



LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 3 | Issue 2

2025

DOI: <https://doi.org/10.70183/lijdlr.2025.v03.40>

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THE LEGAL STATUS OF MARITAL RAPE IN INDIA: AN EXAMINATION OF EVOLVING JURISPRUDENCE

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I. ABSTRACT

The exception under Section 375 of the Indian Penal Code, 1860, which exempts a husband from being prosecuted for rape committed against his wife, remains one of the most archaic and controversial immunities in Indian criminal law. This paper investigates the legal status of marital rape in India through the lens of constitutional principles, judicial reasoning, and comparative legal frameworks. It explores the intersection of privacy, dignity, and bodily autonomy within marriage and evaluates the inconsistency of the exception with Article 14 and Article 21 of the Constitution of India. The study analyses evolving jurisprudence in India, including pending petitions before the Delhi High Court and the constitutional challenges mounted by civil society and survivors. The research juxtaposes Indian laws with international standards under the “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”, to which India is a signatory, and with legal reforms in countries like the UK, Canada, and South Africa where marital rape has been criminalized. Judicial reluctance to read down Exception 2 is critiqued, and the discourse around spousal immunity is deconstructed using feminist legal theory and the doctrine of substantive equality. The paper argues that criminalization of marital rape is not only a legal necessity but also a moral and constitutional imperative. This work also examines the role of the judiciary in fostering transformative constitutionalism, and how public interest litigations have shaped the conversation. It proposes concrete legal reforms through statutory amendments and judicial interventions that align with evolving societal values, gender justice, and constitutional morality. The analysis rests on a wide array of case laws, Law Commission Reports, parliamentary debates, and comparative foreign precedents, highlighting the urgent need for reform in India's approach to sexual autonomy within marriage.

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II. KEYWORDS

Marital Rape, Indian Penal Code, Section 375 Exception 2, Bodily Autonomy, Consent in Marriage, Constitutional Morality, Article 14, Article 21

III. INTRODUCTION

India's criminal legal system still retains the marital rape exception under Section 375 of the Indian Penal Code. This provision effectively immunizes a husband from prosecution for raping his wife, provided she is not under fifteen. The law presumes consent in marriage. This doctrine, a colonial remnant, continues to be sheltered by social and legal conservatism.³ The exception contradicts the notion of individual bodily autonomy which the Constitution guarantees. It treats women not as equal citizens but as subordinates within marriage, stripping them of a right to sexual consent.⁴

The discourse around marital rape in India lies at the cross-section of constitutional law and feminist legal theory. Article 14 promises equality before law. Article 21 ensures right to life and personal liberty. Yet, when it comes to the bedroom, a married woman loses access to these guarantees. Courts have avoided striking down the exception, citing legislative domain. This reluctance to interfere has allowed an unconstitutional norm to survive in a modern republic.⁵

The judiciary has, in other contexts, expanded the scope of personal liberty. In "*Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised privacy as intrinsic to life and dignity". It held that sexual autonomy is a facet of the right to privacy.⁶ Yet, in marital rape, that privacy seems revoked. In *Independent Thought v. Union of India*, the Court diluted the exception by raising the age of consent to eighteen, but still stopped short of criminalising marital rape outright.⁷ The inconsistency in judicial reasoning has bred legal uncertainty.

³ Indian Penal Code, 1860, § 375, Exception 2.

⁴ Const. India arts. 14, 21.

⁵ T. Sareetha v. T. Venkata Subbaiah, AIR 1983 AP 356.

⁶ "*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1".

⁷ "*Independent Thought v. Union of India*, (2017) 10 SCC 800".

Social conservatism and cultural norms continue to influence legislation. Parliamentary debates reveal a divided opinion. Concerns about false cases and family stability often outweigh constitutional values. However, this argument fails to recognise that criminalisation does not automatically lead to misuse. Every law, including those on theft or dowry, has misuse potential, yet the law remains.⁸ Gender-sensitive jurisprudence demands that courts and legislators stop insulating marriage from legal scrutiny.

India is also bound by international obligations. It ratified the “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”. The Committee has repeatedly urged India to criminalise marital rape. The United Nations Special Rapporteurs have noted that the marital rape exception violates basic human rights.⁹ Yet, Indian law still distinguishes between rape and forced sex within marriage as if marriage erases consent.

Comparative legal jurisdictions have moved forward. In *R v. R*, the House of Lords held that the idea of implied consent in marriage was outdated and repugnant to modern law.¹⁰ Canada, South Africa, Australia and many European countries have all criminalised non-consensual sex in marriage. India lags behind, clinging to Victorian-era beliefs. This has raised serious constitutional questions. Is it permissible to treat a married woman as less worthy of constitutional protection?

Law Commission reports have oscillated between progressive and cautious. The 172nd Report advised deletion of the exception, but the government never acted. The Verma Committee, formed after the 2012 Delhi gang rape, strongly advocated for marital rape criminalisation. It argued that marriage cannot be a license to rape.¹¹ However, their recommendations were left out of the 2013 amendment.

Public interest litigations are currently pending in the Delhi High Court. Petitioners argue that Exception 2 is arbitrary, discriminatory, and violates the right to dignity.

⁸ Criminal Law (Amendment) Act, No. 13 of 2013, Acts of Parliament, 2013 (India).

⁹ Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Fourth and Fifth Periodic Reports of India, UN Doc. CEDAW/C/IND/CO/4-5 (2014).

¹⁰ *R v. R* [1991] UKHL 12.

¹¹ Justice Verma Committee Report (2013), Ministry of Home Affairs, Government of India.

The Centre has resisted, stating that criminalisation may destabilise institution of marriage. This argument, though politically convenient, lacks constitutional legitimacy. Courts are now faced with a test of constitutional morality versus societal morality.¹²

This paper will navigate the legislative vacuum, judicial ambivalence, and societal resistance. It will unpack the constitutional, comparative, and human rights arguments for reform. Through doctrinal analysis, case law interpretation and global comparative insight, this study will evaluate why India must end the marital rape exception.

A. Statement of Problem

Marital rape remains excluded from the definition of rape under Indian law. Exception 2 to Section 375 of the Indian Penal Code provides absolute immunity to husbands. This provision assumes implied and irrevocable consent. It denies women the right to bodily autonomy within marriage. This contradicts Articles 14, 15 and 21 of the Constitution. The State's inaction reflects institutional patriarchy. Survivors lack legal remedy. Civil remedies under domestic violence law offer only partial redress. India continues to ignore its international obligations under CEDAW. Courts hesitate to intervene. Legislators avoid reform citing social unrest. The legal framework remains frozen in colonial morality, not constitutional reasoning.¹³

B. Research Questions

1. Whether Exception 2 to Section 375 of the IPC is constitutionally valid?
2. Whether marital rape violates fundamental rights under Articles 14, 15(1), and 21 of the Constitution?
3. Whether India's international human rights commitments mandate the criminalization of marital rape?
4. Whether comparative legal systems offer viable models for reforming Indian rape laws?

¹² PIL WP(C) No. 284/2015, *RIT Foundation v. Union of India* (Pending before Delhi High Court).

¹³ Indian Penal Code, 1860, § 375, Exception 2; Const. India arts. 14, 15, 21.

C. Objectives of the Study

1. To critically examine the constitutional validity of the marital rape exception under Indian law.
2. To study the legislative and judicial developments concerning marital rape in India.
3. To analyze the gaps in the existing criminal and civil legal framework in addressing sexual violence within marriage.
4. To explore international human rights instruments and obligations relevant to marital rape.

D. Research Methodology

The study adopts a doctrinal research methodology. Primary sources include constitutional provisions, Indian statutes, judgments of Indian courts, and international treaties. Secondary sources comprise scholarly articles, commentaries, reports, and comparative legal studies. Case law analysis will be used to trace evolving judicial positions. The study also evaluates Law Commission Reports and government committee recommendations. Feminist legal theory forms the theoretical foundation. The research is analytical and critical in nature. It aims to fill the normative and interpretative gaps in understanding the legal status of marital rape in India. Qualitative content analysis is applied to identify patterns of legal reasoning and judicial hesitation.

IV. UNDERSTANDING MARITAL RAPE—CONCEPTUAL AND HISTORICAL FOUNDATIONS

The concept of rape fundamentally hinges on the absence of consent. Consent must be free, informed, and voluntary. In modern jurisprudence, the understanding of rape extends beyond physical violation to the violation of autonomy, dignity, and bodily integrity.¹⁴ However, historically, marriage was seen as a blanket consent to sexual

¹⁴ Indian Penal Code, 1860, § 375.

intercourse. The wife was considered the husband's property. Her consent was presumed perpetual and irrevocable.¹⁵

Sir Matthew Hale's infamous proposition in the seventeenth century, stating that a husband cannot be guilty of raping his wife because "the wife hath given herself to the husband, body and soul," shaped early English common law.¹⁶ This legal fiction entrenched the marital rape exception into British jurisprudence. Colonial administrators imported this notion into Indian criminal law during the drafting of the Indian Penal Code in 1860, which continues even today under Exception 2 to Section 375.¹⁷

The roots of the marital rape exemption are closely tied to outdated patriarchal norms. They treated women as subordinate beings, incapable of holding sexual agency after marriage. Feminist legal theory criticizes this presumption. It argues that marriage does not and should not extinguish the right to personal autonomy.¹⁸ Marital rape exemption is not just a legal anomaly; it reflects systemic gender bias rooted in historical power structures.

In India, religious personal laws historically reinforced the notion of conjugal rights. Hindu law emphasized the wife's duty to submit to her husband. Islamic law, while recognizing marital rights, still recognized a woman's consent as necessary for sexual intercourse. Over time, however, patriarchal interpretations diluted these protections, reinforcing male entitlement within marriage.¹⁹

With the rise of international human rights law after World War II, the focus shifted toward individual dignity, bodily autonomy, and gender equality. Instruments like the Universal Declaration of Human Rights, 1948, and the Convention on the Elimination of All Forms of Discrimination Against Women, 1979, emphasized that

¹⁵ "Mary Lyndon Shanley, *Marriage Contract and Social Contract in Seventeenth Century English Political Thought*, 32 *Western Political Quarterly* 79 (1979)".

¹⁶ Sir Matthew Hale, *The History of the Pleas of the Crown* 628 (1736).

¹⁷ Indian Penal Code, 1860, § 375, Exception 2.

¹⁸ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 195 (1989).

¹⁹ Tahir Mahmood, *Personal Law in Crisis: Through the Lens of the Indian Law Commission* 63 (1986).

marriage must be based on free consent and equality of partners.²⁰ The continuation of the marital rape exemption places India at odds with these obligations.

Judicial interpretations have slowly started challenging traditional notions. In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court of India held that reproductive rights are integral to personal liberty under Article 21.²¹ If reproductive autonomy is recognized, then sexual autonomy cannot be logically denied. Nonetheless, the marital rape exemption persists, undermining constitutional values and judicial consistency.

Globally, the marital rape exception has been dismantled in most democratic jurisdictions. In *R v. R*, the House of Lords unequivocally declared that a husband's immunity from rape prosecution no longer exists in English law²². South Africa criminalized marital rape under the Prevention of Family Violence Act, 1993, recognizing that marriage does not nullify a woman's right to say no²³.

In the Indian context, while Section 498A of IPC criminalizes cruelty by the husband, it does not specifically address non-consensual sex. The Protection of Women from Domestic Violence Act, 2005, recognizes sexual abuse but does not create a criminal offense for marital rape²⁴. This patchwork protection falls short of addressing the gravity of forced intercourse within marriage.

Historical foundations of the marital rape exemption rest on outdated assumptions of wifely subordination, lack of bodily integrity, and sacramental notions of marriage. These assumptions crumble under the weight of constitutional guarantees of equality, dignity, and personal liberty. Understanding this conceptual and historical trajectory is necessary to appreciate the urgency of reform in Indian law.

²⁰ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

²¹ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

²² *R v. R* [1991] UKHL 12.

²³ Prevention of Family Violence Act, No. 133 of 1993 (South Africa).

²⁴ "Protection of Women from Domestic Violence Act, No. 43 of 2005, Acts of Parliament, 2005 (India)".

V. MARITAL RAPE IN INDIAN LEGAL FRAMEWORK

Section 375 of the Indian Penal Code defines rape. It criminalizes sexual acts without consent. However, Exception 2 to this section exempts a husband from being prosecuted for raping his wife, provided she is not under fifteen years of age.²⁵ This statutory exemption treats marriage as a perpetual consent and places women in a subordinate legal position inside marriage. It shields non-consensual acts by husbands under the garb of matrimonial privilege.

The judiciary has repeatedly confronted the contradictions posed by this exemption. *"In Independent Thought v. Union of India, the Supreme Court held that sexual intercourse with a wife below eighteen years would constitute rape"*, notwithstanding the marital relationship.²⁶ Yet, the broader marital rape exemption for adult women continues. The judgment reflects an incremental, not revolutionary, shift in the judicial approach.

Doctrine of spousal immunity, borrowed from colonial English law, still governs marital rape jurisprudence in India. Courts have treated marriage as a civil contract which supposedly overrides the need for consent for sexual intercourse.²⁷ This approach ignores the evolving interpretation of personal liberty under Article 21 and gender equality under Article 14 of the Constitution.

The offense of cruelty under Section 498A of IPC criminalizes conduct that drives a woman to suicide or causes grave injury, mental or physical.²⁸ Forced sexual intercourse has been interpreted under this provision as mental cruelty. However, this indirect recognition falls short. Section 498A does not specifically or sufficiently address the crime of marital rape as a distinct sexual offense violating bodily autonomy.

*"The Protection of Women from Domestic Violence Act, 2005, recognizes sexual abuse as a form of domestic violence."*²⁹ Under Section 3, sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a woman". Protection

²⁵ "Indian Penal Code, 1860, § 375, Exception 2".

²⁶ "Independent Thought v. Union of India, (2017) 10 SCC 800".

²⁷ Sir Matthew Hale, *The History of the Pleas of the Crown* 628 (1736).

²⁸ Indian Penal Code, 1860, § 498A.

²⁹ Protection of Women from Domestic Violence Act, No. 43 of 2005, Acts of Parliament, 2005 (India).

orders and compensation are available, but the law stops short of criminalizing the act as rape. The remedies under this Act are civil in nature, not penal.

Judicial observations reflect an inherent tension. In *Vikram Vir Vohra v. Shalini Bhalla*, the Delhi High Court acknowledged that sexual relations without consent, even within marriage, violate a woman's dignity.³⁰ However, courts hesitate to read down Exception 2, citing the principle of separation of powers. Courts insist that legislative action, not judicial innovation, must amend the law.

The Law Commission of India in its 172nd Report recommended deleting the marital rape exception.³¹ It noted that marriage should not be a license to non-consensual sex. The Justice Verma Committee Report post-2012 Delhi Gang Rape also strongly recommended criminalizing marital rape, asserting that "the relationship between the accused and the victim is not relevant to the inquiry into whether the complainant consented to the sexual activity".³² However, the 2013 Criminal Law (Amendment) Act consciously left out this reform.

Arguments opposing criminalization of marital rape claim it would destabilize marriages and lead to misuse. Such arguments echo patriarchal fears rather than constitutional morality. The Supreme Court in *Navtej Singh Johar v. Union of India* emphasized that constitutional rights must trump majoritarian morality.³³ Same principle logically applies here too.

Under international law, India's obligations under CEDAW require it to take all appropriate measures to eliminate discrimination against women, including marital rape. United Nations Special Rapporteur reports have criticized India's marital rape exemption as incompatible with the right to bodily integrity.³⁴ India's continuing failure to criminalize marital rape amounts to a breach of its international human rights obligations.

³⁰ *Vikram Vir Vohra v. Shalini Bhalla*, (2010) 4 RCR (Civil) 202 (Delhi High Court).

³¹ Law Commission of India, 172nd Report on Review of Rape Laws (2000).

³² Justice Verma Committee Report (2013), Ministry of Home Affairs, Government of India.

³³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³⁴ Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, A/HRC/17/26 (2011).

The Indian legal framework remains riddled with contradictions. While consent is sacrosanct in all sexual relationships outside marriage, it is rendered meaningless within marriage. This anomalous legal position runs counter to constitutional guarantees of dignity, autonomy, and equality.

VI. CONSTITUTIONAL ANALYSIS AND HUMAN RIGHTS PERSPECTIVES

Article 14 of the Constitution guarantees equality before law and equal protection of laws. The marital rape exception under Section 375 of IPC violates this promise by creating an arbitrary classification between married and unmarried women³⁵. Such classification fails the twin tests of reasonable classification and non-arbitrariness laid down in *State of West Bengal v. Anwar Ali Sarkar*.³⁶ A married woman's right to bodily integrity cannot be lesser than that of an unmarried woman.

Article 21 protects the right to life and personal liberty. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognized privacy as intrinsic to life and liberty.³⁷ Sexual autonomy forms a crucial part of this privacy. Marital rape violates bodily autonomy, dignity, and decisional privacy. Therefore, Exception 2 undercuts Article 21 by denying married women their right to consent.

The principle of dignity is a core component of Article 21. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court affirmed that life under Article 21 means something more than mere animal existence.³⁸ Forcing a woman to engage in non-consensual intercourse within marriage strips her of dignity and reduces her existence to a mere tool for sexual gratification.

Article 19(1)(a) guarantees the right to freedom of speech and expression. Consent is an expression of will. When the law refuses to acknowledge non-consent within

³⁵ Indian Penal Code, 1860, § 375, Exception 2.

³⁶ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

³⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

³⁸ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

marriage, it stifles a woman's right to bodily expression³⁹. Marriage cannot be a tool to silence a woman's voice over her body.

Marital rape also offends Article 15(1) which prohibits discrimination on the ground of sex. In *Anuj Garg v. Hotel Association of India*, the Court held that the State must actively eliminate gender-based discrimination and ensure substantive equality.⁴⁰ By sustaining an exemption that benefits husbands at the cost of wives, the State perpetuates sex-based discrimination.

International human rights instruments affirm the right to bodily autonomy and freedom from violence. The "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)" obligates India to eliminate discrimination against women in all spheres of life.⁴¹ "The United Nations Declaration on the Elimination of Violence against Women, 1993", defines violence to include marital rape.⁴² The Supreme Court in *Vishaka v. State of Rajasthan*, recognized that international conventions can inform constitutional interpretation when there is no inconsistency with domestic law⁴³.

The Indian judiciary has progressively interpreted constitutional rights to include gender equality, dignity, and autonomy. "In *Joseph Shine v. Union of India*, the Court struck down adultery as a penal offense because it discriminated against women and violated dignity".⁴⁴ The marital rape exception similarly discriminates, and thus, should meet the same fate under constitutional scrutiny.

The principle of transformative constitutionalism mandates that laws must be interpreted to fulfill constitutional goals rather than preserve historical injustices. As stated in *Navtej Singh Johar v. Union of India*, constitutional morality must prevail over

³⁹ Const. India art. 19(1)(a).

⁴⁰ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

⁴¹ "Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13".

⁴² United Nations Declaration on the Elimination of Violence Against Women, Dec. 20, 1993, A/RES/48/104.

⁴³ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁴⁴ "*Joseph Shine v. Union of India*, (2019) 3 SCC 39"

social morality.⁴⁵ Retention of the marital rape exception only validates social prejudices and violates the constitutional ethos of equality and dignity.

Comparative constitutional jurisprudence also supports criminalizing marital rape. In *R v. R*, the House of Lords found that the common law rule of marital immunity was anachronistic and violated women's autonomy.⁴⁶ South African courts declared marital rape unconstitutional under their post-apartheid Bill of Rights guaranteeing dignity and equality.⁴⁷ Thus, a constitutional analysis rooted in equality, liberty, dignity, and international human rights compels the conclusion that the marital rape exception in India is unconstitutional.

VII. EVOLVING JUDICIAL TRENDS AND LAW COMMISSION REPORTS

Indian judiciary has cautiously moved on the issue of marital rape. Courts acknowledge the harm but hesitate to strike down Exception 2. The Delhi High Court in *RIT Foundation v. Union of India*, heard extensive arguments challenging the constitutionality of marital rape exemption.⁴⁸ Petitioners argued that forced sex within marriage violates Articles 14, 15, and 21. The Union argued that such criminalization would destabilize marriages and encourage misuse. The case is still pending. No final judgment delivered yet. Delay itself reflects judicial discomfort.

In "*Independent Thought v. Union of India*, the Supreme Court carved a narrow exception". It read down the marital rape exemption to the extent it applied to minor wives under eighteen.⁴⁹ The Court called it a violation of bodily autonomy and human dignity. But for adult women, the exemption still remains untouched. The reasoning of the Court, though progressive in tone, shows the judiciary's preference for incrementalism over full confrontation.

Earlier in *Tukaram v. State of Maharashtra*, the Supreme Court had acquitted police officers accused of custodial rape on grounds of lack of physical resistance. Though

⁴⁵ "Navtej Singh Johar v. Union of India, (2018) 10 SCC 1".

⁴⁶ *R v. R* [1991] UKHL 12

⁴⁷ Prevention of Family Violence Act, No. 133 of 1993 (South Africa).

⁴⁸ *RIT Foundation v. Union of India*, W.P. (C) No. 284/2015 (Del HC).

⁴⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

not a marital rape case, the judgment reflected outdated ideas of consent.⁵⁰ The case created public outrage. Led to reform through the Criminal Law (Amendment) Act, 1983. Shows how judicial failures can spur legislative action. A similar momentum is missing in the context of marital rape.

The Law Commission of India has addressed this issue in multiple reports. The 42nd Report (1971) remained silent on the marital rape exemption. The 84th Report (1980) hinted at problems but gave no concrete suggestion. The 156th Report (1997) expressed concern but did not propose repeal of Exception 2. Only in the 172nd Report (2000), the Commission clearly recommended deleting the marital rape exception.⁵¹ It emphasized that forced sexual intercourse in marriage is as demeaning and harmful as in other contexts.

The 172nd Report also proposed changes to the definition of rape. It urged recognition of non-penile forms of penetration and marital rape within the broader definition. The government shelved this proposal. No action taken. It reflects reluctance to engage with sexual violence inside marriage. The Justice Verma Committee Report (2013), however, took a stronger stand. It categorically recommended criminalizing marital rape. It stated that “marriage should not be a valid defence against charges of rape”. But the 2013 Criminal Law (Amendment) Act ignored this suggestion. Political expediency overruled expert legal advice.

In *State of Karnataka v. Krishnappa*, the Supreme Court observed that “sexual violence, apart from being a dehumanising act, is an unlawful intrusion of the right to privacy and sanctity of a female”. However, the Court did not extend this principle to marital context. Courts treat marriage as a space of implied consent. This conflicts with constitutional values.

Judicial trend shows awareness, but not willingness. Courts use constitutional language but stop short of enforcement. Even progressive rulings like *Joseph Shine v. Union of India*, which decriminalised adultery, failed to question the marital rape

⁵⁰ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185.

⁵¹ Law Commission of India, 172nd Report on Review of Rape Laws (2000).

exemption.⁵² *Navtej Singh Johar v. Union of India*, decriminalised consensual same-sex relations, affirming autonomy and dignity. Yet, the same principles are not applied to married women facing non-consensual sex. Judicial trend so far reflects cautious constitutionalism. Law Commissions and expert bodies repeatedly highlight the need for reform. But legislation remains static. The burden shifts back to the courts. Till then, the silence of law will continue to harm.

VIII. COMPARATIVE LEGAL PERSPECTIVES

United Kingdom dismantled the marital rape exemption in *R v. R*. The House of Lords held that the fiction of irrevocable consent had no place in modern law.⁵³ The judgment acknowledged marriage as a partnership of equals. It extended the same legal protection to a wife as to any other woman. The common law rule was overruled. The UK later codified the position through the Sexual Offences Act, 2003. The Act does not distinguish based on marital status. Consent remains the central element.

United States followed a fragmented route. Rape laws vary by state. As of 1993, all 50 states criminalized marital rape in some form.⁵⁴ However, in some jurisdictions the penalties remain lighter or the evidentiary standards higher for marital rape cases. Some states required proof of violence or threat. Others abolished all marital distinctions. The movement gained momentum during second-wave feminism. Courts began recognizing that marriage does not erase the right to bodily autonomy.

Canada took a decisive turn in 1983. The Parliament removed marital immunity through Criminal Law Amendment Act, 1983. Section 273.1 of the Canadian Criminal Code defines consent strictly and applies uniformly across relationships.⁵⁵ Canadian courts emphasize affirmative and ongoing consent. The Supreme Court of Canada in *R v. Ewanchuk*, emphasized that “no means no,” even in a domestic setting. The legal position reflects a strong rights-based approach.

⁵² Joseph Shine v. Union of India, (2019) 3 SCC 39.

⁵³ *R v. R* [1991] UKHL 12.

⁵⁴ Michelle Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Rape*, 54 Hastings L.J. 1465 (2003).

⁵⁵ Criminal Code, R.S.C., 1985, c. C-46 (Can.)

South Africa criminalized marital rape through the Prevention of Family Violence Act, 1993. The post-apartheid constitutional framework emphasizes equality and dignity. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, reaffirmed this position. It recognizes that consent is essential, regardless of marital status. South African courts view marital rape as a violation of constitutional guarantees of dignity and bodily integrity under their Bill of Rights.

Australia abandoned the marital rape immunity in stages. Queensland was among the last to abolish it in 1991. The Australian High Court in *R v. L* ruled that the presumption of spousal consent is outdated and unconstitutional. Today, all Australian states treat marital rape on par with other sexual offenses. Consent, coercion, and autonomy are central to interpretation.

Germany removed marital rape exemption in 1997. It amended its Penal Code to include marital rape as a punishable offense. Section 177 of the Strafgesetzbuch (StGB) now mandates consent in all sexual acts, regardless of marital ties. The German Constitutional Court reinforced the principle that marriage does not justify forced sex.⁵⁶

European Convention on Human Rights obligates member states to protect individuals from inhuman and degrading treatment. The European Court of Human Rights in *MC v. Bulgaria* (2003) 40 EHRR 20, held that states must define rape laws to ensure effective protection of sexual autonomy. The ruling has influenced several countries in Eastern Europe to adopt stricter consent-based laws, applicable to spouses too.

IX. SOCIAL, ETHICAL, AND CULTURAL CONSIDERATIONS

Patriarchal norms dominate Indian society's view of marriage. The husband is seen as the head. The wife, submissive. Cultural expectations demand silence and sacrifice from women. Consent in marriage is rarely discussed. Most women are not told that

⁵⁶ German Criminal Code (Strafgesetzbuch), § 177 (Ger.).

they have a right to say no. The marital rape exemption strengthens this silence. It signals that sexual access is a husband's right, not a wife's choice.⁵⁷

Honor and family reputation are placed above individual autonomy. A woman speaking about sexual abuse by her husband is seen as destroying family dignity. The stigma around divorce and broken marriages forces women to endure violence. Community elders often advise reconciliation, not justice. The justice system too reflects these biases. Police discourage filing of complaints. Judges invoke cultural morality instead of constitutional rights.

Misuse narratives are overused. Critics argue that women may falsely accuse husbands. But such fears exist with every criminal law. Murder, theft, dowry, all face false case risks. Yet those offenses are still prosecuted. No one argues to decriminalize them. Selective suspicion about marital rape claims reflects gender bias. It delegitimizes real survivors and deters reporting.⁵⁸

Religious personal laws compound the problem. In Hinduism, marriage is a sacrament, not a contract. The woman is seen as arthaangini—half of her husband. This symbolism has been misused to strip her of agency. In Islam, while consent is required, patriarchal interpretations dominate practice. In Christian doctrine too, historically, the wife's consent was presumed perpetual. These traditions, though ancient, cannot justify denial of basic human dignity in a constitutional democracy.

Sexual violence within marriage affects mental and physical health. Studies by WHO show that women subjected to marital rape suffer depression, PTSD, miscarriages, and long-term trauma.⁵⁹ Yet the legal system offers no redressal. The denial of justice becomes a secondary victimization. Survivors remain trapped. Social dependence, lack of financial independence, and emotional coercion prevent escape.

⁵⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 84 (Oxford Univ. Press 2001).

⁵⁸ Madhu Mehra, *Criminalising Marital Rape in India: A Constitutional and Human Rights Perspective*, Partners for Law in Development (2015).

⁵⁹ World Health Organization, *Understanding and Addressing Violence Against Women: Intimate Partner Violence* (2012).

Moral policing by society deters legal reform. Lawmakers hesitate, fearing backlash. Some argue that marriage will become unstable. But no stable marriage can be built on coercion. Criminalization of marital rape does not criminalize marriage. It criminalizes violence. This distinction must be made. Marriage cannot be a cover for violation of fundamental rights.⁶⁰

The ethical question is plain. Is a woman's body hers or her husband's? If she says no, should the law stand with her or with the man who forced her? The moral foundations of our Constitution demand that her autonomy be respected. Dignity is not negotiable based on marital status. Equality is not conditional upon customs or gender roles. The idea that sex is a husband's right reflects outdated male entitlement. It must be dismantled.

Silence of law legitimizes violence. When courts and legislatures remain passive, society assumes consent. This culture of acceptance must end. Change in law must be accompanied by change in thinking. Education, awareness, and gender sensitization are crucial. Schools, religious institutions, media, all must question the normalization of marital rape. Law reform is only one step. Social reform must follow.⁶¹

X. ARGUMENTS FOR CRIMINALIZING MARITAL RAPE IN INDIA

Consent does not dissolve after marriage. Marriage is not ownership. It is companionship. The idea that a husband has a legal right to sexual access violates basic human dignity. Consent must be given for every act, every time. The law cannot ignore that a woman's autonomy continues even inside a marriage.

The marital rape exception violates Article 14. It creates an arbitrary classification. One group of women—unmarried—has the protection of rape laws. The other group—married—does not. No rational basis exists for this differential treatment. The State cannot justify unequal protection under a law that deals with bodily harm. In *Navtej*

⁶⁰ Justice Verma Committee Report (2013), Ministry of Home Affairs, Government of India.

⁶¹ Kalpana Kannabiran, *Tools of Justice: Non-discrimination and the Indian Constitution* 112 (Routledge 2012).

Singh Johar v. Union of India, the Supreme Court affirmed that privacy, dignity, and choice are central to personal liberty.⁶² The same logic applies here.

Article 21 guarantees the right to life and personal liberty. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the right to privacy was declared intrinsic to dignity and autonomy. A married woman has the right to say no. She has the right not to be treated as property. Marital rape strips her of this liberty and imposes a form of subjugation.⁶³

Criminalizing marital rape is essential to uphold constitutional morality. Courts must move beyond public morality or majoritarian opinions. The Supreme Court in *Joseph Shine v. Union of India* emphasized that outdated social norms cannot override constitutional rights. The logic applies directly to Exception 2 of Section 375. Retaining this provision sustains outdated patriarchal norms.

India has international obligations. Under the “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”, India must eliminate discriminatory practices against women in all spheres. UN reports have repeatedly criticized India for failing to criminalize marital rape. The UN Special Rapporteur on Violence Against Women noted that India’s exemption violates the right to bodily integrity. Treaties ratified by India require domestic implementation.

Health and safety of women demand reform. Studies by the World Health Organization show that marital rape leads to depression, anxiety, PTSD, miscarriages, and chronic pain⁶⁴. The lack of legal recourse forces survivors to suffer in silence. Criminalization would open a pathway to justice. It would help survivors seek protection, counseling, and accountability.

Arguments about misuse are exaggerated. Every criminal law faces risk of false reporting. Yet we do not decriminalize theft, dowry harassment, or domestic violence. The law must trust women. The fear of misuse cannot outweigh the need to protect fundamental rights. The *Verma Committee Report* also rejected this logic. It firmly

⁶² Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

⁶³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁶⁴ World Health Organization, *Understanding and Addressing Violence Against Women: Intimate Partner Violence* (2012).

recommended the deletion of Exception 2 and emphasized that marriage does not imply blanket consent⁶⁵.

XI. CONCLUSION AND RECOMMENDATIONS

Exception 2 to Section 375 of the Indian Penal Code protects one class of rapists—husbands. It denies married women the right to sexual autonomy. It treats consent as irrelevant inside marriage. This violates the right to dignity under Article 21. It contradicts the principle of equality in Article 14. It discriminates on the basis of sex and marital status, directly violating Article 15(1).

Judicial pronouncements have acknowledged the evolving notion of privacy, bodily integrity, and choice. *Justice K.S. Puttaswamy*, *Navtej Singh Johar*, and *Joseph Shine* have expanded the scope of Article 21. Yet, the judiciary has not taken a final stand against the marital rape exemption. Courts remain cautious. The Delhi High Court's split verdict in *RIT Foundation v. Union of India* left the matter unsettled. The legislative vacuum continues.⁶⁶

Law Commission reports have shown inconsistency. Early reports were silent or conservative. The 172nd Report called for the removal of the marital rape exception. The Verma Committee strongly endorsed criminalisation. But the legislature excluded the recommendation during the 2013 amendment. Social resistance and political hesitation prevailed over constitutional logic.⁶⁷

Most liberal democracies have reformed their laws. UK, South Africa, Canada, Australia—all removed marital rape exceptions. They did so by recognizing that marriage does not override consent. These jurisdictions treat all rape equally, regardless of the relationship between parties. India, despite being a constitutional democracy, continues to lag.

⁶⁵ Justice Verma Committee Report (2013), Ministry of Home Affairs, Government of India

⁶⁶ *RIT Foundation v. Union of India*, W.P. (C) No. 284/2015 (Del HC); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁶⁷ Law Commission of India, 172nd Report on Review of Rape Laws (2000); Justice Verma Committee Report (2013), Ministry of Home Affairs.

Cultural norms, patriarchal morality, and fear of misuse are offered as justifications. But these are not constitutional defenses. The Supreme Court has stated that constitutional morality must prevail over popular morality. Equality, dignity, and autonomy are not negotiable. Rape is not less violent just because a mangalsutra was involved.⁶⁸

The ethical foundations of criminal law rest on harm and autonomy. Marital rape causes severe physical, emotional, and psychological harm. The law's silence amounts to complicity. It validates coercion. It betrays the idea of justice. Criminalising marital rape is not an attack on marriage. It is a recognition that no relationship can justify sexual violence.⁶⁹

Amend Section 375. Remove Exception 2. Define consent clearly and uniformly. Ensure that the law treats all non-consensual intercourse as rape. No special status for husbands. No dilution of punishments. Amend the Criminal Procedure Code to provide safe mechanisms for reporting. Protect survivors from retaliation and humiliation. Train law enforcement to understand and sensitively handle marital rape cases. Ensure medical professionals are sensitised to identify and document signs of sexual assault within marriage.⁷⁰

Expand access to legal aid and support services for women. Encourage public awareness campaigns that challenge the myth of marital entitlement. Educate judges, police, religious institutions, and schools. Reform begins with recognition. Recognition begins with law. Legislative inertia must end. Judicial silence must break. The Constitution does not stop at the bedroom door. If rape is violence, then marital rape is no less. Marriage cannot be a license to violate.

⁶⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; Joseph Shine v. Union of India, (2019) 3 SCC 39.

⁶⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 134 (Oxford Univ. Press 2001).

⁷⁰ Partners for Law in Development, *Criminalising Marital Rape: India's Structural and Legal Gaps* (2020).

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