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**MARITAL RAPE EXCEPTION IN INDIA: A CRITICAL ANALYSIS OF  
STATUTORY FRAMEWORK, CONSTITUTIONAL VALIDITY AND  
NEED FOR REFORM**- Priyanka Shukla<sup>1</sup>**ABSTRACT**

The paper is a critical analysis of the legal and constitutional stance of the exception marital rape in India in the context of the sexual offence legislation. Although the Indian legal system has greatly developed especially since the Criminal Law (Amendment) Act, 2013, which was meant to incorporate a consent-based approach, the existence of marital rape exception offers a basic contradiction. The article discusses the statutory provisions including Section 375 and Section 376B of the Indian Penal Code and their equivalents in the Bharatiya Nyaya Sanhita. It also analyzes the problem in the context of the constitutional values, such as equality, dignity, and bodily autonomy as expressed in Articles 14 and 21. The paper notes the ineffectiveness of the current framework by using judicial developments, Law Commission reports, and international human rights standards. The paper ends with a call to reform the law to bring Indian law in tandem with the constitutional morality and international human rights standards.

**Key Words:** Marital Rape Exception, Consent-Based Framework, Bodily Autonomy, Constitutional Rights, Gender Justice

**INTRODUCTION**

Indian law towards sexual offences is an indication of progressive change towards the abandonment of colonial moralistic principles of morality to a contemporary rights-oriented approach based on consent, dignity and autonomy. The definition of rape in section 375 of the Indian Penal Code has experienced a remarkable change especially following the Criminal Law (Amendment) Act, 2013, which broadened the definition of sexual offence and

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established a standard related to consent. The marital rape exception still thrives, despite these forward-looking developments, is a critical inconsistency in Indian criminal law. The marital rape exception is based on the archaic common law principles that assume consent is irrevocable in marriage. Such an assumption is a sharp contrast to modern constitutional principles and judicial interpretations that acknowledge bodily autonomy and individual liberty as a core right. Though laws like Section 376B IPC do recognize to some degree the sexual autonomy in the event of separation in marriage, they do not similarly safeguard it in the context of cohabiting marriages, thus drawing an arbitrary line. This paper aims to discuss the legal framework of sexual offence, to discuss the inconsistency in the doctrinaire of the Law of the marital rape exception and to provide an assessment of whether the marital rape exception is constitutional. It discusses, also, the suggestions of several reports of the Law Commission, and of the Justice J.S. Verma Committee, that reform is badly needed due to the changing legal and social standards.

## STATUTORY POSITION

The laws regulating sexual offences in India are a mix of old colonial laws, new legislation, judgments of the Supreme Court and the shift in the values of the constitution. Rape laws have changed a lot in response to the demand of society for justice in the gender equality context, but the marital rape exception is still a deep crevice in Indian criminal law.

The offence of rape was first coded in Section 375 of the Indian Penal Code (IPC).<sup>2</sup> It defined rape and enumerated when sexual intercourse was non-voluntary. The old wording reflected the Victorian morality and patriarchy with more emphasis on protection of chastity than on bodily autonomy.

The Criminal Law (Amendment) Act, 2013 was a wake-up call.<sup>3</sup> Introduced following the Delhi gang rape in 2012, based on the Justice J.S. Verma Committee, it<sup>4</sup> had a modernised definition of rape and enhanced the protection of women.

Although the Act is based on a consent framework, it retains Exception under Section 375 (2) which excludes marital rape from criminal prosecution.<sup>5</sup> Critics have argued that this

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<sup>2</sup> Indian Penal Code 1860, s 375.

<sup>3</sup> Criminal Law (Amendment) Act 2013.

<sup>4</sup> Justice JS Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013).

<sup>5</sup> Indian Penal Code 1860, s 375 Exception 2.

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perpetuates the patriarchal view of marriage and also denies married women equal protection.

When the Bharatiya Nyaya Sanhita (BNS) replaced the IPC, the organisational structure of the statutory framework was reorganised. Section 63 of the BNS now covers rape but still in similar terms retains the marital rape exception. <sup>6</sup>Procedural rules are taken from Bharatiya Nagarik Suraksha Sanhita (BNSS) and evidentiary rules are taken from Bharatiya Sakshya Adhinyam (BSA). <sup>7</sup>

This continuity is evident in that the law has undergone a change in form but not in substance when it comes to the issue of marital rape.

### **SECTION 375 IPC AND THE DEVELOPMENT OF THE RAPE LAW**

Section 375 of IPC is basis for the Rape offence in India. <sup>8</sup>It provides the detailed definition and mentions the situations in which a sexual act becomes criminal. The provision has moved from a morality, to a rights based provision which focuses on consent, bodily autonomy and dignity. Under Section 375, the sexual act is a rape if it is committed in any of the following circumstances: against the will of the woman, without her consent, with her consent by fear, coercion or misrepresentation, when she is unable to understand the act or its consequences, or when she is below eighteen years of age.<sup>9</sup> These conditions indicate the importance of consent and freedom of choice in liability.

#### **Pre-2013 Position: Stunted and Patriarchal Understanding**

Under the previous law, prior to the amendment in 2013, rape was narrowly defined to include penile-vaginal penetration. This was a reflection of colonial thought which preferred chastity over woman's bodily autonomy. It didn't include many types of sexual violence, such as when one person goes into another's mouth, anus, or even finger.

Courts further reinforced this narrow view by requiring evidence of resistance or injury in order to prove lack of consent, which places an unfair burden on survivors. In the case of *State of Punjab v Gurmit Singh*, the Supreme Court recognized the difficulty faced by the

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<sup>6</sup> Bharatiya Nyaya Sanhita, s 63.

<sup>7</sup> Bharatiya Sakshya Adhinyam.

<sup>8</sup> *ibid.*

<sup>9</sup> Indian Penal Code 1860, s 375.

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victims in proving the offence of rape and held the absence of injuries is not an admission to consent.<sup>10</sup> This was one of the forays away from the resistance model.

In the judgment of *Bodhisattwa Gautam vs Subhra Chakraborty*<sup>11</sup>, the Court recognised rape as a violation of Article 21, which means that the focus has shifted from morality to dignity and personal liberty. These judgements opened the way for legislative reform.

#### Post-2013 Reform: Widening of Definition

The 2013 amendment added greatly to Section 375. Influenced by Justice J.S. Verma Committee, it brought the law on rape in line with the constitutional principles of dignity and autonomy<sup>12</sup>.

The new definition therefore now includes:

Penetration of anything or any body part into the vagina, urethra, anus or mouth

- Oral and anal sexual acts

- Digital penetration

Sexual assault (non penile forms of sexual assault)

This wide scope recognises that rape is not confined to traditional intercourse, but covers many acts which are non-consensual.

#### Shift to a Consent Based Framework

One of the biggest changes made in the 2013 amendment is to shift from a resistance-based model to a consent-based model. In the past, the physical resistance has often been used as a form of evidence of lack of consent by the courts. This disregarded psychological coercion and power imbalance.

Explanation 2 to Section 375 now defines consent as an "unequivocal voluntary agreement by communication (through words, gestures or any form of verbal or non-verbal communication)<sup>13</sup>." The definition underlines:

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<sup>10</sup> State of Punjab v Gurmit Singh (1996) 2 SCC 384.

<sup>11</sup> Bodhisattwa Gautam v Subhra Chakraborty (1996) 1 SCC 490.

<sup>12</sup> *ibid.*

<sup>13</sup> Indian Penal Code 1860, s 375 Explanation 2.

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- Active participation: Consent must include a clear affirmative expression of a willingness. Silence or lack of resistance is not consent.
- Free will: Consent has to be freely given, without fear, coercion or undue influence.
- Informed decision: The person needs to know the nature and consequences of the act.

The Supreme Court, in *State of Maharashtra v Madhukar Narayan*, held that even a woman of “easy virtue” is entitled to privacy and bodily integrity, reinforcing the principle that consent is indispensable in all circumstances.<sup>14</sup>

## **SECTION 376B IPC: LIMITED RECOGNITION OF CONSENT**

Section 376B of the Indian Penal Code<sup>15</sup> represents a limited and conditional statutory acknowledgment of sexual autonomy within the institution of marriage. The provision criminalises sexual intercourse by a husband with his wife during separation where such intercourse occurs without her consent. It applies in circumstances where the spouses are living separately, whether pursuant to a decree of judicial separation or otherwise due to factual estrangement.

The punishment prescribed under this section is imprisonment for a term not less than two years, which may extend to seven years, along with a fine<sup>16</sup>. Notably, this punishment is less severe than that prescribed under Section 376 IPC for rape,<sup>17</sup> thereby reflecting a legislative perception that non-consensual intercourse within marriage, even during separation, constitutes a lesser offence. This differentiation itself has been criticised for trivialising the gravity of sexual violence within intimate relationships.

### **Scope and Application of Section 376B**

The applicability of Section 376B is contingent upon two essential elements:

1. Existence of a valid marital relationship between the parties; and

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<sup>14</sup> *State of Maharashtra v Madhukar Narayan* (1991) 1 SCC 57.

<sup>15</sup> Indian Penal Code 1860, s 376B.

<sup>16</sup> *Ibid.*

<sup>17</sup> Indian Penal Code 1860, s 376.

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2. Living separately, either through a judicial decree or factual separation arising from marital discord.<sup>18</sup>

The phrase “living separately” has been interpreted in a broad and pragmatic manner. It includes not only formal separation through court orders but also situations where spouses are not cohabiting due to breakdown of the marital relationship. This interpretation ensures that the protection under the provision is not confined to legally formalised separations but extends to real-life situations where marital relations have effectively ceased.

However, the provision does not extend to cases where the spouses are cohabiting, even if the sexual act is clearly non-consensual. This limitation significantly narrows the scope of protection and excludes a large category of victims who continue to reside with their husbands due to social, economic, or familial constraints.

### **Doctrinal Significance: Partial Recognition of Marital Autonomy**

Section 376B is doctrinally significant because it implicitly dismantles the traditional common law assumption that marriage implies irrevocable consent. By criminalising non-consensual intercourse during separation, the legislature recognises that:

- Consent remains relevant within marriage
- A wife retains sexual autonomy despite the marital bond

This marks a departure from the doctrine articulated by Sir Matthew Hale, which denied the possibility of rape within marriage<sup>19</sup>. The provision acknowledges that the marital relationship does not extinguish a woman’s right to refuse sexual intercourse.

This recognition aligns with broader constitutional principles. In *Suchita Srivastava v Chandigarh Administration*,<sup>20</sup> the Supreme Court affirmed that reproductive and sexual choices are integral to personal liberty under Article 21. Similarly, in *Justice KS Puttaswamy v Union of India*, the Court recognised bodily autonomy and decisional privacy as core aspects of the right to life.<sup>21</sup>

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<sup>18</sup> *ibid*

<sup>19</sup> Matthew Hale, *Historia Placitorum Coronae* (1736).

<sup>20</sup> *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.

<sup>21</sup> *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1.

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These judicial pronouncements reinforce the idea that autonomy and consent are indispensable in all intimate relationships, including marriage.

### **Inherent Contradiction within the Statutory Framework**

Despite its progressive recognition of consent, Section 376B exposes a fundamental inconsistency within Indian rape law. The provision criminalises non-consensual intercourse only in situations of separation while continuing to exclude similar acts within a subsisting and cohabiting marriage.

This creates a clear paradox:

- Non-consensual intercourse during separation → criminal offence
- Non-consensual intercourse within marriage → not an offence

The distinction between separation and cohabitation lacks a rational basis when examined in light of the underlying objective of rape law, which is to protect bodily integrity and sexual autonomy. The harm caused by forced sexual intercourse does not diminish merely because the spouses are living together.

From a constitutional standpoint, this inconsistency raises serious concerns under Article 14. In *EP Royappa v. State of Tamil Nadu*<sup>22</sup>, the Supreme Court held that arbitrariness is antithetical to equality. The differential treatment of similarly situated individuals married women subjected to sexual violence appears manifestly arbitrary and fails the test of reasonable classification.

### **Graded Harm and Legislative Perception**

Another important aspect of Section 376B is the graded approach to punishment. The lesser punishment prescribed under this section suggests that the legislature perceives marital sexual violence as less severe than rape outside marriage.

This approach is problematic for several reasons:

- It undermines the principle that rape is a violation of bodily integrity irrespective of the relationship
- It perpetuates the notion that marriage mitigates the seriousness of sexual violence

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<sup>22</sup> *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

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- It fails to recognise the psychological and physical harm caused by intimate partner sexual abuse

Scholars argue that such differentiation reflects a patriarchal bias embedded within the law, where the sanctity of marriage is prioritised over the rights of women.

### **Judicial and Scholarly Criticism**

The limited recognition of consent under Section 376B has been subject to extensive criticism.

In *Independent Thought v Union of India*<sup>23</sup>, although dealing specifically with minor wives, the Supreme Court emphasised that marriage cannot be used as a licence for sexual exploitation. This reasoning challenges the broader logic of marital rape immunity.

Scholars have argued that Section 376B is inherently self-contradictory. If the law acknowledges that a wife can refuse consent during separation, there is no principled justification for denying the same right within a subsisting marriage.<sup>24</sup>

This selective recognition of consent suggests that the law continues to be influenced by traditional notions of marriage, where cohabitation is equated with implied consent and sexual access is treated as a marital entitlement.

### **Comparative Perspective**

In many jurisdictions, including the United Kingdom, Canada, Australia, and South Africa, marital rape has been fully criminalised. Courts in these jurisdictions have consistently rejected the doctrine of implied consent and affirmed that marriage does not extinguish sexual autonomy.

For instance, the landmark decision in *R v R* (UK) abolished the marital rape exemption, recognising that a wife retains the right to refuse consent at all times.<sup>25</sup>

In contrast, the Indian legal position, as reflected in Section 376B and Exception 2 to Section 375 IPC, continues to draw an artificial distinction based on marital status and living arrangements.

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<sup>23</sup> *Independent Thought v Union of India* (2017) 10 SCC 800.

<sup>24</sup> Vijay P Singh, 'Judicial Approaches to the Criminalisation of Marital Rape' (2021).

<sup>25</sup> *R v R* [1991] UKHL 12

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Implications under the New Criminal Codes

The enactment of the Bharatiya Nyaya Sanhita (BNS) <sup>26</sup>retains provisions analogous to Section 376B IPC, thereby continuing the same limited approach toward marital sexual offences.

While the new criminal codes modernise procedural and evidentiary aspects, they fail to address the substantive inconsistency relating to marital rape. The continued retention of this framework indicates legislative reluctance to fully recognise marital rape as a criminal offence.

This continuity suggests that the law remains influenced by:

- Social perceptions of marriage as a private institution
- Concerns about misuse of criminal law
- Resistance to redefining marital relationships in terms of equality and autonomy

## DOCTRINAL SIGNIFICANCE OF THE CONSENT STANDARD

The introduction of a consent-based framework in Indian rape law marks a fundamental doctrinal shift from viewing rape as a moral or property-based offence to recognising it as a violation of personal autonomy and dignity. This transformation aligns Indian criminal law with contemporary global human rights standards, where the central inquiry is not the character of the victim or the nature of resistance, but the presence or absence of voluntary and informed consent.

The emphasis on consent reflects a broader constitutional evolution. In *Suchita Srivastava v Chandigarh Administration*, the Supreme Court held that a woman's right to make reproductive and sexual choices is an integral component of personal liberty under Article 21<sup>27</sup>. Similarly, in *Justice KS Puttaswamy v Union of India*, the Court recognised the right to privacy as a fundamental right encompassing bodily autonomy and decisional independence in intimate matters.<sup>28</sup>

These judgments collectively reinforce the principle that consent is indispensable in all sexual relationships, irrespective of the identity or relationship between the parties. They

<sup>26</sup> Bharatiya Nyaya Sanhita.

<sup>27</sup> *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1.

<sup>28</sup> *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1

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establish that sexual autonomy is not contingent upon marital status but is a universal constitutional guarantee.

### **Contradiction Created by Exception 2**

Despite these progressive developments, the retention of Exception 2 to Section 375 IPC creates a fundamental contradiction within the statutory framework<sup>29</sup>. While the law mandates consent as the cornerstone of all sexual interactions, it simultaneously deprives married women of the right to withdraw consent within marriage.

This inconsistency undermines the coherence of the consent-based model. If lack of consent constitutes rape, then any non-consensual sexual act must logically be treated as unlawful, regardless of whether the parties are married. However, the marital rape exception operates on the presumption of implied and irrevocable consent within marriage.

Consequently, the law creates a dual standard:

- Consent is required outside marriage
- Consent is presumed within marriage

This dichotomy has been widely criticised as being arbitrary, unconstitutional, and incompatible with modern legal principles. It effectively renders the concept of consent meaningless in the context of marriage and perpetuates the outdated notion that a wife's sexual autonomy is subordinate to her husband.

### **Violation of Article 14 Equality before Law**

The marital rape exception creates an artificial and discriminatory classification between married and unmarried women. This classification fails to satisfy the two-fold test under Article 14 of the Constitution, which requires:

1. An intelligible differentia, and
2. A rational nexus with the objective sought to be achieved.

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<sup>29</sup> Indian Penal Code 1860, s 375 Exception 2.

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The primary objective of rape law is to protect bodily integrity and sexual autonomy. Marital status bears no rational connection to this objective. Therefore, excluding married women from protection is inherently arbitrary.

In *EP Royappa v State of Tamil Nadu*,<sup>30</sup> the Supreme Court held that arbitrariness is antithetical to equality. Similarly, in *State of West Bengal v Anwar Ali Sarkar*<sup>31</sup>, the Court emphasised that classification must not be arbitrary or discriminatory.

Applying these principles, the marital rape exception appears constitutionally untenable as it denies equal protection of law to a specific class of women solely on the basis of marital status.

### **Violation of Article 21 – Right to Life, Dignity, and Autonomy**

Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include:

- Bodily integrity
- Sexual autonomy
- Privacy
- Human dignity

In *Suchita Srivastava v Chandigarh Administration*,<sup>32</sup> the Court recognised that a woman's reproductive choices form an essential aspect of personal liberty. Furthermore, in *Justice KS Puttaswamy v Union of India*, the Court affirmed that privacy includes decisional autonomy in matters concerning the body and intimate relationships.

The marital rape exception directly violates these principles by denying married women the right to refuse sexual intercourse. It effectively legitimises forced sexual relations within marriage, thereby undermining dignity, autonomy, and bodily integrity.

By treating marriage as a justification for non-consensual sex, the law perpetuates a framework where the constitutional rights of women are subordinated to patriarchal notions of marital obligation.

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<sup>30</sup> *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

<sup>31</sup> *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

<sup>32</sup> *ibid*

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## Conflict with International Human Rights Obligations

India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>33</sup> which recognises gender-based violence as a form of discrimination against women.

CEDAW General Recommendation No. 19<sup>34</sup> explicitly identifies marital rape as a form of violence that states are obligated to prevent, investigate, and punish. The continued existence of the marital rape exception places India in conflict with its international obligations.

Global legal trends demonstrate a clear shift toward criminalisation of marital rape. Most jurisdictions have rejected the notion that marriage implies consent and have recognised that sexual autonomy persists within marital relationships.

## Feminist and Sociological Critique

Feminist legal scholars argue that the marital rape exception is rooted in deeply entrenched patriarchal norms<sup>35</sup>. It is based on the assumptions that:

- A wife's body is under the control of her husband
- Marriage implies permanent or irrevocable consent
- Sexual access is a marital entitlement rather than a consensual act

These assumptions reinforce gender inequality and perpetuate structural violence against women.

From a sociological perspective, the exception contributes to the normalisation of coercive sexual relations within marriage. It obscures the reality of marital rape and discourages reporting, as the legal system itself fails to recognise the harm. Women often face social stigma, economic dependence, and familial pressure, further exacerbating underreporting.

## Constitutional Morality vs Social Morality

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<sup>33</sup> Convention on the Elimination of All Forms of Discrimination Against Women

<sup>34</sup> CEDAW Committee, General Recommendation No 19 (1992)

<sup>35</sup> Vijay P Singh, 'Judicial Approaches to the Criminalisation of Marital Rape' (2021).

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The continued existence of Exception 2 reflects an ongoing conflict between constitutional morality and social morality.

In *Navtej Singh Johar v Union of India*,<sup>36</sup> the Supreme Court emphasised that constitutional morality must prevail over social norms rooted in prejudice and tradition. Similarly, in *Joseph Shine v Union of India*, the Court rejected the notion that marriage confers proprietary rights over a spouse.<sup>37</sup>

These judgments underscore that personal relationships cannot be used to justify the violation of fundamental rights. They weaken the philosophical foundation of the marital rape exception and support its constitutional invalidation.

## LAW COMMISSION AND COMMITTEE REPORTS

The issue of criminalising marital rape in India has been the subject of sustained examination by expert bodies, particularly the Law Commission of India and the Justice J.S. Verma Committee.<sup>38</sup> These bodies have played a pivotal role in shaping the legislative discourse on sexual offences by critically evaluating existing legal frameworks and proposing reforms. Their reports reflect the evolving tension between deeply entrenched socio-cultural notions of marriage and the constitutional commitment to equality, dignity, and personal autonomy.

A chronological analysis of these reports reveals a gradual but significant shift in legal thinking<sup>39</sup> from a marriage-centric approach, which prioritised the preservation of the institution of marriage, to a rights-based approach, which foregrounds the autonomy and dignity of women within marital relationships.

### 42nd Law Commission Report

The 42nd Law Commission Report (1971<sup>40</sup>) was one of the earliest comprehensive reviews of criminal law in India. While it addressed several aspects of rape law, its approach toward marital rape was notably conservative and reflective of the socio-cultural context of the time.

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<sup>36</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC

<sup>37</sup> *Joseph Shine v Union of India* (2018) 2 SCC 189.

<sup>38</sup> Law Commission of India, 42nd Report on the Indian Penal Code (1971)

<sup>39</sup> Vijay P Singh, 'Judicial Approaches to the Criminalisation of Marital Rape' (2021).

<sup>40</sup> Law Commission of India, 42nd Report on the Indian Penal Code (1971).

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The Commission recommended that non-consensual sexual intercourse by a husband with his wife should be criminalised only in situations where the spouses are living separately under a decree of judicial separation or otherwise. This recommendation ultimately led to the insertion of Section 376B IPC<sup>41</sup>, which provides limited protection to women in cases of separation.

The rationale provided by the Commission was grounded in three key considerations:

- Marriage was regarded as a special and sacrosanct social institution
- Criminal law was seen as an inappropriate tool for regulating intimate marital relations
- The “private sphere” of marriage was considered beyond the scope of state intervention<sup>42</sup>

This reasoning reflects a broader legal philosophy prevalent at the time, which treated the family as a domain insulated from public law scrutiny. The Commission appeared concerned that recognising marital rape as an offence could undermine the stability of the family unit.

However, from a contemporary constitutional perspective, this approach is deeply problematic. By restricting criminal liability to cases of separation, the Commission implicitly endorsed the notion that consent within marriage is either presumed or legally irrelevant. This effectively denies married women recognition as autonomous individuals capable of exercising sexual agency.

Furthermore, the Report failed to consider the structural inequalities inherent in marriage, including economic dependence, social pressure, and lack of access to justice, which often prevent women from leaving abusive relationships. As a result, the recommendation has been criticised for reinforcing patriarchal norms rather than addressing the realities of marital violence.<sup>43</sup>

## 172nd Law Commission Report

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<sup>41</sup> Indian Penal Code 1860, s 376B.

<sup>42</sup>Rebecca Ryan, ‘The Sex Right: A Legal History of the Marital Rape Exemption’.

<sup>43</sup>Tarafder and Ghosh, ‘Constitutional Analysis of Marital Rape Exception’

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The 172nd Law Commission Report (2000)<sup>44</sup> marked a more progressive engagement with rape law, particularly in terms of expanding definitions and improving procedural safeguards. However, despite its broader reformist orientation, the Commission declined to recommend the removal of the marital rape exception.

The Commission explicitly examined the issue but concluded that criminalising marital rape could lead to:

- Excessive interference in the institution of marriage
- Potential misuse of legal provisions
- Disruption of family structures and social order

The emphasis on preserving marital harmony indicates that the Commission continued to prioritise institutional stability over individual rights. It also reflects a lingering reluctance to extend constitutional principles into the private sphere of family relations.

This position has been widely criticised by scholars and feminist legal theorists. Critics argue that the Commission's reliance on the possibility of misuse is misplaced and inconsistent with constitutional jurisprudence. The Supreme Court, in *Joseph Shine v Union of India*<sup>45</sup>, categorically held that the mere possibility of misuse cannot be a valid ground to deny the enforcement of fundamental rights.

Moreover, the Commission's concern about the breakdown of marriage overlooks the fact that criminal law already intervenes in marital relationships in cases of cruelty, dowry harassment, and domestic violence. The selective invocation of the "private sphere" argument in the context of sexual violence reveals an inconsistency in legal reasoning.<sup>46</sup>

Another significant limitation of the 172nd Report is its failure to engage with evolving constitutional jurisprudence on dignity, autonomy, and equality. By treating marriage as an exception to general criminal law principles, the Report effectively insulated marital relationships from constitutional scrutiny.

### **Justice J.S. Verma Committee Report (2013)**

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<sup>44</sup>Law Commission of India, *172nd Report on Review of Rape Laws* (2000).

<sup>45</sup>*Joseph Shine v Union of India* (2018) 2 SCC 189.

<sup>46</sup>Indumathi and Benjamin, 'Legal Critique of Marital Rape in India'.

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The Justice J.S. Verma Committee Report (2013)<sup>47</sup> represents a watershed moment in the legal discourse on marital rape in India. Constituted in the aftermath of the 2012 Delhi gang rape, the Committee undertook a comprehensive review of criminal law relating to sexual offences and adopted a rights-based approach firmly grounded in constitutional principles.

Departing from earlier reports, the Committee unequivocally recommended the removal of the marital rape exception. It emphasised that:

- Marriage cannot be a defence to sexual violence<sup>48</sup>
- Consent must remain central irrespective of the relationship between the parties
- The law must recognise marital rape as a criminal offence

The Committee explicitly rejected traditional justifications for the exception, including:

- The sanctity of marriage
- The private nature of marital relationships
- Concerns regarding misuse of legal provisions

It characterised these arguments as patriarchal and incompatible with constitutional values of equality, dignity, and personal liberty.

The Committee further observed that:

- The nature of the offence does not change based on the relationship between the victim and the perpetrator
- Sexual violence within marriage is equally harmful, if not more so, due to the element of trust and proximity
- The State has a positive obligation to protect individuals from violence, even within the private sphere

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<sup>47</sup>Justice JS Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013).

<sup>48</sup>*ibid.*

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This approach reflects a significant doctrinal shift. It challenges the traditional public–private divide and asserts that constitutional protections extend into all spheres of life, including the family.

### **Alignment with International Human Rights Standards**

The recommendations of the Verma Committee are consistent with international human rights obligations, particularly under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>49</sup>

CEDAW General Recommendation No.19<sup>50</sup> recognises marital rape as a form of gender-based violence and obligates states to:

- Prevent such violence
- Investigate and prosecute offenders
- Provide remedies to victims

The Committee’s emphasis on state accountability and individual rights reflects a convergence between domestic constitutional law and international human rights norms.

### **Comparative Evaluation and Critical Analysis**

A comparative evaluation of the three reports reveals a clear trajectory of legal development<sup>51</sup>:

- The 42nd Report reflects a traditional, institution-centric approach
- The 172nd Report adopts a cautious reformist stance but retains conservative assumptions
- The Verma Committee Report embraces a constitutional and rights-based framework

This progression illustrates a gradual erosion of the idea that marriage is a domain immune from legal regulation.

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<sup>49</sup>“Convention on the Elimination of All Forms of Discrimination Against Women”

<sup>50</sup> CEDAW Committee, General Recommendation No 19 (1992).

<sup>51</sup> Pallavi Arora, ‘Proposals to Reform the Law Pertaining to Sexual Offences in India’

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However, despite the clarity and authority of the Verma Committee's recommendations, legislative reform has not followed. The continued retention of the marital rape exception demonstrates a disconnect between expert recommendations and political will.<sup>52</sup>

## CONCLUSION

As the discussion of the statutory framework of the sexual offences in India demonstrates, there is a strong clash between the progressive legal developments and the very existence of the marital rape exception. Although the law has adopted a consent-based approach and broadened the definition of rape to capture the current meaning of bodily autonomy and dignity, the omission of marital rape betrays this very premise. The legal provisions like the Section 376B IPC indicate partial acceptance of sexual autonomy in marriage but at the same time reveals the inherent contradiction of the laws. The difference between separated and cohabiting spouses is devoid of any logical grounding and is incompatible with the very purpose of rape law, namely, protection of body integrity. Constitutionally, the marital rape exception is very concerning as it denies married women equal protection and right to autonomy under Articles 14 and 21. Also, the unwillingness to criminalise marital rape in full, even in the light of obvious recommendations by the Justice J.S. Verma Committee and the changing international standards is the belief in the old social norms. After all, the continued existence of the marital rape exception is, however, not only a lapse in legislation but a more profound cultural problem based on the patriarchal beliefs. This would not only need statutory change but a more significant investment in constitutional ideals, such that the law acknowledges and safeguards the dignity and autonomy of everyone, regardless of marital status.

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<sup>52</sup> Gupta, 'Marital Rape under Bharatiya Nyaya Sanhita'.

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