

Criminalization of Marital Rape in India: Constitutional Morality and Legal Reform

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Abstract

Marital rape remains one of the most controversial and under-discussed issues within India's criminal justice and constitutional framework. Despite India's progress in advancing women's rights, the exception carved under Section 375 of the Indian Penal Code continues to exempt husbands from prosecution for rape against their wives. This paper examines the constitutional, moral, and legal dimensions surrounding the criminalization of marital rape in India. It examines the tension between personal laws, patriarchal traditions, and the constitutional guarantees of equality, dignity, and personal liberty as outlined in Articles 14, 15, and 21. Through a comparative and jurisprudential analysis, the study highlights the evolving judicial discourse, the concept of constitutional morality, and global legislative trends. The paper concludes by recommending comprehensive legal reforms to ensure gender justice and align India's criminal law framework with constitutional principles and international human rights obligations.

Keywords: Marital Rape, Constitutional Morality, Gender Justice, Section 375 IPC, Legal Reform

1. Introduction

Marital rape, or non-consensual sexual intercourse by a husband with his wife, remains one of the most pervasive yet overlooked forms of sexual violence in India. It violates a woman's bodily autonomy, integrity, and dignity. Although widely recognized as a grave offence in most democratic nations, Indian law still exempts husbands from prosecution under **Exception 2 to Section 375 of the Indian Penal Code**, which allows sexual intercourse with a wife above fifteen years of age. This colonial-era provision, inherited from British law, continues to reflect the outdated belief that marriage implies permanent consent.

1. This exception is not only inconsistent with the principles of justice and equality enshrined in the Indian Constitution but also contrary to India's international obligations under instruments such as the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** and the **Universal Declaration of Human Rights (UDHR)**. While the British legal system itself repealed the marital rape immunity in *R v. R* (1991), India's retention of this provision reflects the deep-rooted patriarchy that still governs legal and social attitudes towards marriage and sexuality.

1. The issue of criminalizing marital rape has gained renewed attention following landmark constitutional judgments such as *Suchita Srivastava v. Chandigarh Administration* (2009), *Navtej Singh Johar v. Union of India* (2018), and *Joseph Shine v. Union of India* (2019), where the Supreme Court expanded the interpretation of individual liberty, dignity, and sexual autonomy. These judgments have laid the

foundation for re-examining the marital rape exception through the lens of **constitutional morality**, which demands that constitutional values must prevail over outdated social conventions and personal laws.

2. The objective of this paper is to examine the constitutional, moral, and legal imperatives behind the criminalization of marital rape in India. It adopts a **doctrinal and comparative research methodology**, analyzing statutory provisions, judicial precedents, committee reports, and international conventions. The paper also aims to propose practical legal reforms that align India's criminal law system with the principles of gender justice and human rights.
3. In doing so, this study argues that criminalizing marital rape is not merely a legislative option but a **constitutional obligation**—a necessary step to bridge the gap between India's legal framework and its commitment to equality, liberty, and dignity for all citizens.

2. Historical Background and Legal Framework

The origins of the marital rape exception in India can be traced to the **Indian Penal Code (IPC), 1860**, drafted under British colonial rule by Lord Macaulay. Influenced by Victorian-era moral and social norms, the Code was based on the patriarchal assumption that marriage constituted an irrevocable contract, granting the husband permanent sexual rights over his wife. This idea drew heavily from the English common law principle of **coverture**, which treated a married woman's legal identity as merged with that of her husband.

Under this framework, the wife was presumed to have given perpetual consent to sexual relations upon marriage. The infamous assertion by the English jurist **Sir Matthew Hale** that “the husband cannot be guilty of a rape committed by himself upon his lawful wife” became the legal foundation for the marital rape exemption across British colonies, including India. Consequently, **Section 375 of the IPC** defined rape but inserted **Exception 2**, which stated that sexual intercourse by a man with his wife, if she was not under fifteen years of age, did not amount to rape.

While the **United Kingdom abolished the marital rape immunity** through *R v. R* (1991), India continues to retain this outdated exception even after more than seventy years of independence. The provision clearly contradicts the spirit of the Indian Constitution, which guarantees equality, liberty, and dignity to all citizens under **Articles 14, 15, and 21**.

Post-independence, various expert bodies have reviewed and criticized this exemption. The **Law Commission of India (172nd Report, 2000)** acknowledged the need to criminalize marital rape, noting that marriage cannot be a defense for violating a woman's bodily integrity. Later, the **Justice J.S. Verma Committee (2013)**, constituted after the Nirbhaya incident, also recommended deleting the marital rape exception and recognizing the autonomy of women within marriage. Unfortunately, these recommendations were ignored during the passage of the **Criminal Law (Amendment) Act, 2013**, reflecting ongoing political and social resistance to reform.

Even the newly enacted **Bharatiya Nyaya Sanhita, 2023**, which replaced the IPC, has disappointingly retained the same exemption under **Section 63**, thereby reinforcing the outdated patriarchal notion that marriage legitimizes forced sexual relations.

This historical and legal continuity illustrates how colonial-era gender hierarchies still influence modern Indian criminal law. The persistence of this exception highlights an urgent need for reform grounded in constitutional morality, gender equality, and human dignity.

3. Judicial Pronouncements and Development

The Indian judiciary has played a crucial role in shaping the understanding of women's bodily integrity, privacy, and sexual autonomy. Although marital rape remains unrecognized as a criminal offence in statutory law, the courts have gradually advanced constitutional values through progressive interpretation and a rights-based approach.

In *State of Karnataka v. Krishnappa* [(2000) 4 SCC 75], the Supreme Court observed that sexual violence, irrespective of the relationship between the parties, is an unlawful intrusion into a woman's right to privacy and bodily integrity. The Court emphasized that such acts degrade human dignity and are incompatible with the constitutional promise of equality. While not directly addressing marital rape, the judgment set the tone for recognizing sexual violence within marriage as a violation of fundamental rights.

A landmark shift came in *Independent Thought v. Union of India* [(2017) 10 SCC 800], where the Supreme Court read down Exception 2 to Section 375 IPC, holding that sexual intercourse with a wife below 18 years of age amounts to rape. The Court made it clear that marriage cannot be a defense for sexual assault on minors. Justice Madan B. Lokur noted that the exception violated both the dignity and bodily integrity of the girl child, laying an important foundation for questioning the broader marital rape exemption.

In *Suchita Srivastava v. Chandigarh Administration* [(2009) 9 SCC 1], the Court recognized reproductive autonomy and bodily integrity as part of a woman's right to personal liberty under Article 21. Similarly, in *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241], the Court established that sexual harassment violates the fundamental right to equality and dignity, thereby strengthening gender-sensitive interpretations of law.

Further, in *Navtej Singh Johar v. Union of India* [(2018) 10 SCC 1]* and *Joseph Shine v. Union of India* [(2019) 3 SCC 39]*, the Supreme Court reiterated that **constitutional morality** must prevail over social or religious morality. Both cases emphasized that personal autonomy, consent, and dignity form the core of fundamental rights.

Although the judiciary has not yet declared marital rape unconstitutional, these judgments collectively signal a decisive shift towards recognizing sexual autonomy within marriage. They reflect a growing judicial awareness that the protection of human dignity and consent must extend equally to all women, regardless of marital status. The courts have thus laid a strong constitutional foundation for the eventual legislative recognition of marital rape as a criminal offence.

4. Comparative legal perspective

Globally, the criminalization of marital rape has been recognized as a vital step toward protecting human rights and ensuring gender equality. Most modern democracies have reformed their criminal laws to acknowledge that marriage cannot be used as a defense for sexual violence. In contrast, India's continued retention of the marital rape exception highlights a significant gap between its constitutional values and international human rights standards.

The turning point in global jurisprudence came with the landmark **United Kingdom case of *R v. R* [1991] 4 All ER 481 (HL)**, where the House of Lords unequivocally held that marriage does not imply irrevocable consent to sexual intercourse. The Court stated that the marital exemption was a legal fiction inconsistent with modern notions of equality and dignity. Following this decision, the **Criminal Justice and Public Order Act, 1994** formally abolished the marital rape immunity in the UK.

In the **United States**, the reform process began in the 1970s and was completed by 1993 when all fifty states criminalized marital rape. In *People v. Liberta* (1984), the New York Court of Appeals held that the marital exemption violated the Equal Protection Clause of the Fourteenth Amendment. The Court declared that the marital relationship cannot justify violence or unequal treatment before the law.

Similarly, **Canada**, through the *Criminal Law Amendment Act, 1983*, removed the marital exemption and introduced gender-neutral definitions of sexual assault. Canadian courts interpreted these provisions in light of the **Canadian Charter of Rights and Freedoms (1982)**, emphasizing equality and bodily integrity as fundamental constitutional rights.

In **South Africa**, the **Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007** explicitly recognized marital rape as an offence, guided by constitutional values of dignity, freedom, and equality. The South African judiciary, in *S v. Jordan* (2002), reiterated that gender-based violence undermines the constitutional right to equality and personal security.

Other countries such as **Australia**, **New Zealand**, and **Nepal** have also reformed their laws to criminalize marital rape. The **High Court of Australia**, in *R v. L* (1991), held that the presumption of consent within marriage is incompatible with human rights principles. Nepal's Supreme Court, in *Forum for Women, Law and Development v. His Majesty's Government* (2002), struck down the marital exemption, declaring it unconstitutional and inconsistent with the right to equality and dignity.

At the international level, the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** and the **Istanbul Convention (2011)** both mandate signatory states to criminalize all forms of non-consensual sexual acts, including those within marriage.

India's persistence in maintaining the marital rape exception under Section 63 of the *Bharatiya Nyaya Sanhita, 2023* thus places it in contradiction not only with its constitutional framework but also with established international standards. Recognizing marital rape as a crime is, therefore, essential for India to uphold its commitment to gender justice and human rights in the global community.

5. Socio-Legal Challenges in Criminalizing Marital Rape

The debate surrounding the criminalization of marital rape in India is deeply intertwined with cultural, social, and political sensitivities. The primary opposition to its criminalization stems from the traditional belief that marriage is a private institution, immune from state intervention. Certain religious and political groups argue that introducing such a law would “destabilize the institution of marriage” and could be misused to harass husbands, thereby undermining family harmony.

However, this perception is rooted in patriarchal notions that view the husband as the dominant partner and the wife as a passive recipient of marital obligations. The argument that marriage grants unconditional sexual consent contradicts the constitutional guarantee of equality and dignity. The idea that women lose their agency and bodily autonomy after marriage perpetuates gender inequality and normalizes violence within the domestic sphere.

From a social standpoint, the stigma attached to reporting sexual violence within marriage continues to discourage victims from seeking justice. Deeply ingrained notions of honor, family reputation, and societal judgment create a culture of silence. The lack of awareness and the absence of institutional support mechanisms such as marital counselling, safe shelters, and psychological assistance further exacerbate this issue.

Legally, the challenge lies in balancing the concerns of potential misuse with the necessity of protecting fundamental rights. Opponents often cite the example of alleged misuse of dowry or domestic violence laws, but such arguments overlook the fact that misuse cannot be the basis to deny justice to genuine victims. Every law is susceptible to abuse; what matters is the presence of procedural safeguards and fair investigation mechanisms.

Furthermore, the absence of gender-neutral definitions of sexual offences and insufficient training among law enforcement officers and judges lead to biased interpretations and insensitive handling of such cases. To effectively implement a marital rape law, comprehensive judicial and police sensitization is essential.

Thus, the real challenge is not whether marital rape should be criminalized, but how India can overcome socio-legal barriers to ensure that the criminal justice system upholds equality, consent, and dignity for all individuals, irrespective of marital status.

6. The Role of Constitutional Morality in Legal Reform

The Supreme Court’s jurisprudence has consistently emphasized that **constitutional morality** must prevail over societal or religious morality. The concept, first elaborated in *Navtej Singh Johar v. Union of India* [(2018) 10 SCC 1], asserts that the Constitution protects individual dignity, autonomy, and equality against the prejudices of the majority. The Court observed that the essence of constitutional morality lies in upholding the rule of law and the fundamental rights guaranteed to every citizen, even when such rights conflict with traditional social norms.

In *Navtej Johar*, the Supreme Court decriminalized consensual same-sex relationships, holding that personal choices regarding sexuality are protected under Articles 14, 15, and 21. Similarly, in *Indian Young Lawyers Association v. State of Kerala* [(2019) 11 SCC 1]* (the Sabarimala case), the Court reaffirmed that customs and religious practices cannot override constitutional guarantees of equality and dignity. These landmark judgments collectively establish that the law must evolve with time and reflect the progressive values of the Constitution rather than the static views of society.

Applying the same principle to marital rape, it becomes evident that preserving the exception under Section 375 of the IPC (now Section 63 of the Bharatiya Nyaya Sanhita, 2023) violates the spirit of constitutional morality. Denying married women the same protection against sexual assault available to unmarried women creates an arbitrary and discriminatory classification, contrary to Articles 14 and 15.

Thus, the criminalization of marital rape is not merely a matter of social reform but a **constitutional imperative**. The law must ensure that the sanctity of marriage does not override a woman's right to bodily autonomy, privacy, and human dignity — principles that form the bedrock of constitutional morality.

7. Need for Legislative Reform

Comprehensive legislative reform is essential to explicitly criminalize marital rape in India and align domestic laws with constitutional and international human rights standards. The present legal framework, which continues to uphold the marital exemption under **Section 63 of the Bharatiya Nyaya Sanhita, 2023** (previously Exception 2 to Section 375 of the IPC), fails to provide married women the same protection against sexual violence that is available to unmarried women. This legal inconsistency violates the principles of equality, non-discrimination, and personal liberty enshrined in Articles 14, 15, and 21 of the Constitution.

The first and most critical step in reform is the **repeal of the marital rape exception**. The notion that consent is implied through marriage is incompatible with modern constitutional values and human rights jurisprudence. The **Justice J.S. Verma Committee (2013)**, set up after the Nirbhaya case, had categorically recommended the removal of this exception, observing that “the relationship between the accused and the complainant is not relevant to the question of consent.” Unfortunately, this recommendation was ignored during the Criminal Law (Amendment) Act, 2013, reflecting legislative hesitation rooted in patriarchal and socio-political concerns.

Second, the law should introduce **gender-neutral provisions** that recognize sexual violence within marriage as an offence regardless of the gender of the victim or perpetrator. This would ensure inclusivity and align Indian criminal law with international standards, such as those under the **Istanbul Convention (2011)** and **CEDAW**, which demand equal protection for all individuals against sexual violence.

Third, legislative reform must be accompanied by **robust procedural safeguards** to address concerns about possible misuse. Clear evidentiary standards, due process protections, and judicial discretion in granting bail can ensure fairness while preventing false prosecutions. However, the mere possibility of misuse cannot be a justification to deny justice to genuine victims.

In addition, there must be **institutional mechanisms** for victim protection, including confidential reporting, marital counselling, and access to psychological support. Sensitization programs for police officers, prosecutors, and judges are vital to ensure empathetic handling of such cases. The introduction of special cells or family courts with trained counsellors could also facilitate both rehabilitation and legal recourse for victims of marital rape.

Further, **awareness and educational initiatives** should be undertaken to challenge the deeply entrenched social beliefs that normalize sexual violence within marriage. Public campaigns, curriculum inclusion, and community-based programs can help shift societal perceptions from marital privilege to mutual respect and consent.

Ultimately, criminalizing marital rape is not an attack on the institution of marriage; rather, it seeks to strengthen it by ensuring mutual respect, equality, and dignity between partners. Legislative reform must, therefore, reflect the spirit of the Constitution and India's global commitments. The time has come for Parliament to demonstrate moral and constitutional courage by acknowledging that consent within marriage is as sacred and indispensable as it is outside it.

8. Conclusion

Criminalizing marital rape is not a challenge to the institution of marriage; rather, it is a reaffirmation of the values of equality, consent, and human dignity that form the foundation of any healthy marital relationship. The idea that marriage grants unconditional sexual access to one's partner is rooted in patriarchal traditions that deny women agency over their own bodies. Denying legal protection to married women against rape directly violates the constitutional principles of liberty, equality, and dignity guaranteed under Articles 14, 15, and 21 of the Indian Constitution.

India's persistence in retaining the marital rape exception represents not only a legal anomaly but also a moral and constitutional failure. It perpetuates gender discrimination by creating an artificial distinction between married and unmarried women, suggesting that marriage can be a license for sexual coercion. Such an approach contradicts the evolving constitutional jurisprudence that places individual autonomy and consent at the core of fundamental rights.

The judiciary, through landmark decisions such as *Independent Thought*, *Suchita Srivastava*, *Navtej Singh Johar*, and *Joseph Shine*, has laid down a robust foundation for recognizing bodily autonomy and sexual freedom as essential components of human dignity. However, legislative inertia continues to undermine these constitutional ideals. It is, therefore, incumbent upon Parliament to bridge this gap and translate constitutional morality into concrete legal reform.

Criminalization of marital rape would not weaken the sanctity of marriage; it would strengthen it by reinforcing the principles of mutual respect, trust, and equality between partners. True marital harmony cannot be built on coercion or silence but on consent and understanding.

India's constitutional promise of justice—social, economic, and political—demands that its laws evolve to protect the most intimate aspects of individual freedom. Recognizing marital rape as a criminal offence

is not merely a legislative reform; it is a necessary step toward fulfilling the constitutional vision of gender justice and human dignity. The time has come for India to shed the remnants of colonial morality and embrace a progressive, rights-based legal framework that treats every woman, married or unmarried, as an equal citizen before the law.

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10. Conflict of Interest

The author declares that there is **no conflict of interest** concerning the research, authorship, or publication of this paper. This study is an outcome of independent academic inquiry undertaken as part of legal scholarship, without any financial assistance, sponsorship, or institutional pressure. No organization, agency, or individual has influenced the objectives, methodology, or conclusions drawn in this research. The views expressed in this paper are entirely those of the author and are based on an unbiased interpretation of laws, judicial precedents, and scholarly literature. The paper has not been submitted elsewhere for publication and represents original work reflecting the author's own analysis and understanding of the topic. The author remains solely responsible for the accuracy, authenticity, and integrity of the content presented.

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