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Legal, Social And Cultural Impediments Of Criminalising Of Marital Rape

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CHAPTER-2

Legal, Cultural and Social Impediments to Criminalizing Marital Rape in India

2.1 The Indian Legal Framework: Section 375 IPC and the Marital Exemption

However, the provision's Exception 2 excludes "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age," effectively rendering marital rape non-criminal.²⁴ This carve-out reflects the law's enduring deference the marriage as an institution, positioning spousal consent as irrevocable upon nuptials and placing married women outside the protective ambit of the rape statute. While the amendment marked progress in acknowledging varied modalities of sexual violence, it reaffirmed a colonial-era legal fiction: that marriage implies blanket sexual consent and precludes recourse to criminal law for violations within wedlock.

Subsequent legislative proposals to criminalize marital rape—such as private members' bills— have failed to gain traction, reflecting a lack of political will. Debates in Parliament often devolve into assertions that criminalizing marital rape would undermine family values or flood courts with frivolous complaints, perpetuating the status quo and sidelining women's bodily autonomy.

⁹ 24. IPC, 1860, Section 375.

25. (Amendment) Act, 1983.

26. (Amendment) Act, 2013.

The Criminal Law (Amendment) Act enacted in the wake of the 2012 “Nirbhaya” case— introduced new offences such as acid attacks, stalking, and sexual harassment, but again omitted marital rape from its purview.²⁶ Parliamentary debates revealed entrenched political resistance, often invoking cultural and religious arguments to uphold the marital exemption. Despite widespread public outrage over sexual violence against women, policymakers remained reluctant to challenge the assumption that marriage confers unqualified conjugal rights.

The Justice Verma Committee, appointed to recommend reforms after the Delhi case, urged deletion of Exception 2 and recommended that marital rape should be treated seriously.²⁷ Its report underscored how the exemption contravenes guarantees of equality and called for alignment with international human rights norms. Yet, despite these authoritative recommendations, no legislative action has ensued, leaving the exception intact.

In *Independent Thought* (2017), the Court read Exception 2 to apply if the wife is aged fifteen to eighteen, effectively criminalizing sexual intercourse to a minor wife.²⁸ While the judgment was hailed for protecting child brides, it left adult women’s autonomy unaddressed. The Court’s narrow focus on child protection sidestepped the broader question of consent within adult marriages, thereby perpetuating the legal anomaly.

¹⁰ 27. Justice Verma Committee, “Report of the Committee on Amendments to Criminal Law,” 2013.

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

The challenges invoking Articles 14, 15, and 21 have repeatedly been dismissed or deferred, as courts have cited legislative prerogative and social sensitivity. In the absence of clear statutory change, judicial pronouncements have oscillated between recognizing the problem and deferring to Parliament, leaving married survivors without redress.

International bodies—including CEDAW and the UN on Violence against Women argued India to repeal the marital rape exemption. These recommendations highlight India's obligations under human rights treaties, yet they lack enforcement mechanisms, and domestic policymakers have largely ignored them.

Critics argue that the marital exemption perpetuates impunity for spousal abusers and institutionalizes gender inequality. The legal vacuum inhibits evidence-based policing and deters survivors from reporting, reinforcing a culture of silence. Without explicit statutory prohibition, law enforcement agencies often treat marital rape allegations as domestic disputes beyond their remit.

In sum, Section 375's marital exemption represents a profound disjunction between India's constitutional commitments and its criminal law framework. Despite successive amendments and expert recommendations, the exception endures, reflecting deep-seated socio-legal assumptions about marriage and consent.

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2.2 Patriarchal Social Norms and Gender Roles

¹¹ 29. Uma Chakravarti, *Gendering Caste: Through a Feminist Lens*, Kali for Women, 2003.

30. Leela Fernando's, *Democratic Politics*, University of Minnesota Press, 2006.

Patriarchal social structures in India privilege male authority and view women primarily through the lens of domesticity and subordination, shaping societal attitudes toward marital relations.³⁰ Within many communities, marriage is perceived not as a contract of mutual rights but as a woman's affirmation of lifelong submission, rendering the concept of withdrawal of sexual consent inconceivable.³¹ Denial of sex by a wife is often interpreted as defiance of both marital duty and broader familial honour, subjecting women to moral censure and

familial pressure to conform.³²

Customs such as arranged marriages and dowry practices reinforce the view of women as chattel exchanged between families, further eroding the notion of sexual autonomy. In this context, women who assert their right to refuse are frequently labeled “unnatural” or “selfish,” and may face ostracism or even violence from in-laws who perceive them as threatening established power hierarchies.³³

Rural and semi-urban regions often exhibit more rigid enforcement of these norms, with patriarchs wielding authority over marital life and community councils (panchayats) legitimizing punitive measures against “rebellious” wives.

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¹² 31. Mary E. Discrepant Dislocations: Feminism, Theory, and Postmodernity in India, Zed Books, 1996.

32. Sharmila Reis, “Gender, Family and Nation: The Role of Gender Norms in Contemporary India,” *Journal of South Asian Studies*, 2018.

Media representations of marriage and sexuality—whether in cinema, television serials, or popular literature—frequently depict idealized domestic harmony premised on female acquiescence, reinforcing stereotypes that equate female happiness with subservience. These narratives shape public perceptions and obscure the reality of marital violence, including rape.

Educational curricula and sex education programs, where present, seldom address consent or marital rights, leaving young people with misconceptions about sexual entitlement and reinforcing the belief that marriage confers unlimited conjugal access on husbands. The absence of open dialogue about consent perpetuates ignorance and stigmatizes survivors who articulate violations.

Religious discourses across communities may valorize Wife's obligation to meet her husband's sexual desires, framing refusal as sinful or impious. Such doctrinal teachings intersect with customary laws and social practices, creating layered justifications for disregarding marital rape as a legitimate concern.

Urbanization and economic independence have begun to challenge these norms, as increasing numbers of women enter the workforce and assert rights over their bodies. However, these shifts often encounter backlash, with accusations that “modern” women undermine cultural cohesion and familial stability when they resist traditional roles.

Women’s rights organizations have sought to deconstruct patriarchal narratives through grassroots mobilization and public awareness campaigns, highlighting the dissonance between constitutional principles and cultural practices. Yet, deep-rooted gender socialization means such efforts frequently meet resistance at familial and community levels.

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¹³ 33. Radha Kumar, *The History of Doing: Women's Rights and Feminism 1800–1990*, Kali for Women, 1993.

Despite evolving social attitudes among younger generations, intergenerational tensions persist. Many parents remain hesitant to endorse discussions of consent and sexual rights, fearing they will encourage promiscuity or dishonour. Until patriarchal norms are dismantled at both macro and micro levels, the prospect of acknowledging and addressing marital rape in India remains remote.

2.3 Cultural Traditions, Marriage and Consent

In Indian society, marriage is often viewed not just as a union between two individuals but as a sacred, lifelong bond tied deeply to religious, moral, and cultural values. The concept of marriage in traditional Indian thought places an overwhelming emphasis on the sanctity and permanence of the institution, often to the detriment of individual autonomy and consent. This cultural veneration of marriage frequently acts as a barrier to acknowledging violence within its confines, particularly sexual violence. The notion that a wife must remain obedient and

she was free to have sex with her husband. is a deep-seated norm in many communities, rooted in customs that rarely recognize the wife's agency or bodily autonomy.

A significant cultural myth that influences this perception is the belief that consent is implied once marriage is solemnized. This belief is further reinforced by religious scriptures and customary laws that reinforce gender roles. Consequently, marital rape is not just normalized but often goes unacknowledged as a form of violence, as the cultural construct does not leave space for the possibility of non-consensual sex within marriage.

The dowry system and the commodification of women further exacerbate this issue. In many communities, women are still viewed as financial burdens, and once married off, they are

¹⁴ 34. Section 375, Indian Penal Code, 1860.

35. Agnes, : The Politics of Women's Rights in India, 1999.

36. Supreme Court of India, (2017) 10 SCC 800.

expected to “repay” the husband’s family by being obedient and sexually compliant. Any resistance to sexual advances within the marriage is often stigmatized as being unfaithful or as a failure to perform marital duties. These deep-rooted beliefs effectively silence survivors of marital rape and reinforce a culture of acceptance around sexual coercion within marriage.

Additionally, societal attitudes that discourage open discussion on sex and sexual health also contribute to the invisibility about marital rape. Many women are not educated about their rights or are raised to believe that they have no say in sexual matters within marriage. The comprehensive sex education and lack of awareness about consent as a continuous and mutual process perpetuate ignorance and normalize coercion. As a result, victims often do not identify. Their encounters as sexual assault., leading to significant underreporting and lack of legal recourse.

The stigma surrounding divorce and separation also plays a key role in silencing victims of marital rape. Cultural expectations that women must preserve their marriage at all costs, even in the face of abuse, discourage them from speaking out. Women who attempt to leave abusive relationships are often ostracized, blamed, or subjected to economic and social hardships. This fear of societal backlash reinforces silence, even among those who may otherwise be willing to seek justice or help.

¹⁵ 37. CEDAW No. 35 on gender-based against women.

38. Human Rights Watch, “India: Legal Reforms Needed to End Marital Rape Exemption,” 2021.

39. Law Commission of India, Review of Rape Laws, 2000.

Further, joint family system prevalent in many parts of India can function as an enabler of abuse. Within such family structures, the wife is often under constant surveillance, and any attempt to speak out or seek help is met with denial or suppression from other family members. In such cases, the institution of marriage becomes a site of control and coercion, not only by husband, by extended family members who prioritize family honor over individual suffering.

The media and popular culture have also historically reinforced problematic depictions of gender roles and consent in marriage. Films, television shows, and literature often glorify male dominance and portray women as submissive, reinforcing the belief that a wife must always fulfill her husband's desires, regardless of her own. This not only normalizes forced sex within marriage but also shapes public perceptions in a manner that makes the criminalization of marital rape seem unnecessary or even absurd.

Cultural and religious leaders, who hold significant influence over communities, often resist reform by framing the assault of marital rape as a threat to the sanctity of marriage. They argue that introducing such laws would destroy families and destabilize society, ignoring the rights and safety of women. Such narratives are powerful in rural and conservative settings, where the legal literacy is low, and customs are often valued above constitutional rights.

Even when legislative reforms are proposed, they are often met with cultural pushback framed in terms of preserving "Indian values." The belief that criminalizing marital rape is a Western concept imposed on Indian society has been a recurrent argument among those opposing reform. However, this fails to recognize The inherent dignity of all people, the obligation to safeguard Individual worth, irrespective of any cultural specificities.

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¹⁶ 40. National Health Survey (NFHS-5), 2020-21.

41. UN, "Marital Rape: Understanding the Legal and Social Implications," 2022.

To dismantle the cultural barriers to criminalizing marital rape, there is a need for widespread societal transformation. This includes educational campaigns, awareness initiatives, and the reformation of traditional views on marriage and consent. Empowering women, engaging men in conversations on consent, and challenging

patriarchal norms at every level of society are crucial steps in creating a culture that does not tolerate violence in the name of tradition.

2.4 Judicial Attitudes and Law-Enforcement Practices

Throughout history, the laws regarding marital rape in India have been influenced by traditional and cultural norms. Patriarchal interpretations of marriage, often limiting the scope for a progressive and victim-centric application of the law. Courts have, on several occasions, reiterated the marital clause under Section 375, thereby reinforcing the idea that a husband cannot be prosecuted for raping his wife. This position not only lacks alignment with evolving notions of human rights and gender equality but also reflects a systemic failure to recognize the autonomy of married women.

The judiciary's reluctance to criminalize marital rape is often rooted in a misplaced concern for the sanctity of marriage. In several rulings, courts have emphasized the need to preserve familial harmony over addressing individual rights violations. Such judgments prioritize societal stability over personal liberty and send a dangerous message that marital rape is a private matter, not a criminal offense. This mindset severely undermines women's access to justice and perpetuates impunity for perpetrators within the marital relationship.

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¹⁷ 42. Baxi: Rape Trials in India, Oxford University Press, 2014.

43. India Justice Report, "Performance of Police and Judiciary," 2023.

Moreover, courts have at times trivialized the trauma of marital rape by conflating it with minor domestic disputes or characterizing it as a misunderstanding between spouses. In doing so, they fail to treat it as a violent crime, thereby denying survivors the protection and acknowledgment they deserve. This judicial minimization of harm undermines the seriousness of sexual violence and discourages survivors from pursuing legal redress. It also fosters a legal environment where the abuse of power within intimate relationships is tacitly tolerated.

Another concern is the inconsistent application of legal provisions by different courts across the country. While some High Courts have acknowledged the possibility of sexual abuse within marriage, others have continued to

uphold the marital exemption without question. This lack of consistency creates ambiguity in legal interpretation and prevents the development of a cohesive jurisprudence on marital rape. It also leaves survivors at the mercy of judicial discretion, rather than being protected by a uniform legal standard.

The responsibilities of law enforcement agencies in addressing cases of marital rape further reflects institutional apathy and insensitivity. Police officers, often influenced by patriarchal beliefs, discourage women from filing complaints, especially against their husbands. In many cases, survivors are told to reconcile with their abusers or are blamed for provoking the violence. Such practices not only violate the survivor's dignity but also erode trust in the justice system, effectively silencing women and enabling continued abuse. Police personnel are also poorly trained to handle cases involving marital sexual violence. There is a lack of specialized units or sensitization programs that equip officers to intimate partner violence and respond appropriately. This results in procedural lapses, inadequate documentation, and mishandling of evidence, all of which significantly weaken the survivor's case in court. Without reforms in police training and accountability, any legal change remains largely ineffective.

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¹⁸ 44. Supreme Court of India, where the Court acknowledged that “sexual violence apart from being a dehumanising act is an unlawful intrusion on the right to privacy and sanctity of a female.”

The lack of medical and psychological support for survivors within the criminal justice process further compounds the problem. Survivors of marital rape rarely receive timely access to medical examinations, counseling, or safe shelters. The trauma of being violated by a trusted partner is profound, and without systemic support, survivors are often forced to remain in abusive relationships. The absence of survivor-centric infrastructure reflects a broader disregard for the mental and emotional impact of marital rape. Judicial delay is another major impediment in addressing marital rape. Even when women do seek justice, the slow pace of trials and the burden of proof often dissuade them from pursuing the case. The legal system's inefficiency effectively denies them timely justice and closure.

There is also a noticeable reluctance among judges to challenge patriarchal statutes unless mandated by the legislature. This deference to legislative supremacy, though constitutionally sound, has often been used as a justification for inaction. Judges must recognize their role as interpreters of constitutional morality and defenders of fundamental rights. Judicial activism, as demonstrated in other gender justice cases, must extend to addressing the injustice of marital rape. To foster a more responsive judicial and law enforcement system, comprehensive legal reforms must be accompanied by institutional restructuring. Training programs, awareness campaigns, and

accountability mechanisms must be implemented to ensure that judges and police officers uphold the rights of survivors. The criminal justice system must evolve to reflect the principles of equality, dignity, and justice enshrined in the Constitution.

¹⁹ 45. Ministry of Women and Child Development, Government of India, Study on Child Abuse: India 2007, which also included cases of marital abuse faced by young brides.

46. United Nations Population Fund (UNFPA), Sexual and Reproductive Health Rights in India: Review of Key Laws and Policies, 2019, which highlights gaps in Indian laws related to marital rape and reproductive rights.

