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The Legislative Lacuna in the Backdrop of Rape Laws

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ABSTRACT

The Indian Penal Code has long remained silent on the issue of marital rape, and although the offence is now governed by the Bharatiya Nyaya Sanhita, 2023, the marital-rape exception persists. This paper examines the legislative lacuna surrounding marital rape in India, tracing its colonial origins in Exception 2 to Section 375 of the Indian Penal Code and the perpetual-consent doctrine attributed to Sir Matthew Hale. It contrasts the Indian position with the treatment of marital rape in the United States, Canada, the United Kingdom, Europe, Australia, New Zealand, and South Africa, and analyses key judicial interventions, including Independent Thought v. Union of India and the Delhi High Court's split verdict in RIT Foundation v. Union of India, now pending before the Supreme Court. The paper argues that the exception is inconsistent with Articles 14, 15, and 21 of the Constitution and with the recommendations of the Justice Verma Committee and CEDAW, and it concludes that codification, accompanied by social and institutional reform, is necessary to secure gender justice and bodily autonomy for married women.

Keywords: marital rape, Exception 2 to Section 375 IPC, criminalisation, bodily autonomy, gender justice

I. THE LEGISLATIVE LACUNA IN THE BACKDROP OF RAPE LAWS

The Indian Penal Code has long remained silent on the issue of marital rape. This social evil, which persists in Indian society, demands attention in light of the several cases relating to marital rape that have emerged in recent years. Against the backdrop of conditions in India and in foreign sovereign nations, marital rape ought to be recognised as a serious punishable offence, on par with other forms of rape. Although the Indian judiciary has expressed a broadly positive view on the subject, the legislature remains silent. There is a pressing need to enact statutory provisions criminalising the act of marital rape. The criminalisation of marital rape is often argued against on grounds such as harm to the sanctity of marriage and to the husband-wife relationship, but these amount to no more than erroneous claims. This paper seeks to shed light on the urgency of, and the need for, statutes criminalising and punishing the perpetrators of marital rape.

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II. INTRODUCTION

The issue of marital rape is among the most contentious of contemporary debates, as the need for an amendment to the Indian Penal Code is increasingly recognised by the public. Although a Constitution Bench of the Supreme Court has been considering the issue for a considerable time, its hearings have produced both controversial and constructive observations.

The complication is compounded by the fact that there exists no legislation or statute governing marital rape in the first place. The Indian Penal Code, which addresses the subject of rape, does not extend exhaustive governance to the matter of marital rape. The provisions enacted in the statute govern only those circumstances of rape in which the parties are not in a marital relationship. The law thus disregards the existence of any marital relationship between the offender and the victim, a matter that requires attention in the present day. The legislature declines to legislate on this topic in the belief that doing so would attack the values and sanctity of the institution of marriage.

With countries such as Australia and Canada having already explicitly criminalised the offence, marital rape as a social evil within India requires criminalisation through the enactment of new laws prohibiting its practice.

III. MEANING

There is no material difference between rape and marital rape, as both lack the consent of the victim and amount to forcible intercourse. The sole distinction is that, in marital rape, the offender can only be the spouse. In both cases the basic principle of consensual intercourse is violated, and the two ought not to be distinguished merely on the ground of an existing marital relationship, for being married does not confer upon a person any right to dictate another's right to consensual intercourse.

IV. HISTORY OF MARITAL RAPE IN INDIA

The history of marital rape in India is deeply tied to patriarchal traditions, colonial legal systems, and the slow pace of gender-sensitive reforms. Under Section 375 of the Indian Penal Code, rape is defined, but Exception 2 provides that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.¹ This clause originates in British colonial rule and reflects a 1736 opinion of the English jurist Sir Matthew Hale, who claimed

¹ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

that a husband could not be guilty of raping his wife because she had given perpetual consent through marriage.²

After independence in 1947, India retained this provision. For decades, the legal system treated the marital relationship as a private space, immune from scrutiny in respect of sexual violence. Although laws were introduced to address domestic violence and cruelty by husbands, such as Section 498A of the Indian Penal Code³ and the Protection of Women from Domestic Violence Act, 2005,⁴ forced sex within marriage continued to be excluded from criminal law.

Public awareness and activism on the issue began to rise during the women's rights movements of the 1980s and 1990s, but marital rape remained a taboo subject. A significant moment came in 2013, following the Delhi gang-rape case, which led to the constitution of the Justice Verma Committee. The Committee, in its report, strongly recommended that marital rape be criminalised, reasoning that marriage should not be a licence for sexual violence.⁵ Despite this, the recommendation was not adopted by the government, which cited concerns such as the potential misuse of the law and threats to the institution of marriage.

In 2022, a split verdict of the Delhi High Court in a case challenging the marital-rape exception further highlighted the legal and social divide on the issue.⁶ While civil society and human-rights groups continue to press for reform, marital rape is still not recognised as a criminal offence in India.

This reflects the ongoing tension between traditional notions of marriage and modern understandings of individual rights and consent, and emphasises the urgent need for legal reform that upholds bodily autonomy and gender justice.

V. STATUS OF MARITAL RAPE IN INDIA

As already noted, India has failed to criminalise the act of marital rape adequately. The legislature, adopting a negative posture, declines to enact any law prohibiting it, taking the strict view that such a law would harm the sacred bond of marriage and interfere in the private relationship of a husband and wife. The Supreme Court, while striking a more positive note, treads carefully, on the reasoning that the criminalisation of marital rape could invite a backlash

² MATTHEW HALE, *HISTORIA PLACITORUM CORONAE* (THE HISTORY OF THE PLEAS OF THE CROWN) (1736), as cited in *R v. R* [1991] 4 All ER 481 (HL).

³ The Indian Penal Code, No. 45 of 1860, s. 498A (India).

⁴ The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

⁵ JUSTICE J.S. VERMA ET AL., REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 113-17 (2013).

⁶ *RIT Foundation v. Union of India*, W.P. (C) 284/2015 (Delhi H.C. May 11, 2022) (India).

resulting in false accusations of rape by wives against husbands, motivated by personal or economic gain.

A law criminalising a limited form of marital rape exists under Section 376B of the Indian Penal Code, but its scope is restricted.⁷ Section 376B provides: "Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine." This provision prohibits a husband from forcing intercourse upon his wife where they are living separately. It gives rise to the question whether the consent of the wife is presumed while the parties are living together. That question is answered under Section 375 of the Indian Penal Code.⁸ Exception 2 to Section 375 provides that "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape." This exception legalises the act of marital rape provided that the victim is not under fifteen years of age. In *Independent Thought v. Union of India*, the age threshold was raised from fifteen to eighteen years.⁹ The exception thus affords a measure of protection against marital rape, but only to minor wives; wives above the age of eighteen have no such remedy.

Several committee reports and cases have recommended amending these laws, including the report of the Justice Verma Committee (2013)¹⁰ and the proceedings in *RIT Foundation v. Union of India*,¹¹ yet the government has taken no action on the matter. Laws relating to other offences, such as grievous hurt, wrongful restraint, and assault, may cover conduct incidental to an act of marital rape, but do not criminalise the act itself or punish the offender as a rape offender.

It may further be noted that the absence of criminalisation of marital rape demonstrates the inadequacy of fundamental rights, such as the right to life and the right to privacy, in protecting citizens. Article 21¹² guarantees to every person the right to live with human dignity, free from invasion or encroachment that distorts the life of the individual. It also encompasses the right to privacy, and more particularly the right to sexual privacy: even a husband cannot suppress his wife's personal liberty and invade her privacy.

⁷ The Indian Penal Code, No. 45 of 1860, s. 376B (India).

⁸ The Indian Penal Code, No. 45 of 1860, s. 375 (India).

⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

¹⁰ JUSTICE J.S. VERMA ET AL., REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (2013).

¹¹ *RIT Foundation v. Union of India*, W.P. (C) 284/2015 (Delhi H.C. May 11, 2022) (India).

¹² INDIA CONST. art. 21.

VI. SOCIAL CONSTRUCT REGARDING MARITAL RAPE IN INDIA

The social construct surrounding marital rape in India is deeply rooted in patriarchal norms, traditional family structures, and cultural beliefs that prioritise male authority and female subservience within marriage. Indian society has long upheld the notion that marriage grants the husband unquestioned rights over his wife's body, equating sexual consent with marital duty rather than individual autonomy. This belief stems from historical and religious practices that view women as the property of their husbands, expected to serve and obey them, including sexually.

In many communities, the idea that a wife may refuse sexual advances from her husband is considered taboo or even dishonourable. Women are often taught from a young age that their role in marriage is to maintain family harmony, even at the cost of their own well-being. As a result, forced sex within marriage is rarely identified as rape, either by the victim or by society. Victims of marital rape frequently remain silent for fear of stigma, social isolation, or being blamed for family disruption.

The normalisation of marital rape is further reinforced by the legal system. Exception 2 to Section 375 of the Indian Penal Code exempts a husband from prosecution for raping his wife,¹³ thereby legitimising the idea that consent is not required within marriage. This legal endorsement shapes public perception, making it difficult to challenge marital rape as a form of violence.

Media, films, and popular culture have also contributed to this construct by romanticising male dominance and portraying marital obedience as a woman's virtue. However, changing attitudes among younger generations, legal-awareness campaigns, and feminist movements are slowly questioning these deep-seated beliefs.

VII. STATUS OF MARITAL RAPE IN OTHER COUNTRIES

Marital rape, defined as non-consensual sexual intercourse by a spouse, has received varying legal treatment around the world. While many countries have taken steps to criminalise it, the degree of enforcement, social acceptance, and legal recognition varies significantly. The global status of marital-rape laws reflects broader societal attitudes towards gender equality, bodily autonomy, and the sanctity of marriage.

In the United States, all fifty states had criminalised marital rape by the early 1990s. However, legal provisions and sentencing vary widely. Some states treat it as a lesser offence than non-

¹³ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

marital rape, and in others certain conditions (such as living apart) must be met for prosecution. Despite this, the United States legal system broadly affirms that marriage does not eliminate the requirement of consent.

Canada was among the early countries to repeal the marital-rape exemption, doing so in 1983. Since then, the law has recognised spousal sexual assault in the same manner as any other sexual assault.

The United Kingdom abolished the marital-rape exemption in 1991 through the landmark House of Lords ruling in *R v. R*, which affirmed that a husband can be guilty of raping his wife.¹⁴ This decision marked a turning point in common-law countries.

In Europe, marital rape is recognised as a crime in nearly all member states of the European Union. Countries such as Germany, France, Spain, Sweden, and Norway have clear laws that treat spousal rape on par with other forms of sexual violence. Sweden, known for its progressive gender policies, requires affirmative consent in all sexual activity, regardless of the relationship between the parties. France criminalised marital rape in 1990, and its courts have regularly upheld convictions since. Germany amended its rape laws in 1997 to include spousal rape expressly, following sustained pressure from women's-rights organisations.

Australia and New Zealand also reformed their laws in the 1980s and 1990s to criminalise marital rape. In Australia, marital rape is unlawful in all states and territories. In New Zealand, the exemption was removed in 1985. These reforms reflect growing awareness of sexual autonomy and the shift towards viewing marriage as a partnership of equals.

By contrast, many Asian and Middle Eastern countries continue to afford legal immunity to husbands. India, for example, retains Exception 2 to Section 375 of the Indian Penal Code, under which sexual intercourse by a man with his wife is not rape if she is above the age of fifteen.¹⁵ Despite growing advocacy, legal reform remains stalled owing to concerns about false accusations, misuse of the law, and the preservation of traditional marriage structures.

Similarly, Pakistan, Bangladesh, and several Middle Eastern countries do not recognise marital rape as a crime. In these regions, cultural and religious norms often prioritise male dominance and the sanctity of marriage over individual rights and consent.

¹⁴ *R v. R* [1991] 4 All ER 481 (HL).

¹⁵ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

In Africa, laws vary. While South Africa criminalised marital rape under its Sexual Offences Act of 2007,¹⁶ enforcement remains limited by societal stigma. Other African nations either lack clear legislation or fail to implement it effectively.

Overall, while over one hundred countries have criminalised marital rape, many others still permit it under outdated legal exceptions. International bodies such as the United Nations and the Committee on the Elimination of Discrimination against Women (CEDAW) continue to call for global recognition of marital rape as a fundamental violation of human rights,¹⁷ demanding reform to ensure justice and equality for all individuals, regardless of marital status.

VIII. CASE LAWS RELATED TO MARITAL RAPE IN INDIA

Although marital rape is not yet criminalised in India under the Indian Penal Code, several landmark cases have brought the issue into legal and public discourse. The judiciary has addressed aspects of marital rape through constitutional interpretation, civil-law remedies, and judicial commentary, reflecting an evolving perspective on consent, bodily autonomy, and gender justice.

One of the most significant cases is *Independent Thought v. Union of India* (2017).¹⁸ There, the Supreme Court read down Exception 2 to Section 375 of the Indian Penal Code, which exempted husbands from rape charges where the wife was above fifteen years of age. The Court held that sexual intercourse with a wife below eighteen years of age, even within marriage, would amount to rape. This judgment harmonised the rape law with the legal age of marriage (eighteen years for girls) and marked a significant step in recognising that consent is essential, even within a marital relationship. However, the ruling applied only to minor wives and did not extend protection to adult women in marriage.

Another major development came in *RIT Foundation v. Union of India*, a case filed before the Delhi High Court challenging the constitutionality of the marital-rape exception.¹⁹ The petitioners argued that Exception 2 to Section 375 violated Articles 14, 15, and 21 of the Constitution,²⁰ which guarantee equality, non-discrimination, and the right to life and personal liberty. In May 2022, the Delhi High Court delivered a split verdict: Justice Rajiv Shakdher held the marital-rape exception unconstitutional, whereas Justice C. Hari Shankar upheld the

¹⁶ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

¹⁷ COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, CONCLUDING OBSERVATIONS ON THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF INDIA, U.N. Doc. CEDAW/C/IND/CO/4-5, para. 22 (July 24, 2014).

¹⁸ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

¹⁹ *RIT Foundation v. Union of India*, W.P. (C) 284/2015 (Delhi H.C. May 11, 2022) (India).

²⁰ INDIA CONST. arts. 14, 15, 21.

exception, citing legislative domain and the potential misuse of the law. Owing to the split, the matter has been referred to the Supreme Court, where it is currently pending.

Further, in *Tukaram v. State of Maharashtra* (the Mathura rape case, 1979),²¹ although not a case of marital rape, the public outrage that followed led to the first wave of legal reforms on sexual violence and laid the groundwork for future debates, including on spousal rape.

In *Vishaka v. State of Rajasthan* (1997),²² the Supreme Court emphasised women's right to dignity and bodily integrity, laying the constitutional groundwork for interpreting laws relating to gender-based violence.

While criminal prosecution for marital rape remains legally restricted, civil remedies exist under the Protection of Women from Domestic Violence Act, 2005,²³ which recognises forced sexual intercourse by the husband as a form of sexual abuse, allowing women to seek protection orders and compensation.

These cases reflect the judiciary's growing recognition of the need to address sexual violence within marriage, even as legislative change remains elusive.

IX. WHY MARITAL RAPE IS NOT CODIFIED

Marital rape is not codified as a criminal offence in India primarily because of deep-rooted societal norms, patriarchal beliefs, and legislative reluctance to interfere in the perceived sanctity of marriage. Under Section 375 of the Indian Penal Code, rape is defined, but Exception 2 grants a husband immunity for non-consensual sex with his wife, provided she is not under fifteen years of age.²⁴ This exception is based on colonial-era English law and the outdated notion that marriage constitutes irrevocable consent to sexual relations.²⁵

One of the major reasons for the absence of codification is the belief that criminalising marital rape would destabilise the institution of marriage. Lawmakers and some sections of society argue that such a law may be misused, leading to false allegations and increased litigation within families. This fear of misuse has often overshadowed the importance of addressing the violation of consent and bodily autonomy within marriage.

Cultural and religious traditions in India also play a part. Marriage is often viewed as a sacrament in which the wife is expected to fulfil marital duties, including sexual obligations.

²¹ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India).

²² *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

²³ The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

²⁴ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

²⁵ *R v. R* [1991] 4 All ER 481 (HL).

Within such a framework, the concept of consent within marriage is rarely acknowledged or discussed.

Moreover, there is a lack of political will. Despite recommendations from expert bodies such as the Justice Verma Committee (2013), which strongly advocated the criminalisation of marital rape, successive governments have not acted, citing the need for broader social consensus.²⁶

Finally, legal provisions such as the Protection of Women from Domestic Violence Act, 2005, address sexual abuse within marriage as a civil wrong, but do not provide for criminal punishment under the rape laws.²⁷

The non-codification of marital rape in India thus reflects a complex mix of legal inertia, cultural conservatism, and resistance to redefining traditional gender roles within marriage.

X. CRITICISMS

The non-codification of marital rape in India has drawn widespread criticism from legal experts, human-rights activists, and international bodies. Critics argue that Exception 2 to Section 375 of the Indian Penal Code violates the fundamental rights guaranteed under Articles 14 (equality), 15 (non-discrimination), and 21 (right to life and personal liberty) of the Constitution.²⁸ By exempting husbands from prosecution, the law fails to recognise the autonomy and consent of married women, effectively denying them protection against sexual violence.

International human-rights organisations, including the United Nations and the Committee on the Elimination of Discrimination against Women (CEDAW), have repeatedly urged India to criminalise marital rape, stating that the current legal framework perpetuates gender-based violence and inequality.²⁹ Feminist scholars also contend that the fear of misuse is exaggerated and should not justify the denial of justice to genuine victims.

Critics further argue that the legal distinction between married and unmarried women in matters of consent reinforces patriarchal control over women's bodies. The failure to criminalise marital rape not only silences survivors but also legitimises sexual coercion within marriage, normalising abuse under the guise of marital obligation. This legal gap undermines the broader goals of gender justice and women's rights in India.

²⁶ JUSTICE J.S. VERMA ET AL., REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 113-17 (2013).

²⁷ The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

²⁸ INDIA CONST. arts. 14, 15, 21.

²⁹ COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, CONCLUDING OBSERVATIONS ON THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF INDIA, U.N. Doc. CEDAW/C/IND/CO/4-5, para. 22 (July 24, 2014).

XI. WHY CODIFICATION IS NECESSARY

The codification of marital rape as a criminal offence is essential to uphold the constitutional rights of women, ensure gender equality, and protect bodily autonomy within marriage. The legal immunity presently granted to husbands under Exception 2 to Section 375 of the Indian Penal Code³⁰ denies married women the fundamental right to refuse sexual intercourse, thereby violating Article 14 (equality), Article 15 (non-discrimination), and Article 21 (right to life and personal liberty) of the Constitution.³¹

Codification is crucial because it legally acknowledges that consent does not cease to matter after marriage. It shifts the societal narrative from viewing marriage as a licence for sexual access to understanding it as a partnership built on mutual respect and agency. Criminalising marital rape would empower survivors to seek justice, break their silence, and access institutional support without shame or fear.

Furthermore, codification would align India with international human-rights standards and the recommendations of bodies such as the United Nations and CEDAW.³² It would also strengthen the legal framework by closing a significant loophole in the existing rape laws, ensuring that all women, regardless of marital status, are equally protected against sexual violence.

Reliance solely on civil remedies, such as those under the Protection of Women from Domestic Violence Act, 2005, is inadequate, as they do not recognise forced sex as a criminal act.³³ Codification would send a strong message that sexual violence in any form is unacceptable, and would be a critical step towards ensuring justice, dignity, and equality for all women in India.

XII. WHAT CONSEQUENCES DOES CODIFICATION IMPLY

The codification of marital rape as a criminal offence in India would have far-reaching legal, social, and institutional consequences. Legally, it would close a significant gap in the criminal-justice system, ensuring that all women, regardless of marital status, receive equal protection against sexual violence. It would affirm the principle that consent is central to all sexual relationships, including those within marriage, thereby strengthening the constitutional guarantees of dignity, equality, and personal liberty.

³⁰ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

³¹ INDIA CONST. arts. 14, 15, 21.

³² COMM. ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, CONCLUDING OBSERVATIONS ON THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF INDIA, U.N. Doc. CEDAW/C/IND/CO/4-5, para. 22 (July 24, 2014).

³³ The Protection of Women from Domestic Violence Act, No. 43 of 2005 (India).

Socially, codification could lead to greater awareness of sexual rights and consent within marriage. It would challenge deep-seated patriarchal norms that view a wife's body as her husband's entitlement, encouraging a shift towards more egalitarian marital relationships. However, it may also provoke resistance from conservative sections of society who fear the breakdown of traditional family structures.

At an institutional level, codification would require the training of police, the judiciary, and medical professionals to handle such cases sensitively. It may also lead to an increase in the reporting of spousal sexual violence, necessitating improved support systems for survivors.

While concerns about false accusations exist, these can be addressed through fair investigation procedures. Ultimately, codification would signal a commitment to human rights and gender justice, aligning India with global legal and ethical standards.

XIII. STATISTICS

A. Statistics regarding marital rape in India

According to the National Family Health Survey (NFHS-5, 2019-21), about 29.3% of ever-married women aged 18 to 49 reported having experienced spousal violence (physical, sexual, or emotional).³⁴ Among these, 6.4% reported sexual violence by their husband, an indirect indicator of marital rape. In some states, such as Manipur, Bihar, and Karnataka, the reported rates of spousal sexual violence are higher than the national average.

According to NFHS-4 (2015-16), 5.6% of ever-married women reported that their husbands had physically forced them to have sex when they did not want to.³⁵ Around 83% of women who experienced such violence never sought help, and very few approached institutional sources such as the police or healthcare providers.

A 2011 study by the International Center for Research on Women (ICRW) found that one in five Indian men admitted to forcing their wives into sex.³⁶ Only a fraction of women recognised this as violence, owing to the normalisation of coercion in marriage.

A UN Women report (2021) noted that India is one of nearly thirty countries where marital rape is still not criminalised, despite such high prevalence rates.³⁷ These statistics highlight a

³⁴ MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5) 2019-21: INDIA REPORT 574 (2022).

³⁵ MINISTRY OF HEALTH & FAMILY WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-4) 2015-16: INDIA REPORT 561 (2017).

³⁶ INT'L CTR. FOR RESEARCH ON WOMEN, MASCULINITY, INTIMATE PARTNER VIOLENCE AND SON PREFERENCE IN INDIA 22 (2011).

³⁷ UN WOMEN, MEASURING THE SHADOW PANDEMIC: VIOLENCE AGAINST WOMEN DURING COVID-19 14 (2021).

disturbing reality and underscore the urgent need for legal recognition of, and protection against, marital rape in India.

B. Statistics regarding marital rape in other countries

In the United States, according to the National Intimate Partner and Sexual Violence Survey (NISVS, CDC, 2015 data), around 11% of women (over 13 million) reported experiencing rape by an intimate partner, including spouses, and 51.1% of female rape victims were raped by a current or former intimate partner.³⁸ Marital rape is criminalised in all fifty states, though definitions and penalties vary.

In the United Kingdom, a 2021 report by the Office for National Statistics (ONS) found that over 33% of adult women who had been raped since the age of sixteen were assaulted by a partner or ex-partner.³⁹ Marital rape has been a criminal offence there since the *R v. R* (1991) judgment.⁴⁰

In South Africa, according to the South African Medical Research Council, one in four men admitted to raping a woman, and more than 50% of those admitted rapes were against intimate partners, including wives.⁴¹ Marital rape has been criminalised there since the Sexual Offences Act of 2007,⁴² but underreporting remains a significant challenge.

In Nepal, a 2009 UNFPA report showed that 46% of women reported having experienced sexual violence by their husbands.⁴³ Nepal criminalised marital rape in 2006, making it one of the few South Asian nations to do so.

In Bangladesh, according to Human Rights Watch (2020), 27% of women experienced forced sex by their husbands.⁴⁴ Marital rape is not criminalised there, except where the wife is under thirteen years of age.

In Pakistan, no official statistics exist, but independent studies estimate that 20 to 30% of married women face sexual coercion. Marital rape is not recognised as a crime.

³⁸ Sharon G. Smith et al., THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2015 DATA BRIEF 18 (Ctrs. for Disease Control & Prevention, 2018).

³⁹ OFFICE FOR NAT'L STATISTICS, SEXUAL OFFENCES IN ENGLAND AND WALES OVERVIEW: YEAR ENDING MARCH 2020, at 12 (Mar. 18, 2021).

⁴⁰ *R v. R* [1991] 4 All ER 481 (HL).

⁴¹ Rachel Jewkes et al., S. AFR. MED. RESEARCH COUNCIL, UNDERSTANDING MEN'S HEALTH AND USE OF VIOLENCE: INTERFACE OF RAPE AND HIV IN SOUTH AFRICA (2009).

⁴² Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (S. Afr.).

⁴³ UN POPULATION FUND, ADDRESSING GENDER-BASED VIOLENCE IN NEPAL: A REVIEW OF LAWS, POLICIES AND PROGRAMMES 31 (2009).

⁴⁴ HUMAN RIGHTS WATCH, BANGLADESH: NEW LAW FAILS TO CRIMINALIZE MARITAL RAPE (Oct. 13, 2020).

XIV. IMPLICATIONS AND SOLUTIONS

The non-criminalisation of marital rape in India has serious implications for women's rights, public health, and the justice system. Legally, it denies married women the right to bodily autonomy and equality under the law, reinforcing the notion that consent is not required within marriage. This exemption perpetuates gender-based violence and allows sexual abuse within marriage to go unpunished. It also discourages survivors from seeking justice, knowing that their experiences are not recognised as crimes under the law.

Socially, the absence of legal recognition legitimises patriarchal norms that treat wives as the sexual property of their husbands. This fosters a culture of silence and shame, leading to underreporting and long-term psychological and physical harm. Marital rape also carries severe health implications, including trauma, sexually transmitted infections, and unwanted pregnancies.

To address these issues, several solutions may be proposed. First, criminalising marital rape by removing Exception 2 to Section 375 of the Indian Penal Code is essential. This legal reform must be supported by clear definitions of consent and robust safeguards against the misuse of the law.

Second, comprehensive sex education and gender-sensitisation programmes are needed to change societal attitudes towards consent and marriage. Engaging communities, schools, and religious institutions in awareness campaigns can challenge deeply held cultural beliefs.

Third, the training of police, medical personnel, and judicial officers is crucial to ensure the sensitive handling of cases. In addition, the Protection of Women from Domestic Violence Act, 2005, should be strengthened to provide immediate relief and long-term rehabilitation for survivors.

Ultimately, recognising and addressing marital rape is not only a legal necessity but also a moral imperative, essential to uphold human dignity, equality, and justice in India's evolving democratic society.

XV. CONCLUSION

Marital rape remains one of the most pervasive yet overlooked forms of gender-based violence in India. Its legal non-recognition under Exception 2 to Section 375 of the Indian Penal Code⁴⁵ reflects deeply entrenched patriarchal norms that prioritise the institution of marriage over the individual rights of women. By denying married women the legal right to refuse sexual

⁴⁵ The Indian Penal Code, No. 45 of 1860, s. 375 Exception 2 (India).

intercourse, the law effectively legitimises sexual violence within marriage and violates the constitutional guarantees of equality, dignity, and personal liberty.⁴⁶

Despite increasing public awareness, judicial intervention, and recommendations from expert bodies such as the Justice Verma Committee,⁴⁷ the Indian legislature has failed to take decisive action. This legal gap not only silences survivors but also reinforces a culture in which consent is regarded as irrelevant in marital relationships.

Codifying marital rape as a criminal offence is essential to protect women from abuse and to affirm that marriage is not a licence for sexual coercion. However, legal reform must be accompanied by broader social and institutional change, achieved through education, public awareness, and capacity-building for law enforcement and healthcare professionals.

Ultimately, addressing marital rape is not merely a matter of legal justice; it is about recognising women as equal citizens with full rights over their bodies, regardless of marital status. Only then can India truly uphold its commitment to gender justice and human rights.

⁴⁶ INDIA CONST. arts. 14, 15, 21.

⁴⁷ JUSTICE J.S. VERMA ET AL., REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW 113-17 (2013).