKING THE SILENCE – MARITAL RAPE AND CONSENT IN MARRIAGES

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ABSTRACT

“Consent is the foundation of any sexual relationship, yet the term marriage has been used as shield to justify forced sexual relations. If rape is a crime outside marriage why should a wedding ring erase a woman’s right to say no”.¹

Marital rape in today’s context is not so discussed and an overlooked topic of sexual violence. Many people wish to talk and express their related concerns about the same but, they get overburdened by the societal pressure the society still has a perception that rape is not an offence when it comes to two married individuals. Legal frameworks in many countries criminalise the concept of rape but due to its exceptions a plethora of victims are denied justice.²

This paper tends to explore the century old stigma that once married, the husband can form sexual relationship with the wife without her consent subject to marital rape while also looking at its psychological and social consequences and the impact it has on the victim’s mental health. This paper will also look at the legal reforms needed in the criminal justice system so far as the marital rape is concerned.

Marital rape is recognised as a serious crime and this study tends to break the silence that consent is non-negotiable even within the sacred institution of marriage.

Keywords: Marital rape, rape, justice, consent, marriage.

¹ Vartika Kumar, Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India, 6 Dignity: A Journal of Analysis of Exploitation and Violence art. 6 (2021)

² Simon Bronitt & Arushi Misra, Reforming Sexual Offences in India: Lessons in Human Rights and Comparative Law (2014).

Introduction

Marriage is a very sensitive topic that has been ignored or over looked by many societies. Historically, many cultures have viewed marriage as a green signal in the matter of consent, assuming that once someone gets married, they do not the right to refuse to consent to sexual relationship. This belief leads to continued sexual immorality, abuse, and weakness in marriage.³ Consent, including open communication and respect for boundaries, is essential to maintaining healthy and positive interpersonal relationships. Recognizing the importance of consent in marital matters that are beyond understanding, and accepting the idea that both parties have the right to exercise their own bodily autonomy, regardless of the age of the couple. As a result, societies around the world are beginning to rethink and re-evaluate the ideals of marriage, emphasizing that relationships and love can only flourish when both parties agree to engage in sexual intercourse voluntarily. The value of consent in marriage is essential to creating a harmonious, balanced and supportive relationship for all parties.⁴

Objectives of The Paper

- To discuss the history and the origins of marital rape as a deep rooted notion based on patriarchy in a society
- To understand the term marital rape, though not defined under any provision of law but is regarded as a serious offence.
- To analyse the what is meant by consent. Consent is assumed when a women get married. The objective of the paper is to look forward and examine how consent should be understood in marriages
- Analyse the psychological and social impacts that the victims face as a result of marital
- Lastly this paper tends to discuss the reforms made and the necessary recommendations.

³ Amandeep Kaur & Ayesha Iqbal, Criminalizing the Marital Rape Exemption: Constitutional Morality versus Patriarchy under the Indian Penal Framework. (2026)

⁴ Shikha Kanodia & Ritu Ray, Why Penalize Marital Rape, 21 IOSR Journal of Humanities & Social Science 49 (2016)

Research Question

How does societal, cultural and legal attributes impact the right of women to give consent for sexual activities in terms of marriage and the rights of partners in marital relationship?

What Constitutes As Marital Rape

Marital rape means non-consensual sexual intercourse or any other sexual abuse forced upon a spouse by their partner in the institution of marriage.⁵ It is a kind of sexual violence where one spouse forces the other partner to make sexual relations with them without their consent. Since rape is considered as a sexual offence but not much light has been thrown to it and its forms. Rape is seen as a form of heinous offence committed without a person's wilfulness but when a person gets married why is this considered as a green license for people to assume that it will always be a "yes". Marital rape is recognised as violation of bodily autonomy, human rights and personal dignity, yet it remains a legally and socially contested issue in many parts of the world.

History of Marital Rape

1.1 Origin

The history of marital rape is embedded in deep cultural and legal beliefs about marriage, gender, and sexual rights. For many ages, societies have viewed marriage as a contract that grants rights, including sexual rights, to the husband over his wife. This perception often occurs in patriarchal systems where the concept of consent within the institution of marriage is ignored or absent.⁶

a) In Ancient Cultures

In Greece, Rome, and medieval Europe, ideas about sexual rights within marriage were based on the idea that the husband owns his wife. Women were viewed as their husband's property, and marriage was often seen as a way to create and maintain family ties rather

⁵ Deepak Sharma, Marital Rape Exception in India – A Critical Analysis (2026), Vartika Kumar, Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India, 6 Dignity: A Journal of Analysis of Exploitation and Violence art. 6 (2021)

⁶ Anjali Sharma, Evolving Jurisprudence on Marital Rape: A Comparative Legal Study, 5 Journal of International & Empirical Research (2025)

than a partnership based on respect and consent. In marriages it is therefore believed that the women give up her rights and personal dignity to the men without her consent.⁷

b) Medieval and Early Modern Periods

It promotes the idea that the primary role of a woman is to be a wife and mother. In this case, the husband is considered to have the right to touch his wife. Religious traditions, including Christianity, often support this belief. For example, canon law said that a man cannot rape his wife, as sexual relation was considered part of the marital duty. Even if a woman did not approve of her husband approaching her, this was often perceived as a minor marital inconvenience rather than a crime.⁸

c) The 19th and Early 20th Century

In the 19th century, many countries began to show some importance for women's rights in marriages, but the issue of marital rape remained absent from legal discourse. Then came the doctrine of coverture in Britain, the doctrine meant that a married woman had no legal identity and rights separate from her husband, further erasing out any other rights she had. Marital rape was also largely ignored in the legal and medical communities in the United States and other Western nations. The common law tradition, which was inherited from Britain, did not recognize that husbands could rape their wives because wives were subordinate to them and had no right to give consent.⁹ This legal position was rooted in the idea that consent was implied by marriage vows, and thus, a wife's refusal to engage sexually was not legally valid. In fact, marital rape was often framed as an oxymoron because marriage itself was viewed as a form of permanent consent for a husband to do sexual acts without the will of the wife.¹⁰

d) Transition Period from 1970s–1980s

The feminist movement of the 1960s and 1970s played a vital role in challenging these stereotypes. Women's rights activists and scholars began to see the implications of marital rape

⁷ Samantha Kriek, Marital Rape in India: A Crime Without a Name in Law, 10 International Journal of Research and Innovation in Applied Science (2025)

⁸ Debaditya Deb, R v R [1992] 1 AC 599 (House of Lords, United Kingdom): Landmark Case Analysis, 4 LIJDLR (2026)

⁹ Simon Bronitt & Arushi Misra, Reforming Sexual Offences in India: Lessons in Human Rights and Comparative Law (2014)

¹⁰ Richard Emerton, Marital Rape and Related Sexual Offences: A Review of the Proposed Amendments to Part XII of the Crimes Ordinance (2002).

as a form of sexual violence against women and a cause of marital discord. Feminists argued that marriage should not eliminate the idea of consent where it is assumed that once a woman is married, she has no consent in terms of making relationship with the spouse and that sexual relations within marriage were born from the patriarchal social structures.¹¹

e) Today's Stance:

In Today's time marriage is seen as an important part of the global movement for gender equality and women's rights. But in many places and cultures the discrimination between marriage and consent remain, making it difficult for many people to survive on their own. In addition, some jurisdictions still treat marital rape as less serious than other forms of sexual assault, highlighting the challenges that still face in recognizing women's rights in marriage. The history of rape reflects a long struggle to recognize that consent is the basis for all sexual activity, regardless of marital status. Despite progress, the journey toward full recognition and justice for victims continues.¹²

Marital Rape How Defined by Prominent Scholars

It is already well established that since the definition of marital rape in itself is not recognised by the Indian penal code or the BNS. In this part we will discuss the definitions and assumptions made by different scholars and their prospective of rape.

a) Sir Mathew hale

he was an English jurist and was the first person who stated that "a husband cannot be guilty of rape of his wife, for their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract".¹³ His opinions were based on the fact that marriage is a contract and in this marital relationship the wife has no consent, that is to say that her consent is irrevocable. Further his ideas were influenced by the doctrine of coverture which states that women's rights are covered with that of the men in marriages. His views were criticised and overturned in the case of **R vs R 1991** in by the House Of Lords

¹¹ Frances Olsen, Constitutional Law: Feminist Critiques of the Public/Private Distinction, 10 Constellations (1993), Rosemary Hunter, Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism, in Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law (2013).

¹² Vivek Singh & Anjali Singh, The Legal Status of Marital Rape in India: An Examination of Evolving Jurisprudence, 3 LIJDLR (2025).

¹³ Debaditya Deb, R v R [1992] 1 AC 599 (House of Lords, United Kingdom): Landmark Case Analysis, 4 LIJDLR (2026)

where Lord Keith of Kinkle and Lord Emslie referring to the legal precedent **S vs HM Advocate** wherein marital rape had no exception and they further stated that the concept of marriage has evolved from the hales time where the women had no right to express her concerns and was subordinate to the men.¹⁴ They stated that the marriage is no more a contract and the exemption of marital rape is a common law fiction.¹⁵

b) By Koss

He defined rape as an nonconsensual penetration obtained by force, threat and bodily harm or when the victim is unable to give consent.¹⁶

c) According to The Roman Law

As per the roman law rape has been defined as a form of assault or *crimen vis*, which involved the abduction of the women against her will.¹⁷

d) According to International Criminal Tribunal for The Former Yugoslavia

They have defined rape as a crime which involves coercion, or threat of force against the victim.

As we move forward, we see that, all these definitions have defined rape and not the term marital rape. Further it is to be noted that these definitions contain a common term that is 'consent of the victim'. It is thus implicit that any kind of sexual acts done forcibly without the consent of the women even in marriages can also fall under the ambit of these definitions.

Legal Stance of Marital Rape

Marital rape has not been defined in the *Bhartiya Nyaya Sanhita 2023* as a sole offence but its usually covered under section 63 of rape :

2.1. Marital rape as Bhartiya Nyaya Sahita 2023

Section 63: Definition of rape

¹⁴ R v. R [1992] 1 AC 599 (House of Lords, UK)

¹⁵ Imran S. Khan, Consent in Marriage: A Radical Feminist Analysis of Pakistani Law (2020).

¹⁶ Samantha Kriek, Marital Rape in India: A Crime Without a Name in Law, 10 International Journal of Research and Innovation in Applied Science (2025)

¹⁷ Chandreyee Mukherjee & Anindita Bhattacharya, Silent Epidemic of Rape in India (2023)

A man is said to commit “rape” if he:

- 1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- 2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- 3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
- 4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:*
 - against her will*
 - without her consent*
 - with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.*
 - with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*
 - with her consent when, at the time of giving such consent, by reason of mental illness or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*
 - with or without her consent, when she is under eighteen years of age.*
 - when she is unable to communicate consent.*

Explanation 1: For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1: A medical procedure or intervention shall not constitute rape.

Exception 2: Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.¹⁸

Criticism of This Section

As far as the exception 2 is concerned many scholars and activists and human right organisation argue that a marriage simply does not give one spouse the right to override the other spouse consent to sexual relations. This exception also says that a husband can not be charged with rape if he has sexual intercourse with his wife who is above eighteen years of age. This exception is subject to criticism that this allows the husband to form sexual relations with a woman without her consent by the way of marriage.

Some of the criticisms are:

a) Gender Inequality

The patriarchal system saw women inferior to the men and always subordinate to them reducing their autonomy. In many ancient cultures women’s body is seen as a property of a man. This continues to normalise sexual violence against women.¹⁹

b) Encouraging Sexual Entitlement

The exception 2 of section 63 of Bharatiya Nyaya Sanhita 2023, the critics say that this exception effectively legalises violence within marriage if the wife is above eighteen years of age and

¹⁸ The Bharatiya Nyaya Sanhita, No. 45 of 2023, Section 63 (India)

¹⁹ Riya Roychoudhuri, Marriage Is Not Consent: Rethinking the Marital Rape Exception in India (2026)

gives an open access to the husband to do whatever sexual act he wants to do with the spouse without her consent. This suggests that husband's sexual entitlement within marriage takes precedence over the wife's right to refuse any sexual act.²⁰

c) Impunity to Perpetrators

This exception lays down a defect that it grants impunity to the perpetrators of marital rape. This means it excludes the husband from being prosecuted even if they coerce, force, or violate their wives.²¹

d) Infringement on Right to Bodily Integrity :

Marital rape is considered as a private matter rather than a serious criminal offence. This not only violates wife's autonomy but also denies her the right to physical integrity. The critics also say that it undermines the women's right to consent to sexual activities within the marriage.²²

e) Lack of Clear Definitions

marital rape has not been defined as per the BNS and the legal framework of section 63 also does not adequately address marital rape as a crime which results in loopholes in prosecution and lack of justiciable legal frameworks.²³

Marital Rape as a Violation of Fundamental Rights

Marital rape is a violation of the fundamental right of a woman specifically under Articles 14 and 21 of the Constitution of India. In this Part, we argue that the lack of criminalisation of marital rape infringes on the fundamental rights of a woman. Even though this crime of marital rape occurs within the private sphere of a marriage, it is the responsibility of the State to penetrate through this private sphere. If the State does not penetrate this private sphere, then a

²⁰ S. Gupta, S. Sanjay & M. Prabhakar, Criminalization of Marital Rape in India: A Constitutional and Human Rights Perspective, 4 LIJDLR (2026)

²¹ Criminalisation of Marital Rape in India: A Scoping Review, International Journal of Social Sciences (2024)

²² R. Tripathi et al., Right to Privacy Vis-a-Vis Matrimonial Rights in India, International Journal of Mechanical & Production Engineering Research and Development (2020)

²³ Deepak Sharma, Marital Rape Exception in India – A Critical Analysis (2026).

woman is left without remedy when raped by her husband.²⁴

However, an analysis of judicial decisions with respect to matters traditionally conceived to be within the private sphere of marriage and family highlights the hesitation of the judiciary to bring in fundamental rights in this private sphere. The judiciary has created this fictitious private sphere where it refuses to implement and read in fundamental rights. The effect of this has been to negate the question of whether marital rape is an infringement of fundamental rights. This is because in the perceived marital sphere, there is no role for fundamental rights.²⁵

Thus, in this Part, we will first, rebut this creation of a private sphere where constitutional rights cannot be engaged with. In Part A, we will first trace the creation of the private sphere where fundamental rights cannot be enforced. In Part B, we will analyse why this conceptualisation of the private sphere is flawed. Further, in Part C, we will depict how the exemption clause of §375 of the IPC is in violation of Article 14 of the Constitution.

Creation of Private Spheres Where Fundamental Rights Can Not be Enforced

It is necessary to analyse the reluctance of the judiciary to engage with fundamental rights in the private sphere by tracing the trajectory of the decisions with regard to ‘restitution of conjugal rights’ (‘RCR’). This is because the constitutional law issues that arise with regard to RCR are analogous to the debate on marital rape. The RCR is a remedy that originated in English law, although it no longer exists there. It is a mechanism through which a court may pass an order compelling a married couple to live together, a restitution of a spouse’s conjugal right against the other. In India, this is found in section 9 of the Hindu Marriage Act, 1956. The gist of the section is that if a husband or wife does not live with the other spouse ‘without reasonable excuse’, the court can grant a decree of RCR. RCR has been known to work to the disadvantage of women. Women are often forced to resume conjugal relations with their husbands. Here, similar to the debate on marital rape, the central question is whether the State can compel a woman to have sexual relationships with her husband. This question has confronted High Courts and the Supreme Court and they have had to continually deal with

²⁴ Amandeep Kaur & Ayesha Iqbal, Criminalizing the Marital Rape Exemption: Constitutional Morality versus Patriarchy under the Indian Penal Framework.

²⁵ Anurag Mishra, Criminalization of Marital Rape in India: Constitutional Morality and Legal Reform, 6 AIJFR (2025).

challenges to its constitutionality.²⁶

The Andhra Pradesh High Court in the case of **T. Sareetha v. T. Venkata Subbaiah** (**'Sareetha'**) was the first case to strike down the constitutionality of the RCR as given in the Hindu Marriage Act. The argument before the Court was that the section 9 of the Hindu Marriage Act violated Articles 14, 19 and 21 of the Constitution (golden triangle). The Court agreed with this argument. The Court held that the RCR remedy was unconstitutional since it transferred the right of choice to indulge in sexual intercourse from the woman to the State.²⁷

This would violate Article 21 of the Constitution since it infringes upon the personal autonomy of an individual. Moreover, the Court accepted that women would be hurt by this provision and notes the importance of sexual autonomy for a woman. It is also here that the Court agrees that “no positive act of sex can be forced upon the unwilling persons, because nothing can conceivably be more degrading to human dignity and monstrous to human spirit than to subject a person by the long arm of the law to a positive sex Act”. Interestingly and it is very rare for the Court to do so – it notes that even within the realm of marriage, the concept of forced sex can exist. However, the Court held that the concept of RCR is not in tandem with the concept of the ‘marital sphere’.

In Harvinder Kaur v. Harmander Singh The Delhi High Court was also confronted with a petition challenging the constitutionality of the RCR. Departing from Sareetha case, the Court upheld the constitutionality of section 9 of the Hindu Marriage Act. In this case, the Court stated that the purpose of RCR was not to coerce someone to stay with their partner but rather to “protect the institution of marriage”. It also refuses to accept that a decree of RCR would result in women being forced to resume conjugal relationships with their husband. At one part of the judgment, the Court takes a progressive stance by mentioning that sexual relationships are not the only kind of relationship that encompasses a marriage. However, again, the Court uses this ‘progressive’ understanding of marriage to ignore the fact that when a woman is forced to live with her husband, there is a very high probability that these women would be forced into sexual relationships as well. The Court turned a blind eye to this form of abuse women would face by subscribing to the theory of ‘marital privacy’.²⁸

²⁶ Hindu Marriage Act, 1956, section 9, Saroj Rani v. Sudarshan Kumar Chadha, AIR 1964 SCC 1562

²⁷ T. Sareetha v. T. Venkata Subbaiah, AIR 1983 A.P. 356, R. Nayyar, Case Comment: Saroj Rani v. Sudarshan Kumar Chadha AIR 1984 SC 1562, 11 International Journal of Scientific Research (2022).

²⁸ Harvinder Kaur v. Harmander Singh, AIR 1984 .

By doing so, the Court refuses to even engage with the question of sexual and personal autonomy simply because it distances the debate of RCR from the constitution. This boils down the debate on RCR to merely a legislative policy, one without implications on constitutional law. Here, the Court has created a private sphere where the Constitution and the fundamental rights enshrined in it have no significance.

B. Critiquing The Creation of Private Spheres

These cases indicate two views that are relevant to distancing marital rape as an infringement of fundamental rights. First, there is a creation of an impenetrable sphere known as the 'marital sphere' where constitutional law has no application. The impact of this is that while rape is seen as a violation of the fundamental right of a woman, this argument ceases to hold in the 'marital sphere'. This is because fundamental rights are inapplicable in the marital sphere. Feminist theory has critiqued the notion of public and private spaces in law. Traditionally, it was believed that law could not regulate certain private affairs of the family. Thus, the law was thought to regulate mainly public affairs and the private world was immune to law. However, this is now understood to be a misplaced notion of the role of law. Frances Olsen in the 'Feminist Critique' argues that the notion of certain private spaces creates an area wherein those who are harmed do not have recourse under law, and as a consequence, no legal action can be taken against those who harm. There is no basis for the argument that constitutional law does not have place in the realm of the family.²⁹

The Constitution of India was brought in to assure equality and abolish practices such as untouchability even in private spaces, indicating the intention to break down these public-private barriers. With the coming in of legislations that deal with the violence of women in their marital sphere, this distinction has slowly but surely eroded. The PWDVA, 2005 and Section 498A of the IPC already provide a range of civil and criminal remedies for women who are victims of forms of abuse in the marital sphere. This was to protect the rights of such women. Thus, the argument that there exists a sphere without any constitutional rights has lost its relevance in the present scenario. It is merely employed as a tool to continue to mask certain forms of violence in the marital sphere that both the judiciary and the legislature are uncomfortable to acknowledge and address. Therefore, we argue that the exception clause in

²⁹ Frances Olsen, *Constitutional Law: Feminist Critiques of the Public/Private Distinction*, 10 *Constellations* (1993)

Section 375 of the IPC can be adjudged on the basis of constitutional law, and as we shall depict further, it fails the test of the Constitution.³⁰

Constitutional Incapability of Marital Rape Exception Under Article 14

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. The marital rape exception creates an unreasonable distinction between married and unmarried women by denying married women the same protection against non-consensual sexual intercourse that is available to all other women. This classification is based solely on marital status and fails to satisfy the constitutional requirements of reasonable classification.³¹

For a classification to be constitutionally valid, it must satisfy two conditions: there must be an intelligible differentia distinguishing persons grouped together from those left out, and that differentia must have a rational nexus with the objective sought to be achieved by the legislation. The object of rape law is to protect an individual's sexual autonomy, bodily integrity, and dignity by criminalising sexual intercourse without consent. Excluding married women from this protection bears no rational connection with that objective. Instead, it undermines the very purpose of rape law by presuming irrevocable consent upon marriage.³²

The Supreme Court has consistently held that Article 14 embodies substantive equality rather than mere formal equality. In **Shayara Bano v. Union of India**, the Court recognised the doctrine of manifest arbitrariness, holding that legislation which is irrational or capricious violates Article 14. Similarly, in **Joseph Shine v. Union of India**, the Court rejected patriarchal assumptions underlying the offence of adultery and recognised women as autonomous individuals rather than the property of their husbands. These constitutional developments demonstrate that laws founded on outdated notions of marriage cannot withstand constitutional scrutiny.³³

The marital rape exception perpetuates the stereotype that marriage extinguishes a woman's sexual autonomy. Such an assumption is incompatible with constitutional morality, which requires the State to protect the dignity and equality of every individual irrespective of marital

³⁰ Protection of Women from Domestic Violence Act, No. 43 of 2005 (India), Indian Penal Code, No. 45 of 1860, Section 498A (India), Constitution of India Article 14,15,21

³¹ Deepak Sharma, Marital Rape Exception in India – A Critical Analysis (2026).

³² Nisha Kaur, Criminalisation of Marital Rape in India: A Constitutional and Human Rights Perspective (2026)

³³ Shayara Bano v. Union of India, (2017) 9 SCC 1, Joseph Shine v. Union of India, (2019) 3 SCC 39.

status. Consequently, the marital rape exception fails the test of Article 14 and amounts to unconstitutional discrimination against married women.

Violation of Article 21: Bodily Integrity, Dignity and Sexual Autonomy

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to the procedure established by law. Over the years, the Supreme Court has interpreted this provision expansively to include the rights to dignity, privacy, bodily integrity, and decisional autonomy. These rights form the constitutional foundation of an individual's ability to make free and informed choices regarding intimate and sexual relationships.³⁴

Consent is central to the exercise of bodily autonomy. Marriage does not extinguish a woman's right to refuse sexual intercourse, nor does it authorise forced sexual relations. The presumption of irrevocable consent underlying the marital rape exception is inconsistent with the constitutional recognition of personal liberty and bodily integrity. In **Justice K.S. Puttaswamy v. Union of India**, the Supreme Court recognised privacy as a fundamental right encompassing bodily integrity and decisional autonomy. Similarly, in **Suchita Srivastava v. Chandigarh Administration**, the Court affirmed that reproductive choice forms an integral component of personal liberty under Article 21. These decisions establish that individuals retain autonomy over their bodies irrespective of their marital status.³⁵

The marital rape exception also undermines the constitutional value of human dignity. Sexual violence within marriage inflicts physical, psychological, and emotional harm comparable to rape outside marriage. By refusing to recognise such conduct as a criminal offence, the law effectively denies married women equal protection of their bodily integrity and personal dignity. Accordingly, the marital rape exception violates Article 21 by depriving married women of the constitutional guarantees of bodily autonomy, dignity, privacy, and personal liberty.

International Human Rights Perspective

The growing international recognition of marital rape as a violation of human rights reflects

³⁴ R. Tripathi et al., Right to Privacy Vis-a-Vis Matrimonial Rights in India, *International Journal of Mechanical & Production Engineering Research and Development* (2020).

³⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1, R. Arora, *Marital Rape: A Conflict Between Bodily Autonomy, the Principle of Equality, and Social Issues* (2026).

the evolving understanding that marriage cannot justify sexual violence. International human rights instruments emphasise equality, bodily autonomy, and freedom from violence, imposing positive obligations upon States to protect women irrespective of their marital status.

India is a State Party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obligates States to eliminate discrimination against women and adopt effective measures to prevent gender-based violence. The CEDAW Committee has repeatedly recommended that India criminalise marital rape by removing the existing legal exception.³⁶

The International Covenant on Civil and Political Rights (ICCPR) similarly protects the rights to equality, personal security, and freedom from cruel, inhuman, or degrading treatment. International human rights bodies increasingly recognise that failure to criminalise marital rape amounts to discrimination against women and undermines the protection of fundamental human rights.³⁷

Several countries, including the United Kingdom, Canada, Australia, South Africa, and Nepal, have abolished the marital rape exemption through reforms and judicial decisions. These developments simply mean that marriage can not automatically be considered as a virtue of consent for intercourse.³⁸

Although international conventions are not automatically enforceable within domestic law, Indian constitutional jurisprudence has consistently recognised that international human rights norms may guide constitutional interpretation where they are consistent with fundamental rights. Therefore, India's continued retention of the marital rape exception places it increasingly at odds with evolving international standards protecting women's autonomy and dignity.³⁹

Need for Legislative Reforms and Way Forward

The constitutional deficiencies of the marital rape exception demonstrate the urgent need for

³⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S.

³⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S.

³⁸ Anjali Sharma, *Evolving Jurisprudence on Marital Rape: A Comparative Legal Study*, 5 *Journal of International & Empirical Research* (2025).

³⁹ Vivek Singh & Anjali Singh, *The Legal Status of Marital Rape in India: An Examination of Evolving Jurisprudence*, 3 *LIJDLR* (2025).

legislative intervention. Criminal law should provide equal protection to all victims of sexual violence regardless of their marital status. Retaining the marital rape exception perpetuates discrimination and reinforces outdated patriarchal assumptions that are inconsistent with constitutional values.⁴⁰

Legislative reform should begin with the complete repeal of the marital rape exception so that consent becomes the determining factor in every allegation of rape. Marriage should neither operate as a defence nor create a presumption of continuing consent. At the same time, any legislative reform must incorporate procedural safeguards to ensure fairness during investigation and trial while protecting the rights of both complainants and accused persons.⁴¹

Legal reform alone, however, cannot eliminate marital sexual violence. Effective implementation requires specialised training for police officers, prosecutors, and judges to ensure that complaints are handled with sensitivity and without gender stereotypes. Accessible counselling services, medical assistance, legal aid, and victim protection mechanisms should also be strengthened to encourage reporting and facilitate access to justice.⁴²

Finally, public awareness programmes challenging harmful social norms surrounding marriage and consent are equally essential. Recognising marital rape as an offence is not intended to weaken the institution of marriage but rather to reinforce the constitutional principle that every marital relationship must be founded upon mutual respect, dignity, equality, and free consent. Only through comprehensive legislative and institutional reforms can the constitutional promise of equality and personal liberty be meaningfully realised.⁴³

Conclusion

Marital rape remains one of the most contested issues in criminal law, reflecting the conflict between traditional notions of marriage and the modern understanding of individual autonomy and human rights. The historical assumption that marriage implies irrevocable consent to sexual relations has gradually lost its legal and moral justification. Consent is a continuous,

⁴⁰ Justice J.S. Verma, Leila Seth & Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law, 2013.

⁴¹ Sukhpreet Kaur, *The Gap in Marital Rape Law in India: Advocating for Criminalization and Social Change* (2019).

⁴² Shirin Madhok, Maya Unnithan & Carolyn Heitmeyer, *On Reproductive Justice: "Domestic Violence", Rights and the Law in India*, 16 *Culture, Health & Sexuality* 123 (2014).

⁴³ Chandreyee Mukherjee & Anindita Bhattacharya, *Silent Epidemic of Rape in India* (2023).

voluntary, and informed agreement that cannot be presumed merely because two individuals are married.

This study has demonstrated that the marital rape exception undermines the constitutional principles of equality, dignity, bodily integrity, and personal liberty. Although the *Bhartiya Nyaya Sanhita, 2023* recognises rape as a serious offence, the continued exception relating to sexual intercourse by a husband with his adult wife creates an inconsistency in the legal protection available to married women. Such an exception not only denies equal protection before the law but also perpetuates gender inequality and normalises violence within the institution of marriage. The experiences of several jurisdictions across the world show that recognising marital rape as an offence does not weaken the institution of marriage; rather, it strengthens it by promoting mutual respect, consent, and equality between spouses. Marriage should never be regarded as a licence to violate an individual's bodily autonomy.

Legal reform alone, however, is insufficient. Public awareness, gender sensitisation, effective support mechanisms for survivors, judicial responsiveness, and social change are equally necessary to address the stigma surrounding marital rape. A balanced legal framework must protect genuine victims while ensuring procedural safeguards against misuse.

Ultimately, recognising that consent does not end at marriage is essential for achieving substantive gender justice. Criminal law must evolve in accordance with constitutional values and international human rights standards so that every individual, irrespective of marital status, enjoys equal protection of their bodily autonomy and dignity. Breaking the silence surrounding marital rape is therefore not merely a legal necessity but a moral and constitutional imperative for a just and equitable society