

Marital Rape in India: A Crime Without a Name in Law

Shivani Kriek

University Institute of Legal Studies Avalodge Shimla, India

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INTRODUCTION

Every sixteen minutes, a woman in India is raped. But if the rapist is her husband, the law looks away. Behind closed doors, countless women are forced into silence — their bruises hidden, their pain normalised, and their violation denied a name. This silence has a name too: marital rape. And it remains one of the darkest stains on India's promise of gender justice.

Statistics tell us the scale. Stories tell us the scars. And both reveal the silence the law continues to enforce.

"I stopped screaming after a while. It made no difference. In my own house, in my own bed, I became a prisoner. As if my marriage certificate was also a license for him to hurt me every night." — Anonymous survivor, Delhi, 2019.

In the eyes of the Indian law, what she endured was not rape. Exception 2 of Section 375 Indian Penal Code (IPC), 1860(n

Presently Section 63 of. Bharatiya Nyaya Sanhita (BNS), 2023)still shields men from accountability. What began as a colonial relic has today become a constitutional contradiction — a nation that promises equality, yet denies it within the bedroom.

Marital rape is the most invisible form of sexual violence, disguised by the sanctity of marriage and legitimised by archaic provisions. The same Constitution that guarantees equality under **Article 14** and liberty under **Article 21**, shuts its eyes the moment a woman enters into marriage. Justice stops at the bedroom door. This research seeks to strip away that shield, confront the law's complicity. and ask the question our justice system has avoided for too long: **Does marriage give a man ownership over a woman's body, or should consent be the foundation of every sexual act — even within marriage?** Because marital rape is not just about sex without consent — it is about dignity without recognition, pain without justice, and marriage without equality. And if consent is the. cornerstone of human dignity, why must marriage be its graveyard?

Historical & Cultural Context

Ancient Indian Texts & Dharmashastra Tradition

In ancient India, texts like Manusmriti and other Dharmashastras described women as duty-bound to their husbands. The idea of pativrata (a woman devoted to her husband) restricted a woman's autonomy severely. Wives were often viewed as the "property" of their husbands, and sexual relations were considered the husband's conjugal right. This cultural notion that "a wife cannot refuse her husband" became deeply ingrained and is still used by some to justify marital rape.

Marital Rape as a Colonial Relic

The marital rape immunity in India is a colonial import. It originates from Sir Matthew Hale's 17th-century doctrine in England, which stated that by marriage, a woman "gives herself" to her husband irrevocably. Although England itself criminalised marital rape in *R v R* (1991), India continues to carry this outdated legacy. The provision reflects entrenched patriarchal notions — that a wife's body belongs to her husband and consent is unnecessary within marriage.

Ancient Civilizations (circa 1900 BCE – Babylonia)

In Babylonian society, sexual intercourse with another man's wife or daughter was punishable by death. This reflected the belief that women were the property of their fathers before marriage, and of their husbands after marriage. Rape was treated not as a violation of a woman's autonomy but as a property crime against her male guardian. Within this framework, a husband could never be accused of raping his wife — one cannot “steal” or “damage” what already belongs to them.

British Colonial Period (1700s)

Under British law, rape statutes were aimed at protecting a woman's sexual purity prior to marriage. The marital bond was seen as granting irrevocable sexual consent to the husband. The assumption was that marriage transferred ownership of the wife's body to the husband, making it impossible for him to commit sexual violation within marriage.

Doctrine of Coverture

This legal doctrine, followed in England and transplanted to its colonies, held that upon marriage, a woman's legal identity merged with that of her husband. She could not own property, enter contracts, or sue independently. Her consent was presumed perpetual and irrevocable — including in sexual relations.

Colonial Codification in IPC (1860)

When Lord Macaulay drafted the Indian Penal Code, Exception 2 to Section 375 was inserted, which explicitly stated that a husband cannot rape his wife above a certain age. This was a direct reflection of British legal morality, transplanted into Indian law. As a result, India inherited both patriarchal traditions and colonial patriarchal codification.

Age of Consent Debates (1891 onwards)

The Age of Consent Act, 1891, declared marital intercourse with a wife below 12 years as rape. Later, in the 1940s, this age was raised to 15. However, while the law provided some protection for child brides, the consent of an adult wife was never given legal recognition.

Post-Independence Silence (1950s–1980s)

After independence, the Constitution guaranteed equality and dignity under Articles 14, 15, and 21. Yet, the marital rape immunity under IPC remained untouched. Lawmakers avoided debating it, citing the excuse of protecting “family sanctity” and “marital harmony.”

In the 1980s, feminist movements, particularly after the Mathura rape case (1972) and the Supreme Court's judgment in *Tukaram v. State of Maharashtra* (1979), triggered reforms in rape laws. But despite these reforms, the marital rape exception was deliberately left untouched.

Causes of Marital Rape

Patriarchal Mindset → “Ownership Syndrome”

In many households, marriage is viewed as granting the husband permanent sexual rights over his wife. This ownership mindset normalizes the belief that a wife's refusal is invalid and reinforces male entitlement over her body. A woman is often raised with the idea that once she marries, she “belongs” to her husband. Many men genuinely believe that marriage = permanent consent.

Society teaches men to treat wives as their possession. Concepts like *pativrata nari* silently justify forced sex as a “husband's right.”

Financial Dependence →

Most women in India don't have separate bank accounts, stable jobs, or parental support after marriage. So even if they suffer abuse, the fear of "how will I survive, feed my kids, or pay rent?" keeps them quiet. When women are not economically independent, they silently endure abuse because leaving the marriage feels like "choosing hunger over dignity."

Legal Loophole

→ "Consent Lost in Law

Indian law itself says marital rape is not rape (Exception 2, Sec. 375 IPC). It is as if the law whispers to every married man: "Once she marries you, she cannot refuse."

Irony: The Hindu Marriage Act (1955) asks for free consent before marriage, but once rituals are done, it assumes eternal consent for sex — a contradiction the law refuses to see.

Social Stigma → "Honour over Humanity

Society judges divorced women more harshly than abusive husbands. Deep-rooted stigma around divorce and separation discourages women from speaking out. Families often advise women to "adjust" for the sake of family honour, thereby silencing their experiences. Once married, many women are treated as "parayi," with parents and relatives stepping back from active support, leaving them isolated. Generations of conditioning lead women to internalize the idea that marital sex is a duty, not a matter of consent. Victims also fear being blamed for "failing" in their marriage, while abusive husbands escape judgment. Combined with financial insecurity after divorce, these factors trap women in abusive relationships without hope of justice.

Sexual Dissonance → "No Means Never Heard"

A husband facing unemployment, ego hurt, or frustration may misuse forced sex as a weapon to prove control. Psychological note: Sexual violence becomes a way to reassert masculinity. This normalization of coercion reduces a woman's autonomy to a mere formality, where consent is presumed permanent once married

Cultural Conditioning → "Silence is Sanskaar"

From childhood, girls are often told: "After marriage, serving the husband is the wife's ultimate duty." So when violence occurs, many women genuinely believe: "Maybe this is normal, maybe I am supposed to endure it." They do not even name it as rape — they see it as duty. This early conditioning makes women internalise

the idea that a husband has unquestionable rights over his wife's body. As a result, marital rape is often normalised, mislabelled as marital obligation, and not recognised as violence. The cruelest impact of this silence is that women do not even see a reason to protest, leaving abuse unchallenged for generations.

Weak Institutions → "Justice Behind Closed Doors"

Marital rape is not even recognised as a crime in India. So even when women gather courage to approach police, their complaints are either dismissed or reduced to 'cruelty' or 'domestic violence.' This legal vacuum itself emboldens abusers and silences survivors."

Effects of Marital Rape

Psychological trauma:

Survivors often suffer from clinical depression, anxiety, post-traumatic stress disorder (PTSD), and suicidal tendencies.

According to the World Health Organization (WHO), survivors of intimate partner violence are twice as likely to suffer from depression and nearly three times more likely to attempt suicide.

If these numbers came from a war zone, the world would call it a humanitarian crisis. But when it happens inside a marriage, the law calls it ‘private life.’”

Physical harm:

Injuries may include damage to private organs, torn muscles, fractures, and visible bruises or wounds. Every bruise tells a story of a crime often unrecognized by law. According to the National Family Health Survey (NFHS-5) 2019-21, nearly 32% of ever-married women have faced spousal physical, sexual, or emotional violence. Specifically, 29% experienced physical violence while 6% reported sexual violence.

1. **Constant fear and insecurity:** Women live under the continuous threat of repeated assaults, which erodes their sense of safety and dignity.
2. **Impact on health and livelihood:** Decline in overall mental, emotional, and physical health may affect the victim’s ability to work or participate in social life. Dignity is lost, yet the law still struggles to recognise the loss.
3. **Social stigma and silence:** Nearly 90% of women who experience sexual violence within marriage do not seek help, as they either fear social repercussions or do not recognise it as a crime, perceiving it instead as a “husband’s right.”
4. **Violation of fundamental rights:** Marital rape undermines the constitutional guarantees of equality, dignity, and personal liberty. Scars on the body may heal, but the mind never forgets.

Intergenerational Poisoning

Marital rape doesn’t just destroy the wife’s dignity; it plants poison in the minds of children. Daughters grow up carrying the burden of silence, and sons inherit the arrogance of control. As one writer said, “What the parents tolerate in silence, the children repeat in violence.” This isn’t just abuse of a woman — it’s the corruption of an entire generation.

Childhood Exposure → Adult Mental Disorders

Children do not forget. A University of Toronto study shows the truth — those who witness such violence grow up with 22.5% falling into major depression, 15% into crippling anxiety, and 27% into substance abuse. What begins as marital power ends as generational scars carved deep into young minds."

Legal Framework In India

Table: Section 375 IPC – Definition of Rape & Exceptions

Aspect	Detail / Explanation
Definition of Rape (Section 375 IPC)	Sexual intercourse with a woman without her consent , or with consent obtained by force, threat, coercion, deception, or misrepresentation .
Consent	Must be free and voluntary . Consent obtained by threat, fear of harm, fraud, or misrepresentation is invalid .
Marital Exception	Sexual intercourse by a husband with his wife above 15 years of age is not considered rape under current law. (This is widely debated and criticized for legal reform.)
Aggravated Rape	Certain circumstances increase punishment: • Perpetrator is a public servant or police officer • Perpetrator is in a position of authority

	- Repeat offenders - Gang rape cases
Punishment	Minimum imprisonment of 7 years; can extend to life imprisonment , plus fine. Aggravated circumstances attract harsher punishments.
Other Key Exceptions / Notes	- Sexual intercourse with wife under 15 years is considered rape. - Court considers age, consent, mental capacity, and circumstances of the act. - Judicial precedents interpret nuances of consent, threat, and coercion.

Flowchart (Stepwise Understanding of Section 375 IPC)

Start → Sexual Intercourse occurs

| v

Did the woman give free & voluntary consent?

|-----|

No Yes | | v v Is consent obtained by Not Rape
force / threat / coercion / fraud / misrepresentation? |-----|

Yes No | | v v

RAPE (Punishment: 7 years to life + fine)

| v

Check for Aggravated Circumstances?

|-----|

Yes No

| |

Harsher punishment Normal punishment

Indian Penal Code Section 375 – Rape

(Indian Penal Code, 1860 IPC)

Rape.—

A man is said to commit “rape” if he—

- penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

1. against her will.
2. without her consent.
3. with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
4. with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. with or without her consent, when she is under eighteen years of age.
7. when she is unable to communicate consent.

Explanation 1.— For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Bharatiya Nyaya Sanhita, Section 63 –

BNS, 2023)

Rape.—

A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
 - (i) against her will; or
 - (ii) without her consent; or

- (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt; or
- (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; or
- (v) with her consent when, at the time of giving such consent, by reason of mental illness or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent; or
- (vi) with or without her consent, when she is under eighteen years of age; or (vii) when she is unable to communicate consent.

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Judicial Scrutiny of the Marital Rape

Supreme Court’s Landmark Ruling: Independent Thought v. Union of India (2017)

What the Court Held:

- The petition challenged **Exception 2 to Section 375 IPC**, which stated that “sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”
- The Supreme Court held that this exception is **constitutionally indefensible** as it carves out immunity for husbands from prosecution for rape against wives aged **15–18 years**—creating an irrational and discriminatory distinction inconsistent with child protection laws .
- Justices **Madan B. Lokur and Deepak Gupta**, speaking for the Bench, stated that the **age of consent and marriage is lawfully fixed at 18 years**, and permitting intercourse with a married girl aged above 15 but below 18 years defies rational legislative purpose .
- As a result, the Court **read down** Exception 2 to align it with statutory child protection: now, “**sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape.**” This approach ensures harmony with the **Protection of Children from Sexual Offences (POCSO) Act** and **Prohibition of Child Marriage Act** .
- Crucially, this judgment was given **prospective effect**, meaning it applies only to incidents occurring **after 11 October 2017**, when the judgment was delivered .

Constitutional Rights Undermined by the Exception:

Even after this judicial modification, the broader **marital rape immunity** (for adult wives) still stands, reaffirming the exception. This continued exemption infringes upon:

- **Article 14** (Equality before the law) — It creates an unjustifiable classification between married and unmarried women, and between adult wives and minor wives.
- **Article 21** (Right to life and personal liberty, including bodily integrity) — It denies a married woman control over her own body, undermining her fundamental right to dignity and autonomy.
- **Article 19(1)(a)** (Freedom of expression, including sexual autonomy) — It implicitly negates a married woman's right to refuse bodily intimacy, infringing on her personal liberty and self-expression.

Citation Details

- Full Case Name: Independent Thought v. Union of India & Anr., Writ Petition (Civil) No. 382 of 2013.
- Judgment Date: **11 October 2017**.
- Reported as: **(2017) 10 SCC 800** — this corresponds to **All India Reporter (AIR 2017 SC 4904)**.
- Key paragraphs:
 - **Paragraphs 29–33** explained the incoherence created by the Exception.
 - **Paragraph 53** summarised inconsistency with child-friendly statutes.
 - **Paragraph 115** formulated the read-down as stated above.

Judicial Responses

Modern Legislative and Judicial Developments

Domestic Violence Act, 2005 – Recognition but Not Remedy

The **Protection of Women from Domestic Violence Act, 2005 (PWDVA)** marked India's first comprehensive legislation acknowledging that violence within the home is not merely a "private matter" but a violation of women's fundamental rights.

Definition of Sexual Abuse (Section 3):

The Act explicitly includes "any conduct of a sexual nature that abuses, humiliates, degrades or violates the dignity of a woman." This recognition is significant, as it implicitly covers marital sexual assault.

Civil, Not Criminal Remedy:

However, the Act provides only **civil reliefs** — protection orders, residence orders, monetary compensation, custody orders. It does **not criminalise marital rape**.

Judicial Interpretation:

Courts have affirmed that forced sexual intercourse within marriage amounts to "sexual abuse" under the PWDVA. For instance, the Supreme Court in **Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705**, held that continued sexual abuse within marriage constitutes domestic violence and entitles the wife to remedies under the Act.

The Punishment Paradox (Section 31):

- If a man violates a **protection order**, punishment is **imprisonment up to 1 year or fine up to ₹20,000, or both**.
- Contrast this with **Section 376 IPC**, where rape outside marriage attracts **minimum 10 years, extendable to life imprisonment**.

The Gap: Yet, the absence of criminal consequences means the law treats marital rape as a civil wrong, not as a sexual offence. Thus, while the Act acknowledges the harm, it **stops short of recognising marital rape as a crime** — leaving women with protection orders but not justice in the truest sense.

Critical Observation

In India, a wife may be protected from her husband's violence, but not from his violation." The PWDVA symbolises a paradox — it dares to name sexual abuse within marriage, but silences itself at the threshold of criminal law. It recognises a woman's pain, yet refuses to punish the perpetrator.

Law Commission of India, 172nd Report (2000) – Silence in the Face of Reform

In 2000, the **172nd Report of the Law Commission of India** undertook a comprehensive review of sexual assault laws. It examined international standards, feminist critiques, and the demand for gender-just reforms.

The Demand:

Women's groups and reformists urged the Commission to recommend removal of the **marital rape exception under Section 375 IPC**, arguing that consent cannot be presumed merely by marriage.

The Commission's Response:

Surprisingly, the Commission **refused to recommend the deletion of the marital rape exception**. It justified its position on the ground that such a step would "destabilise the institution of marriage" and could be "misused."

The Paradox:

- On one hand, the Report **expanded the definition of sexual assault** to be more gender-sensitive and survivor-centric.
- On the other, it **consciously retained the marital immunity**, thereby diluting the principle of bodily autonomy within marriage.

Critical Implication:

The Commission's refusal created a chilling effect — it institutionalised the idea that **a wife's body is not fully her own**. By insulating marital rape from criminal law, the State legitimised forced sex within marriage as a lesser wrong, if at all.

"The Law Commission, 2000, gave women new words of protection but denied them the language of justice."

Justice J. S. Verma Committee, 2012 – The Unheeded Call

The horrific Nirbhaya case (2012) shook the conscience of the nation and led to the constitution of the **Justice J. S. Verma Committee** — a panel tasked with overhauling India's criminal law on sexual violence.

Progressive Vision:

The Committee's Report was groundbreaking. It declared that **marital rape must be criminalised**, noting that "marriage cannot be a licence for sexual aggression." It emphasised that a woman's dignity and bodily autonomy do not dissolve at the threshold of matrimony.

Key Recommendation:

Exception 2 to Section 375 IPC — which exempts husbands from being prosecuted for raping their wives — was termed as **"unsustainable in modern constitutional jurisprudence"**. The Committee clearly recommended its deletion.

Judicial Philosophy:

The Report invoked **Articles 14, 15 and 21 of the Constitution**, stressing that denying married women protection against rape violates equality, non-discrimination and the right to life with dignity.

Tragic Reality:

Despite its moral and constitutional force, the recommendation was **not implemented**. Parliament chose to retain the marital rape exception, thereby rejecting the Committee's bold attempt to align Indian law with global human rights standards.

Critical Observation

The Verma Committee showed India the mirror: it recognised that a wife is not her husband's property, but an equal citizen. Yet, the State averted its gaze — proving that law can change only when society dares to confront its own shadows. The Verma Committee wrote the truth in law; Parliament erased it in silence.

Parliamentary Rejection, 2015

Background:

In 2015, the Ministry of Home Affairs (MHA) was directly questioned in Parliament on why marital rape was not being criminalised, especially after the Nirbhaya case had intensified public debate.

Government's Stand (Rejection):

The MHA categorically rejected the proposal, stating that:

1. Criminalising marital rape would **destabilise the Indian family system**.
2. Marriage is a **sacred institution** where consent is presumed.
3. The law could be **misused** by women for harassment.
4. India's **social and cultural context** is different from the West, where marital rape is criminalised.

Criticism:

This reasoning was heavily criticised by activists, jurists, and human rights advocates, who argued that:

Marriage cannot be a license to rape.

- Protecting the “sanctity of marriage” at the cost of denying women's **bodily autonomy** is unconstitutional.
- Such rejection entrenches **patriarchal privilege** and denies women equal protection of law.

Critical Observation:

“In 2015, Parliament chose to preserve the sanctity of marriage, but in doing so, it sacrificed the sanctity of consent.”

Parliamentary Standing Committee's View

Committee's Argument:

When the demand to criminalise marital rape was considered, the Parliamentary Standing Committee took a **conservative stance**, reasoning that:

1. Criminalisation would **disrupt the Indian family system**.
2. It might encourage **false or exaggerated complaints**, thereby threatening marital stability.
3. The institution of marriage in India, unlike in the West, is seen as **sacred and enduring**, making criminalisation “unsuitable” for Indian society.

Criticism:

- The argument of “family stability” was condemned as **placing marriage above women’s dignity**.
- By prioritising cultural preservation over **individual rights**, the Committee effectively legitimised a man’s control over his wife’s body.
- Critics argued this approach treats women as **property of their husbands** rather than equal citizens entitled to constitutional protection.

Critical Note

“The Standing Committee sought to protect the Indian family, but in truth, it protected patriarchy — allowing violence to hide behind the mask of tradition.”

RIT Foundation v. Union of India (2022) — Split Verdict on Marital Rape

Background

In petitions filed by the **RIT Foundation**, **All India Democratic Women's Association (AIDWA)**, and two individuals, the **Delhi High Court** was asked to review the **marital rape exception** (Exception 2 to Section 375 IPC). The core question: Should marital rape between consenting adults (over 18) be considered a crime when consent is absent? This pivotal case reignited the national conversation on consent and marriage.

Judgment — A Division Bench with Divergent Views (May 11, 2022)

Justice Rajiv Shakdher (Progressive Stand)

- Held that “marriage cannot be a licence to rape.”
- Declared that **Exception 2 to Section 375 IPC**, along with related provisions (Section 376B and Section 198B CrPC), **violated Articles 14, 15, 19(1)(a), and 21 of the Constitution**.
- Emphasized that a wife's **bodily autonomy and human dignity** are constitutionally protected and cannot be forfeited by marriage.
- Noted that excising these exemptions would **not create a new offence**, but rather integrate marital rape into the existing definition under Section 375 IPC.
- Granted a **certificate of leave to appeal** to the Supreme Court, citing substantial questions of law.

Justice C. Hari Shankar (Conservative Stand)

- Upheld the marital rape exception, stating that **marriage is an intelligible differential classification** — the legislature decided to treat marital sexual offences differently.
- Argued that striking down the exemption would be the judiciary **substituting its judgment for that of the legislature**, undermining democratic separation of powers.
- Maintained that allowing the exception does **not condone sexual violence** within marriage — misuse, if any, is an isolated abuse of discretion, not a systemic failure.

Outcome & Significance

- The bench delivered a **split decision (1–1)**, meaning no definitive stance was taken.
- The case now awaits adjudication in the **Supreme Court**, where it will determine the constitutional validity of the marital rape exemption.
- This verdict stands as a **symbolic battleground**—reflecting India’s legal struggle between **individual autonomy** and **institutional protection** of marriage.

Analytical Summary

Aspect Justice Rajiv Shaktiher Justice C. Hari Shankar

View on Marital Rape Unconstitutional, violates Constitutional, based on Exception multiple fundamental rights legislative wisdom Interpretation of Section 375 Should include marital rape Exception is necessary to when consent is absent preserve marriage Role of Judiciary vs Courts should remove Courts must respect Legislature unconstitutional provisions legislature’s value judgment

Critical Reflection

“The Delhi High Court's split verdict reveals the tension between recognizing a wife’s right to consent and preserving marital sanctity.

One judge saw marriage as no escape clause for rape; the other saw legal change as a disruptor, not a protector.”

Amendments to Indian Rape Law

Criminal Law (Amendment) Act, 2013

- Enacted after the horrific **Nirbhaya case (2012)** which shook the conscience of the nation.
- Based on recommendations of the **Justice J.S. Verma Committee**.

Key changes:

- Expanded definition of rape → Earlier, rape meant only penile-vaginal penetration. After 2013, it includes **penetration of vagina, mouth, urethra or anus by penis, objects or any other body part**.
- Recognised **sexual assault beyond intercourse** → bringing Indian law closer to international standards.
- Introduced **new offences**: stalking (Sec. 354D), voyeurism (Sec. 354C), acid attacks (Sec. 326A).
- Increased punishment → **minimum 7 years**, extendable to life; death penalty for aggravated cases (e.g., gang rape resulting in death).

Criminal Law (Amendment) Act, 2018

Passed after the **Kathua gang rape case (2018)** which again highlighted brutal crimes against children.

Key changes:

Raised minimum punishment for rape to **10 years** (earlier 7).

1. Introduced **death penalty for rape of girls below 12 years**.
2. Harsher punishments for gang rape of minors.

The Persistent Blind Spot — Marital Rape

Despite such progressive reforms, **Exception 2 to Section 375 IPC** (which exempts marital rape if wife is above 15 years of age) was **not removed**.

Result:

A stranger forcing sex = rape, punishable with **minimum 10 years to life imprisonment**.

A husband forcing sex = **not rape**, only treated as “sexual abuse” under civil law (PWDVA, 2005).

This creates a **legal paradox** — the same act, committed by two men, has opposite legal consequences depending only on marital status.

Critical Gap: Despite these progressive amendments, the marital rape exemption (Exception 2 to Section 375 IPC) was left untouched. Meaning: Law criminalises every form of rape outside marriage, but immunises the husband inside marriage — a legal paradox that continues to deny women equality and dignity under Articles 14 and 21.

Evolution of Indian Rape Law

years; death penalty for rape of girls below 12; strict punishments for gang rape of minors

Current (2025) Law recognises wide Stranger rape = **10** Husband rape = **Not** range of sexual **years to death** **a crime** (unless wife offences; high **penalty** <18) punishments

Indian courts have shown conflicting approaches Judicial Pronouncements on Marital Rape in India

2004 **Sakshi v. Union** Supreme Court Refused to Maintained **of India** (2004) 5 expand rape marital rape SCC 518 definition to exception.

include marital rape; left matter to Parliament. 2011 **Bhagwan Dass** Supreme Court Recognised Strengthened **v. State (NCT of** sexual abuse in domestic **Delhi)** (2011) 6 marriage as violence SCC 396 grave violation, jurisprudence. though not termed marital rape. **Independent** Supreme Court **Thought v.**

Union of India

wives.

2017 **Joseph Shine v.** Supreme Court

Union of India (2018) 2 SCC 189 Sex with wife Marriage $\neq$ below 18 = rape, unconditional even if married. consent, but limited to minor Struck down adultery law; emphasised Indirectly challenged idea of presumed sexual autonomy spousal consent. & equality in (2017) 10 SCC marriage. 800 **RIT Foundation** Delhi High Court Split Verdict: Case pending **v. Union of** Justice before Supreme **India** Shaktiher → Court.

Exception 2 unconstitutional; Justice Shankar → upheld exception citing marriage institution.

2022 **X v. State (NCT Delhi High Court** Recognised Shows judicial **of Delhi)** (Bail marital rape unease with Matter) (though not in current law.

IPC) as serious bodily violation while deciding bail.

Why Marital Rape Law Has Not Been Criminalised in India

Legal & Institutional Concerns

Destabilization of Marriage as an Institution

Lawmakers argue that Indian marriage is not just a private contract but a sacred bond, traditionally understood to include conjugal rights. If marital rape is criminalised, it would mean that consent to sex must be obtained every single time, which, according to them, “destabilises” the cultural idea of marriage. They fear that this could weaken family structures and increase litigation between spouses.

Implied Consent & Burden of Proof

In marriage, the presumption of “implied consent” still dominates. Unlike stranger rape, there are no eyewitnesses or external circumstances to easily establish coercion. The intimate setting makes it extremely difficult to prove in court whether sex was consensual or forced. This high burden of proof may result in either wrongful convictions or failure to punish genuine offenders.

Existing Legal Remedies

Supporters of the exception argue that women are not left without protection. They can file cases under:

- **Section 498A IPC** (cruelty by husband or relatives),
- **The Protection of Women from Domestic Violence Act, 2005**,
- and earlier, even **Section 377 IPC** (unnatural sex, before it was decriminalised for consenting adults).

Thus, they believe criminalising marital rape separately may overlap with these laws and create legal confusion.

Legal Harshness & Bail Issues

Under current rape laws, punishment is a minimum of 10 years imprisonment and bail provisions are very strict. If marital rape is brought under the same framework, a husband accused—whether guilty or falsely implicated—would immediately face severe consequences. Lawmakers argue that such rigidity could lead to unjust situations in the absence of clear evidence.

Fear of Misuse & Practical Challenges

Possibility of False Allegations

One of the strongest objections raised is the fear of misuse. As seen in dowry harassment (498A) and some reported false rape cases, there is concern that marital rape provisions could be weaponised by spouses during divorce proceedings, custody battles, or property disputes. Critics worry that this could shift the law into a tool of vengeance rather than justice.

Difficulty in Investigation

Medical evidence in rape cases generally includes proof of injury, forced intercourse, or signs of resistance. However, in the context of a marital relationship, absence of such evidence makes investigation complex. Often, ongoing consensual intimacy between partners blurs the line, leaving courts and police with almost no reliable way to distinguish force from consent.

"Marriage is for Sex" Argument

A traditional view persists in society that marriage inherently grants spouses sexual access to each other. According to this mindset, sex is not optional but a duty within marriage. Therefore, criminalising marital rape is seen by conservative voices as undermining the very essence of matrimony, converting it into a purely contractual relationship.

Double-Edged Sword

Even those sympathetic to the plight of victims highlight that the law could act both ways:

- On one hand, it would finally recognise a wife's right to bodily autonomy, treating her as an equal citizen.
- On the other hand, it could overwhelm courts with frivolous or fabricated complaints, already a problem with other genderbased offences, thereby diluting the system's effectiveness for genuine victims.

Conclusion The issue of marital rape in India remains deeply **complex and polarised**. On one side lies the urgent need to uphold women's dignity and autonomy; on the other lies the fear of misuse, difficulty in proof, and disruption of social fabric. As the saying goes, "a coin has two sides" — and the debate continues between protection of rights and safeguarding against misuse.

Why Marital Rape Should be Criminalised

Forced Marriage & Consent Cannot Be Assumed

In India, many marriages still happen due to family pressure, fear of honour killings, or social stigma. In such marriages, women often have no real choice. To assume that marriage means "blanket consent" for life silences these women forever. Consent must be treated as an **ongoing right**, not a one-time license.

Justice Over Fear of Misuse

Opponents argue that the law may be misused, but Indian jurisprudence follows the principle: "Better that 100 guilty go free than one innocent be punished." Fear of misuse cannot justify denying justice to genuine victims. Every law — dowry, SC/ST protection, rape laws — carries the risk of misuse, but that has never been a reason to abolish them.

Marriage Will Not Break from Accountability

Marriage is based on trust and respect. When forced sex happens, it is the marriage itself that breaks. Criminalising marital rape does not destroy marriage — rather, it preserves the dignity and trust that are the foundation of the relationship.

Existing Laws Are Insufficient

Section 498A IPC (cruelty) or the Domestic Violence Act, 2005 mainly provide civil remedies — compensation, judicial separation, or at most 3 years' punishment for cruelty. These laws do not directly address sexual violation or deliver the retributive justice victims deserve. A **specific penal provision** is essential to recognise marital rape as a crime.

Global Practice & Human Rights Standards

According to World Bank data, over **100 countries** criminalise marital rape. India remains among the 37 countries that do not, exposing a major human rights gap. International conventions like CEDAW have repeatedly urged India to remove this exception.

Consent is Universal

Consent is absolute and applies in every relationship. Whether the perpetrator is a stranger or a husband, rape is rape. The Karnataka High Court and others have affirmed that marriage does not grant ownership of a woman's body.

Protection of Fundamental Rights

Articles 14, 19, and 21 of the Constitution guarantee dignity, equality, and personal liberty. If women are not safe within their homes, these fundamental rights become meaningless. The marital rape exception is a **direct violation** of constitutional guarantees.

Punishment for Marital Rape

Critics fear that strict punishments could harm innocent husbands if falsely accused. But judicial safeguards — high evidentiary standards, bail scrutiny, fast-track courts — can address this. Like all other criminal laws, misuse can be managed; protection of victims must remain the priority.

Social Message

Criminalising marital rape will send a powerful social message that “No means No” applies in every context. Popular culture, like the film *Pink*, has already reinforced that consent is continuous and cannot be waived by marriage.

CONCLUSION:

Criminalising marital rape is not just a legal reform, but a matter of **constitutional morality, human dignity, and women’s autonomy**. The law must protect, not perpetuate injustice.

Marital Rape in India: Recent Case Studies

Case Study 1: Hrishikesh Sahoo v. State of Karnataka (Supreme Court, Pending 2025)

Facts:

The petition challenged the constitutionality of the marital rape exception under Section 375 IPC (Section 63 BNS, 2023). The Karnataka High Court had earlier struck down the exception, terming it a “license for crime,” stating that the exception allowed sexual abuse within marriage to go unpunished. The petitioners argued that this exception violated Articles 14 (equality before law), 19 (personal freedoms), and 21 (right to life and personal liberty) of the Constitution.

Issues:

- Whether the marital rape exception violates fundamental rights of women.
- Whether marriage can be treated as a license to bypass consent in sexual relations.

Arguments:

- **Petitioners:** Marriage does not grant unlimited sexual rights; consent is continuous and cannot be assumed. Criminalising marital rape is necessary to protect dignity and bodily autonomy.
- **Respondent / Government:** Criminalising marital rape could destabilise marriages, create practical difficulties in proof, and may lead to misuse of the law.

Holding (so far):

The Supreme Court has issued an **interim stay** on the Karnataka HC order. Final adjudication is pending before the constitutional bench.

Significance / Impact:

This case could be the landmark judgment that finally criminalises marital rape in India. It tests the balance between protecting fundamental rights of women and societal concerns regarding marriage. The verdict is expected to set a precedent for how consent within marriage is legally interpreted.

Case Study 2: Delhi High Court – May 2025

Facts:

A husband was accused under Section 377 IPC for forcing sexual acts on his wife. The case highlighted the lack of statutory recognition of marital rape.

Issues:

- Whether the act constituted rape under Indian law, despite being within marriage.
- How courts can provide relief when criminal law does not explicitly cover marital rape.

Arguments:

- **Petitioner / Wife:** The act was forced and violated her bodily integrity.
- **Respondent / Husband:** Sexual relations within marriage are presumed consensual; marital rape is not recognised.

Holding:

The Delhi High Court **quashed the proceedings**, stating that marital rape is **not recognised** under Indian criminal law.

Significance / Impact:

This case demonstrates the **legal invisibility** of marital rape in India. While it recognises the harm suffered, the court was bound by existing law, highlighting the urgent need for legislative reform.

Case Study 3: Madhya Pradesh High Court – 2025

Facts:

A wife filed a complaint alleging that her husband forced her into unnatural sexual acts.

Issues:

- Whether forced sexual acts within marriage can be treated as rape.
- Alternative legal remedies under existing laws when marital rape is not criminalised.

Arguments:

- **Petitioner / Wife:** Sexual acts were non-consensual and caused physical and psychological harm.
- **Respondent / Husband:** Marital relations are presumed consensual; criminal law does not cover marital rape.

Holding:

The High Court held that the acts did not constitute rape but **amounted to cruelty under Section 498A IPC**.

Significance / Impact:

The case highlights the **limited protection** available to women under existing laws. While cruelty provisions provide some remedy, the trauma of sexual violation is not fully addressed, reinforcing the loophole in marital rape legislation.

Case Study 4: Karnataka High Court (Earlier 2024)

Facts:

A public interest petition challenged the constitutionality of the marital rape exception in Section 375 IPC.

Issues:

- Whether the marital rape exception violates constitutional rights of equality, dignity, and personal liberty.
- Whether legislative inaction can justify continued immunity for husbands committing sexual abuse.

Arguments:

- **Petitioners:** Exception allows husbands to sexually abuse wives with impunity; violates Articles 14, 19, 21.
- **Respondent / State:** Criminalising marital rape would be “excessively harsh” and could disrupt the institution of marriage.

Holding:

Karnataka High Court **struck down the marital rape exception**, calling it a “**license for crime.**” The Supreme Court has stayed the order pending final review.

Significance / Impact:

A landmark HC decision signalling judicial recognition of women’s rights. However, the stay prevents immediate implementation, leaving marital rape still legally uncriminalised. This judgement forms the foundation for ongoing Supreme Court review.

Overall Observation:

Recent judicial trends (2024–2025) show growing recognition of **harm caused to wives**, but **marital rape remains uncriminalised** until the Supreme Court delivers its final verdict. These cases collectively illustrate the tension between societal norms, legislative inaction, and constitutional rights of women.

Comparative Analysis

Global Examples of Criminalizing Marital Rape – Detailed Year of Country Key			Reason / Context
Notes / Example Cases Criminalization			
United Kingdom	1991	The UK recognized that marriage does not imply ongoing sexual consent. The Supreme Court rejected the idea that a husband has automatic sexual rights.	R v R (1991): Husband convicted of raping his wife. The case emphasized the wife’s autonomy within marriage and set a legal precedent.
Canada	1983	Gender equality and sexual autonomy were recognized; marriage no longer provides automatic consent.	Criminal Code amendment ensures that no one is exempt from sexual assault, even if married.
South Africa	1993	Post-apartheid legal reforms focused on protecting Marital rape is punishable; consent is women’s human rights; marriage could not be considered ongoing and revocable. used as a shield for sexual abuse.	

Australia	1981–1991 (varies by state)	Human rights perspective: sexual assault within Criminal Code to marriage is not allowed. Gradual reforms reflected remove marital exemptions. Ensures equality in marriage.	Each state amended its laws. Reflects changing social norms.
Germany	1997	Constitutional protection of sexual selfdetermination applied to marriage.	Marital rape is punishable; highlights individual rights within marriage.
Sweden	1965	Early adoption of gender equality principles; marriage does not justify sexual assault.	Marital rape treated the same as other rape cases; reflects Sweden’s strong human rights framework.

Key Reasons Behind Criminalization

- 1. Autonomy & Consent:** Marriage does not mean automatic consent; each spouse’s autonomy must be respected.
- 2. Equality in Marriage:** Ensures that men and women have equal rights over their bodies.
- 3. Human Rights Protection:** Aligns with international human rights frameworks emphasizing protection from sexual violence.
- 4. Legal & Social Reform:** Societies with strong gender equality norms moved to criminalize marital rape to counter patriarchal practices.
- 5. Judicial Precedents:** Landmark cases like **R v R (UK)** reinforce the principle of ongoing consent and autonomy.

Offence or Not: Where Do Other Countries Stand on Marital Rape?

Country Status of Marital Rape Law

USA

Criminalized in all 50 states; legislation details vary by state.

China

Marital rape is neither a criminal nor a civil offence.

Nigeria

Categorically excluded from the criminal code; a man cannot be held guilty of raping his wife under any circumstance.

Saudi Arabia

Rape is a criminal offence, but marital rape is not criminalized.

CONCLUSION:

Marriage is not a license for rape. If a husband can force sex and the law looks away, what message does it send? That your “home” isn’t yours, your body isn’t yours, and your dignity doesn’t matter? In 2025, India still pretends that rape stops at the bedroom door — while over 100 countries already criminalise marital rape.

Consent is not a wedding vow, it is a human right. Every “No” ignored, every fear silenced, every scar hidden in the shadows — that is a crime, whether the man is a stranger or a husband. Laws are meant to protect the innocent, not give criminals a free pass because society calls it “marriage.”

It’s time to tell the truth loud and clear: Marriage does NOT erase a woman’s rights. Marital rape must be criminalised —and anyone who thinks otherwise needs a reality check. RAPE IS RAPE !

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