



Research Topic -Marriage, Consent and Crime: Struggle to Recognize Marital Rape in Indian Law

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Abstract: India is amongst few countries that does not consider marital rape as crime and continues to exempt husbands from being charges for rape. This article will examine the reason for exemption of marital rape from being considered crime in Bhartiya Nyaya Sanhita. The exemption stems from the belief in Indian culture that sexual consent is implied and irrefutable upon marriage. This depicts the patriarchal nature of the society which developed upon the notion that wife's body is a property of her husband thus undermining her liberty. The discussion on marital rape in India basically surrounded by intersection of marriage, consent and crime. Historically speaking the marriage in India is sacred concept with the deep-rooted beliefs that women should always fulfil the sexual needs of her partner. These notions clearly violate fundamental rights of women and stand in contradiction with constitutional values of gender equality, dignity and bodily integrity. The key issue relating marital rape is of consent. The exemption that consent is given automatically once marriage is solemnized which disregards the essential elements of consent which is consent should be free from any pressure and is dynamic and ongoing process which can be revoked at any time. The absence of legalization of marital rape deprives women of right to bodily autonomy and personal security which are enshrined in constitution under Article 14 (equality before law), Article 19 (freedom of expression) and article 21 (right to life and personal liberty). This paper will also compare laws relating to marital rapes in other countries with Indian law.

Key words- Marital rape, Implied consent, criminalised, Constitution of India, Indian Penal Code, human dignity.

I. Introduction

Marital rape is a debated issue, in India where nonconsensual intercourse by a husband with his wife is not considered a crime under law despite acknowledgment of it as a violation of human rights according to Section 375 of the Indian Penal Code (IPC) which excludes forced intercourse between spouses except when the wife is, below 18 years old. This legal loophole originates, from gender norms that regard marriage as an agreement, to sexual intimacy and restrict women's independence in controlling their bodies. The absence of acknowledgment of rape has ignited a significant discussion, among advocates and legal experts as well, as feminist organizations who contend that it sustains gender disparities and infringes upon the constitutional entitlement to respect human dignity and preserve personal freedom and bodily autonomy.

The failure of Parliament to even recognize marital rape as a crime has been widely debated by activists, legal scholars and women's organizations who say it perpetuates gender inequality and infringes on the constitutional rights to human dignity, personal liberty and bodily integrity. Supporters of the bill argue that Indian society has evolved from a generation ago, when dowry norms were far more prevalent in certain communities. Despite this, attempts to make marital rape a crime has been opposed by conservative groups who argue that it would undermine the institution of marriage. The discussion around marital rape in India represents a clash between public opinion, steeped in tradition, and modern legal frameworks of the age-old feminist rights.

II. Legal status marital rape in India

Marital rape has been a highly controversial issue of status by law in India, much debated mainly because it has been decriminalized under the Indian Penal Code. This is because marital rape, being not any criminal offense with serious legal and social consequences, manifests a value of patriarchy deeply entrenched in society—an area in which the legal system is yet to respond, especially vis-à-vis the autonomy and sexual agency of women within the marriage setting. This has loopholes in criminal jurisprudence with respect to marital rape and hence has a telling effect on the protection of the women's right in India, as this furthers a system where consent for women within a marriage is often seen as secondary or, more frequently, even as if it does not exist. In Section 375 there is a provision that addresses consensual sexual intercourse where the individual did not consent. A man having relations, with his wife who is older, than fifteen years old does not constitute rape. Therefore, it excludes nonconsensual sexual acts from being classified as rape. A husband engaging in relations, with his wife who is, above fifteen years old thereby enables a husband to exercise his right without requiring consent¹. In other words, what it basically provides is that once a woman is married and above fifteen years of age, her husband cannot be prosecuted for non-consensual sexual intercourse, no matter what the wish of the wife is. This creates a legal loophole that denies women their basic human right to bodily autonomy and renders them vulnerable to sexual violence in the very space that is supposed to uphold safety and mutual respect: within their marriages. The marital rape exemption, therefore, starkly contrasts with other provisions of law aimed at protecting a woman from sexual assault outside the ambit of the marital relationship, which exposes huge chasms in the legal protection accorded to married women. In the case of *Independent Thought v. Union of India* 2017², the Supreme Court of India made a partial advancement by increasing the age of consent within marriage from fifteen to eighteen years, thus bringing it on par with the legal age of consent outside marriage. This landmark judgment, progressive in addressing child marriage and statutory rape, left the broader issue of criminalizing marital rape untouched. The Supreme Court did not question the exemption of marital rape and did not even give a guideline toward its possible criminalization, leaving millions of adult women beyond the actual protection provided by the law in respect to rape committed by their husbands. What speaks volumes in this judgment is the refusal to squarely face up to the issue of marital rape, viewed in terms of continued judicial diffidence in breaking from the traditional concepts of marriage as an inviolable union where the concept of implied consent supersedes individual autonomy. The Delhi High Court also dealt with the question of marital rape, and in 2022 it came out with a divided opinion—a something that has spearheaded and marked the line between the Indian judiciary and society on the said issue. There were two judges of divergent opinion in the instant case. The first one was in favor of criminalizing marital rape on the basis that marital rape violates the basic rights of equality, dignity, and personal liberty of a woman enshrined under the Indian Constitution. This view presumes an evolving understanding of the fact that marriage cannot be an exception to the protection provided worldwide against bodily autonomy in sexual encounters. On the contrary, the dissenting judge held the marital exemption based on the reasoning that the institution of marriage itself involves an ongoing consent to sexual relations. Such reasoning borders more toward traditional and patriarchal views of marriage at the expense of the burgeoning understanding of marriage as a union of equals in which respect for mutual respect and consent is indispensable. The division in verdict by the Delhi High Court reflects deep-seated ideational and legal barriers on the route to criminalize marital rape and an entrenched cultural opposition to looking at marital rape as violation of women's rights. Excepting the IPC, the PWDVA of 2005 brings some reprieve for women who are victims of sexual violence within marriage, but even this has limited scope. It recognizes sexual abuse as a form of domestic violence that can, at least in theory, include acts within marriage that are non-consensual. However, a remedy allowed under this Act is mostly of a civil nature, such as protection orders, monetary relief, and residence orders, and for that reason there is no criminal sanction against the perpetrator. In other words, though this Act recognizes the reality of sexual violence within a marriage, it does not go that way to criminally bring the husbands to account for marital rape. Not only is there a dearth of criminal provisions in the PWDVA and a marital exemption available under the IPC, but this places women in a position of vulnerability where they seek civil remedies but are denied rights to approach criminal justice in case of acts of sexual violence by their spouse. Here, the differential civil and criminal remedies raise the larger question of how Indian jurisprudence views violence in marriage: at all costs, the institution of marriage should be saved, and not necessarily the rights of a person within the marriage. The same also resonates in the decriminalization of marital rape: greater social unwillingness to see marriage as a site where violence could happen. Marriage is an inviolable institution and a sacrament in the cultural context of Indian society, and it has cast a spell over the letter of the law, even much

¹ KI Vibhuti, "Rape within Marriage" in India: Revised", Indian Bar Review, 2000, Vol 27, P. 167

² AIR 2017 SUPREME COURT 4904

public attitude toward marital rape. Anybody who raises questions of/against or disturbs the sanctity of the marital bond is condemned to serious social stigma. Women reporting sexual violence within a marriage often face social stigma, non-recognition, or even legal opposition because it is believed that sexual access to the woman's body is the due of the husband according to the marriage contract. This, arguably, has a chilling effect in that the victims of marital rape are engendered to such reluctance or fear against approaching the authorities considering not only societal repercussions but also a lack of legal intervention. The failure to criminalize marital rape in India runs further into conflict with international human rights standards. Calls for the criminalization of marital rape are located within the wider framework of addressing gender-based violence and have also been raised by various international human rights bodies, notably the United Nations Committee on the Elimination of Discrimination Against Women. Through ratification of CEDAW and other human rights conventions, India is therefore under obligation internationally to protect women from all forms of violence, including that of sexual violence within marriage. It is thus a serious erosion of the country's posture toward international human rights norms. Further, the predominant condition of law in India, due to the decriminalized provision on rape and other constraints in seeking remedies under the PWDVA, does not bode well for protecting women against marital sexual violence. This exception reflects the archaic and patriarchal interpretations of marriage where the wife's consent is irrelevant or, worse still, assumed to be implicit by virtue of her being married. Judicial pronouncements-in the form of the Delhi High Court majority judgment or the ruling in Independent Thought-are testimony to the fact that in the realm of jurisprudence this remains one of the most hotly debated and therefore unresolved issues. As much as civil remedies for domestic violence provide some respite, they fall miles apart from addressing the crime of marital rape. Their non-criminalization into law maintains a culture of impunity for husbands while leaving open the rape of the women within their marriages. This would require a change in the law and an alteration of societal values regarding marriage and consent; this issue, therefore, calls for an affirmative answer with respect for basic women's rights in India.

III. Societal and cultural perspective

This raises a viewpoint on the occurrence of marital rape being a social and cultural belief in India, rooted in tradition and patriarchy, which places the sanctity of marriage and keeping family structure above all—above individual rights and autonomy; most importantly, that of women. These deep-rooted cultural beliefs turn the acknowledgment and addressing of marital rape as a criminal act into a Herculean task. Marital rape is viewed as an issue that can dismantle or at least shake the foundation of traditional society. One of the central arguments against criminalizing marital rape emanates from the belief that such legislation would disrupt the established family structure and social order, seen by many as the backbone of Indian society. Marriage is not conceptualized here only as a relationship but is used as an institution that upholds big social and cultural values. For instance, there is a growing sentiment that has been generated among the more conservative sections by the threat of legal interventions that stir instability within families. In fact, this is the patriarchal view that the bond of marriage overrides sanctity of individual rights, especially those of females. It was and has often remained a woman's agency and rightful claim to integrity of her body given up on the altar of maintaining social harmony and unity. This leads to a culture where domestic matters, including marital rape, are considered primarily as private concerns that do not deserve redress by external judicial mechanisms. To justify that marital rape does not fall under criminal law, the concept of cultural relativism is applied. Adherents of this attitude commonly cite the alleged categorical difference of Indian societal attitudes toward marriage and sexual relations from those in the Western Hemisphere. Therefore, it would be inappropriate, at least culturally insensitive, to apply against marital rape in India the legal frameworks from the West. This argument, however, fails to appreciate that human rights, inclusive of the right to integrity of a person and protection from violence, do transcend cultural boundaries. It also does not consider that culture cannot justify the violation of fundamental rights, much less the right to live free from violence and force in any context in which it could be made. Cultural relativism here helps only to perpetuate the concept that the rights of a woman in marriage are those which may be compromised based on culture and practice rather than being inherent and inalienable. It is perhaps one of the intrinsic elements of the Indian societal perception regarding marital rape-entrenched beliefs that, through marriage itself, consent for sexual activity is somehow implied. This seems underlined by the old notion of conjugal rights, assuming that by getting married, a woman has given her perpetual and irrevocable consent to her husband. It follows, therefore, that the wife's body would be considered her husband's property, and any possible questions of refusal of sexual advances against the right to one would promptly be declined³. This rather conservative and salacious belief system annihilates the

³ Theresa Fuss, Criminalizing Marital Rape: A Comparison of Judicial and Legislative Approaches, 39 Vanderbilt Law Review 481(2021), pg.483 available at <https://scholarship.law.vanderbilt.edu/vjtl/vol39/iss2/5>

cornerstone that underlines consent in any sexual act: it must be voluntary, it must be informed, it must be ongoing, and it applies both within and outside marriage. The process of consent is dynamic and always to be done and handled respectfully without considerations of relations. In furthering its argument, it goes on to argue that implied consent in the Indian marital relationship was a direct denial of control of her body, thus maintained an inequality in the equilibrium of power to the woman in the marital matters.

The power imbalance, however, only helps to further entrench the patriarchal structures; but it also places women in a subordination from which they can be coerced into sexual intercourse or obliged to endure sexual aggression without any legal covering. Alongside this implied consent thesis that has its basis in the culture, social responses towards spousal rape victims reflect general blame and stigmatization. Violence against women, cases of marital rape, are a tight corner in which she has no other way but to keep quiet lest her coming out would shame her family, or the marital bond, considered sacred and never to be violated. In such violence, the blame always appears to be shifted onto the victim through questions against her conduct, behavior, or failure to perform her marital obligations. The structures of a blame-the-victim culture not only discourage acting on the part of the survivors, but they also reinforce the very power structures that enable marital rape. In many cases, this is compounded by social ostracism and economic reliance on husbands or in-laws that further prohibits them from leaving abusive marriages or reporting the violence being perpetrated against them. It increases feelings of isolation and helplessness, the latter because the lack of substantial support systems for survivors of marital rape only heightens this. Indeed, with no appropriate legal, psychological, and economic support, the options become quite limited for many women. Also, silencing through violence is a very valid option. The police and judicial responses aggravate it further. Police usually minimize the gravity of abuse and rape of a woman within a marriage or make marital rape a private matter that one should sort out at home. Further trivializing of sexual violence as being part of a marriage comes when broader social attitudes lean in favor of reconciliation over justice, even in those cases where some serious abuse has occurred. Not only this, but the judiciary has also shown inconsistency in the approach towards marital rape, as was evident from several courts which gave verdicts as split orders over it. While some of the judges observed the violation of rights, which women were facing due to no criminalization in marital rape, others said, "A marriage means consent and criminalizing it will break up the social order.". Such arbitrariness in the rule of law only sends the most confusing messages to survivors and further cements the reality that justice for victims of marital rape is hardly relevant in such legal considerations. Apart from this lack of protection through law, the stigma that comes with such acts of rape makes it very difficult for victims of marital rape to seek help or lodge complaints with the judiciary. Those few who do come forward face being stuck in a system more interested in the institution of marriage than justice for the individual victim of sexual violence. In conclusion, what societal and cultural insights into marital rape in India boil down to are making sure that traditional values and stability concerning the family unit take precedence over basic rights for women and self-determination. Such rationale is inherently tied to patriarchal values in which not only women's rights but also sanctity in marriage is sacrosanct, placing the wife beneath her husband.

The implied consent in marriage coupled with the social stigma that often surrounds the victim of marital rape combines to create a social environment where sexual violence within marriage is invariably dismissed or even justified. Without change in public attitudes, alongside legal reformation, the abuse will continue; tens of thousands of women will experience continuous sexual violence with little or no protection against the possibility of justice. At the same time, although criminalized, the necessity of this cultural shift in the recognition of rape within marriage should be furthered with one that tends to respect the woman's autonomy, dignity, and right to live free from violence, independent of her marital status.

IV. International perspective

In contrast, international opinion much varies in legal recognitions and societal attitudes regarding marital rape, as against India, where decriminalization is still continuously kept. Indeed, it was the growing trend internationally to criminalize marital rape, at least enabling prosecution for the crime in over 104 countries, with 32 nations having specific laws targeting it. What the countries have realized is that in marital rape, a fundamental human right is violated and they have repudiated the ancient principle that marriage is an irrevocable license for conjugal intercourse. This is still the position as India retains this exception to Section 375 of the Indian Penal Code, defining rape but excluding marital relations from the purview of such definition. This thus means that under the same legal framework, consent in marriage is deemed implied and perpetual. Many countries in Europe and North America, and even those in parts of Asia, such as Turkey and Indonesia,

have criminalized marital rape since the late 20th and early 21st century, and India has not fallen in step yet, thus creating a loophole as big as anything in protection for married women under the law. Much of the drive toward criminalization of marital rape has come from international movements on human rights and advocacy on behalf of women's rights. The global pandemic of HIV/AIDS—particularly in developing areas—has also framed marital rape as a public health issue wherein women are often forced into sexual relations in a marriage where negotiation of safe practices is not possible. This has increased pressure on governments to see marital rape as a violation not only of human rights but also from a public health perspective⁴. Many international human rights mechanisms have stated—which most UN campaigns articulate—that violence against women, such as marital rape, is a denial of basic human rights notwithstanding whatever endorsement through cultural or social norms. These global changes run in direct contrast with the legal framework of India. However, Indian law sanctions marital rape if a wife is above 18 years of age, as an end to the archaic, patriarchal assumption that marriage is consent to regular and constant sex⁵.

This juristic stand likens a woman to being a wife and not an independent entity who shall be entitled with certain rights in her independent capacity, sans her marital status or role intervening. While the Indian Supreme Court has taken up relevant issues, as in the case of the age of consent for marriage, the court has so far stayed its hand where marital rape is concerned. The Justice Verma Committee, constituted after the 2012 Delhi gang-rape case, recommended that marital rape be criminalized⁶. Till date, these guidelines have not been translated into laws. They show the gap between judicial effort and advocacy on one hand, and legislation on the other. The social attitudes of India make the matter even worse: Marriage as an institution is sacrosanct and cannot be violated, which implies that any form of legal interference would necessarily be found as an attack upon family values and social order. Most of the lawmakers and sections in the Indian society consider such a step as one that disturbs the archetype of a family and breaks up family stability.

More so, the sanctity of marriage is held more strongly than individual rights in most of the cultural arguments in large parts of the world. In fact, there is, however, a growing awareness on the international plane that marriage should not be an exception to the principle of consent and that the rights of women over their body should be promoted in every sort of relationship, including the marital one. Indeed, changing social attitudes have been a great force behind legal reform in many countries where marital rape has already been criminalized, with appreciation of the role of women as individuals rather than simply as wives or mothers⁷. Since social fabric in India has traditionally smeared, women are viewed more in their role of wives receiving little or no sympathy and understanding for a situation wherein countrywide support for criminalization be far to be seen as a reality. Against such a backdrop and concerns, women's rights campaigns for change have gathered momentum in recent years in India growing from pressure by civil society organizations, feminist groups to international bodies urging legal reform. These are reminiscent of a broader-based global advocacy movement that has driven many countries to criminalize marital rape. However, it could not catalyze any movement in India to accomplish the required legislative changes about this, and hence, left married women without any protection from the law as concerns sexual violence within marriages. Meanwhile, the international trend of recognizing marital rape as a violation of human rights has continued unabated, while the Indian legal framework has done little about marital rape. Indeed, it is a perceptible shift in those countries which have opened their legal frameworks to reforms aimed at protecting women against all forms of violence, including those committed within marriage. Now, several countries around the world have modified their judicial mechanisms in ways to prosecute marital rape with the same force as other forms of rape. In effect, they made such practice be kept in line with the most basic understanding: that marriage does not nullify a right to consent for an individual and thus beget gender equality through protection of human rights. On these counts, India lags. The fact that marital rape was still exempted from the definition of rape within the IPC demonstrated that the latter was still tainted by traditional and repressive, patriarchal understandings of marriage. Progressive judicial bodies have recommended changes to this effect—the Justice Verma Committee being a most recent example—but no such reforms have been enacted into law due to both political hesitancy and social resistance to change. The comparison on a global scale highlight that, important though cultural

⁴ UN Women, *Virtual Knowledge Centre to End Violence against Women and Girls: Understanding the Issue*, <https://www.endvawnow.org/en/articles/398-marital-rape.html> (last visited Sept. 16, 2024).

⁵ Indian Penal Code, No. 45 of 1860, India Code (1860), https://www.indiacode.nic.in/bitstream/123456789/4219/1/indian_penal_code.pdf.

⁶ Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law*, Government of India (2013), https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20repo_rt.pdf.

⁷ Meena Saraswathi Seshu & Shakun Desai, *Criminalizing Marital Rape in India: Moving Beyond Cultural Norms to Human Rights* (Centre for Women's Global Leadership 2018), to *Human Rights* (Centre for Women's Global Leadership 2018), https://civicus.org/documents/criminalizing_marital_rape_in_india.pdf.

views might be in shaping laws relating to marital rape, an increase in recognition of women's rights as human rights has swept across the globe. Countries that have in recent years reformed their laws on marital rape have shown that it is possible for the letter and spirit of law to change as new social values emerge with human rights and public health advocacy. These countries hence provide a precedent for India where there is growing consciousness about the necessity of reform but no political will to usher them in. The international stand on marital rape, although in its early stages of movement, essentially indicates an imperative trend of criminalization of the act and violation of human rights of women. While most countries of the world have been making giant strides to take their laws in congruence with the fact that marriage does not annul the fact of having to require consent, India remains caught up in conservative legal and social traditions where marriage is seen as a realm which requires subsumption of a woman's autonomy to maintain family and social mores. This also provides a model that India may follow once the political will and societal attitude change towards protecting the rights of women in marriage.

There is an urgent need for legal reform. The changed global climate of opinion regarding this issue can be what spurs such changes in India, where crucially important protections against sexual violence in the home is still not accorded to married women.

V. Advocacy and reforms

Advocacy and reforms regarding marital rape in India have picked up the last few years due in large part to heightened awareness of women's rights and clear need for legal protection against gender-based violence. Marital rape is largely decriminalized under Indian law, mostly on account of deeply ingrained attitudes within society and plugged into legal loopholes that continue to protect perpetrators. The nub of the issue is the Indian Penal Code itself, Section 375, defining rape but then carving an exception for marital relationship, stating sexual intercourse by a husband with his wife not amounting to rape if she is over 18 years of age. This exception continues the precept of "implied consent" in marriage, which devalues a woman's control over her body and exposes her to abuse.

Though enactments like the Protection of Women from Domestic Violence Act, 2005 enumerate forms of domestic violence that include sexual assault, criminal provisions have not included marital rape. However, this law only affords civil remedies rather than penal remedy and hardly meets the seriousness of marital rape cases.

Different organizations and NGOs working on women's rights matters took up the cause of making marital rape a criminal offense. They, argue that under the current law, there is an absence of equal protection for women and criminalizing marital rape would represent a society that takes women's rights to bodily integrity seriously. In this regard, marital rape is understood as a grave human rights violation, and people advocate for law reforms which guarantee women fair treatment under any constitution. There are also examples of judicial activism questioning the questions that have arisen in the present legal status quo. As an example, *Independent Thought v. Union of India, 2017* is there where the Supreme Court questioned the age of consent in child marriages and spoke

about marital rape but only to an extent. While, however, a few judges openly advocated criminalizing marital rape, it shows judicial attitudes have shifted and is a pathway to further legal changes.⁸

The public awareness campaigns of the advocacy groups aim to educate people on the issue of marital rape and challenge a widespread belief which presumes that by virtue of marriage, a man gains limitless sexual rights over his wife. Such campaigns focus on the principles of consent and bodily autonomy, insisting that consent should always be active and that marriage per se should not be made a pre-emptive justification for non-consensual sex. Changing these societal norms is part of the advocacy efforts because one of the biggest hurdles to reform lies in the deeply ingrained cultural resistance to the idea of marital rape. Many see marriage as a sacred institution, even legislators in Indian society. They seem to really believe that criminalizing marital rape would shake the family structure and have no clue about its effects on women. It simply resorts to a patriarchal mindset that prioritizes marriage sanctity over women's rights and safety.

The suggested changes would involve overturning Section 375 of the IPC, removing the marital rape exception. Such a reform would finally bring Indian law into line with international human rights standards which are slowly coming to recognize marital rape as a serious crime. In addition, advocates argue that there should be a detailed legal structure which will define marital rape explicitly, detail punishments against perpetrators, and clearly guide survivors through a legal route to justice. Another very important area of reform is the education and training for law enforcement officers, judges, and other judicial personnel; most of whom

⁸ *Independent Thought v. Union of India*, (2017) 10 SCC 800, https://main.sci.gov.in/supremecourt/2013/35128/35128_2013_Judgement_11-Oct-2017.pdf

are not geared with understanding and sensitivity toward handling marital rape cases. It will ensure the dignity of survivors while making sure that they must be dealt with justice in mind rather than using procedures to re-traumatize the survivor. The other important area is the building of better support systems to help survivors. Counselling services, legal aid, and shelters are very important instruments in the healing process for survivors of marital rape and their pursuit of justice. These services must be accessible with absolute assurance that nothing worse than the crime already committed would happen to these survivors should they decide to come forth.

Cultural resistance is one of the largest barriers to change. Proponents in the fray argued that rape within marriage has become an integral part of Indian culture due to a belief that marriage automatically connotes perpetual consent to sexual relations. Many believe that criminalizing marital rape would break up the traditional family. Opponents of the reform argue that such laws will frequently be misused by women to falsely accuse their husbands of rape, reflecting a mistrust in the legal system's ability to differentiate between genuine cases and false claims.

However, an argument is that the fear raised is primarily unfounded considering that data by countries which criminalized marital rape have not reflected massive malpractice of these laws. For that matter, survivors of marital rape usually face extreme stigma and victim-blaming that will essentially deter them from seeking assistance. Most ladies fear loss of social support and financial dependency as well as retaliation from families or communities if they report marital rape, and this has complicated efforts to address the problem⁹. Advocacy to reform marital rape in India highlights the fundamental necessity to balance legal protection with women's rights and gender equality. The current legal framework that criminalizes marital rape has failed to safeguard sexual abuses against women in marriage. Society attitudes that justify marital rapes need condemnation. The most significant development in this regard was towards increasing consciousness and exerting pressure for legal reforms. However, there are still many obstacles between only changing the legal framework and changing the cultural perception about marital rape. It is by following such comprehensive reforms that criminalize marital rape, offer support to the victim in a wholesome manner, and alter societal perceptions that women's rights can be advanced and a better, just, and balanced society can be constructed. It is in this respect that reforms are significant so that marriage does not provide immunity for the perpetrators of sexual violence and full legal as well as human rights are granted to women through the institution of marriage.

VI. Conclusion

The debate over marital rape issues in India is deeply entangled with old practice and legal ambiguity. Increasing debates on women's rights and autonomy notwithstanding, marital rape is still not defined as a criminal offense under Indian law. Now, the heart of the legal challenge is found in section 375 of the Indian Penal Code, which defines rape but contains exception for sexual intercourse between a husband and wife if the wife has attained the age of consent that is 18 years as of 2017. This exclusion keeps the myth of "implied consent" in marriage—a notion that basically takes away from the married women any right to decide about sexual activity, autonomy, and dignity. It also shows a new judicial development toward recognizing the necessity of reform.

In 2022, a split decision from the High Court of Delhi underlined two opposing views: one judge supported criminalization and elaborated on why protection of the wife's right to consent was paramount while the other argued for the old exemption of marital rape saying that it was not feasible to worry about misuse and destabilization of the family structure. It reflects debates over a wider societal balance between women's rights and preservation of traditional family values. Societal attitudes thus complicate the legal debate concerning marital rape. Indian marriage often is viewed as a sacrosanct institution, and it is assumed that consent to sexual relations goes with the marital bond. The cultural backdrop there is heavy with the challenge of reform because criminalizing marital rape poses a perceived threat to family integrity and traditional value congregations.

Abuses of law through false accusations against husbands is yet another complaint from the other side against the reform. Though India has taken an extremely stringent stand against marital rape, most countries have criminalized the practice. The United States, the United Kingdom and South Africa; among more than 100 countries that criminalize marital rape, had turned into a watershed in humanity's shift toward the protection of women's rights within marriage. India still remains in the list of 34 countries where marital rape isn't recognized as a crime, showing how far India has lagged to align with international human rights standards.

⁹ National Crime Records Bureau, *Crimes in India - 2021 Report*, Government of India (2021), <https://ncrb.gov.in/en/Crimes-in-India>.

But the battle for legal reform continues. Women's rights organizations and activists have vocally protested the inability of the status quo legal system to uphold women's rights in the form of criminalizing marital rape. Other committees, with the most recent after the Delhi gang rape case in 2012 being the Justice Verma Committee, have pleaded for a change in the law where marital rape has been decreed possible. However, to date, there is slow progress because of powerful resistance from conservative elements in society and concerns that such laws may be misused.

In short, the fact that marital rape obtains zero legal recognition leaves a huge loophole in safeguarding the rights of women. It not only tramples down the dignity and autonomy of women but also perpetuates bad social norms by supporting the violent exercise of sexual rights within marriage.

Therefore, all-round legal reforms in the Indian front are warranted to meet the present-day parameters of human rights. This would include withdrawal of the exemption clause relating to marital rape from Section 375, IPC, and defining marital rape with proper definitions and punishments. Marital rape needs to be identified as a criminal act so that the dignity of women is preserved, while equality between sexes will be made sure and an environment created where sexual consent is respected everywhere. The opinionated beliefs of the traditional society need to be challenged by the concerted efforts of lawmakers, judiciary, civil society organizations, and the masses for an all-round improvement by way of systemic change. Only such collective effort can help India overcome its glaring issues and protect the rights and dignity of women everywhere

