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Sexual Autonomy of Women in India: Challenges and Way Forward

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ABSTRACT

Sexual autonomy, central to the principles of bodily integrity and human dignity, remains a fiercely contested terrain in India. While it promises individuals, particularly women, the right to make independent decisions over their bodies, sexuality, and reproduction, entrenched patriarchal structures have long subjugated this autonomy to the demands of family honour, religious morality, and communal control. Legal reforms and judicial pronouncements have nominally advanced sexual and reproductive rights, yet deep-seated societal resistance continues to undermine these gains, subjecting autonomous women to social policing and stigma. This paper interrogates the historical trajectory of sexual autonomy from pre-Vedic times to the colonial period, critiques the judiciary's often ambivalent role in either reinforcing or challenging patriarchal norms, and scrutinizes the contemporary legal and social exclusions faced by marginalized groups such as minor girls and women in sex work. The paper also shed lights marital rape which is seen as taboo topic and the approach of Courts in dealing it. It argues that the gap between constitutional ideals and lived realities reveals a systemic failure to realize sexual autonomy as an uncompromising right and a site of radical political resistance.

Keyword: Sexual Autonomy, Women, Minor Girls, Sex Workers, Marital Rape.

I. INTRODUCTION

Sexual autonomy stands at the core of bodily integrity, dignity, and the broader human rights framework. It encompasses the ability of individuals, particularly women, to make independent choices regarding their bodies, sexuality, and reproductive lives, free from coercion, discrimination, and violence.² In India, however, the exercise of sexual autonomy by women has historically been constrained by entrenched patriarchal structures, which have sought to regulate women's bodies as repositories of family honour, religious morality, and community identity.³

Yet, India's social fabric reveals important exceptions that nuance this otherwise grim picture.

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² B. Sivaramayya, *Sexual Autonomy and the Law* (1995).

³ Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* (Permanent Black, 2004).

Matrilineal societies such as the Nairs of Kerala and the Khasi tribes of Meghalaya present alternate models where women traditionally enjoyed greater sexual and economic autonomy.⁴ In these contexts, lineage, property, and sometimes even social power were traced through women, challenging the dominant Brahmanical-patriarchal norms that governed much of the Indian mainland.⁵

Despite these exceptions, for the vast majority of Indian women, the right to exercise sexual autonomy remained, and continues to remain, heavily policed — both socially and legally. The present landscape reveals a paradox: while legal reforms and judicial interventions increasingly recognize women's sexual and reproductive rights,⁶ societal attitudes often lag, reinforcing stigma against women asserting autonomy outside traditional frameworks of marriage and family.⁷

This article explores three central questions: First, how has the sexual autonomy of women evolved across different historical periods — from pre-Vedic times to the colonial era? Second, what has been the role of law and judiciary in either curtailing or enabling this autonomy? Third, how do contemporary legal and social realities address the sexual autonomy of marginalized groups, particularly minor girls and women engaged in commercial sex work? In navigating these questions, the paper critically engages with the disjuncture between constitutional promises of autonomy and the lived realities of many Indian women, situating sexual autonomy not merely as a personal right but as a crucial site of resistance and reform.⁸

II. FROM ANCIENT TIMES TO COLONIAL INDIA: SHIFTING NOTIONS OF FEMALE SEXUAL AUTONOMY

(A) Pre-Vedic Period

Archaeological evidence from the Indus Valley Civilization (circa 2500–1900 BCE) indicates a relatively egalitarian society, with figurines and seals representing female deities suggesting reverence for the feminine principle.⁹ Although direct legal codifications are absent, scholars infer from cultural artefacts that women may have exercised substantial agency in personal

⁴ K. Saradamoni, *Matriliney Transformed: Family, Law and Ideology in Twentieth-Century Travancore* (Sage Publications, 1999). See also, Tiplut Nongbri, *Gender and Khasi Family Structure: The Matrilineal System in Meghalaya* (Rawat Publications, 2000).

⁵ Uma Chakravarti, *Gendering Caste: Through a Feminist Lens* (Stree, 2003).

⁶ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1. *X v. Principal Secretary Health and Family Welfare Deptt.*, (2022) SCC OnLine SC 905.

⁷ Pratiksha Baxi, 'Sexual Autonomy and the Indian State' (2001) 36(8) *Economic and Political Weekly* 734.

⁸ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999). See also, Amita Dhanda, 'Constructing a Right to Sexual Autonomy' in Kalpana Kannabiran (ed), *The Violence of Normal Times: Essays on Women's Lived Realities* (Women Unlimited, 2005).

⁹ Shereen Ratnagar, *Enquiries into the Political Organisation of Harappan Society* (Ravish, 1991).

matters, including marriage and sexuality.¹⁰ There are suggestions that notions of bodily autonomy existed, albeit informally: practices such as remarriage and possibly the ability to terminate pregnancies without stigma were not uncommon.¹¹ The absence of overt restrictions implies that women were not rigidly controlled by male-centric legal structures at this time.

(B) Vedic Period

The early Vedic period (1500–1000 BCE) marks a continuation of relative freedom for women, albeit with emerging hierarchies. Women participated actively in intellectual and religious life, composing hymns (e.g., Gargi, Maitreyi) and exercising autonomy in marital decisions through rituals like *Swayamvara*.¹² Marriages were often based on consent, and texts like the *Rigveda* reflect instances where women's choice was paramount.¹³ However, by the later Vedic period (post-1000 BCE), increasing codification of norms led to greater control over women's sexuality, emphasizing chastity and fidelity.¹⁴

Regarding abortion, the Vedic corpus is silent; later Ayurvedic texts permitted certain medical interventions, suggesting that termination of pregnancy was not strictly criminalized.¹⁵ Divorce and remarriage were allowed in cases of desertion, infertility, or cruelty, reflecting a pragmatic approach to marital relations.¹⁶

(C) Sangam Era

In southern India, the Sangam period (circa 300 BCE–300 CE) provides fascinating insights into female autonomy. Sangam literature, particularly *Akam* (love) poetry, depicts women choosing their lovers freely, often engaging in premarital romantic relationships without social ostracization.¹⁷ Celebrated women poets like Avvaiyar embody a culture where female intellectualism and emotional agency flourished.¹⁸

The Sangam society recognized the legitimacy of love marriages (*Kalavu*) and distinguished it from arranged marriages (*Karpu*), demonstrating nuanced attitudes toward women's sexual choices.¹⁹ Abortion was not heavily moralized; rather, the emphasis was on social stability post-

¹⁰ Gregory L. Possehl, *The Indus Civilization: A Contemporary Perspective* (Rowman Altamira, 2002).

¹¹ Kumkum Lal, 'Women in the Indus Valley Civilization' (2005) 10(3) *Indian Historical Review* 45.

¹² Stephanie Jamison, *Sacrificed Wife/Sacrificer's Wife: Women, Ritual, and Hospitality in Ancient India* (Oxford University Press, 1996).

¹³ Wendy Doniger, *The Hindus: An Alternative History* (Penguin, 2011).

¹⁴ A.S. Altekar, *The Position of Women in Hindu Civilization* (Motilal Banarsidass, 1959).

¹⁵ Julia Leslie, *Roles and Rituals for Hindu Women* (Motilal Banarsidass, 1992).

¹⁶ Suvira Jaiswal, *Women in Early India: Issues and Perspectives* (Manohar, 1981).

¹⁷ George Hart, *Poets of the Tamil Anthologies: Ancient Poems of Love and War* (Princeton University Press, 1975).

¹⁸ S. Sundari, 'Avvaiyar and the Ideals of Tamil Womanhood' (2003) 18(2) *Journal of Tamil Studies* 75.

¹⁹ Kamil Zvelebil, *The Smile of Murugan: On Tamil Literature of South India* (Brill, 1974).

pregnancy. Divorce and remarriage were permissible under customary law, especially among non-Brahmanical communities.²⁰

(D) Medieval India

The medieval period saw a marked decline in women's sexual autonomy. The codification of patriarchal norms in *Manusmriti* (circa 200 BCE–200 CE, but influential much later) emphasized female chastity, male guardianship, and the imperative of controlling women's sexuality.²¹ *Manusmriti* famously dictated that a woman must be under the control of her father, husband, or son throughout her life — an idea deeply influential in subsequent centuries.

The advent of Islamic rule introduced new socio-cultural practices, including veiling (*purdah*) and seclusion (*zenana*), which further restricted women's mobility and sexuality.²² However, it is important not to homogenize: in Mughal India, elite women such as Nur Jahan wielded significant power, and there were spaces within Islamic jurisprudence recognizing women's property rights.²³

In terms of abortion, Islamic law generally permitted termination before 120 days of gestation, depending on interpretations of *ensoulment*.²⁴ Thus, Islamic influence may have created pluralistic legal standards regarding reproductive autonomy.

Divorce and remarriage among Muslim women were relatively more attainable compared to Hindu women during this period. Hindu widows were largely forbidden to remarry, while Islamic law recognized *talaq* (divorce) and widow remarriage, albeit under male-centric control.²⁵

(E) British India

The British colonial period (1757–1945) entrenched a conservative moral code that paradoxically combined Victorian sexual prudery with a reification of Hindu orthodoxy. The codification of Section 377 of the Indian Penal Code, 1860 — criminalizing "carnal intercourse against the order of nature" — policed non-procreative, non-heteronormative sexualities, disproportionately affecting women's sexual expressions.²⁶

At the same time, colonial authorities selectively engaged in "reforming" Indian traditions,

²⁰ Sumathi Ramaswamy, *Passions of the Tongue: Language Devotion in Tamil India, 1891–1970* (University of California Press, 2010).

²¹ Patrick Olivelle (tr), *The Dharmasutras: The Law Codes of Ancient India* (Oxford University Press, 1999).

²² Indrani Chatterjee, *Gender, Slavery and Law in Colonial India* (Oxford University Press, 1993).

²³ Ruby Lal, *Domesticity and Power in the Early Mughal World* (Cambridge University Press, 2005).

²⁴ Haleem Abdul, *Islamic Law: Theory and Practice* (Edinburgh University Press, 1993).

²⁵ Asghar Ali Engineer, *The Rights of Women in Islam* (Sterling Publishers, 1992).

²⁶ Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (Books for Change, 2004).

notably through interventions like the abolition of *sati* (immolation of widows) via the Bengal Sati Regulation, 1829 and the enactment of the Hindu Widows' Remarriage Act, 1856. These reforms ostensibly enhanced women's rights but were also deeply entangled with the imperial civilizing mission.²⁷

Abortion was criminalized under Sections 312–316 IPC unless performed to save the life of the mother, reflecting Victorian attitudes toward female sexuality and reproduction (Forbes, 1996).²⁸ Divorce became a formal legal possibility only with acts like the Hindu Marriage Act, 1955, post-Independence; during British rule, Christian women had some limited grounds for divorce under the Indian Divorce Act, 1869, but Hindu and Muslim women's options remained heavily restricted.²⁹

In sum, colonial India institutionalized patriarchal control through codified laws, religious reinforcement, and new social norms, compressing the diverse and relatively pluralistic traditions of earlier periods into rigid structures that continued to undermine women's sexual autonomy.

III. JUDICIAL INTERPRETATION OF SEXUAL AUTONOMY (1945–PRESENT)

The evolution of judicial approaches to women's sexual autonomy in India has been gradual and reflective of broader societal transformations. For analytical clarity, this development can be divided into three major phases: 1945–1991 (Post-Independence to Pre-globalisation), 1991–2011 (Post-globalisation and Rights Expansion), and 2012–Present (Post-Nirbhaya Activism and Privacy Expansion). This division rests on key socio-political shifts: India's independence and Constitution-building in the first phase, liberalisation and global rights discourse influencing the second, and finally, the Nirbhaya movement and the Privacy judgment radically altering the constitutional terrain in the third.

(A) Conservative Socio-legal Outlook: 1945–1991

In the early decades after independence, Indian courts operated within a deeply patriarchal framework. Despite the adoption of a progressive Constitution, judicial attitudes towards women's sexual agency remained conservative. *Usha Ramanathan* has observed that mid-20th century Indian legal reasoning was profoundly influenced by Victorian morality and indigenous patriarchal customs, framing women more as dependents or victims rather than autonomous

²⁷ Lata Mani, 'Contentious Traditions: The Debate on Sati in Colonial India' (1989) 14(2) Cultural Critique 119.

²⁸ Geraldine Forbes, *Women in Modern India* (Cambridge University Press, 1996).

²⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999).

agents.³⁰

One illustrative case is *Yusuf Abdul Aziz v. State of Bombay*, where Section 497 IPC (criminalizing adultery) was challenged for being discriminatory against men.³¹ In its 1954 ruling, the Supreme Court upheld the constitutionality of the provision, reinforcing the notion that women were passive actors or "victims" in cases of adultery, devoid of sexual agency.

However, occasional departures from this model occurred. In *State of Maharashtra v. Madhukar Narayan Mardikar*, the Court protected the right to dignity of a woman who was characterized as being of "easy virtue."³² It held that no woman loses her right to privacy and bodily integrity, regardless of her background. Nevertheless, such affirmations were sporadic, and courts largely failed to conceptualize women as autonomous sexual beings.

During this period, early challenges to restrictive laws like Section 377 IPC (criminalising non-heteronormative sexual relations) were rare and unsuccessful, as seen in cases like *Ammini v. Union of India*, where autonomy arguments were made but not accepted.³³

(B) Economic Liberalisation and Expanding Rights: 1991–2011

The liberalisation of India's economy in 1991 brought urbanisation, increased global engagement, and exposure to international human rights norms. This broader socio-economic transformation slowly seeped into judicial reasoning as well. As *Mrinal Satish* notes, courts began tentatively linking concepts like dignity and equality with bodily integrity and sexual autonomy.³⁴

A landmark decision during this phase was *Vishaka v. State of Rajasthan*, where the Supreme Court issued guidelines against sexual harassment at the workplace, recognizing that sexual dignity and bodily autonomy were crucial to ensuring equality.³⁵ Similarly, in *Anuj Garg v. Hotel Association of India*, the Court struck down gender-discriminatory employment laws and emphasized that "protective discrimination" often stemmed from gendered stereotypes about women's sexuality and agency.³⁶

The question of reproductive autonomy received robust judicial articulation in *Suchita Srivastava v. Chandigarh Administration*, where the Court upheld the right of a mentally

³⁰ Usha Ramanathan, "Women, Violence, and the Law: A South Asian Perspective," 44(40) Economic and Political Weekly (2009) 79.

³¹ *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321.

³² *State of Maharashtra v. Madhukar Narayan Mardikar*, AIR 1991 SC 207.

³³ *Ammini v. Union of India*, 1995 SCC OnLine Ker 29.

³⁴ Mrinal Satish, "Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India," 11 Indian Journal of Constitutional Law (2017) 27.

³⁵ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

³⁶ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

retarded woman to make reproductive choices, including abortion.³⁷ *Aparna Chandra* critiques this judgment for its nuanced approach: it not only reaffirmed a woman's bodily integrity but also recognized reproductive decision-making as an inseparable component of personal autonomy.³⁸

Marital sexual autonomy also found indirect recognition in *Samar Ghosh v. Jaya Ghosh*, where the Court acknowledged that persistent denial of sexual relations could amount to mental cruelty warranting divorce.³⁹ Although the Court did not explicitly frame the issue in terms of autonomy, the underlying recognition of sexual agency within marriage was significant. Nevertheless, societal resistance often diluted these judicial advancements. As *Flavia Agnes* points out, while economic reforms empowered women economically, social conservatism continued to restrain legal recognition of women's full sexual autonomy.⁴⁰

(C) Post-Nirbhaya Expansion of Privacy and Dignity: 2012–Present

The brutal Nirbhaya gang rape incident in 2012 triggered massive public outrage and galvanized feminist legal activism. Courts, in response, shifted more decisively towards upholding women's sexual autonomy.

The monumental decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* established that privacy is a fundamental right under Article 21, and explicitly stated that sexual autonomy forms an intrinsic part of privacy.⁴¹ *Dipika Jain* argues that this judgment redefined constitutional morality by pivoting individual bodily autonomy at the heart of fundamental rights jurisprudence.⁴²

Building upon this, *Navtej Singh Johar v. Union of India* decriminalised consensual same-sex relations by reading down Section 377 IPC.⁴³ The Court recognized that the right to choose one's sexual partner and to express one's sexuality are fundamental aspects of human dignity. *Ratna Kapur's* earlier scholarship had called for precisely such a deconstruction of heteronormative assumptions in Indian law.⁴⁴

³⁷ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

³⁸ *Aparna Chandra*, "Autonomy, Rights and Reproductive Choices: The Judicial Construction of Motherhood," 5(1) *National Law School of India Review* (2013) 1.

³⁹ *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

⁴⁰ *Flavia Agnes*, "Transgressing Boundaries of Gender and Autonomy: Women Negotiating with Law in Contemporary India," 36(22) *Economic and Political Weekly* (2001) 1875.

⁴¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁴² *Dipika Jain*, "Gender Identity, Privacy and Non-Discrimination: Rethinking Constitutional Morality after Puttaswamy," 14(1) *National University of Juridical Sciences Law Review* (2021) 1.

⁴³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴⁴ *Ratna Kapur*, "Deconstructing Sexuality under Colonial and Post-Colonial Legal Regimes: The Case of India," in *Bringing Rights Home: Socio-Legal Perspectives on Human Rights* (Hart Publishing, 2007) 143.

Further, in *Joseph Shine v. Union of India*, the Court struck down Section 497 IPC (adultery), asserting that women are not the property of their husbands and that sexual agency is not subordinated to marriage.⁴⁵

In *Independent Thought v. Union of India*, the Supreme Court partially dismantled the marital rape exception for minors under 18 years, recognizing that marriage could not extinguish a girl's right to bodily integrity.⁴⁶ Similarly, in *X v. Principal Secretary Health and Family Welfare Department*, the Court upheld an unmarried woman's right to abortion, reinforcing reproductive autonomy beyond marital status.⁴⁷

Even High Courts have contributed to this transformative jurisprudence. In *Sushma v. Commissioner of Police*, the Madras High Court affirmed the right of adult women in same-sex relationships to live together without State interference.⁴⁸ Meanwhile, in *Supreme Court Women Lawyers Association v. Union of India*, the apex Court called for gender-sensitive reforms in rape sentencing, emphasizing the autonomy and dignity of survivors.⁴⁹

Thus, contemporary Indian constitutional and criminal law increasingly embraces a vision of sexual autonomy as essential to human dignity, freedom, and equality. Yet, persistent gaps between constitutional promises and lived realities remain — a tension that underscores the continuing relevance of this discourse.

IV. SEXUAL AUTONOMY OF WOMEN ENGAGED IN COMMERCIAL SEX WORK

Commercial sex work, often referred to as the world's oldest profession, has existed across civilizations in various forms, from the temple courtesans (*devadasis*) of ancient India (initially they were not exploited for sex however this situation changed at later point) to the contemporary urban sex worker.⁵⁰ Despite societal stigma, the core reality remains: women engaged in commercial sex possess the same inherent rights to bodily integrity, dignity, and autonomy as any other citizen. Philosophically, the value of human dignity does not diminish based on profession. Morally, in a rights-based framework, the principle of autonomy demands that every individual's choice concerning their body and sexuality are respected, so long as they are voluntary and informed.

Indian courts have, over time, grappled with the difficult task of balancing societal morality

⁴⁵ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

⁴⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁴⁷ *X v. Principal Secretary Health and Family Welfare Dept.*, (2022) SCC OnLine SC 905.

⁴⁸ *Sushma v. Commissioner of Police*, 2021 SCC OnLine Mad 1752.

⁴⁹ *Supreme Court Women Lawyers Association v. Union of India*, (2016) 3 SCC 680.

⁵⁰ Rekha Pande, *Divine Servitors: The Temple Women of India* (Routledge 2010); also, see Patricia Cline Cohen, *The "Respectable" Profession: Sex Work Through History* in 18 *Journal of Women's History* 4, 2006.

with constitutional morality when it comes to commercial sex work. A significant breakthrough came with *Budhadev Karmaskar v. State of West Bengal (I)*, where the Supreme Court recognized that a sex worker "is entitled to a life of dignity under Article 21 of the Constitution."⁵¹ Importantly, the Court observed, "Merely because a woman is a prostitute, she does not cease to be a human being," thus firmly affirming the humanity and constitutional entitlements of women in sex work.

In *Gaurav Jain v. Union of India*, the Court, while focusing on the rehabilitation of children of sex workers, underscored the autonomy of adult women choosing sex work as a livelihood.⁵² Although the judgment was couched in protective language, it opened space for recognizing agency within an occupation traditionally viewed through a lens of victimhood.

The approach toward voluntary sex work witnessed a notable evolution in *Budhadev Karmaskar (III) Directions (2022)*, where the Supreme Court explicitly recognized that sex work done voluntarily by consenting adults falls within the protective ambit of Article 21.⁵³ The Court clarified that criminalization should attach only where there is evidence of coercion, trafficking, or exploitation, rather than penalizing the act of sex work per se. This recognition marked a pivotal moment in Indian constitutional jurisprudence by linking sexual autonomy directly with human dignity and freedom of choice.

Complementing this understanding, the Orissa High Court in *Kalandi Charan Lenka v. State of Orissa* directed protection for sex workers from police harassment, reinforcing the notion that their rights are not forfeited due to their occupation.⁵⁴ Similarly, in *State v. Kalyani*, the Supreme Court held that consensual adult sex work is not in itself a criminal offense unless specific anti-trafficking statutes or exploitation-related laws are violated.⁵⁵

Thus, Indian jurisprudence is progressively aligning with a moral framework that recognizes sex workers as rights-bearing individuals. Protecting their sexual autonomy not only affirms their dignity but also furthers the constitutional vision of equality, liberty, and fraternity. However, gaps remain, and broader legislative recognition is still necessary to fully realize the autonomy of women in the commercial sex sector.

V. SEXUAL AUTONOMY OF MINOR GIRLS: NAVIGATING A DELICATE TERRAIN

The question of sexual autonomy for minor girls in India is an area fraught with legal, social,

⁵¹ *Budhadev Karmaskar v. State of West Bengal (I)*, (2011) 10 SCC 283.

⁵² *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

⁵³ *Budhadev Karmaskar (III) Directions*, (2022) SCC OnLine SC 825.

⁵⁴ *Kalandi Charan Lenka v. State of Orissa*, 2017 SCC OnLine Ori 762.

⁵⁵ *State v. Kalyani*, (2004) 3 SCC 83.

and moral complexities. It is akin to "walking on eggshells" — where one must delicately balance the protection of minors with an honest acknowledgement of their evolving capacities for choice and agency. Societal standards continue to perceive minors, especially girls, as symbols of purity to be protected, while ground realities and judicial pronouncements increasingly reveal that adolescent girls do engage in consensual sexual relationships, often asserting agency over their bodies and choices.

This inherent tension has manifested in multiple judicial decisions, particularly after the enactment of the Protection of Children from Sexual Offences (POCSO) Act, 2012. POCSO criminalizes all sexual activity under 18 years of age, irrespective of consent. However, courts have gradually recognized that a blanket application of this standard risks criminalizing consensual romantic relationships among adolescents, creating a conflict between protective law and lived reality.

In *Independent Thought v. Union of India*, the Supreme Court in 2017 took a landmark step by carving out an exception within the general marital rape immunity in the IPC, holding that sexual intercourse with a wife below 18 years amounts to rape, notwithstanding the marital bond.⁵⁶ This judgment acknowledged that marriage cannot be used to legitimize sexual violation of minors, affirming their bodily integrity.

Further, several High Courts have grappled with cases involving consensual sexual relationships between adolescents. In *Sandeep Kumar v. State of Uttarakhand*, the Uttarakhand High Court quashed a POCSO case where the girl, though technically a minor, had willingly eloped and lived with her partner, recognizing the evolving autonomy of adolescents.⁵⁷ Similarly, in *Junaid v. State of Haryana*, the Punjab and Haryana High Court granted relief to a boy in a consensual relationship with a 17-year-old girl, emphasizing that criminal law should not be used to punish youthful romantic experimentation.⁵⁸

The Delhi High Court in *Manju Devi v. State (NCT of Delhi)* also reiterated the need for a nuanced approach when dealing with consensual relationships under POCSO, noting that not every physical relationship involving a minor should automatically be equated with exploitation.⁵⁹ In *Dharampal v. State of Haryana*, the Punjab and Haryana High Court went further, suggesting that consensual adolescent relationships require a differentiated treatment

⁵⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁵⁷ *Sandeep Kumar v. State of Uttarakhand*, 2017 SCC OnLine Utt 907.

⁵⁸ *Junaid v. State of Haryana*, 2019 SCC OnLine P&H 4008.

⁵⁹ *Manju Devi v. State (NCT of Delhi)*, 2019 SCC OnLine Del 6836.

within the criminal justice framework.⁶⁰

Despite these progressive developments, a large number of consensual adolescent relationships continue to be prosecuted under POCSO, leading to stigmatization and psychological trauma for both parties. This points towards a deep-rooted societal discomfort with acknowledging adolescent female sexuality. Laws aimed at protection can thus paradoxically end up punishing young women for exercising nascent forms of agency, as family honour and social reputation often drive complaints.

In sum, the judicial discourse reflects a cautious but growing recognition that sexual autonomy is not an all-or-nothing concept suddenly acquired at 18. Instead, it evolves through adolescence. Navigating this delicate terrain requires a sensitive, differentiated legal response that protects minors from exploitation while respecting their emerging agency — an equilibrium that Indian law and society are still struggling to achieve.

VI. MARITAL RAPE: TRACKING THE JUDICIAL TRAJECTORY AND NEED FOR REFORM

The Indian legal system has long grappled with the question of marital rape, often balancing between the sanctity of marriage and the evolving constitutional ideals of dignity and consent. While marital rape remains largely criminalised for adult women, judicial interpretations over time have increasingly laid the groundwork for its potential recognition.

Marital rape remains one of the gravest blind spots in Indian criminal law. Traditionally, Exception 2 to Section 375 of the Indian Penal Code, 1860 ("IPC") legalized non-consensual intercourse within marriage if the wife was above fifteen years. The Bharatiya Nyaya Sanhita, 2023 ("BNS") revised this threshold to eighteen years (Section 63, Exception 2), but still did not address the issue of consent within marriage.

The judiciary's approach has evolved gradually. In *State of Himachal Pradesh v. Mango Ram*,⁶¹ the Supreme Court emphasized that the true test in rape cases is whether the woman consented voluntarily, not whether physical force was used. This principle, although in a non-marital context, laid a foundation for recognizing consent as central. In *State v. Mr. Ram Gopal*,⁶² the Delhi High Court underscored that cumulative appreciation of evidence must guide decisions in sexual offences — important in the marital context where direct evidence may be scarce.

⁶⁰ Dharampal v. State of Haryana, 2021 SCC OnLine P&H 4297.

⁶¹ State of Himachal Pradesh v. Mango Ram, (2000) 7 SCC 224.

⁶² State v. Mr. Ram Gopal, 2002 SCC OnLine Del 642.

In *Sushil Kumar Sharma v. Union of India*,⁶³ the Court reiterated that fear of misuse of law is no ground to deny protections intended for vulnerable groups, a rationale crucial to rebut arguments against criminalizing marital rape.

In *Independent Thought v. Union of India*,⁶⁴ the Supreme Court read down Exception 2 to Section 375 IPC, holding that intercourse with a minor wife (aged 15–18) constituted rape, thus carving a major exception to the marital immunity, albeit only for minor wives.

In *Joseph Shine v. Union of India*,⁶⁵ the Court struck down Section 497 IPC (adultery) as unconstitutional, observing that the state cannot dictate private sexual behaviour between consenting adults. The emphasis on personal autonomy, sexual agency, and gender equality bolstered arguments against the marital rape exception. In *Navtej Singh Johar v. Union of India*,⁶⁶ the Court decriminalized consensual same-sex relations and highlighted that dignity and sexual autonomy are protected under Article 21. This reaffirmation of consent and individual rights challenges the marital rape exception.

In *X v. State of Kerala*,⁶⁷ the Kerala High Court held that marital rape could be considered a ground for divorce, even though it is not recognized as a criminal offence. The Court powerfully stated that marriage does not entitle a husband to disregard the wife's autonomy over her body.

In the landmark split verdict in *RIT Foundation v. Union of India*,⁶⁸ Justice Rajiv Shakdher struck down the marital rape exception as unconstitutional, finding it violative of Articles 14, 19, and 21. In contrast, Justice C. Hari Shankar upheld the exception, emphasizing the sanctity of marriage. Appeals are pending before the Supreme Court.

However, The High Courts aren't taking progressive steps, in *Umang Singhar v. State of Madhya Pradesh*,⁶⁹ the Madhya Pradesh High Court erroneously implied that in marriage, consent becomes irrelevant, misapplying the principles of sexual autonomy laid down in previous cases. Subsequent High Court decisions continued to reflect confusion. In *XYZ v. State of Madhya Pradesh*,⁷⁰ and *Dilip Pandey & Ors v. State of Chhattisgarh*,⁷¹ courts upheld marital rape immunity, refusing to criminalize non-consensual acts within marriage. In *Sanjeev Gupta v. State of U.P. & Anr*,⁷² the Allahabad High Court acquitted a husband under Section 377 IPC

⁶³ *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281.

⁶⁴ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁶⁵ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

⁶⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁶⁷ *X v. State of Kerala*, 2021 SCC OnLine Ker 3661.

⁶⁸ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1028.

⁶⁹ *Umang Singhar v. State of Madhya Pradesh*, 2022 SCC OnLine MP 1074.

⁷⁰ *XYZ v. State of Madhya Pradesh*, 2023 SCC OnLine MP 4322.

⁷¹ *Dilip Pandey & Ors v. State of Chhattisgarh*, 2023 SCC OnLine Chh 1231.

⁷² *Sanjeev Gupta v. State of U.P. & Anr*, 2023 SCC OnLine All 912.

for marital non-consensual acts, failing to appreciate the centrality of consent in a rights-based framework.

Finally, in *Rajaram v. State of Madhya Pradesh*,⁷³ the Supreme Court reiterated that in sexual offences, the entire factual matrix must be assessed rather than isolated inconsistencies, a standard that strengthens survivors' cases, including in the context of marital rape.

Despite these advances, societal, cultural, and legal reluctance continues to impede full criminalization. Concerns about misuse of law, the sanctity of marriage, and social stigma are frequently invoked to resist reform. Yet, constitutional morality — not societal morality — must guide the law. The path forward lies in affirming that marriage is a partnership of equals, not a platform for coerced sexuality. Recognition of marital rape would not dismantle the institution of marriage; rather, it would strengthen it by rooting it firmly in the principles of consent, respect, and dignity.

VII. CONCLUSION

The concept of sexual autonomy stands as a fundamental pillar of human dignity and bodily integrity, yet its realization remains an ongoing struggle for many women in India. Historically, from the pre-Vedic period to colonial rule, female sexual autonomy was shaped by complex layers of social, religious, and patriarchal forces, often rendering women's bodies as sites of control rather than personal choice. While matrilineal societies offered some semblance of autonomy, they were the exception rather than the rule. The dominant patriarchal structures, reinforced during the colonial period, further curtailed women's ability to exercise agency over their bodies, with legal frameworks that often excluded or discriminated against them.

Post-independence, judicial interpretations have witnessed a complex interplay between the evolving legal recognition of women's rights and the persistence of conservative attitudes within society. From the conservative socio-legal outlook of the mid-20th century, marked by a deeply ingrained patriarchal mindset, to the transformative changes post-economic liberalization in the 1990s, the trajectory of women's sexual autonomy in India has been incremental. However, the landmark judicial shifts since the 2012 Nirbhaya case reflect a broader shift towards recognizing the inviolable nature of bodily autonomy and dignity, even as resistance within social structures persists.

The sexual autonomy of marginalized groups, particularly women engaged in commercial sex work and minor girls, presents distinct challenges. For these women, the intersection of legal

⁷³ *Rajaram v. State of Madhya Pradesh*, (2023) SCC OnLine SC 130.

marginalization and societal stigma exacerbates their vulnerability, limiting their ability to assert their rights to bodily integrity. Despite progressive judicial decisions that have extended the understanding of sexual autonomy, the persistence of the marital rape exception in Indian law represents a critical blind spot in the recognition of women's rights. As the judiciary continues to wrestle with this issue, it is clear that marital rape, as an offence, must be unequivocally recognized, dismantling any legal justifications that rely on marital status to perpetuate sexual violence.

In light of these challenges, the role of law and the judiciary in advancing sexual autonomy cannot be overstated. However, true progress will only be achieved when societal attitudes evolve alongside these legal reforms, ensuring that sexual autonomy is not merely a right codified in law, but a reality experienced by all women.
