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Crimsinalization of Marital Rape in India: A Constitutional and Human Rights Analysis

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Abstract

In India, marriage has always been seen as a sacred bond but the persistence of marital rape exception has raised a lively debate on consent, dignity, autonomy of the body and equality of the sexes in marriage from a constitutional and human rights perspective. Indian criminal law still does not give husbands any criminal liability for non-consensual sexual intercourse with their wives in certain situations, as compared to unmarried women.

This paper critically explores the validity of the marital rape exception under the Indian Constitution in the context of three of its fundamental provisions- Right to equality (Article 14), Prohibition of discrimination (Article 15) and Right to privacy (Article 21). The study also examines India's international human rights commitments and the developing jurisprudence of human rights and constitutional morality. It also tackles issues of abuse of law, evidence and the social consequences of criminalization.

The paper adopts a doctrinal and analytical approach to the research and concludes that the exemption from criminal responsibility for marriage alone is against constitutional values and current international human rights norms. The paper concludes that criminalization of marital rape is necessary to achieve the substantive equality, protection of women's autonomy and to achieve constitutional justice in India.

Keywords- Marital Rape, Consent, Bodily Autonomy, Constitutional Morality, Gender Justice, Human Rights, Article 21, Sexual Autonomy.

1. Introduction

Marriage is an institution of great social, cultural and legal importance in India. Unique in the history of the community, marriage has been considered a bond of trust and companionship, based on sacrament and obligations, which has traditionally been outside the purview of the state, especially when it involved sexual relations between the partners. But the issue of marital rape has become one of the most debated and complex questions in the current constitutional discourse in India, balancing personal autonomy, gender justice and the sanctity traditionally given to marriage.

Marital rape is defined as sexual intercourse without consent from the wife by her husband. In contemporary democratic societies, consent is important for all sexual encounters, including consensual ones between married couples. The Indian criminal law, however, still has an exception which bars prosecution of husbands for rape against their wives, unless there are certain exceptions, like when the wife is under the age of a certain limit or living separately by court order etc. This exception remains valid because of the colonial belief that marriage is synonymous with consent to sexual intercourse, which has been very much accepted as a norm in patriarchy.

In the recent years, the discussion of criminalizing marital rape has become more heated because of the changing interpretation of the constitution and the growing respect for women's autonomy and privacy in making decisions about their bodies. In the Judgments of the Supreme Court of India, the concept of Fundamental rights has been progressively broadened. Some decisions like Justice K.S. Puttaswamy (Retd.) v. Union of India saw privacy and autonomy as part of the right to life as guaranteed by Article 21, and Joseph Shine v. Union of India, added dignity, equality and the individual choice in marriage. Furthermore, Navtej Singh Johar v. Union of India had established constitutional morality over social morality and emphasized on the need for personal autonomy and consent. These judicial developments have bolstered the claims of unconstitutionality of the marital rape exception.

India's international obligations under CEDAW, UDHR and ICCPR have increased criticism of the marital rape exception. The continued refusal of the Indian government to make marital rape a criminal offence has therefore been criticized by human rights groups, legal

academics and women's rights activists, who claim that the current exception violates the constitutional provisions of equality and dignity.

The present research paper aims at critically discussing the constitutional and human rights aspects of marital rape as it is in India. The study attempts to determine whether or not the exception for marriage rape is harmonious with the current constitutional regime of constitutional morality and gender justice as well as with international human rights standards. It also examines judicial trends, comparative changes in the law, and ongoing issues related to consent in marriage. The paper, based on doctrinal research and analytical arguments tries to join the debate on the need for criminalization of marital rape for substantive equality, autonomy and dignity of women in India.

2. Historical Evolution of the Marital Rape

Marital rape exemption was developed in seventeenth-century English common law, among the theories of Sir Matthew Hale, who said that a husband couldn't be responsible for raping his wife if he took her to marry, meaning that she gave her husband "irrevocable consent" to sexual intercourse.¹ The doctrine on which this rested was the doctrine of coverture, which made the law of a woman after marriage that of her husband. Wives were therefore regarded as secondary to husbands, and had no autonomy or control over their bodies.

These are the principles of patriarchy which were introduced in Indian criminal law during the colonial era by Indian Penal Code. One exception in Section 375 of the IPC was that husbands were not to be prosecuted for sexual intercourse with their wives, if the intercourse was not consensual, and if the wife was of a certain age.² A traditional concept of marriage was that it provided a permanent consent and issues relating to marriage should not be subject of criminal investigation. The Law Commission of India in its 172nd Report of Rape Laws examined the issue of sexual offences and recommended substantial reforms in rape jurisprudence. The report contributed significantly to the national debate regarding consent, sexual autonomy and legal reform.³

3. Constitutional Analysis of the Marital Rape Exception in India

¹ 1 MATTHEW HALE, *THE HISTORY OF THE PLEAS OF THE CROWN* 629 (1736).

² Indian Penal Code, No. 45 of 1860, section 375 Exception 2 (India).

³ Law Comm'n of India, 172nd Report on Review of Rape Laws (2000).

The constitutional validity of the marital rape exception has become a hot topic in Indian constitutional law. Critics argue that this exception violates fundamental rights guaranteed under Articles 14, 15, and 21 by denying married women equal protection, bodily autonomy, and freedom from sexual violence.

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

Article 14 of the Constitution guarantees equality before the law and equal protection under the law.⁴ The marital rape exception creates an unfair classification between married and unmarried women by denying legal protection against rape based only on marital status. While non-consensual sex with an unmarried woman is considered rape, the same act by a husband against a married woman does not carry criminal punishment under this exception.

The Supreme Court has repeatedly pointed out that arbitrariness goes against equality. In *Shayara Bano v. Union of India*,⁵ the Court noted that clear arbitrariness violates Article 14. Many legal scholars argue that giving immunity for sexual violence simply because of marriage is clearly arbitrary and discriminatory.

➤ **Violation of Article 15: Prohibition of Discrimination**

Article 15 prohibits discrimination based on sex.⁶ The marital rape exception disproportionately affects women and reflects deeply ingrained patriarchal views regarding the subordinate status of wives.

The Supreme Court has consistently stated that laws based on patriarchal ideas violate the principle of equality. In *Joseph Shine v. Union of India*, the Court struck down the adultery law for treating women as property of their husbands.⁷ The Court emphasized that the Constitution does not support laws that are based on gender stereotypes. Similarly, the marital rape exception has faced criticism for treating married women as objects who lack independent sexual agency.

⁴ INDIA CONST. art. 14.

⁵ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

⁶ INDIA CONST. art. 15.

⁷ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

This exception also undermines true equality by denying married women the protections that all other victims of sexual violence receive. It creates a legal system where being married acts as a defense against criminal liability, institutionalizing discrimination against women within marriage.

➤ **Violation of Article 21: Right to Life, Dignity, and Bodily Autonomy**

Article 21 ensures the right to life and personal liberty.⁸

The marital rape exception, however, effectively denies married women the right to refuse sex. By assuming that consent continues after marriage, the law strips women of control over their own bodies.

➤ **Judicial Developments and Pending Constitutional Debate**

The constitutional validity of the marital rape exception has faced major scrutiny in *RIT Foundation v. Union of India* before the Delhi High Court. The case resulted in a split verdict: one judge found the exception unconstitutional for violating Articles 14 and 21, while the other upheld it based on legislative policy and societal concerns.

The issue is currently under review by the Supreme Court, making it one of the most important unresolved constitutional matters related to gender justice and bodily autonomy in India.

➤ **Statistical and Social Context**

Despite being underreported due to social stigma and lack of legal recognition, several studies highlight the prevalence of sexual violence in marriage. According to the National Family Health Survey (NFHS-5), a significant number of married women reported experiencing physical or sexual violence from their husbands.

4. Human Rights Perspective and International Legal Framework

The issue of marital rape is not just a matter of domestic criminal law; it is closely tied to international human rights principles related to dignity, equality, bodily autonomy, and freedom from violence. Around the world, legal systems and international organizations have

⁸ INDIA CONST. art. 21.

increasingly acknowledged that marriage cannot be seen as a justification for non-consensual sexual relations. The criminalization of marital rape is regarded as a necessary part of women's human rights and gender justice in modern democratic societies.

India, as a constitutional democracy and a signatory to several international human rights agreements, has a duty to protect women from all forms of violence, including sexual violence within marriage. However, the ongoing presence of the marital rape exception has drawn criticism from international organizations, human rights groups, and legal scholars who argue that this exception is out of step with changing global standards on women's rights and bodily autonomy.

➤ **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women is one of the most important international agreements on women's rights.⁹ Often called the international bill of rights for women, CEDAW requires state parties to eliminate discrimination against women in all its forms.

India ratified CEDAW in 1993 and thus accepted the responsibility to:

- protect women from gender-based violence,
- eliminate discriminatory legal practices,
- And ensure real equality between men and women.

Although CEDAW does not specifically mention marital rape, the Committee on the Elimination of Discrimination against Women has consistently interpreted gender-based violence, including sexual violence within marriage, as a form of discrimination that the Convention prohibits.¹⁰

The Committee has repeatedly advised that countries should criminalize marital rape and eliminate legal provisions that protect husbands. Critics argue that India's retention of the marital rape exception goes against its international obligations under CEDAW.

➤ **Universal Declaration of Human Rights (UDHR)**

⁹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁰ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, 124, U.N. Doc. A/47/38 (1992).

- The United Nations recognizes equality, dignity, liberty, and security of person as fundamental human rights.¹¹

The principles in the UDHR highlight that everyone possesses inherent dignity and equal rights, regardless of social status or gender. Forced sexual intercourse violates:

- personal dignity,
- bodily integrity,
- And freedom from degrading treatment.

The marital rape exception is seen as contradictory to the universal principle that everyone is entitled to equal legal protection against violence.

- **International Covenant on Civil and Political Rights (ICCPR)**

India is also a signatory to the International Covenant on Civil and Political Rights, which guarantees:

- the right to life and liberty,
- freedom from cruel, inhuman, or degrading treatment,
- And equal protection under law.¹²

International human rights organizations interpreting the ICCPR stress that states must take effective steps to protect women from domestic and sexual violence. Not criminalizing marital rape may therefore indicate a denial of equal legal protection and state tolerance of gender-based violence.

- **Declaration on the Elimination of Violence against Women**

The United Nations Declaration on the Elimination of Violence against Women, adopted in 1993, clearly recognizes violence within families, including marital rape, as a form of violence against women.¹³ The declaration calls on states to prevent violence, provide legal remedies, and eliminate laws that allow abuse.

This declaration has significantly furthered the global understanding that violence occurring in private settings like marriage is not beyond legal intervention.

- **Comparative International Position**

¹¹ Universal Declaration of Human Rights arts. 1, 3 & 5, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹² International Covenant on Civil and Political Rights arts. 7, 17 & 26, Dec. 16, 1966, 999 U.N.T.S. 171

¹³ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

In recent decades, many countries have removed the marital rape exception, acknowledging that marriage does not negate a woman's right to consent.

1) **United Kingdom**

The United Kingdom removed marital rape immunity in the landmark case of *R v. R* (1991).¹⁴ The House of Lords decided that the historical view of irrevocable consent was outdated and incompatible with modern legal principles. The Court recognized marriage as a partnership of equals rather than a relationship of ownership.

2) **Canada**

Canada criminalized marital rape in 1983 through legislative reform. The law treats non-consensual sexual intercourse within marriage as it would any other form of sexual assault, focusing on equality and bodily autonomy.

➤ **India's Position in the Global Context**

India is still one of the few countries in the world to have not completely criminalized marital rape. Human rights groups say that this undermines India's efforts towards gender equality and women's dignity.

The continuing existence of the marital rape exception in the Bharatiya Nyaya Sanhita, 2023 has led to increased criticism as many had hoped to see the law drastically overhauled to bring it in tune with constitutional morality and international human rights standards.

A critique of the criminalization movement from within India is that India's social system, culture and family system are different from the west. From this view, the criminalization of rape in marriage can prove destabilizing to marriage and result in misuse of the criminal law.

6. Judicial approach and landmark case laws regarding marital rape in India.

Judicial attitude towards marital rape in India shows a gradual shift from the idea of marriage being a private sphere which does not fall under the purview of the state to the perception of marriage as a constitutional sphere where the fundamental rights are still in force. Whilst the marital rape exception per se has not yet been struck down by a court, a number of cases have established the constitutional framework for contesting the lawfulness of the exception.

¹⁴ *R v. R*, (1992) 1 A.C. 599 (H.L.) (U.K.).

1) **Independent Thought vs. Union of India**¹⁵

This case was a landmark one in terms of the marital rape exception. The Supreme Court studied Exception 2 to Indian Penal Code that permits sexual intercourse amongst a wife in the age group between 15-18 years.

The Court ruled that:

- The sexual intercourse with a minor wife under eighteen years is rape,
- child marriage cannot trample on constitutional protections,
- And the marital rape exception would not be a way to justify sexual exploitation of minors.

The Court pointed out that the dignity, freedom and physical integrity of a girl cannot be taken away just because she is married.

The decision, while not criminalizing marital rape when the victim was an adult woman, showed judicial unease to examine the constitutionality of marital immunity.

2) **K.S. Puttaswamy v. Union of India (1979)**¹⁶

Although not directly related to marital rape, in India this case led to a new understanding of privacy and bodily autonomy in the constitution.

The Supreme Court agreed unanimously that:

- privacy as a fundamental right guaranteed under Article 21,
- bodily integrity,
- decisional autonomy,
- Gives special attention to the values of the Constitution, including the rights of equality and of the person.

The judgment highlighted the autonomy of each person, relating to their private choices, such as those relating to the body or sexuality.

3) **Joseph Shine v. Union of India**¹⁷

Here, the Supreme Court declared the law on adultery of Section 497 of the IPC unconstitutional.

The Court strongly condemned the patriarchal ideas which considered women as the property of men and found that:

- Marriage does not make a woman second-class, and
- Dignity and equality prevail in the family,

¹⁵ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

¹⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

¹⁷ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

- The former has a higher standard than the latter – and constitutional morality overrules social morality.

The judgment was significant in the debate on marital rape, especially in that it challenged the traditional understanding of the law that husbands had control over their wives' bodies and decisions.

4) **Navtej Singh Johar v. Union of India**¹⁸

This ruling was a landmark decision that decriminalized consensual same-sex relations and expanded constitutional jurisprudence on dignity and autonomy.

The Court highlighted that decisions relating to intimate activities are integral to Article 21 of the Constitution.

The principles evolved in this case strengthened arguments that:

- Consent is at the heart of sexual relationships,
- There are principles of and constitutional protections which are applicable to private spaces, e.g. marriage.

5) **RIT Foundation v. Union of India**¹⁹

This case is one of the most significant case studies before the courts in India regarding the exception of marital rape.

Petitioners challenged the constitutional validity of Exception 2 to Section 375 IPC on grounds that it violated:

- Article 14 (Equality),
- Article 15 (Non-discrimination),
- The articles related to this are: 19, 20 and 21 (Dignity and Personal Liberty).

In the year 2022, the Delhi High Court gave a divided judgment.

6) **Justice Rajiv Shakhder's Opinion**

Justice Shakhder found the exception for marital rape to be unconstitutional and noted that:

- marriage does not mean "no more divorce" and
- Women have bodily freedom post marriage,
- Sexual relationships that include forced sexual intercourse in marriage are in violation of dignity and equality.

¹⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

¹⁹ *RTI Foundation v. Union of India*, W.P. (C) No. 284 of 2015 (Delhi High Court, 2022).

7) The Opinion of Justice C. Hari Shankar read out by him.

Justice Hari Shankar allowed the exception and declared that criminalization is a policy process in the legislation, marriage is a unique social institution, and the judiciary must be careful not to be too zealous in tweaking the criminal law.

He also voiced worries about:

- possible misuse,
- evidentiary difficulties,
- And its effect on marriages and relationships.

The split verdict led to the case being filed in the Supreme Court.

8) Proceedings before the Supreme Court that are still pending are referred to as ongoing Proceedings

The issue of constitutional challenge against the marital rape exception is currently pending before the Supreme Court of India. The question is one of the biggest constitutional debates that have arisen regarding gender justice, bodily autonomy, and constitutional morality.

The Court's final ruling will be pivotal to whether or not the marital status can be constitutionally used as a defense against rape.

The proceedings have started a debate across the country with:

- women's rights organizations,
- constitutional scholars,
- religious groups,
- And policymakers.
- Judicial recognition of bodily autonomy.

This is a developing constitutional framework that is at tension with the persistence of the marital rape exception because autonomy-based constitutional jurisprudence is inconsistent with immunity based on marriage, and individual dignity has become more important than patriarchal social structures in the interpretation of the constitution in and of itself.

❖ Judicial Limitations, Legislative Concern

Even with the progressive observations, Indian courts have been hesitant to criminalize marital rape by interpretation. It has long been recognized by courts that:

The competence of the legislature is generally the one that is concerned with the criminal law reform, etc.

Ultimately, and, Parliament needs to deal with more policy issues.

This judicial restraint can be interpreted as a concern about the institutions that deals with the following:

- separation of powers,
- criminal justice implementation,
- evidentiary standards,
- And social consequences.

However, the approach of constitutional courts remains influential, in that they acknowledge that marriage does not abrogate fundamental rights.

7. Problems, counterarguments, and actual concerns regarding criminalization of marital rape

There are not only constitutional and human rights considerations at play when it comes to criminalizing marital rape in India, but there's also a moral dimension. Additionally, there are intricate social, legal, cultural and functional matters that remain to play a role in legislative delay and public opinion. Those who favor the criminalization of spousal abuse contend that husbands should not be immune to prosecution because it perpetuates gender injustice and infringes on women's rights to bodily autonomy, while others have reservations about the possibility of misuse of the law, evidentiary problems, the effect on the institution of marriage and the implementation of the law. It is important to examine these counter-arguments since they are a key component of the current debates on the criminalization of marital rape in India and further illuminate the implications of criminalization.

Flavia Agnes argues that legal reform relating to violence against women must balance protection of women's rights with procedural fairness while remaining sensitive to the social realities of Indian marriages and gender relations.²⁰

➤ The JLA is concerned about misuse of the law

²⁰ Flavia Agnes, *Protecting Women Against Violence? Review of a Decade of Legislation, 1980-1989*, 27 ECON. & POL. WKLY. WS19 (1992).

One of the most common arguments against criminalization is the possibility of misuse of legal provisions. Opponents argue for introducing marital rape as a criminal offence because it could result in false allegations in marital separations, or misuse in divorce and custody cases, and Oppression of wives and their families.

This is often associated with the issue of misuse of dowry and domestic violence legislation. Others are concerned that criminal charges could be difficult to prove in a marriage since it is a private relationship that involves emotional dynamics.

Even Government affidavits given in court have shown apprehensions that criminalization of marital rape may have a potential of undermining the institution of marriage and may be used as a tool for the legal abuse.²¹

But pro-criminalization folks say that-

- While the risk of abuse may not be enough to give up on any legal protections for real victims,
- The use and misuse is a problem of concern with almost all criminal laws, not only those relating to women.

The Supreme Court has consistently ruled that the threat of abuse of a statute is not sufficient to strike it down as unconstitutional.²² Ensuring the protection of the rights of victims of sexual violence does not undermine the need for legal protection, fair investigation or judicial oversight in relation to false cases.

➤ **The difficulty of the evidence and burden of proof**

Another significant issue is one of proof, as to the crime of marital rape. Marital rape is different from rape by strangers, in that consent is a more complex legal and factual issue, with the intimacy of the relationship and domestic life constantly present.

The difficulty of proving consent is expanded when it comes to the marital component of the sexual relationship, according to critics, as sexual intercourse is considered socially to be consensual between husband and wife.

Meanwhile, women's rights activists note that:

- There are many cases in sexual offences where challenges to evidence arise,
- And legal systems will not be able to say 'no harm' when proof is hard to come by.

The modern law of rape has moved beyond the moralizing perspective and has come to the realization that:

²¹ Affidavit Filed by Union of India in *RTI Foundation v. Union of India*, W.P. (C) No. 284 of 2015 (Delhi High Court).

²² *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

- absence of physical resistance does not imply consent,
- Delayed reporting is prevalent in survivors,
- The behavior of the victim is frequently impacted by and trauma.

As a result, there is a strong case for procedural changes, rather than total legal immunity, based on evidentiary concerns.

➤ **Social stigma and underreporting**

A major problem in the implementation of response to marital rape is the strong stigma attached to talking about sexual violence in marriage.

Research and survey have shown that many women suffer sexual violence within the confines of marriage and do not report the violence because of the following:

- economic dependency,
- Worry about feeling left out, and/or
- concern for children,
- Lack of family support,
- And lack of legal status.
- Forced marital sex is normalized and this leads to the silence of society and cycles of abuse.

➤ **The case for the Institution of Marriage, Argument**

Those who are against the criminalization of marital rape often say that the decision to make it a crime could weaken the bond of marriage and make it less stable.

This argument is based on the belief that:

- criminal law should not be too much in the business of private marital relationships,
- Marriage requires both give and take, and adjustments,
- Reconciliation may be lost through and criminal prosecution.

Therefore, advocates say that safeguarding women against sexual violence enhances, not undermines, the institution of marriage as a relationship built on equality and consent is more in keeping with the Constitution.

➤ **The lack of a clear legislative framework is a major problem**

The other difficulty lies in the fact that there is no comprehensive legislation having a specific focus on sexual violence in marriage.

Currently, the Protection of Women from Domestic Violence Act, 2011, in India, offers civil laws to women victims of domestic violence. Under criminal law, non-consensual sexual intercourse by the husband is not considered rape.

There are concerns that the criminalization could be problematic if there is not sufficient detail about the safeguards procedures.

Key issues for legislation are:

- standards for determining consent in marriage,
- safeguards against misuse,
- evidentiary procedures,
- sentencing policies,
- And reconciliation mechanisms.

There are several scholars who recommend India needs to-comprehensive legal reform, gender-sensitive investigation procedures, judicial training, victim protection mechanisms, in addition to criminalization, and awareness programs.

➤ **The psychological and health impacts of marital rape**

The major problems with the existing legal framework is that it does not take into account the serious psychological and physical harm experienced by victims of marital rape.

Medical research and studies have shown that marital rape can result in depression, anxiety disorders, Post-traumatic stress disorder (PTSD), and Suicidal tendencies.

Trauma may be exacerbated by not being legally recognized when victims feel socially isolated, legally invisible, and deprived of justice.

Human rights advocates also say that the severity of sexual violence shouldn't preclude it from being treated as a crime, simply because it takes place between consenting adults in a marriage.

➤ **A feminist analysis of the current structure is undertaken**

The feminist scholars state that the marital rape exception is a result of assuming patriarchy in the legal system. From the feminist legal theory perspective:

- the exception is a reinforcement of the male dominance in marriage,
- regulates sexual whim of husbands, and
- And takes away women's equal sexual agency.

➤ **The need for balanced reform.**

A number of legal experts call for a "balanced approach" that defines sexual intercourse without consent as a crime, introduces procedural safeguards, protects genuine victims, and addresses issues of misuse.

Suggested reforms include:

- provide a clear and explicit definition of consent,
- gender-sensitive investigation mechanisms,
- The use of counseling and mediation when appropriate
- wavering from justice,
- And judicial oversight.

The goal of reform should not be the destruction of marriage; it should be the protection of dignity, autonomy, and equality within marriage, according to supporters.

8. Recommendations and need for legal reform

Indian law, as is evident in the ever-expanding constitutional and human rights debate on "marital rape," needs a change in the current statutes. The ongoing presence of the marital rape exception in the criminal justice is a tension between the colonial patriarchal notions and modern constitutional values of dignity, equality and autonomy of body. The issues of misuse, difficulty of evidence and social impact are issues that need to be taken into account, but they should not be used to excuse a blanket refusal to give married women legal protection from sexual violence. A legal framework that respects women's autonomy and is fair is therefore vital to ensure women's rights are protected and their autonomy respected in the criminal justice system.

➤ **Removal of the Marital Rape Exception**

The most important and the needed reform is the abolition of marital rape exception in Indian criminal law. The Justice J.S. Verma Committee, constituted after the 2012 Delhi gang rape incident, strongly recommended the criminalization of marital rape and observed that the relationship between the accused and the complainant should not operate as a defense against sexual offences. The Committee emphasized that a woman's right to bodily integrity and sexual autonomy continues even after marriage.²³ The exception allows for the creation of a false dichotomy between

²³ Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law 113-17 (2013).

married and unmarried women, and weakens the constitutional principle that every person has equal rights over their body, and equal dignity.

➤ **The switch to a Consent-Based Framework**

The concept of consent is gaining prominence in the Indian criminal law as the 'hallmark' of sexual offences. Yet, the marital rape exception runs counter to this rule: it assumes that consent to marriage is ongoing.

Legislation should therefore have a clear and uniform framework, with consent as a basis, regardless of marriage status.

The right to bodily integrity is violated by forced sexual intercourse, even in a consensual relationship.

Indo-constitutional law would harmonize with the constitutional morality and international human rights standards if it were based on consent.

➤ **Preventing the misuse of the procedures**

But the fears of wrongful prosecution cannot be ignored and hence need to be met by reasonable procedural safeguards. But protection shouldn't be a method that stops justice from being served for real victims.

Reasonable procedural safeguards such as judicial scrutiny, gender-sensitive investigation, confidentiality during trial, and protection against malicious prosecution can balance fairness with accessibility to justice.

➤ **Victim protection and Institutional Sensitization**

Effective reform requires survivor support mechanisms include counseling, legal aid, medical assistance, and gender-sensitive investigation. Police officers, prosecutors, judges, and medical professionals should receive training related to consent, trauma-informed procedures, and constitutional values.

➤ **Legislative action is necessary**

While the judiciary has made great strides in constitutional jurisprudence in the area of dignity and autonomy, only legislation can provide a more complete reform.

Legislative reforms must be guided by constitutional morality, empirical research, compare legal developments, and modern principles of equality and consent.²⁴

Thus, the issue of reform of marital rape is not only a criminal law issue but also a constitutional one, since it is a matter of substantive equality and women's recognition as autonomous persons in the conjugal union.

²⁴ *Navej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

9. Conclusion

The issue of marital rape represents one of the most complex and significant constitutional challenges in contemporary Indian criminal jurisprudence. The continued existence of the marital rape exception reflects the persistence of colonial and patriarchal assumptions that are increasingly incompatible with modern constitutional values of dignity, equality, liberty, and bodily autonomy. While Indian constitutional jurisprudence has progressively evolved to recognize privacy, decisional autonomy, and gender equality as essential components of fundamental rights, the law still denies married women equal protection against sexual violence within marriage.

The study further establishes that international human rights law increasingly recognizes marital rape as a violation of bodily integrity, dignity, and gender equality. International conventions such as CEDAW and ICCPR obligate states to protect women from all forms of violence, including violence occurring within marriage. Comparative legal developments across democratic nations also indicate a global shift toward recognizing consent as the foundation of all intimate relationships irrespective of marital status.

Therefore, the solution lies in balanced legal reform that protects genuine survivors while ensuring fairness within the criminal justice process.

Judicial developments in India, particularly in cases such as *Justice K.S. Puttaswamy v. Union of India*, *Joseph Shine v. Union of India*, and *Independent Thought v. Union of India*, indicate an emerging constitutional recognition of bodily autonomy, dignity, and sexual agency within marriage. These judgments collectively strengthen the argument that constitutional rights do not disappear after marriage and that intimate relationships must be governed by consent rather than coercion.

Ultimately, criminalization of marital rape is not merely a question of legal reform but a question of constitutional morality and recognition of women as equal citizens under the Constitution. A democratic society committed to human dignity and substantive equality cannot permit immunity for sexual violence solely because it occurs within marriage. Therefore, comprehensive legislative reform based on consent, equality, and constitutional values is essential to ensure that the institution of marriage remains consistent with the principles of justice, autonomy, and human rights in modern India.

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❖ Statutes and Constitutional Provisions

- 1) INDIA CONST. arts. 14, 15 & 21.
- 2) Indian Penal Code, No. 45 of 1860, section 375 Exception 2 (India).

❖ International Conventions and Declarations

- 1) Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.
- 2) Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).
- 3) International Covenant on Civil and Political Rights arts. 7, 17 & 26, Dec. 16, 1966, 999 U.N.T.S. 171.
- 4) Universal Declaration of Human Rights arts. 1, 3 & 5, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

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