



# IJMRRS

**International Journal for Multidisciplinary  
Research, Review and Studies**

**ISSN: 3049-124X (Online)**

**VOLUME 2 - ISSUE 1**

2024

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## **Historical Evolution of Marital Rape Exception in India**

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### **Abstract**

The marital rape exception in India represents one of the most contested intersections of criminal law, constitutional rights, and socio-cultural norms. Rooted in colonial legal traditions, particularly the doctrine of implied consent within marriage, the exception under Section 375 of the Indian Penal Code, 1860, has historically shielded non-consensual sexual acts by a husband from criminal liability. This paper traces the historical evolution of the marital rape exception from its origins in English common law to its continued existence in post-independence India. It critically examines legislative developments, including amendments to rape laws and the partial recognition of sexual violence within marriage under allied statutes such as the Protection of Women from Domestic Violence Act, 2005. The study further analyses key judicial pronouncements, particularly the progressive interpretation adopted in *Independent Thought v. Union of India* (2017), alongside ongoing constitutional challenges questioning the exception's validity under Articles 14 and 21 of the Constitution.

The paper highlights the inherent tension between traditional notions of marriage and evolving constitutional values of dignity, autonomy, and equality. By incorporating a comparative analysis of global legal frameworks and international human rights obligations, the study underscores the growing consensus against marital rape immunity. It concludes by emphasising the urgent need for legal reform in India, advocating for the repeal of the marital rape exception and the adoption of a rights-based approach that aligns with constitutional morality and gender justice.

**Keywords:** Marital Rape, Section 375 IPC, Constitutional Rights, Gender Justice, Legal Reform.

## **I. Introduction**

The legal framework governing rape in India has undergone significant transformation over time, reflecting evolving societal values, judicial interpretations, and legislative reforms. Historically, rape laws in India were deeply influenced by colonial legal structures, particularly the Indian Penal Code, 1860, which codified sexual offences within a rigid and patriarchal framework. For a long period, the law conceptualized rape primarily as an offence against modesty and morality rather than as a violation of bodily autonomy and dignity. Post-independence developments, especially after landmark incidents and public outcry, led to critical amendments aimed at strengthening protections for women, expanding the definition of rape, and recognizing the importance of consent. Despite these advancements, certain colonial-era remnants continue to persist within the legal framework, one of the most controversial being the marital rape exception.

The concept of marital rape occupies a complex and sensitive position within socio-legal discourse in India. It refers to non-consensual sexual intercourse by a husband with his wife, raising fundamental questions about consent, autonomy, and equality within the institution of marriage. In Indian society, marriage has traditionally been viewed as a sacrosanct and enduring union, often accompanied by expectations of conjugal rights and duties. This cultural perception has contributed to the reluctance to acknowledge the possibility of rape within marriage, as it challenges deeply ingrained norms regarding spousal relations. Concerns about misuse of laws, the sanctity of marriage, and potential disruption of familial structures further complicate the issue. At the same time, growing awareness about individual rights and gender justice has intensified debates around the need to criminalize marital rape, positioning it as a violation of fundamental human rights rather than a private matrimonial matter.

The “marital rape exception” is explicitly embedded within the definition of rape under Section 375 of the Indian Penal Code<sup>1</sup>. According to this provision, sexual intercourse by a man with his own wife, provided she is not below a specified age, does not constitute rape. This exception effectively grants immunity to husbands from prosecution for non-consensual sexual acts within marriage, thereby creating a legal distinction between married and unmarried women in matters of sexual autonomy. Over time, legislative amendments have raised the age threshold to ensure protection for minor wives, reflecting partial recognition of the issue. However, the core exception remains intact, continuing to shield non-consensual acts within marriage from being classified as rape under criminal law. This legal position has been widely criticized for being inconsistent with the broader definition of consent and for undermining the constitutional principles of equality, dignity, and personal liberty.

The importance and relevance of examining the marital rape exception in contemporary India cannot be overstated. As Indian society witnesses increasing advocacy for gender equality and

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<sup>1</sup> The Indian Penal Code, No. 45 of 1860, § 375, Exception 2 (India).

human rights, the persistence of such an exception raises critical concerns about the coherence and fairness of the legal system. It brings into question whether the law adequately protects women from violence within the private sphere and whether it aligns with international human rights standards that recognise marital rape as a criminal offence. Furthermore, judicial pronouncements and ongoing public interest litigations have kept the issue at the forefront of legal debates, highlighting the urgent need for a comprehensive reassessment of the existing legal framework. The study of this exception is therefore crucial not only for understanding its historical underpinnings but also for evaluating its continued legitimacy in a modern constitutional democracy.

### **Research Objective**

The primary objective of this research is to critically analyse the historical evolution and contemporary relevance of the marital rape exception in India. It seeks to trace the origins of the exception within colonial legal thought and examine how it has been retained or modified through subsequent legal developments. Another key objective is to assess the constitutional validity of the exception in light of fundamental rights, particularly the rights to equality, non-discrimination, and personal liberty. The research also aims to explore the broader implications of retaining or abolishing the exception, including its impact on marital relationships, legal enforcement, and societal attitudes towards consent and autonomy.

### **Research Question**

In pursuing these objectives, the study is guided by specific research questions that frame the inquiry. First, it seeks to understand why the marital rape exception exists in Indian law, examining the historical, cultural, and legal rationales that have justified its inclusion. Second, it investigates how the exception has evolved, considering legislative amendments, judicial interpretations, and socio-political influences. Third, it addresses the critical question of whether the marital rape exception is constitutionally valid in modern India, particularly in light of evolving jurisprudence on fundamental rights and gender justice. These questions aim to provide a structured and comprehensive analysis of the issue, facilitating a deeper understanding of its complexities.

### **Research Methodology**

The research adopts a doctrinal or legal analytical methodology, focusing on the examination of primary and secondary legal sources. Primary sources include statutory provisions, constitutional texts, and judicial decisions that have shaped the legal discourse on marital rape. Secondary sources such as academic commentaries, law commission reports, and scholarly articles are also utilised to provide contextual insights and critical perspectives. This method enables a systematic analysis of the legal framework, allowing for the identification of inconsistencies, gaps, and

areas requiring reform. By relying on established legal principles and interpretative techniques, the study aims to present a balanced and reasoned evaluation of the marital rape exception.

In essence, the issue of marital rape and its exception under Indian law represents a significant intersection of tradition, law, and evolving notions of justice. While the legal system has made notable strides in recognizing and addressing sexual violence, the continued existence of this exception raises fundamental questions about the extent to which the law upholds the rights and dignity of individuals within marriage. Through a detailed examination of its historical roots, legal justifications, and constitutional implications, this research seeks to contribute to the ongoing discourse on reforming rape laws in India and aligning them with contemporary standards of justice and human rights.

## **II. Conceptual Framework**

The concept of rape under Indian law is primarily defined in Section 375 of the Indian Penal Code, which characterizes rape as a sexual act committed against a woman without her consent, against her will, or under circumstances where consent is obtained through coercion, misrepresentation, or incapacity. The provision adopts an expanded understanding of sexual assault, recognizing various forms of penetration and emphasizing the centrality of consent. However, Exception 2 to this section creates a legal distinction by excluding non-consensual sexual intercourse by a husband with his wife, provided she is above a specified age, thereby giving rise to the controversial notion of marital rape immunity.

Marital rape, in its broadest sense, refers to non-consensual sexual intercourse or sexual acts by a spouse within a marital relationship. While globally recognized as a violation of human rights and bodily integrity, Indian law does not fully acknowledge it as a Crime within marriage due to the persistence of the marital rape exception. This exception is historically rooted in the doctrine of implied consent, which assumes that a wife irrevocably consents to sexual relations upon entering into marriage. Such a presumption negates the autonomy of women and fails to recognize marriage as a partnership of equals.

The distinction between consent within and outside marriage forms the crux of the debate. Outside marriage, consent must be free, informed, and ongoing, and its absence constitutes rape. Within marriage, however, the legal framework traditionally presumes consent as continuous and irrevocable, thereby undermining the requirement of explicit and voluntary agreement. This dichotomy creates an artificial boundary that privileges the institution of marriage over individual rights.

Central to this discourse is the concept of bodily autonomy and sexual agency, which affirms an individual's right to make decisions about their own body and sexual relations. The denial of these rights within marriage reflects deeper structural inequalities embedded in societal and legal norms. The intersection of marriage, law, and patriarchy further complicates the issue, as legal

doctrines often mirror patriarchal values that prioritize marital unity and male authority over women's rights. Consequently, the marital rape exception not only represents a legal anomaly but also reinforces gender hierarchies, challenging the constitutional principles of equality, dignity, and personal liberty.

### **III. Colonial Origins of the Marital Rape Exception**

The colonial roots of the marital rape exception in India can be traced to the enactment of the Indian Penal Code, 1860, a comprehensive criminal statute introduced by the British colonial administration to codify criminal law in India. Drafted under the influence of colonial legal thinking and largely modeled on English legal principles, the IPC incorporated prevailing Victorian notions of marriage, morality, and gender roles. Within this framework, rape was defined under Section 375, but it expressly excluded sexual intercourse by a man with his own wife, provided she was above a specified age. This exception reflected the deep entrenchment of patriarchal norms within colonial law, where a wife was not seen as an autonomous legal individual but rather as subsumed within the identity of her husband.

A significant intellectual foundation for this exception lay in the doctrine propounded by Sir Matthew Hale, a 17th-century English jurist, who asserted that by marriage, a woman gave irrevocable consent to sexual intercourse with her husband. This notion of "implied consent" became a cornerstone of English common law and was subsequently transplanted into colonial legal systems, including India. Hale's doctrine effectively denied the possibility of rape within marriage, as it treated consent as permanent and incapable of withdrawal. The colonial administration adopted this reasoning without adequately considering the diverse social realities of Indian society or the fundamental rights of women<sup>2</sup>.

The early legal justification of marital rape immunity in India thus rested on the dual assumptions of conjugal unity and male dominance. Marriage was construed as a contract that conferred sexual rights upon the husband, and any recognition of marital rape was viewed as a threat to the sanctity and stability of the institution of marriage. Consequently, the law prioritized preservation of marital relations over the bodily autonomy and dignity of women. This approach not only normalized sexual violence within marriage but also institutionalized gender inequality within the legal system.

Another important aspect of the colonial framework was the age-based exception embedded within the rape law. Initially, the IPC set a low age threshold, below which sexual intercourse with a wife could still amount to rape. Over time, this age was revised through legislative amendments, reflecting gradual shifts in societal attitudes towards child marriage and consent. Notably, even within the marital rape exception, intercourse with a wife below a certain age was criminalized, highlighting a limited recognition of harm in cases involving minors. In

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<sup>2</sup> Matthew Hale, *The History of the Pleas of the Crown* 629 (1736).

contemporary times, judicial interventions, such as the decision in *Independent Thought v. Union of India*<sup>3</sup>, have read down the exception to criminalize sexual intercourse with a wife below eighteen years of age, thereby aligning it with child protection laws.

Further, under the reformed criminal law framework introduced through the Bharatiya Nyaya Sanhita, 2023, which replaces the IPC, the marital rape exception has been largely retained in substance, continuing to exclude non-consensual sexual intercourse within marriage from the definition of rape, except in specific circumstances such as when the wife is under eighteen years of age. This continuity underscores the enduring legacy of colonial legal principles in modern Indian criminal law, despite evolving constitutional values centered on equality, dignity, and personal liberty<sup>4</sup>.

#### **IV. Post-Independence Legal Developments**

India largely retained the colonial legal framework, including the provisions of the Indian Penal Code, 1860, which continued to recognize the marital rape exception under Section 375. Despite the transformative aspirations of the Constitution, particularly with respect to equality, dignity, and personal liberty under Articles 14, 15, and 21, the criminal law did not immediately reflect these progressive values in the context of marital relationships. The exception to rape, which effectively immunized husbands from prosecution for non-consensual sexual intercourse with their wives (provided the wife was above a specified age), persisted as a legal norm. This continuity illustrates how deeply embedded colonial notions of marriage and consent remained within the post-independence legal system<sup>5</sup>.

In the early decades after independence, the judiciary generally adopted a conservative approach towards issues concerning marital rape, often refraining from questioning the validity of the exception. Courts tended to uphold the sanctity of marriage as a social institution, frequently prioritizing it over individual autonomy and the bodily integrity of women. The prevailing judicial reasoning reflected societal attitudes that viewed marriage as implying irrevocable consent to sexual relations, thereby limiting the scope for recognizing sexual violence within marriage as a criminal offense. As a result, women's rights within the marital sphere were narrowly interpreted, and legal remedies for sexual abuse by a husband were virtually non-existent under criminal law, though certain civil remedies, such as judicial separation or divorce on grounds of cruelty, were available.

The limited recognition of women's rights within marriage during this period can also be attributed to the broader patriarchal structure of society, which influenced both legislative inertia and judicial interpretation. While constitutional guarantees formally established equality between

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<sup>3</sup> *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

<sup>4</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

<sup>5</sup> INDIA CONST. art. 14.

men and women, their practical enforcement within the private sphere of marriage remained weak. The legal system continued to treat the family as a domain largely insulated from state intervention, thereby reinforcing the notion that issues such as marital rape were private matters rather than public wrongs warranting criminal sanction.

The stance of the Law Commission of India further reflects this cautious and incremental approach to reform. In its 42nd Report (1971), the Commission reviewed various provisions of the Indian Penal Code but did not recommend the removal of the marital rape exception<sup>6</sup>. The report largely adhered to the traditional understanding of marriage and did not engage deeply with the question of consent within marital relationships. This omission indicates the limited priority accorded to women's sexual autonomy at the time. Subsequently, the 172nd Report (2000), which was prepared in the wake of increasing national and international attention to gender justice, revisited the issue of rape laws more comprehensively. While the report recommended several progressive changes, including broadening the definition of rape and making the law more victim-centric, it stopped short of advocating for the complete criminalization of marital rape. Instead, it acknowledged the complexity and sensitivity of the issue, suggesting that a cautious approach was necessary due to prevailing social conditions and concerns about potential misuse of the law.

The post-independence period reflects a pattern of legal continuity and gradual, albeit limited, reform. While there were emerging discussions around women's rights and gender justice, these did not translate into substantive changes in the treatment of marital rape under criminal law. The persistence of the marital rape exception during this time underscores the tension between constitutional ideals and entrenched social norms, a tension that continues to shape contemporary debates on the issue.

## **V. Legislative Amendments and Partial Reforms**

The trajectory of legislative amendments in India concerning sexual offences reflects a gradual yet incomplete shift towards recognizing women's rights within marriage, particularly in the context of marital rape. The Criminal Law (Amendment) Act, 1983 marked one of the earliest significant interventions in reforming rape laws in India. Enacted in response to widespread public outrage following custodial rape cases such as the Mathura rape case, this amendment sought to strengthen legal protections for women against sexual violence. It introduced stringent provisions relating to custodial rape, shifted the burden of proof in certain circumstances, and enhanced punishments for offenders. However, despite these progressive steps, the amendment left untouched the marital rape exception under Section 375 of the Indian Penal Code, thereby continuing to immunize husbands from prosecution for non-consensual sexual intercourse with

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<sup>6</sup> Law Commission of India, 42nd Report: Indian Penal Code (1971).

their wives, provided the wife was above a specified age. This omission underscored the deeply entrenched societal and legal perception of marriage as a domain of implied and irrevocable consent, thereby prioritizing the institution of marriage over the bodily autonomy of women.

The Criminal Law (Amendment) Act, 2013, enacted in the aftermath of the brutal gang rape and murder of a young woman in Delhi in 2012, commonly referred to as the Nirbhaya case, represented a watershed moment in the evolution of sexual offence laws in India. The Justice Verma Committee, constituted to recommend reforms, explicitly advocated for the removal of the marital rape exception, emphasizing that marriage should not be a license for sexual violence and that a woman's consent must be respected irrespective of her marital status. The Committee's recommendations were grounded in constitutional principles of equality, dignity, and personal liberty. Nevertheless, when the amendment was enacted, the legislature chose to retain Exception 2 to Section 375 IPC, which continues to state that sexual intercourse by a man with his own wife, if she is not under a certain age, does not constitute rape. This legislative decision reflected a reluctance to disrupt traditional notions of marriage and indicated the persistence of patriarchal attitudes within the legal framework. While the 2013 amendment significantly broadened the definition of rape, introduced new categories of sexual offences, and enhanced penalties, its failure to criminalize marital rape remains one of its most criticized aspects.

Despite the retention of the marital rape exception, the 2013 amendment did introduce a limited recognition of non-consensual sexual acts within marriage through the insertion of Section 376B of the IPC. This provision criminalizes sexual intercourse by a husband with his wife during a period of separation, whether under a decree of separation or otherwise, without her consent. The inclusion of this section is significant as it implicitly acknowledges that a wife's consent is relevant and necessary, at least in situations where the marital relationship is strained or legally suspended. However, the narrow scope of Section 376B highlights the inconsistency in the legal approach, as it draws an artificial distinction between cohabiting and separated spouses. The underlying implication is that consent becomes legally relevant only when the marital bond is weakened, thereby reinforcing the problematic assumption that ongoing marriage entails perpetual consent. Consequently, while Section 376B represents a step towards recognizing women's sexual autonomy, it falls short of addressing the broader issue of marital rape in its entirety.

Parallel to developments in criminal law, civil legislation such as the Protection of Women from Domestic Violence Act, 2005, has contributed to the recognition of sexual abuse within marriage. This Act adopts a more expansive understanding of domestic violence, explicitly including sexual abuse as a form of violence that can be perpetrated by a husband against his wife. It provides civil remedies such as protection orders, residence orders, and monetary relief, thereby offering a mechanism for women to seek redress for various forms of abuse, including

non-consensual sexual conduct<sup>7</sup>. The recognition of sexual abuse within this framework is a crucial acknowledgment of the reality that violence within marriage is not limited to physical harm but extends to violations of sexual autonomy. However, the Act does not criminalize marital rape; rather, it treats such conduct as a civil wrong, thereby limiting the scope of legal consequences for perpetrators. This distinction between civil recognition and criminal liability further illustrates the fragmented approach of Indian law in dealing with marital rape.

Taken together, these legislative amendments and reforms reveal a pattern of partial progress characterized by incremental recognition of women's rights without a corresponding willingness to fully challenge the marital rape exception. While reforms in 1983 and 2013 have strengthened the legal framework against sexual violence in general, and provisions such as Section 376B IPC and the Domestic Violence Act have acknowledged the possibility of sexual abuse within marriage, the continued existence of Exception 2 to Section 375 IPC remains a significant legal and moral inconsistency. It reflects an ongoing tension between evolving constitutional values and deeply rooted social norms, highlighting the need for a more comprehensive and coherent legal response that unequivocally affirms the principle of consent within marriage.

## **VI. Judicial Interpretation and Constitutional Challenges**

Essential step, as it acknowledged the bodily autonomy and rights of minor girls within marriage and aligned criminal law with constitutional principles and child protection frameworks. However, the Court consciously limited its ruling to minor wives, leaving the broader question of marital rape involving adult women unresolved.

The constitutional challenges to the marital rape exception have gained renewed momentum in recent years, most notably before the Delhi High Court, which delivered a split verdict in *RIT Foundation v. Union of India (2022)*<sup>8</sup>. The petitions in this case challenged the constitutionality of Exception 2 to Section 375 IPC on the grounds that it violates fundamental rights guaranteed under the Constitution of India. One of the central arguments advanced was that the exception is manifestly arbitrary and discriminatory, thereby violating Article 14, which guarantees equality before the law and equal protection of the laws. It was contended that the provision creates an unreasonable classification between married and unmarried women by denying married women the same legal protection against non-consensual sexual acts. This classification lacks a rational nexus with any legitimate state objective and perpetuates gender-based discrimination rooted in patriarchal assumptions about marriage.

Another significant constitutional challenge pertains to Article 21, which guarantees the right to life and personal liberty, including the right to live with dignity, bodily integrity, and sexual

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<sup>7</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

<sup>8</sup> *RIT Foundation v. Union of India*, W.P. (C) 284/2015 (Delhi H.C. 2022) (India).

autonomy. Petitioners argued that the marital rape exception effectively strips married women of their right to refuse sexual intercourse, thereby undermining their dignity and autonomy. The notion that marriage implies irrevocable consent to sexual relations is fundamentally incompatible with modern constitutional jurisprudence, which recognizes individual agency and consent as central to personal liberty. The exception, by denying legal recourse to married women subjected to non-consensual sex, was argued to be violative of their fundamental rights and inconsistent with India's obligations under international human rights law.

The split verdict of the Delhi High Court reflects the ongoing judicial ambivalence on this issue. One judge held that the marital rape exception is unconstitutional, emphasizing that marriage does not extinguish a woman's right to bodily autonomy and that the state cannot condone forced sexual relations within marriage. This opinion underscored the need to interpret criminal law in light of constitutional morality rather than social morality. In contrast, the other judge upheld the validity of the exception, reasoning that any change in the legal position should be undertaken by the legislature rather than the judiciary, given the complex social and cultural dimensions involved. This divergence illustrates the tension between judicial restraint and the imperative to uphold fundamental rights.

Judicial reluctance to strike down the marital rape exception in its entirety can be attributed to several factors, including concerns about potential misuse of the law, the perceived sanctity of marriage as a social institution, and the fear of unintended consequences such as increased litigation and breakdown of matrimonial relationships. Courts have also emphasized the need for a nuanced approach, considering the broader socio-legal context in India. At the same time, there has been a discernible shift towards a more progressive interpretation of women's rights within marriage, as evidenced by decisions expanding the scope of privacy, dignity, and autonomy under Article 21.

The evolving jurisprudence indicates that while the judiciary has taken incremental steps to address specific aspects of the marital rape exception, it has largely refrained from delivering a definitive ruling on its constitutionality in relation to adult women. This cautious approach highlights the limitations of judicial intervention in the absence of comprehensive legislative reform. Nonetheless, the constitutional challenges and judicial observations have significantly contributed to the ongoing debate, bringing issues of gender justice, equality, and individual autonomy to the forefront. The trajectory of judicial interpretation suggests a gradual but discernible movement towards recognizing that the institution of marriage cannot be used as a shield to deny fundamental rights, even though a conclusive legal position on marital rape in India remains to be established.

## **VII. Socio-Legal Critique of the Marital Rape Exception**

The marital rape exception in Indian criminal law continues to attract intense socio-legal criticism for its deep-rooted association with gender inequality and entrenched patriarchal

assumptions. Historically, the exception reflects a legal ideology that positions the husband as having a privileged and almost proprietary claim over the wife's body, thereby normalizing the subordination of women within marriage. This framework is incompatible with contemporary constitutional values that emphasize equality, dignity, and individual autonomy. By creating a distinction between married and unmarried women in matters of sexual consent, the law perpetuates discrimination, effectively denying married women equal protection against sexual violence. The persistence of such an exception signals a reluctance to fully recognize women as independent rights-bearing individuals within the institution of marriage.

A central justification often advanced in support of the exception is the notion of implied consent, which assumes that by entering into marriage, a woman consents to sexual relations with her husband continually. This idea, however, is fundamentally flawed and detached from lived realities. Consent, in its true legal and ethical sense, must be free, voluntary, informed, and capable of being withdrawn at any time. Marriage cannot extinguish an individual's right to refuse sexual activity, nor can it transform forced intercourse into a lawful act. The myth of implied consent not only undermines the concept of autonomy but also disregards the dynamic and evolving nature of marital relationships, where mutual respect and communication should prevail over coercion or entitlement.

The impact of the marital rape exception on women's bodily autonomy and dignity is profound and far-reaching. By failing to criminalize non-consensual sexual acts within marriage, the law effectively legitimizes a form of violence that strikes at the core of a woman's physical and psychological integrity. Bodily autonomy, recognized as an essential facet of personal liberty, implies the right to make decisions about one's own body, including the right to refuse sexual advances. The denial of this right within marriage not only violates constitutional guarantees but also perpetuates a culture of silence and acceptance around spousal abuse. It reinforces the idea that a woman's identity and agency are subsumed within her marital status, thereby eroding her dignity as an individual.

Another significant socio-legal concern is the widespread underreporting of marital rape, driven by societal stigma, economic dependence, and lack of legal recognition. Women often face immense pressure to preserve the sanctity of marriage, even at the cost of enduring abuse. Cultural norms that prioritize family honor and discourage public disclosure of marital issues further exacerbate the problem. In many cases, victims are reluctant to approach legal institutions due to fear of social ostracism, victim-blaming, and inadequate support mechanisms. The absence of a clear legal remedy in criminal law compounds this silence, as women may perceive reporting as futile or even counterproductive. Consequently, the true extent of marital rape remains obscured, hindering meaningful policy interventions and legal reform.

The marital rape exception also highlights a broader conflict between criminal law and personal laws in India. While criminal law aspires to uphold universal standards of justice and protect

individuals from harm, personal laws governing marriage often reflect traditional and religious norms that may not align with constitutional principles. This tension creates a fragmented legal landscape where the rights of women are inconsistently recognized and enforced. The reluctance to criminalize marital rape is sometimes justified on the grounds of preserving marital harmony or respecting cultural diversity, but such arguments risk prioritizing institutional preservation over individual rights. A progressive legal system must reconcile these differences by ensuring that personal laws do not undermine fundamental rights, particularly in matters involving bodily integrity and protection from violence.

In essence, the marital rape exception stands at odds with the evolving understanding of gender justice and human rights. It perpetuates outdated notions of marriage, compromises women's autonomy, and fails to provide adequate legal protection against sexual violence within the domestic sphere. A critical socio-legal analysis reveals that retaining such an exception not only undermines the credibility of the legal system but also perpetuates structural inequalities that hinder the realization of substantive equality in society.

### **VIII. Comparative Perspective**

The comparative perspective on the marital rape exception reveals a significant divergence between India and several progressive jurisdictions that have recognized the autonomy and dignity of married women within the framework of criminal law. In the United Kingdom, the marital rape exemption was decisively abolished in 1991 through the landmark case of *R v R*<sup>9</sup>, wherein the House of Lords rejected the archaic common law doctrine that a husband could not be guilty of raping his wife. The judgment emphasized that marriage does not imply irrevocable consent to sexual intercourse and affirmed that a person retains her individual legal identity and bodily autonomy. This marked a transformative shift from historical notions rooted in patriarchal assumptions to a rights-based approach grounded in equality and human dignity.

In the United States, the criminalization of marital rape occurred gradually over several decades, reflecting the federal structure and the autonomy of individual states in legislating criminal law. By the early 1990s, all fifty states had recognized marital rape as a criminal offence, although certain variations persisted in terms of evidentiary standards and degrees of punishment. Initially, many states treated marital rape as a lesser offence or required proof of additional elements such as physical force or separation. However, over time, reforms have largely eliminated these distinctions, aligning the legal treatment of marital rape more closely with that of non-marital rape. This evolution underscores a broader societal acknowledgment that consent within marriage must be ongoing and cannot be presumed<sup>10</sup>.

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<sup>9</sup> *R v R* [1992] 1 A.C. 599 (H.L.) (U.K.).

<sup>10</sup> The Criminal Law (Amendment) Act, 2013, No. 13 of 2013 (India).

Canada took a more direct legislative route by abolishing the marital rape exemption in 1983 through amendments to its Criminal Code. The reforms replaced the traditional offence of rape with a gender-neutral framework of sexual assault, thereby eliminating any legal distinction based on the marital status of the parties. This approach not only recognized the rights of married women but also reflected a progressive understanding of sexual violence as an offence against personal integrity rather than merely a moral or property-based wrong. Canadian jurisprudence has consistently upheld the principle that consent must be freely given and can be withdrawn at any time, irrespective of the relationship between the individuals involved.

At the international level, various conventions and institutional frameworks have reinforced the obligation of states to eliminate discrimination against women and address gender-based violence, including marital rape. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has played a pivotal role in shaping global norms on women's rights. Although it does not explicitly mention marital rape, its interpretative bodies, particularly through General Recommendations, have clarified that gender-based violence constitutes a form of discrimination. States that are party to CEDAW are therefore expected to take appropriate legislative and policy measures to criminalize all forms of sexual violence, including those occurring within marriage. India, as a signatory to CEDAW, is bound by these obligations, which underscore the need for harmonization of domestic laws with international human rights standards<sup>11</sup>.

Similarly, the United Nations has consistently advocated for the recognition and criminalization of marital rape through various resolutions and reports. UN Special Rapporteurs and human rights bodies have emphasized that immunity for marital rape is incompatible with fundamental rights such as equality, dignity, and freedom from violence. These recommendations reflect a global consensus that traditional or cultural justifications cannot override the basic human rights of individuals. The international legal framework thus places a moral and normative responsibility on states, including India, to reform laws that perpetuate gender inequality and deny justice to survivors.

The comparative analysis offers several important lessons for India. First, it highlights the necessity of discarding outdated legal doctrines that treat marriage as a basis for implied and irrevocable consent. The experiences of jurisdictions such as the United Kingdom, the United States, and Canada demonstrate that legal reform is both feasible and essential to ensure the protection of women's rights. Second, it underscores the importance of adopting a uniform definition of consent that applies equally within and outside marriage. Third, it reveals that legal change must be accompanied by broader societal transformation, including awareness, education, and institutional support for survivors. Finally, it reinforces the need for India to align its domestic legal framework with its international commitments under CEDAW and other

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<sup>11</sup> Convention on the Elimination of All Forms of Discrimination Against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

human rights instruments. In doing so, India can move towards a more just and equitable legal system that recognizes the autonomy and dignity of all individuals, irrespective of their marital status.

## **IX. Need for Reform and Recommendations**

The continued existence of the marital rape exception in Indian law highlights an urgent need for comprehensive legal reform that aligns criminal law with constitutional principles of equality, dignity, and bodily autonomy. The repeal of Exception 2 to Section 375 of the Indian Penal Code is a necessary first step in this direction, as it perpetuates the outdated notion that marriage implies irrevocable consent. Removing this exception would recognize married women as individuals with independent sexual agency and ensure that non-consensual acts within marriage are treated on par with other forms of sexual violence. Such reform would also bring Indian law closer to global human rights standards and constitutional mandates under Articles 14 and 21.

At the same time, there is a growing argument for adopting a gender-neutral framework in the drafting of rape laws to ensure inclusivity and equal protection. While women remain disproportionately affected by sexual violence, a gender-neutral approach would acknowledge that individuals of all genders can be victims, thereby strengthening the legitimacy and fairness of the legal system. However, any such reform must be accompanied by carefully designed safeguards to prevent misuse of the law. Concerns regarding false allegations, though often overstated, can be addressed through procedural checks such as thorough investigation, judicial scrutiny, and penalties for malicious prosecution, without diluting the seriousness of the offence<sup>12</sup>.

Equally important is the need for widespread awareness and sensitization programs aimed at challenging deep-rooted patriarchal attitudes that normalize coercion within marriage. Legal reform alone cannot be effective unless supported by societal change, including education on consent, gender equality, and respectful relationships. Institutions such as law enforcement agencies, medical professionals, and the judiciary must also undergo regular training to handle such cases with sensitivity and professionalism.

Furthermore, strengthening support systems for survivors is crucial for ensuring access to justice. This includes expanding access to legal aid, counseling services, shelter homes, and rehabilitation mechanisms that address both immediate and long-term needs. The role of the judiciary and legislature remains central in this transformative process. While the judiciary can

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<sup>12</sup> United Nations, Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

adopt progressive interpretations to uphold fundamental rights, it is ultimately the responsibility of the legislature to enact clear, comprehensive, and enforceable laws. A coordinated effort between these institutions is essential to eliminate the legal and social barriers that continue to deny justice to survivors of marital rape in India.

## **X. Conclusion**

The historical evolution of the marital rape exception in India reveals a deeply entrenched legal doctrine rooted in colonial jurisprudence and patriarchal assumptions about marriage. Originating from the English common law principle articulated by Sir Matthew Hale, the idea that a wife gives irrevocable consent to sexual intercourse upon marriage became embedded in the Indian Penal Code, 1860. This notion survived the transition from colonial rule to independence, reflecting the continuity of legal structures that often failed to adapt to changing societal values. Over time, while various amendments to criminal law, particularly in 1983 and 2013, expanded the scope of protection for women against sexual violence, the marital rape exception remained largely intact. Judicial interventions, such as reading down the exception in cases involving minor wives, marked incremental progress but stopped short of addressing the broader issue of non-consensual sexual relations within marriage. Thus, the evolution has been characterized more by hesitation and partial reform than by decisive transformation.

In its current form, the legal position in India continues to uphold the marital rape exception under criminal law, thereby creating a distinction between married and unmarried women in matters of sexual autonomy. This distinction has been widely criticized for being inconsistent with constitutional guarantees of equality, dignity, and personal liberty. While certain legal provisions, such as those addressing cruelty or domestic violence, offer limited remedies, they do not adequately recognize marital rape as a criminal offense. The judiciary has shown a mixed approach, at times acknowledging the need for reform while also exhibiting restraint, often deferring to the legislature on this sensitive issue. The split verdict of the Delhi High Court on the constitutionality of the exception exemplifies the ongoing legal uncertainty and the absence of a unified judicial stance. Consequently, the current framework appears insufficient in addressing the lived realities of women who experience sexual violence within marriage.

A critical examination of this issue highlights the tension between constitutional morality and social morality. Constitutional morality, grounded in the principles of justice, equality, and individual dignity, demands that all individuals be treated as autonomous agents with the right to bodily integrity. In contrast, social morality in the Indian context has often been shaped by traditional notions of marriage, gender roles, and family structure, which may inadvertently legitimize coercive practices within the marital relationship. The persistence of the marital rape

exception reflects an overreliance on these societal norms, at the cost of fundamental rights. However, constitutional jurisprudence in India has increasingly emphasized the primacy of individual rights over collective social expectations, suggesting a gradual shift toward a more rights-based approach. Recognizing marital rape as an offense would align the law with this evolving constitutional vision and reinforce the principle that marriage does not extinguish a woman's autonomy or consent.

In light of these considerations, there is a pressing need for progressive legal reform in India. The repeal of the marital rape exception would be a significant step toward ensuring substantive equality and upholding the dignity of married women. Such reform should be accompanied by gender-sensitive drafting of laws, procedural safeguards to prevent misuse, and comprehensive awareness initiatives to challenge deeply ingrained societal attitudes. Additionally, strengthening institutional support mechanisms for survivors, including legal aid, counseling, and rehabilitation services, is essential for effective implementation. The role of the judiciary and legislature is crucial in driving this change, not only through legal enactments but also through interpretative approaches that reflect contemporary constitutional values. Ultimately, reforming the law on marital rape is not merely a legal necessity but a moral imperative, essential for building a just and equitable society where the rights and dignity of every individual are respected, irrespective of marital status.

## References

1. The Indian Penal Code, No. 45 of 1860, § 375 (India).
2. The Criminal Law (Amendment) Act, 2013, No. 13 of 2013 (India).
3. The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).
4. *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).
5. *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).
6. *R v R* [1992] 1 A.C. 599 (H.L.) (U.K.).
7. Law Commission of India, 42nd Report: Indian Penal Code (1971).
8. Law Commission of India, 172nd Report on Review of Rape Laws (2000).
9. Law Commission of India, 243rd Report on Section 498A IPC (2012).
10. Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (2013).
11. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13.
12. World Health Organization, *Understanding and Addressing Violence Against Women: Sexual Violence* (2012).
13. United Nations, Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104 (Dec. 20, 1993).
14. Flavia Agnes, *Protecting Women Against Violence? Review of a Decade of Legislation, 2005–2015*, 50 *Econ. & Pol. Wkly.* 117 (2015).

15. Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publ'g House 1982).