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# Examining the Validity of Marital Rape under Indian Statute with special reference to Domestic Violence

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## ABSTRACT

*In Indian statutes, particularly the Domestic Violence Act, the researcher will assess the legal position regarding marital rape. Despite increasing awareness and advocacy, marital rape continues to be excluded from criminalisation in Indian statutes largely due to traditional notions of marriage and consent. This analysis looks at the proposed exemption, using the experiences of women living with domestic violence as an example. Investigating the gap between societal standards and the current statutory and case law structures will be the focus of the researcher through court interpretations and current laws. The researcher will also address the possibility for reforms to combat this consequential issue, advocating for a more nuanced understanding of consent always — even within the context of marriage. The research will highlight the need for substantive change by introducing marital rape as a human right violation through the work on the current case study and analysis of the legislative acts, which at some point will also urge for a timely and urgent amendment in the Indian laws to fairly and equally protect every human being in the institution of marriage. Through this research, we will not only fill the gap of laws, legal scholarship existing in the country, but hope to help the policymakers and activists involved in the struggle against gender-based violence.*

**Keywords:** marital rape, domestic violence, Indian law, consent, legal reform.

## I. INTRODUCTION

The phenomenon of marital rape within the Indian context engenders extensive debate and controversy, significantly shaped by entrenched societal norms and traditional gender roles that often eclipse legal considerations. A critical examination of cultural and legal frameworks governing domestic violence is warranted to ascertain whether Indian statutes recognize marital rape as a legitimate legal concept. Historically, Indian jurisprudence has failed to classify marital rape as a prosecutable offense, resulting in numerous survivors remaining ensnared within their marriages, with scant opportunities for recourse.

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The Indian Penal Code delineates the definition of rape in Section 375<sup>2</sup>; however, it incorporates an exception that exonerates husbands from facing prosecution for non-consensual sexual actions against their wives. This legal provision thus effectively legitimizes the act of marital rape.<sup>3</sup> The persistence of this legal loophole can be attributed to archaic patriarchal ideologies, which simultaneously contradict India's obligations to uphold international human rights and the constitutional imperative to promote the dignity and equality of women. Scholars in feminist theory contend that violence against women, including instances of marital rape, epitomizes entrenched gender power dynamics aimed at maintaining the subjugation of women.<sup>4</sup>

A comprehensive approach to addressing violence against women necessitates a recognition of the phenomenon as a systemic issue rather than a series of disconnected events, fundamentally rooted in gender-based discrimination. The slow acknowledgment of this reality within India's legal framework is exemplified by the continued existence of the marital rape exception, which represents a conspicuous shortcoming in the broader efforts to combat domestic violence and advance gender equality. Despite international dialogues advocating for women's bodily autonomy, Indian laws persist in undermining this fundamental principle, perpetuating stigma and silence around the issue of marital rape.

This ongoing discourse is intricately linked to the wider conversations surrounding domestic violence and women's rights in India, where the institution of marriage is often esteemed as sacred. However, such reverence does not warrant the legal exclusion of marital rape from the definition of sexual assault. This exclusion cultivates a culture of silence, consequently rendering women susceptible to abuse within the confines of marriage. Recent national surveys indicate that approximately 32% of married women experienced physical, sexual, or emotional violence perpetrated by their spouses between 2019 and 2021, thereby accentuating the pressing need for legal reform.<sup>5</sup>

While legislative advancements such as the Protection of Women from Domestic Violence Act, 2005<sup>6</sup>, have made significant strides in addressing gender-based violence, the persistence of the marital rape exception within Section 375 illustrates a paradox in India's legal framework. This exception, rooted in colonial-era statutes, continues to influence judicial interpretations and

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<sup>2</sup> *Indian Penal Code*, Sec. 375 (1860).

<sup>3</sup> Siddharth Mehta, *Rape Law in India: Problems in Prosecution Due to Loopholes in the Law*, SSRN, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2250448](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250448) (last visited Jan. 21, 2025).

<sup>4</sup> Ayushi Agarwal, *The Case for Treating Violence Against Women as a Form of Sex Discrimination in India*, 2020, <https://journals.sagepub.com/doi/10.1177/1358229120978865> (last visited Jan. 24, 2025).

<sup>5</sup> Aisha Akram, *The Decriminalisation of Marital Rape: How India Continues to Refuse Justice to Its Married Women*, Oxford Hum. Rts. Hub, <https://ohrh.law.ox.ac.uk/the-decriminalisation-of-marital-rape-how-india-continues-to-refuse-justice-to-its-married-women/> (last visited Jan. 21, 2025)

<sup>6</sup> *Protection of Women from Domestic Violence Act*, 2005 (India).

societal attitudes towards domestic violence.<sup>7</sup> Alarming, only about 10% of victims report incidents of spousal sexual abuse, highlighting a considerable gap between reported and actual occurrences.<sup>8</sup>

Currently, the Supreme Court of India heard the petitions challenging the constitutional validity of the marital rape exception, an event that could represent a significant turning point in the nation's legal history.<sup>9</sup> Through a rigorous examination of the legislative and judicial landscape, alongside the societal ramifications of marital rape, this analysis aims to contribute to the discourse on women's rights, bodily autonomy, and the evolution of criminal justice in India. It underscores the urgent necessity for legislation that unambiguously condemns marital rape, aligning legal standards with contemporary conceptions of consent and securing justice for survivors.

## II. OVERVIEW OF MARITAL RAPE AND ITS LEGAL STATUS IN INDIA

The legal classification of marital rape in India presents a complex and contentious landscape, significantly shaped by the provisions of Section 375 of the Indian Penal Code (IPC)<sup>10</sup>. Although this code criminalizes the act of rape, it simultaneously includes a notable exemption regarding specific sexual conduct occurring within the context of marriage. According to the IPC, "sexual intercourse by a man with his wife who is not less than 15 years of age does not amount to the offence of rape".<sup>11</sup> This legal exception embodies a considerable paradox; it effectively permits non-consensual sexual acts within marriage to remain unpunished, thus rendering many victims devoid of legal avenues for redress. Such legislative frameworks give rise to significant ethical dilemmas pertaining to the autonomy, dignity, and rights of married women. By framing a wife as akin to property rather than recognizing her as an individual with inherent bodily autonomy, the law mirrors deeply entrenched cultural beliefs that undermine the agency of women. Furthermore, the pervasive stigma surrounding the issue of marital rape contributes to a notable underreporting of incidents, alongside a pronounced deficiency in systemic support for survivors. This interplay of factors serves to reinforce cycles of abuse and silence, thereby exacerbating the marginalization of affected women.

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<sup>7</sup> Helen Regan & Esha Mitra, *Marital Rape Is Still Not Outlawed in India. Changing That Would Be 'Excessively Harsh,' Government Argues*, CNN (Oct. 11, 2024), <https://edition.cnn.com/2024/10/11/india/indian-government-marital-rape-intl-hnk/index.html>. (last visited on 21, 2025)

<sup>8</sup> Nandini Agarwal et al., *Marital Rape and Its Impact on the Mental Health of Women in India: A Systematic Review*, PubMed Cent., <https://pmc.ncbi.nlm.nih.gov/articles/PMC10021972/> (last visited Jan. 24, 2025).

<sup>9</sup> *Supreme Court to Hear Marital Rape Exclusion Case on October 17*, The Hindu (2024), <https://www.thehindu.com/news/national> (last visited Jan. 24, 2025).

<sup>10</sup> *Supra* 1

<sup>11</sup> Aashita Mehta & Aneesh Gupta, *Nuptial Rape: Rape Within Marriage*, CORE, <https://core.ac.uk/download/587416765.pdf> (last visited Jan. 23, 2025).

The implications of marital rape extend beyond individual cases, significantly impacting the broader discourse on gender equality and the safeguarding of women's rights in India. The reluctance of the legal system to categorize marital rape as a criminal offense can be attributed to deeply rooted patriarchal attitudes that are woven into the fabric of traditional societal norms. This neglect complicates the fight against domestic violence and leaves a myriad of women without the necessary legal protections. Advocacy from scholars and activists has increasingly emphasized the necessity for legal reform that would classify marital rape as a criminal act, as such changes would represent an essential progression toward affirming women's autonomy and achieving gender justice. Research conducted by Oluremi H. Abimbola, Olujide A. Adekeye & Sussan O. Adeusi in the year 2011<sup>12</sup>, highlights the significant influence of socio-economic factors on domestic violence, thus underscoring the urgent need for reforms that address not only legal shortcomings but also the broader societal conditions perpetuating such violence. The intersection of marital rape and domestic violence unveils systemic barriers that hinder advancements in women's rights throughout India. To dismantle the patriarchal structures that sustain these abuses, extensive reforms targeting both legislative measures and societal attitudes are imperative.

The institution of marriage in Indian society has historically been esteemed as a sacred entity, signifying a lifelong commitment and unity between partners. Nonetheless, this idealized perception often conceals stark realities, including the widespread occurrence of domestic violence, which is frequently manifested as marital rape. Despite the global surge in awareness and advocacy surrounding marital rape, the legal framework in India remains deficient, exempting such acts from criminal prosecution. This legal exemption contributes to a pervasive culture of silence and impunity. The urgency of this matter, which is intricately linked with societal norms and legal structures, necessitates a thorough examination of the exclusion of marital rape from criminal law in India and its broader implications in the domain of domestic violence.

Domestic violence represents a pervasive and deeply entrenched issue within India, with numerous studies consistently documenting alarming statistics regarding its occurrence. The entrenched patriarchal norms, coupled with a cultural emphasis on safeguarding the sanctity of marriage, play a significant role in the normalization of violence within domestic settings. Furthermore, this normalization is often exacerbated by societal expectations that prioritize the preservation of family integrity over the rights and autonomy of individual women. The

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<sup>12</sup> Oluremi H. Abimbola, Olujide A. Adekeye & Sussan O. Adeusi, *Domestic Violence in a Semi-Urban Neighbourhood*, CORE, <https://core.ac.uk/download/12356567.pdf> (last visited Jan. 23, 2025).

narratives shared by women in counselling environments reveal the profound influence of cultural dynamics, illustrating how societal constructs surrounding femininity, marriage, and motherhood serve to legitimize and obscure instances of domestic violence.<sup>13</sup>

Addressing the multifaceted nature of these issues necessitates not only reforms in legal statutes but also a fundamental transformation of cultural attitudes. Such changes are imperative to ensure the protection and empowerment of women within the domestic sphere, thereby fostering an environment in which their rights are recognized and upheld.

In order to navigate the challenges presented by the prevailing legal and societal paradigms, a thorough examination of the interconnectedness of marriage, consent, and violence is essential. By fostering an understanding of these intricate dynamics and promoting both legal and cultural reforms, significant progress toward gender equity and justice for all citizens in India can be achieved.

### III. HISTORICAL BACKGROUND, LEGAL FRAMEWORK SURROUNDING MARITAL RAPE AND IT'S CHALLENGES

The institution of marriage in India has historically been perceived as a sacred bond, representing unity and a commitment that endures for a lifetime. Nevertheless, this glorified perception often masks the stark realities of domestic violence, including marital rape. Despite the growing advocacy for women's rights globally, the legal system in India fails to classify marital rape as a criminal offense, thus perpetuating a culture characterized by silence and impunity. This lack of legal recognition raises significant issues regarding the autonomy and rights of women. An examination of the legal framework pertaining to marital rape in India reveals considerable inadequacies that compromise the principles of gender equality and consent.

The Indian Penal Code (IPC), enacted in 1860<sup>14</sup>, explicitly exempts marital rape from criminal classification. According to Exception 2 to Section 375, sexual intercourse between a husband and wife does not constitute rape. This legal provision perpetuates antiquated ideas of unwavering consent within marriage, founded on patriarchal beliefs that prioritize the desires of husbands over the autonomy of their wives. Critics assert that this provision infringes upon the dignity and bodily autonomy of women, with one commentator stating, “marriage condones

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<sup>13</sup> Nishi Mitra, *Domestic Violence in India: Addressing Gender Inequalities*, 2013, <https://journals.sagepub.com/doi/10.1177/1077801213506287> (last visited Jan. 23, 2025).

<sup>14</sup> *Indian Penal Code*, (1860).

coercion rather than mutual consent".<sup>15</sup> The criminal justice system's hesitance to confront issues of marital rape reveals ingrained misogyny and facilitates continued exploitation in domestic relationships.<sup>16</sup> Reforming this legal structure is imperative to enable the empowerment of women and the safeguarding of their rights.

Historically, the immunity from marital rape in Indian law is rooted in colonial-era legal doctrines, particularly the Hale doctrine, articulated by Sir Matthew Hale<sup>17</sup> in the 17th century. This doctrine posited that a wife's consent upon marriage was perpetual and irrevocable. As noted by legal scholars, this archaic principle persists in contemporary Indian law, particularly manifested in Exception 2 to Section 375 of the IPC.<sup>18</sup> Following the Delhi gang rape incident, the Criminal Law Amendment Act of 2013<sup>19</sup> instituted significant reforms in India's rape legislation; however, it conspicuously neglected to address the issue of marital rape.<sup>20</sup>

While the Protection of Women from Domestic Violence Act, 2005<sup>21</sup> represents a progressive step by offering civil remedies for domestic violence, it fails to criminalize marital rape.<sup>22</sup> This legal paradox results in a situation where spousal sexual violence is acknowledged as domestic violence under civil law but remains immune to criminal prosecution under the IPC.<sup>23</sup> Consequently, civil remedies, which include protection orders and compensation, often fall short of addressing the immediate threats and psychological trauma encountered by survivors.

In recent times, there has emerged a burgeoning legal discourse that challenges the constitutional validity of the marital rape exemption. Petitions submitted to the Supreme Court contend that this exemption is in violation of Article 14 (right to equality) and Article 21 (right to life and personal liberty) of the Indian Constitution.<sup>24</sup> These ongoing debates indicated a

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<sup>15</sup> Chandra Deep Yadav, *Marital Rape: Legal Framework in India*, CORE (2021), <https://core.ac.uk/download/482075360.pdf>.

<sup>16</sup> Anushka, The Criminalization of Marital Rape in India: A Distant Dream, 6(01) *People: Int'l J. Soc. Sci.* 294-305 (2020), <https://doi.org/10.20319/pijss.2020.61.294305>.

<sup>17</sup> **Wikipedia**, *Matthew Hale (jurist)*, [https://en.wikipedia.org/wiki/Matthew\\_Hale\\_\(jurist\)](https://en.wikipedia.org/wiki/Matthew_Hale_(jurist)) (last visited Jan. 24, 2025).

<sup>18</sup> Areeb Uddin Ahmed, *The Controversy Surrounding Marital Rape: History, Judicial Precedents and the Road Ahead*, Bar & Bench, <https://www.barandbench.com/columns/just-law-controversy-around-marital-rape-part-i>.

<sup>19</sup> **Press Information Bureau, Govt. of India**, *Criminal Law (Amendment) Ordinance, 2013*, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=91979> (Feb. 4, 2013, 1:21 PM).

<sup>20</sup> Priyali Prakash & Dhriti Mankatalia, *Explained | Marital Rape in India: The History of the Legal Exception*, The Hindu (May 16, 2022), <https://www.thehindu.com/news/national/explained-marital-rape-in-india-the-history-of-the-legal-exception/article65404106.ece>.

<sup>21</sup> *Supra* 5

<sup>22</sup> Bhavish Gupta & Meenu Gupta, *Marital Rape: Current Legal Framework in India and the Need for Change*, Galgotias University, <https://www.galgotiasuniversity.edu.in/pdfs/issue2.pdf>.

<sup>23</sup> Sarthak Makkar, *Marital Rape: A Non-Criminalized Crime in India*, Harv. Hum. Rts. J. (Jan. 2019), <https://journals.law.harvard.edu/hrj/2019/01/marital-rape-a-non-criminalized-crime-in-india/>.

<sup>24</sup> Swarati Sabhapandit, *Criminalising Marital Rape in India*, The India Forum, <https://www.theindiaforum.in/law/criminalising-marital-rape-india>.

possible shift in judicial perspectives, presenting the potential for a landmark ruling that could redefine the rights and responsibilities inherent to marriage in India. However, governmental resistance to the criminalization of marital rape, often justified by concerns of destabilizing the institution of marriage, reflects the persistence of deeply entrenched patriarchal attitudes.<sup>25</sup>

Current efforts to reform India's legal framework, as seen in initiatives like the Bharatiya Nyaya Sanhita (BNS) 2023<sup>26</sup>, have faced scrutiny for retaining provisions akin to the IPC's marital rape exception. Although the BNS acknowledges that sexual intercourse with a bride under the age of 18 constitutes rape, it neglects to address instances of marital rape involving adult women, thereby leaving significant voids in legal protections.<sup>27</sup>

The discourse surrounding marital rape extends beyond Indian borders, with various legal systems worldwide exhibiting diverse approaches to the matter. In the United States, for instance, marital rape is prohibited in all 50 states, yet inconsistencies remain in enforcement and legal definitions. Specifically, while 20 states and the District of Columbia have removed exemptions for husbands, others retain loopholes that complicate legal prosecution.<sup>28</sup> On an international scale, many countries continue to permit marital rape due to cultural and legal obstacles, despite an increase in advocacy for reform. Notably, some nations, such as Greece, have made significant strides by defining rape to include any sexual act lacking consent, regardless of violence.<sup>29</sup> However, concerning omissions persist in regions such as the Caribbean, where several member states do not impose criminal penalties for marital rape.<sup>30</sup>

In order to effectively address marital rape, legal frameworks must encapsulate explicit recognition of the crime, equitable treatment under the law, and thorough protections for survivors. Nonetheless, challenges related to enforcement remain prominent. Cultural stigma, coupled with a lack of awareness and institutional reluctance, obstructs the successful

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<sup>25</sup> *here Are Other Legal Remedies: Centre Opposes Criminalisation of Marital Rape in Supreme Court*, The Week (Oct. 3, 2024), <https://www.theweek.in/news/india/2024/10/03/there-are-other-legal-remedies-centre-opposes-criminalisation-of-marital-rape-in-supreme-court.html> (last visited Jan. 23, 2024).

<sup>26</sup> *Bharatiya Nyaya Sanhita (BNS) 2023*.

<sup>27</sup> Shraddha Chaudhary, *Unpacking the Centre's Affidavit on Marital Rape*, The Hindu (Sept. 26, 2024), <https://www.thehindu.com/opinion/op-ed/unpacking-the-centres-affidavit-on-marital-rape/article68729068.ece>.

<sup>28</sup> Raquel Kennedy Bergen & Elizabeth Barnhill, *Marital Rape: New Research and Directions*, VAWnet, <https://vawnet.org/material/marital-rape-new-research-and-directions>.

<sup>29</sup> Amnesty International, *Greece: Newly Amended Rape Law is a Historic Victory for Women* (June 12, 2019), <https://www.amnesty.org/en/latest/press-release/2019/06/greece-newly-amended-rape-law-is-a-historic-victory-for-women/>.

<sup>30</sup> Caribbean News Service, *Criminalising Marital Rape in the Caribbean*, UN Women, <https://caribbean.unwomen.org/en/stories/op-ed/2022/09/criminalising-marital-rape-in-the-caribbean-caribbean-news-service>.



implementation of current laws.<sup>31</sup> It is essential that legislative reforms are coupled with robust enforcement mechanisms and societal transformation to dismantle the barriers that hinder survivors from achieving justice.

The trajectory toward progress necessitates collaborative efforts among legislators, law enforcement officials, civil society, and the judiciary to ensure that legal reforms result in meaningful protections for survivors of marital rape. By tackling the legal and cultural foundations of this issue, India can advance toward a society that prioritizes the principles of equality, dignity, and justice for all individuals.

#### IV. EXISTING INDIAN STATUTE AND THEIR STANCE ON MARITAL RAPE

The regulatory framework governing issues of marital rape and domestic violence in India reveals significant shortcomings that necessitate urgent reform. Presently, legislation does not categorize marital rape as a criminal act, thereby prioritizing the sanctity of familial privacy at the expense of individual rights and autonomy. This lack of legal classification contributes to an environment that trivializes violations of women's bodily autonomy within the institution of marriage. As articulated by Kumar Vidhik<sup>32</sup>, the historical context of legal protections surrounding marital rape continues to perpetuate its prevalence in India, where instances of gender-based violence remain alarmingly high. In a similar vein, the observations made by Angana P. Chatterji<sup>33</sup> illustrate the profound impact of gender-based violence on the quality of life experienced by women. These legal inadequacies are indicative of deeply rooted societal norms and significantly obstruct victims access to justice, thereby highlighting the imperative for substantial legal reforms.

The perception of marital rape within the Indian legal context mirrors a broader societal understanding of marriage as a private sphere, largely insulated from external scrutiny. This viewpoint has cultivated a legal milieu wherein spousal rape is not acknowledged as a crime, consequently undermining the rights and autonomy of victims. In contrast to the legal advancements seen in numerous other countries that have criminalized marital rape, India's ongoing exemption underscores a concerning adherence to antiquated societal norms that prioritize familial reputation over the dignity of individuals. The discourse surrounding sexual

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<sup>31</sup> 7 Ways Sexual Violence Laws Are Failing Survivors Around the World, Equality Now, [https://equalitynow.org/news\\_and\\_insights/7-ways-sexual-violence-laws-are-failing-survivors-around-the-world/](https://equalitynow.org/news_and_insights/7-ways-sexual-violence-laws-are-failing-survivors-around-the-world/).

<sup>32</sup> Vidhik Kumar, *Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India* (2021), <https://core.ac.uk/download/480471840.pdf>.

<sup>33</sup> Angana P. Chatterji, Laurel E. Fletcher, Malika Kaur & Roxanna Altholz, *Access to Justice for Women: India's Response to Sexual Violence in Conflict and Social Upheaval*, International Human Rights Law Clinic, Univ. of Cal., Berkeley Sch. of L. (2015), <https://core.ac.uk/download/75783197.pdf>.

offenses reveals a troubling inconsistency in legal interpretations, permitting non-consensual acts to remain unpunished within the confines of marriage, which reinforces the notion that such violations may be deemed acceptable in intimate relationships.<sup>34</sup> Therefore, addressing this matter necessitates a comprehensive reassessment of existing legal statutes to ensure equitable protection for all individuals, regardless of marital status.<sup>35</sup>

Marital rape, characterized as non-consensual sexual intercourse occurring within a marriage, is a widespread yet underreported manifestation of domestic violence in India. Despite international strides towards the criminalization of this act, India remains one of the few nations that does not legally recognize marital rape. As highlighted by Rao<sup>36</sup>, the Indian Penal Code, which serves as the foundation of the country's criminal legal system, explicitly excludes marital rape from its definition of rape. Consequently, under this legal framework, a husband cannot be prosecuted for compelling his wife to engage in sexual acts, as marriage is construed to imply perpetual consent<sup>37</sup>. Such an interpretation effectively strips women of autonomy over their own bodies.<sup>38</sup> The "marital rape exception" has drawn significant criticism, with arguments positing that it fundamentally undermines women's dignity and human rights.<sup>39</sup>

While the explicit criminalization of marital rape remains absent from the legal corpus, certain legislative instruments offer limited protections for victims. The Protection of Women from Domestic Violence Act of 2005 acknowledges marital rape as a form of domestic violence, allowing victims to pursue protection orders and various civil remedies.<sup>40</sup> Nevertheless, these provisions are inadequate in delivering comprehensive legal recourse or effective deterrence, thereby leaving a substantial gap in the mechanisms available to address this pressing issue.

## V. IMPACT OF DOMESTIC VIOLENCE ON THE RECOGNITION OF MARITAL RAPE

The ramifications of marital rape extend beyond individual instances, revealing deep-rooted cultural norms and systemic disparities that significantly undermine the rights and autonomy of women. In the context of societies such as India, the perpetuation of violence within marriage is often accepted, thereby reinforcing detrimental gender stereotypes and fostering the

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<sup>34</sup> Supra 28

<sup>35</sup> Falk, Patricia J. (2015). Husbands Who Drug and Rape Their Wives: The Injustice of the Marital Exemption in Ohio's Sexual Offenses. <https://core.ac.uk/download/301550718.pdf>

<sup>36</sup> T.S.S. Rao, N. Shah & C. Andrade, Marital Rape in India, 4(4) *J. Psychosexual Health* 221-222 (2022), <https://doi.org/10.1177/26318318221131745>.

<sup>37</sup> Ibid 32

<sup>38</sup> Supra 15

<sup>39</sup> Dhingra, Sumati and Dhingra, Sumati, Criminalisation of Marital Rape in India (May 11, 2015). Available at SSRN: <https://ssrn.com/abstract=2604919> or <http://dx.doi.org/10.2139/ssrn.2604919>

<sup>40</sup> P.B. Deosthali, S. Rege & S. Arora, Women's Experiences of Marital Rape and Sexual Violence Within Marriage in India: Evidence from Service Records, 29(2) *Sexual & Reproductive Health Matters* (2022), <https://doi.org/10.1080/26410397.2022.2048455>.

perception that the concept of consent is subordinate to societal and familial expectations. The investigation of sexual violence, including marital rape, highlights the necessity for interdisciplinary approaches that facilitate a thorough examination of the behavioural and systemic factors contributing to these offenses, as well as the identification of effective countermeasures.<sup>41</sup>

An analysis of the legal framework governing marital rape reveals substantial deficiencies in the safeguarding of women's rights, frequently leaving survivors without adequate remedies and cultivating an atmosphere characterized by silence and stigma. Addressing these societal challenges is imperative for reshaping the understanding of consent and for ensuring that marital rape is acknowledged as a violation of personal dignity and fundamental human rights. Such acknowledgment could catalyze a transformation in broader societal attitudes toward domestic violence.<sup>42</sup>

In India, the intersection of domestic violence and marital rape presents a notable challenge within the legal system, mirroring societal convictions that often trivialize the gravity of sexual violence within the context of marriage. The prevalent belief that consent is inherently granted in marital relationships contributes to the marginalization of marital rape, particularly in situations marked by abusive dynamics. This societal misconception fosters an environment wherein victims are frequently discouraged from speaking out and are often uninformed about their rights, which accentuates the critical necessity for increased awareness initiatives regarding victim rights in India.<sup>43</sup>

Furthermore, evidence indicating the pervasive nature of gender-based violence suggests that abusive behaviour frequently infiltrate marital environments, thereby complicating the quest for legal recognition of marital rape. In the absence of explicit legal statutes, survivors find themselves ensnared in cycles of abuse, which highlights the urgent need for reforms within India's legal framework to effectively address the intertwined issues of marital rape and domestic violence.<sup>44</sup>

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<sup>41</sup> Raveendran Nair K.P., *A Comparative Study of Laws Governing Domestic Violence in Ethiopia and India*, available at <https://core.ac.uk/download/237210355.pdf>.

<sup>42</sup> Catherine Turner, *Out of the Shadows: Child Marriage and Slavery* (Jan. 1, 2013), available at <https://core.ac.uk/download/33611505.pdf>.

<sup>43</sup> Das, Pallab, Mishra, Shree, Padhy, Sushant, Panigrahi, et al.. "Shedding light on sexual crimes and victim's rights: Examining the intersection of psychology and law in the Indian legal system". 2023, <https://core.ac.uk/download/587416999.pdf>

<sup>44</sup> *Supra* 29

## **VI. EXAMINATION OF HOW DOMESTIC VIOLENCE LAWS INTERSECT WITH THE ISSUE OF MARITAL RAPE**

The examination of domestic violence legislation in India in relation to marital rape reveals significant legal and societal impediments. Domestic violence laws are designed to safeguard individuals from various forms of abuse such as physical, emotional, and economic within intimate partnerships. However, a critical deficiency in these laws is the failure to explicitly categorize marital rape as a form of domestic violence. This absence creates a contradictory legal framework, wherein consent is assumed by virtue of marriage, thereby undermining the autonomy and rights of spouses. Consequently, the lack of clear legal acknowledgment of marital rape serves to perpetuate cycles of abuse, leaving victims without adequate legal recourse or protection under existing statutes. Furthermore, the societal stigmas surrounding both domestic violence and marital rape present additional barriers to victims seeking justice. Addressing these deficiencies within Indian law is imperative to empower survivors and ensure that the legal system appropriately responds to the diverse manifestations of domestic violence.

Cultural perspectives play a significant role in shaping the understanding of marital rape and its impacts on victims, particularly in India, where traditional norms often reinforce subjugation within intimate relationships. Cultural attitudes commonly regard marriage as an indissoluble bond, leading to the automatic presumption of consent, which in turn normalizes the occurrence of marital rape. This normalization diminishes acknowledgment of the suffering experienced by victims and fosters an environment of silence and shame that deters individuals from reporting incidents or pursuing legal remedies. Recent analyses articulate that the Indian legal system's inadequacy in addressing marital rape is deeply intertwined with these prevailing cultural beliefs, resulting in the insufficient protection of victims.<sup>45</sup>

In addition, comparative studies of domestic violence legislation across various countries suggest that legal frameworks alone are insufficient to dismantle deeply ingrained cultural attitudes. The implementation of holistic strategies, encompassing public awareness initiatives and robust victim support systems, is essential for transforming societal perceptions and empowering survivors.<sup>46</sup> It is imperative to tackle these multifaceted issues to promote legal reforms and secure justice for victims of marital violence.

## **VII. CONCLUSION**

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<sup>45</sup> Supra 38

<sup>46</sup> Supra 37

The phenomenon of marital rape in India serves as a salient illustration of the complex interplay among deeply rooted cultural practices, antiquated legal structures, and pervasive societal stigmas, all of which collectively contribute to the perpetuation of gender-based violence and systemic inequality. Despite legislative progress exemplified by the enactment of the Protection of Women from Domestic Violence Act in 2005<sup>47</sup>, the omission of marital rape from the penal code starkly reveals a significant deficiency in the legal protection of women's rights. This exclusion not only compromises the constitutional tenets of bodily autonomy, consent, and equality but also leaves survivors inadequately shielded and bereft of effective legal recourse. The continued existence of the "marital rape exception" within Section 375 of the Indian Penal Code<sup>48</sup> reflects a patriarchal legal framework that prioritizes the sanctity of familial privacy and traditional marriage over the assertion of individual rights, thereby exacerbating the marginalization of survivors.

Vidhik Kumar posits that the prevailing societal norms in India lend legitimacy to violence within the institution of marriage, thereby fostering an environment in which marital rape is normalized. These norms, grounded in the assumption of implicit consent inherent in marital relationships, contribute to a culture of silence that further obscures the realities of marital rape. Such normalization not only diminishes the gravity of survivors' experiences but also erects substantial obstacles to the pursuit of justice and awareness regarding their entitlements.<sup>49</sup>

In their examination of the issue, Angana P Chatterji identify the profound impact of marital rape on victims, emphasizing that the challenge transcends mere legal considerations to encompass entrenched societal attitudes. They report that incidences of gender-based violence in India occur with alarming frequency, with a woman being raped every twenty minutes. These distressing statistics underscore a broader cultural acceptance of violence against women, thereby highlighting the urgency for both societal and legislative reforms aimed at addressing these pervasive challenges effectively.<sup>50</sup>

The analysis of comparative studies and international practices reveals that the criminalization of marital rape necessitates an approach that exceeds simple legislative amendment. A fundamental cultural shift is required to reconceptualize marriage as a partnership rooted in equality rather than a sphere of domination. To dismantle the systemic barriers that facilitate violence, comprehensive strategies must be implemented. These should include public

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<sup>47</sup> Supra 5

<sup>48</sup> Supra 1

<sup>49</sup> Supra 31

<sup>50</sup> Supra 32

awareness initiatives, robust victim support systems, and enhanced enforcement of existing domestic violence legislation. Acknowledging marital rape as a critical violation extends beyond the pursuit of justice; it affirms the dignity and autonomy of individuals while aligning India's legal system with contemporary human rights norms.

### **(A) Summary of Findings and Recommendations**

The persistent exclusion of marital rape from India's criminal legislation highlights a significant deficiency in safeguarding women's rights. The presupposition of implicit consent within marriage trivializes survivors' experiences and perpetuates cycles of violence. Legal reforms must rectify this deficiency through the establishment of explicit definitions of marital rape, the provision of comprehensive training for law enforcement officials to address cases sensitively, and the initiation of public awareness campaigns aimed at challenging entrenched cultural norms.

By implementing these strategies, a more equitable legal framework can be established in India, one that prioritizes the dignity and autonomy of all individuals within the institution of marriage. As the Supreme Court deliberates on the constitutional challenge to the marital rape exception, the nation finds itself at a critical crossroads. A forward-thinking response from judicial and legislative bodies has the potential to create a transformative precedent, thereby ensuring justice for survivors and advancing the broader struggle against gender-based violence.

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