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ABSTRACT

This paper critically examines the legal, constitutional, and socio-cultural dimensions of the marital rape exception in India, specifically analyzing Exception 2 to Section 375 of the Indian Penal Code. The primary objective is to evaluate the tension between patriarchal marital traditions and modern constitutional values. Utilizing a qualitative and analytical methodology, the study examines Indian judicial trends, feminist jurisprudence, and comparative international frameworks to assess the validity of the current legal immunity. The major findings indicate that the marital rape exception creates an arbitrary classification between married and unmarried women, systematically violating fundamental rights. The paper highlights how economic dependence and digital tools exacerbate spousal vulnerability, while existing civil remedies like the Domestic Violence Act, 2005 remain insufficient due to a lack of deterrent effect. Ultimately, the study concludes that consent must be recognized as continuous and revocable, and that legislative reform to criminalize marital rape is an immediate constitutional and moral imperative to ensure substantive gender justice and bodily autonomy.

KEYWORDS

Marital Rape, Bodily Autonomy, Article 21, Consent, Constitutional Morality.

1. INTRODUCTION

Marriage has traditionally been viewed as a sacred and inviolable institution, symbolizing companionship, trust, and mutual respect. However, beneath this idealized conception lies a complex reality shaped by power imbalances and entrenched gender roles. One of the most contentious issues arising from this imbalance is marital rape, defined as non-consensual sexual intercourse by one spouse with the other.

Historically, legal systems across the world operated on the presumption that marriage implied irrevocable consent to sexual relations. This assumption, rooted in patriarchal norms, denied individuals primarily women the right to bodily autonomy within marriage. While many countries have since recognized marital rape as a criminal offense, India continues to retain an exception under criminal law, thereby excluding non-consensual sexual acts within marriage from the ambit of rape.

This paper critically examines the legal, constitutional, and socio-cultural dimensions of marital rape. It explores the tension between traditional marital norms and modern constitutional values, analyzes judicial trends, and evaluates the need for legal reform in light of international human rights standards.

2. HISTORICAL EVOLUTION OF THE MARITAL RAPE EXCEPTION

The origins of the marital rape exemption can be traced to English common law, particularly the doctrine propounded by Sir Matthew Hale in the 17th century. Hale asserted that a husband could not be guilty of raping his wife because, upon marriage, she had given irrevocable consent to sexual relations.

This doctrine was incorporated into colonial legal systems, including India's, and continues to exist in Exception 2 to Section 375 of the Indian Penal Code. The provision effectively denies married women legal protection against sexual violence by their husbands, provided they are above eighteen years of age.

However, modern legal thought has increasingly rejected this notion, recognizing that consent is not a one-time act but a continuous and revocable agreement. The persistence of this outdated doctrine highlights the gap between evolving human rights standards and existing legal frameworks.

3. CONSTITUTIONAL FRAMEWORK AND CONFLICT

The marital rape exception raises significant constitutional concerns, particularly in relation to fundamental rights guaranteed under the Constitution of India.

Right to Equality (Article 14)

Article 14 ensures equality before the law and equal protection of laws. The marital rape exception creates an arbitrary distinction between married and unmarried women, denying the former protection against sexual violence. In *State of West Bengal v. Anwar Ali Sarkar*, the Supreme Court held that classification must be reasonable and non-arbitrary. The marital rape exception fails this test. The classification between a married woman and an unmarried woman lacks an intelligible differentia and has no rational nexus with the object of protecting women from sexual violence. Marriage cannot operate as a legal waiver of statutory protection.

Right to Life and Personal Liberty (Article 21)

The scope of Article 21 has been expansively interpreted to include dignity, privacy, and bodily autonomy. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognized the right to privacy as intrinsic to personal liberty. Similarly, in *Suchita Srivastava v. Chandigarh Administration*, the Court affirmed a woman's right to make reproductive choices.

Marital rape directly violates these principles by denying individuals control over their own bodies within marriage. If the right to privacy includes informational and spatial privacy, it must axiomatically protect bodily integrity. Forced sexual intersection inside a marriage is a direct violation of the right to live with dignity.

Right Against Discrimination (Article 15)

Article 15 prohibits discrimination on the grounds of sex. The marital rape exception disproportionately affects women and reinforces gender-based inequality, thereby violating this constitutional guarantee. By protecting husbands from prosecution, the exception institutionalizes a patriarchal dominion that discriminates specifically against women based on sex, reinforcing the outdated notion of coverture where a woman's legal identity is subsumed by her husband.

4. JUDICIAL TRENDS IN INDIA

Although marital rape remains uncriminalized, Indian courts have increasingly emphasized the importance of consent and autonomy.

In *Independent Thought v. Union of India*, the Supreme Court read down the marital rape exception for minor wives, holding that sexual intercourse with a wife aged between 15 and 18 years constitutes rape.

In *Joseph Shine v. Union of India*, the Court rejected the notion of women as property and emphasized dignity within marriage. Similarly, *Navtej Singh Johar v. Union of India* underscored the primacy of constitutional morality over societal norms.

These judgments reflect a gradual shift toward recognizing individual autonomy within marriage, although legislative reform remains pending.

5. SOCIO-CULTURAL PATRIARCHY AND THE FEMINIST RE-CONCEPTUALIZATION OF CONSENT

Feminist jurisprudence provides a critical analytical framework to deconstruct the marital rape exception, directly challenging the archaic notion that marriage implies irrevocable or perpetual sexual consent. Historically rooted in patriarchal social structures, colonial legal systems

treated women as the legal property of their husbands, completely stripping them of bodily autonomy. In contemporary society, particularly within the Indian context, this historical subjugation manifests as a persistent gap between evolving human rights norms and entrenched social attitudes. The marital rape immunity effectively institutionalizes these gender-based power imbalances, reinforcing a hierarchical model of marriage where the husband holds systemic authority over the wife.

Within this patriarchal framework, cultural and religious norms heavily romanticize and pathologize the institution of marriage, viewing it as a sacred realm that should remain entirely beyond legal scrutiny. This deliberate mystification creates severe systemic barriers for survivors. Societal pressure to preserve 'family harmony' combined with the acute social stigma associated with refusing sexual relations actively discourages women from asserting their rights or reporting intimate partner violence. Consequently, these socio-cultural dynamics work in tandem to normalize marital rape, rendering the abuse invisible and severely hindering legislative and structural reform.

To achieve substantive gender justice, feminist scholars argue that the legal framework must radically shift from presumed or permanently granted consent to a standard where consent is recognized as strictly free, informed, and continuous. The regressive expectation that a spouse is legally or morally obligated to engage in non-consensual sexual relations fundamentally violates the constitutional guarantees of equality and human dignity. Therefore, dismantling this structural inequality requires both a socio-cultural rejection of patriarchal dominance and the formal criminalization of marital rape to restore absolute agency and bodily integrity to married women.

6. INTERSECTIONAL VULNERABILITIES AND THE MULTI-DIMENSIONAL TRAUMA OF SURVIVORS

The experience of marital rape is not monolithic; rather, its severity and the subsequent barriers to justice are deeply influenced by intersectional factors such as class, caste, economic status, and educational background. Women belonging to marginalized or economically weaker sections often lack the critical financial resources required to escape abusive marriages. This vulnerability is further compounded by geographic isolation for women in rural areas, as well as the unique, systemic challenges faced by women with disabilities. For these vulnerable groups, pervasive social stigma and a general lack of legal awareness drastically limit their access to justice, making survival and legal recourse exceptionally difficult. This institutional and social entrapment exacerbates the profound physical and psychological

consequences of the abuse. The trauma is distinctly magnified by the intimate nature of the spousal relationship and the systemic lack of legal recognition for the crime. Psychologically, survivors are frequently subjected to severe mental health crises, including depression, anxiety, post-traumatic stress disorder (PTSD), emotional isolation, and a debilitating loss of self-esteem. Simultaneously, the physical toll is devastating. Survivors often endure traumatic injuries, chronic pain, severe reproductive health complications, and a heightened risk of contracting sexually transmitted infections. These severe health implications of intimate partner sexual violence have also been strongly corroborated by reports from the World Health Organization. Therefore, addressing the epidemic of marital rape necessitates a comprehensive, intersectional approach. Legal frameworks and support systems must evolve to provide targeted, trauma-informed care that acknowledges the diverse and multi-dimensional suffering of all vulnerable groups.

7. STATUTORY LIMITATIONS, GLOBAL PRECEDENTS, AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The inadequacy of the domestic legal framework in addressing spousal sexual violence directly necessitates a critical look toward global jurisprudence and international human rights commitments. Within India, the primary recourse for survivors is the Protection of Women from Domestic Violence Act, 2005 (PWDVA), which formally recognizes sexual abuse as a facet of domestic violence and provides essential civil remedies such as protection orders and monetary relief. However, this framework remains fundamentally restricted precisely because it operates purely in the civil domain. By failing to criminalize the act of forced sexual intercourse, the PWDVA lacks the necessary penal deterrent effect, thereby failing to deliver complete criminal justice to survivors and proving that civil alternatives cannot act as a substitute for explicit penal sanctions. This very institutional gap and vacuum in domestic criminal law highlights the urgency of adopting the progressive standards seen in comparative global frameworks. Numerous jurisdictions across the world have already transitioned from mere civil remedies to robust penal provisions to align with contemporary human rights standards. A landmark baseline was set in the United Kingdom by the House of Lords in the historic case of *R v R*, which decisively abolished the common law marital rape exemption by recognizing that a marriage contract does not imply irrevocable sexual consent. Following this evolutionary shift, nations such as the United States, Canada, and South Africa have similarly enacted progressive legislations that penalize spousal sexual assault, demonstrating that criminalization is not only legally feasible but is a necessary step for a modern, rights-based society. Ultimately, India's hesitation to adopt these global criminal law models creates a direct, irreconcilable conflict

with its commitments under international law. Global legal precedents like *R v R* do not exist in isolation; they are practical applications of core international instruments that heavily emphasize the absolute elimination of all forms of violence against women. For instance, the Universal Declaration of Human Rights (UDHR) explicitly recognizes individual dignity and equality as fundamental, non-negotiable rights, while the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly obligates state parties to take active measures to dismantle gender-based violence. Therefore, as a proud signatory to these global instruments, India's international law responsibility to align its domestic penal provisions with these humanitarian standards becomes the final, binding justification for repealing the marital rape exception.

8. IMPLEMENTATION CHALLENGES AND STRATEGIC POLICY RECOMMENDATIONS

Despite the compelling constitutional and human rights arguments for reform, the transition from exception to criminalization faces several complex implementation challenges. Chief among these is the evidentiary difficulty in proving a lack of consent within the private, intimate sphere of marriage, which often raises concerns regarding the potential misuse of the law. This legal hurdle is further complicated by deep-seated societal resistance and cultural stigma, alongside a lack of institutional preparedness within our law enforcement and administrative machinery. However, these institutional and social anxieties are not unique to marital rape and have been successfully managed in other domains of special penal legislation through targeted procedural safeguards and structural overhauls.

To effectively counter these challenges, a comprehensive and multi-layered policy framework must be adopted, serving as a direct remedy to the systemic anxieties of enforcement. The first and most vital step is comprehensive legislative reform to completely remove the marital rape exception and codify a clear, statutory definition of continuous consent. To address the issue of institutional preparedness, rigorous police training and specialized judicial sensitization programs are essential to ensure empathy, proper evidence collection, and a survivor-centric approach during legal proceedings. Finally, to dismantle societal resistance, wide-scale public awareness campaigns must be launched to promote gender equality and a culture of consent, seamlessly backed by robust support systems including accessible counseling, institutional shelters, and state-sponsored legal aid.

9. ECONOMIC DEPENDENCE AND POWER DYNAMICS IN MARRIAGE

A critical yet frequently marginalized dimension of marital rape is the role of economic dependence in perpetuating spousal abuse. In many socio-legal landscapes, including India, women experience systemic financial dependency due to restricted access to quality education, formal employment, and independent property rights. This structural asymmetry creates a profound power imbalance within the domestic sphere, severely compromising a woman's capacity to either resist or report sexual violence.

Financial subjection not only severely restricts a survivor's exit options from an abusive marriage but also subtly dictates her day-to-day decision-making and autonomy. The pervasive anxiety of losing financial subsistence, social security, and basic shelter forces many women, particularly non-earning homemakers to endure sexual subjugation in silence. Under these circumstances, economic vulnerability operates as a silent mechanism of entrapment.

Furthermore, financial hegemony is frequently weaponized as a coercive tool by abusive spouses. By withholding monetary resources, restricting access to material assets, or threatening absolute economic abandonment, husbands systematically compel sexual compliance. This transactional duress fundamentally blurs the distinction between voluntary consent and forced compliance, raising critical questions in feminist jurisprudence regarding the legal validity of consent extracted under severe economic pressure.

Consequently, dismantling the structural immunity of marital rape necessitates a dual approach combining penal reform with the structural economic empowerment of women. State policies tailored to enhance institutional access to education, employment avenues, and financial literacy can drastically lower spousal vulnerability. Moreover, securing egalitarian property rights and institutional credit lines remains vital to strengthening women's socio-legal bargaining power within the institution of marriage.

10. DECONSTRUCTING THE CONJUGAL EXCEPTION: MARITAL STABILITY VS. CONSTITUTIONAL REALITY

A pervasive counter-argument against penalizing spousal sexual assault is the conservative anxiety that criminalization would inherently destabilize the institution of marriage. However, this institutional preservation argument rests upon a deeply flawed, romanticized understanding of marital harmony. While traditional societal narratives idealize marriage as a sacred union rooted in mutual respect, the

empirical reality reveals that many domestic spheres are governed by asymmetric power structures, systemic coercion, and deep-seated abuse. Presuming that all marital interactions are inherently consensual deliberately invalidates the lived experiences of countless women subjected to non-consensual sexual violations within their own homes.

The legal fiction that criminalization would dismantle the marital bond fails to acknowledge that it is spousal violence itself, not its legal penalization, that erodes the foundation of any relationship. A marriage sustained artificially through structural fear and physical coercion completely lacks socio-legal legitimacy and cannot be deemed a stable institution. On the contrary, criminalizing marital rape acts as a corrective measure that strengthens the democratic core of marriage by institutionalizing individual accountability, equal partnership, and mutual consent.

Furthermore, the "sanctity of the private sphere" argument is historically inconsistent, as the state already exercises legitimate penal intervention in domestic matters through laws penalizing dowry harassment, child marriage, and domestic cruelty. Extending this existing criminal law protection to shield a married woman's bodily integrity from sexual violence is therefore not a radical disruption, but a logical, non-negotiable step toward constitutional consistency.

11. SOCIETAL CATALYSTS, IMPLEMENTATION BOTTLENECKS, AND THE STRATEGIC WAY FORWARD

Dismantling the legal immunity surrounding spousal sexual violence requires a synchronized effort between grassroots advocacy and responsible public narrative structures. Civil society and non-governmental organizations (NGOs) serve as a vital institutional bridge between survivors and an otherwise complex legal system, translating constitutional guarantees into accessible relief. These organizations optimize survivor support by providing essential legal assistance, trauma-informed psychological counseling, emergency shelter, and rehabilitation, alongside systemic awareness campaigns. However, the efficacy of this advocacy is frequently undercut by mainstream media representation, which historically reinforces patriarchal stereotypes and trivializes domestic sexual violence. Popular cultural mediums often mischaracterize forced intimacy within marriage as normalized romance, thereby embedding spousal coercion into the public psyche and systematically undermining the legal standard of continuous consent. Rectifying this requires an immediate transition toward a responsible media ecosystem that actively portrays egalitarian partnerships rooted in mutual respect, operating as a transformative catalyst for cultural change.

This collaborative social engineering is crucial because the formal criminalization of marital rape faces entrenched implementation bottlenecks. The primary systemic hurdles include aggressive resistance from conservative factions, deep-seated institutional barriers within law enforcement machinery, widespread educational gaps, and a pervasive regulatory anxiety regarding the potential misuse of the law. Addressing these multifaceted vulnerabilities requires a comprehensive strategy that rejects isolated legal adjustments in favor of long-term social restructuring. A viable way forward necessitates a dual commitment: formally recognized criminalization coupled with a safe, responsive institutional environment where survivors can actively seek justice without fear of secondary victimization. Ultimately, successfully navigating this transition requires structured cooperation between state machinery, civil society institutions, and public stakeholders to replace a culture of spousal coercion with a constitutional culture of accountability.

12. JUDICIAL TRENDS AND JURISPRUDENTIAL EVOLUTION

The constitutional validity of the marital rape exception must be evaluated through the lens of evolving judicial trends that gradually center bodily autonomy, dignity, and explicit consent within Indian marriage jurisprudence. The global foundation for dismantling spousal immunity was established by the House of Lords in the landmark decision of *R v R*¹, which addressed the critical issue of whether a husband could be held criminally liable for raping his wife. The House of Lords decisively abolished the centuries-old common law marital rape exemption, decreeing that marriage does not imply irrevocable sexual consent and declaring that the law must dynamically evolve alongside modern societal transformations. Domestically, the Supreme Court of India in *State of Karnataka v. Krishnappa*², expanded this understanding of sexual violence beyond simple physical violation. Addressing the issue of systemic violence against women from vulnerable backgrounds, the Court decreed that rape is a fundamental violation of basic human rights that destroys the psychological and emotional well-being of the survivor, establishing a principle that applies with equal force to non-consensual violations within a marriage.

This constitutional framework was further fortified by the Supreme Court in *Bodhisattwa Gautam v. Subhra Chakraborty*³, which dealt with sexual exploitation under a false promise of marriage. The Court explicitly recognized rape as a direct violation of the right to life and personal dignity under Article 21, asserting a judicial duty to protect

¹ [1991] UKHL 12.

² (2000) 4 SCC 75.

³ (2000) 1 SCC 66.

survivors and enforce interim compensation, reinforcing the argument that any form of forced sexual violence—including marital rape—is a constitutional wrong. The essentiality of choice was then crystalized in *Suchita Srivastava v. Chandigarh Administration*⁴, where the issue centered on the reproductive rights of a pregnant survivor. The Supreme Court decreed that a woman's right to make reproductive choices is intrinsic to her personal liberty under Article 21, establishing that continuous consent and bodily integrity are non-negotiable thresholds in all sexual and bodily interactions.

A direct, structural dilution of the spousal exception occurred in *Independent Thought v. Union of India*⁵, which directly challenged Exception 2 to Section 375 of the IPC for minor wives. Addressing whether sexual intercourse with a minor wife aged between 15 and 18 could be legally exempted from rape, the Supreme Court read down the exception and decreed that a minor child cannot grant valid legal consent, effectively harmonizing the penal code with child protection frameworks and prioritizing child rights over traditional marital status. Simultaneously, the historic privacy judgment in *Justice K.S. Puttaswamy v. Union of India*⁶, re-contextualized the entire fundamental rights paradigm. Evaluating whether the right to privacy constitutes a fundamental right under the Constitution, a unanimous nine-judge bench decreed that privacy is an unalienable core value under Article 21 that intrinsically encapsulates bodily integrity, spatial privacy, and personal autonomy, thereby rendering any statutory exception for forced marital sex unconstitutional.

The primacy of choice over archaic dogmas was later reaffirmed in *Navtej Singh Johar v. Union of India*⁷, which evaluated the constitutional validity of Section 377 of the IPC. Decriminalizing consensual same-sex relationships, the Court decreed that consent is central to all sexual activities and held that constitutional morality must decisively override conservative societal morality, directly empowering legal challenges against the marital rape exemption. Finally, the structural equality within marriage was fully realized in *Joseph Shine v. Union of India*⁸, which tested the constitutionality of the adultery law under Section 497 of the IPC. Striking down the provision for violating Articles 14, 15, and 21, the Supreme Court unequivocally rejected the patriarchal premise that a married woman is the legal property of her husband. The Court decreed that marriage is an equal partnership that does not subordinate or dilute an individual's independent constitutional identity, definitively

⁴ (2009) 9 SCC 1.

⁵ (2017) 10 SCC 800.

⁶ (2017) 10 SCC 1.

⁷ (2018) 10 SCC 1.

⁸ (2019) 3 SCC 39.

confirming that spousal consent matters continuously within the marriage.

13. CONCLUSION: THE PARADIGM SHIFT TOWARD MARITAL EQUALITY AND GENDER JUSTICE

The constitutional, psychological, and sociological analysis of the marital rape exception underscores a fundamental, irreconcilable conflict between archaic colonial dogmas and contemporary human rights. Beyond the evident constitutional violations, the systematic retention of this legal immunity inflicts deep, multi-dimensional trauma on the psychological well-being of survivors. Unlike isolated instances of sexual assault, the repetitive and ongoing nature of spousal sexual violence within an intimate relationship induces chronic psychological trauma, frequently manifesting as debilitating conditions such as post-traumatic stress disorder (PTSD), acute clinical depression, severe anxiety, and emotional isolation. This severe trauma is uniquely amplified by a profound sense of institutional betrayal, as the perpetrator is a partner whom the survivor is socially conditioned to trust, depend upon, and cohabit with. Consequently, an effective legal remedy must extend past basic penal sanctions to actively integrate accessible mental health services, trauma-informed support groups, and specialized rehabilitation frameworks within both the judicial and healthcare systems.

Ultimately, the issue of marital rape lies at the critical intersection of constitutional jurisprudence, sociological restructuring, and universal human rights. While the socio-cultural complexities surrounding the private sphere of marriage are undeniably intricate, this systemic sensitivity can no longer be weaponized as an excuse for legislative inaction or judicial hesitation. The continued existence of Exception 2 to Section 375 of the Indian Penal Code actively devalues the sovereign principles of equality, non-discrimination, and absolute bodily autonomy guaranteed to married women under Articles 14, 15, and 21 of the Constitution. Moving forward, the complete criminalization of marital rape must not be viewed merely as an optional statutory adjustment, but as an immediate constitutional necessity and a binding moral imperative. Dismantling this systemic immunity is the definitive step required to transform the institution of marriage from a regressive model of spousal coercion into a democratic, egalitarian partnership rooted in mutual accountability, dignity, and true gender justice.

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