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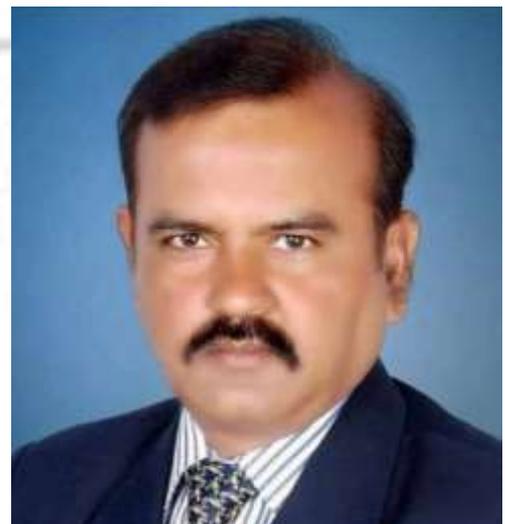
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRIMINALIZATION OF MARITAL RAPE IN INDIA

AUTHORED BY - SANTRA SAJI

1. Introduction

Marital rape, defined as non-consensual sexual intercourse by a husband with his wife, remains one of the most contentious and under-addressed issues in Indian jurisprudence. Despite global advancements in recognizing marital rape as a criminal offense, India continues to uphold the colonial-era exception under Section 375 of the Indian Penal Code (IPC), which explicitly exempts non-consensual sexual acts within marriage from the definition of rape. This exception, rooted in archaic notions of marital obligations and gender roles, has been widely criticized for perpetuating gender inequality and violating fundamental human rights.

The criminalization of marital rape is not merely a legal issue but a moral and social imperative. It raises critical questions about consent, bodily autonomy, and the right to equality within the institution of marriage. This paper seeks to explore the historical, legal, and societal dimensions of marital rape in India, analyze the constitutional and human rights implications of its continued exemption, and evaluate the judicial and legislative developments in this area. By drawing on comparative international frameworks and addressing the challenges of implementation, this paper argues for the urgent need to criminalize marital rape in India.

2. Historical and Legal Background

Origin of the Marital Rape Exception

The marital rape exception in India can be traced back to British colonial rule. The IPC, enacted in 1860, was heavily influenced by Victorian-era moral standards, which viewed marriage as an irrevocable contract granting husbands conjugal rights over their wives. This legal framework reflected the patriarchal notion that a wife's consent was implicit in the marital contract, thereby rendering the concept of marital rape nonexistent.

The British common law doctrine of coverture, which treated a married woman as the property of her husband, further entrenched this exception. The IPC's framers, led by Lord Macaulay, codified this doctrine into Indian law, ensuring that marital rape remained outside the purview of criminal law. This colonial legacy continues to shape India's legal landscape, despite

significant social and legal advancements in other areas.

Evolution of Rape Laws in India

Over the years, India has made significant strides in reforming its rape laws. The Criminal Law (Amendment) Act, 2013, enacted in response to the Nirbhaya gang rape case, expanded the definition of rape to include acts such as penetration with objects and criminalized acts like stalking and voyeurism. However, the marital rape exception remained untouched, reflecting a reluctance to challenge entrenched patriarchal norms.

The Justice Verma Committee, formed in the aftermath of the Nirbhaya case, recommended the criminalization of marital rape, stating that the exception was “based on the outdated notion of a wife being the property of her husband.” However, the government rejected this recommendation, citing concerns about the sanctity of marriage and the potential misuse of the law.

Judicial Interpretations

Indian courts have occasionally addressed the issue of marital rape, albeit indirectly. In *Independent Thought v. Union of India (2017)*, the Supreme Court partially struck down the marital rape exception by criminalizing non-consensual sexual acts with minor wives. This landmark judgment highlighted the inherent contradictions in the law but stopped short of addressing the broader issue of marital rape.

The court held that the exception violated the rights of minor girls under Articles 14, 15, and 21 of the Constitution, stating that “sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not.” While this judgment was a step in the right direction, it failed to address the plight of adult married women who continue to be denied legal protection against marital rape.

3. Constitutional and Human Rights Perspective

Violation of Article 14 (Right to Equality)

The marital rape exception in the **Indian Penal Code (IPC)** violates **Article 14** of the **Indian Constitution**, which guarantees **equality before the law**. By exempting non-consensual sex within marriage from being classified as rape, the law creates an **arbitrary distinction** between

married and unmarried women, denying married women the same legal protection against sexual violence. This differentiation is **not based on any reasonable classification** but stems from outdated patriarchal norms that treat marriage as a license for sexual entitlement.

The **Supreme Court of India** has repeatedly ruled that any classification under **Article 14** must be based on **intelligible differentia** and have a **rational nexus** to its objective. However, in the case of marital rape, there is no **valid justification** for distinguishing between married and unmarried victims—rape is a violation of bodily autonomy **regardless of marital status**. By upholding this exception, the law perpetuates **gender discrimination** and reinforces the idea that a wife's consent is irrelevant in marriage, contradicting the **constitutional mandate of equality**.

Violation of Article 21 (Right to Life and Dignity)

The marital rape exception also **violates Article 21**, which guarantees the **right to life, personal liberty, and dignity**. Over time, the **Supreme Court** has expanded **Article 21** to include the **right to privacy, bodily autonomy, and freedom from violence**. By failing to criminalize marital rape, the state indirectly **sanctions sexual violence**, denying women **agency over their own bodies** and reinforcing the **subordination of wives** in marriage.

The right to **bodily autonomy**, a key aspect of **Article 21**, ensures that individuals have control over their own bodies, including the right to refuse sexual activity. The **IPC's failure** to recognize marital rape as a crime disregards this fundamental right and perpetuates the myth that marriage implies **irrevocable consent**. The **Supreme Court's rulings** in *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)* and *Suchita Srivastava v. Chandigarh Administration (2009)* emphasize bodily autonomy and dignity, making the marital rape exception **constitutionally untenable**.

By refusing to amend the law, the state continues to deny married women their **right to dignity, equality, and freedom from violence**, contradicting the **progressive jurisprudence** on gender justice and constitutional rights.

International Obligations

India's marital rape exception violates its commitments under **international human rights treaties**, including **CEDAW, ICCPR, and the UDHR**, which mandate the elimination of

gender-based violence and the protection of **equality and dignity**.

CEDAW, ratified by India in 1993, requires states to eliminate **all forms of discrimination**, including **domestic sexual violence**. The **CEDAW Committee** explicitly recognizes **marital rape** as gender-based violence and urges its criminalization. By retaining the exception, India fails to meet its **CEDAW obligations**.

Under **ICCPR**, ratified in 1979, India is bound to ensure **equality before the law** and protection from **torture and inhuman treatment**. The **Human Rights Committee** has affirmed that **gender-based violence, including marital rape**, violates these rights, making India's exception a **direct breach** of the treaty.

The **UDHR**, the cornerstone of human rights law, upholds **equality, dignity, and freedom from violence**. Articles **1 and 5** guarantee freedom from **discrimination and cruel treatment**, making the marital rape exception **incompatible with global human rights standards**.

Additionally, **UN human rights bodies**, including the **Committee on the Elimination of Discrimination against Women** and the **Special Rapporteur on Violence against Women**, have repeatedly urged India to **criminalize marital rape** and provide **equal legal protection** to all women, regardless of marital status.

4. Judicial and Legislative Developments

Independent Thought v. Union of India (2017)

The case of *Independent Thought v. Union of India* (2017) marked a significant milestone in the judicial discourse surrounding marital rape in India. In this landmark judgment, the Supreme Court partially addressed the issue of marital rape by striking down Exception 2 to Section 375 of the Indian Penal Code (IPC) insofar as it applied to minor wives. The court held that sexual intercourse with a wife below the age of 18 years, even within the bounds of marriage, would constitute rape. This decision was a critical step forward in recognizing the rights of minor girls and protecting them from sexual exploitation, even within the institution of marriage.

The court's reasoning was grounded in the principles of gender equality, the right to bodily

autonomy, and the best interests of the child. The judgment emphasized that the marital rape exception, as it applied to minors, was inconsistent with the Protection of Children from Sexual Offences (POCSO) Act, 2012, which defines any sexual activity with a child below the age of 18 as a criminal offense. By aligning the IPC with POCSO, the court sought to eliminate the legal anomaly that allowed marital rape of minors to go unpunished.

However, while the judgment was a progressive step, it was limited in scope. The court explicitly refrained from addressing the broader issue of marital rape involving adult women, leaving the exception intact for married women above the age of 18. This partial striking down of the exception highlighted the judiciary's reluctance to fully confront the entrenched patriarchal norms that underpin the marital rape exemption. Nevertheless, the case set an important precedent by recognizing that marriage cannot be used as a shield to justify sexual violence, particularly against minors.

Delhi High Court Split Verdict (2022)

In 2022, the Delhi High Court delivered a split verdict in a batch of petitions challenging the constitutionality of the marital rape exception under Section 375 of the IPC. The case, which garnered widespread attention, saw the two-judge bench expressing divergent views on the issue, reflecting the deep societal and legal divides surrounding marital rape.

Justice Rajiv Shukla, in his opinion, declared the marital rape exception unconstitutional, holding that it violated the fundamental rights to equality (Article 14), non-discrimination (Article 15), and life and personal liberty (Article 21). He emphasized that the exception perpetuated gender-based discrimination and denied married women the same protection from sexual violence that was available to unmarried women. Justice Shukla's judgment underscored the importance of recognizing marital rape as a violation of a woman's bodily autonomy and dignity, stating that the right to refuse sexual intercourse is an inherent aspect of personal liberty.

On the other hand, Justice C. Hari Shankar upheld the marital rape exception, arguing that it was based on a reasonable classification and did not violate the Constitution. He expressed concerns about the potential misuse of the law if marital rape were criminalized, suggesting that it could destabilize the institution of marriage and lead to false accusations. Justice Shankar's opinion reflected a more conservative approach, prioritizing the preservation of

marital harmony over the protection of women's rights.

The split verdict highlighted the complexities and challenges involved in addressing marital rape within the Indian legal framework. While one judge championed the cause of gender equality and individual rights, the other prioritized societal stability and the perceived sanctity of marriage. The lack of consensus within the judiciary underscored the need for a more comprehensive and nuanced approach to the issue, one that balances the rights of women with the need to prevent misuse of the law.

Pending Supreme Court Case

The issue of marital rape is currently pending before the Supreme Court of India, which is expected to deliver a final verdict on the constitutionality of the marital rape exception. The case, which has been closely watched by activists, legal experts, and the general public, represents a critical opportunity for the apex court to address the glaring gap in India's legal framework and affirm the rights of married women.

The petitions before the Supreme Court challenge the marital rape exception on the grounds that it violates the fundamental rights to equality, dignity, and personal liberty. The petitioners have argued that the exception is rooted in archaic and patriarchal notions of marriage and gender roles, which have no place in a modern, democratic society. They have also highlighted India's international obligations under treaties such as CEDAW and the ICCPR, which require the state to eliminate gender-based violence and ensure equality before the law.

The Supreme Court's decision in this case will have far-reaching implications for women's rights in India. A ruling striking down the marital rape exception would mark a historic step forward in the fight against gender-based violence and would bring India in line with global standards on women's rights. It would also send a powerful message that the law recognizes and respects the bodily autonomy and dignity of all women, regardless of their marital status.

However, a decision upholding the exception would be a significant setback for gender justice and would perpetuate the systemic discrimination and violence faced by married women. It would also undermine India's commitments under international human rights law and reinforce the harmful stereotypes that have long justified the subjugation of women within marriage.

5. Societal and Cultural Arguments

Support for Criminalization

Advocates for the criminalization of marital rape argue that it is a grave violation of women's fundamental rights and a form of gender-based violence. They emphasize that marriage does not negate an individual's right to bodily autonomy and that consent must be a cornerstone of all sexual relations, including those within marriage. Proponents highlight that failing to recognize marital rape as a crime perpetuates patriarchal norms that view women as subordinate to their husbands. They also stress that criminalization is essential to ensuring equality before the law and fulfilling international human rights obligations. Additionally, they argue that legal recognition of marital rape would empower survivors to seek justice and access support systems, thereby fostering a culture where violence against women is not tolerated.

Opposition to Criminalization

Opponents of criminalization often cite concerns about the potential misuse of the law, fearing that false accusations could disrupt marriages and lead to increased litigation. Some argue that criminalizing marital rape could undermine the sanctity of marriage and destabilize traditional family structures. In conservative societies, resistance is often rooted in cultural and religious beliefs that view sexual relations within marriage as a duty rather than a matter of consent. Additionally, opponents contend that existing legal provisions addressing domestic violence and cruelty already offer sufficient protection for women, making a separate law on marital rape unnecessary. Critics also express concerns about the challenges in proving lack of consent within an intimate relationship, which could complicate legal proceedings.

6. Comparative Analysis

Several countries have recognized the necessity of criminalizing marital rape to protect women's rights and promote gender equality. Nations such as the **United Kingdom, the United States, Canada, Australia, and South Africa** have adopted stringent legal frameworks to address this issue. In these countries, marital rape is treated as a serious criminal offense, with provisions ensuring that perpetrators are held accountable regardless of their marital status.

For instance, **the United Kingdom criminalized marital rape in 1991** through the landmark case *R v R*, where the House of Lords ruled that the long-standing marital exemption was outdated and incompatible with modern legal principles. In the **United States**, all 50 states

have criminalized marital rape, though penalties and legal interpretations vary across jurisdictions. **Canada's legal reforms in 1983** removed the marital exemption from rape laws, recognizing the equal rights of spouses. **Australia and South Africa** have also enacted progressive legislation, incorporating victim support mechanisms, awareness campaigns, and specialized legal provisions to address the complexities of prosecuting marital rape cases.

These legal frameworks demonstrate that criminalizing marital rape does not undermine the institution of marriage; rather, it reinforces the principle that all individuals, regardless of their relationship status, have the right to bodily autonomy and freedom from sexual violence. The experiences of these countries serve as crucial reference points for nations where marital rape remains decriminalized, illustrating the importance of legal reform in upholding human rights and gender equality.

Challenges in Implementation

Evidentiary Concerns

Marital rape cases are difficult to prove due to the **lack of physical evidence** and the **private nature** of the offense, making it challenging for victims to establish **non-consensual sexual acts** in court.

Potential Misuse vs. Underreporting

While concerns exist about the **misuse of marital rape laws**, they must be weighed against the **widespread underreporting** of such cases. Fear of **societal stigma**, lack of **legal recourse**, and **dependency on the spouse** often prevent victims from coming forward.

Law Enforcement and Judicial Sensitivity

For effective implementation, **law enforcement officials and the judiciary** must be **sensitized** to the complexities of marital rape. This includes **training programs** to ensure that **victims are treated with dignity**, their complaints are taken seriously, and justice is delivered **without bias** or preconceived notions about marriage and consent.

8. The Way Forward

Recommended Legal Reforms

A crucial step toward addressing marital rape in India is the amendment of **Section 375 of the**

Indian Penal Code (IPC) to remove the exception that exempts non-consensual sexual acts within marriage from being classified as rape. Recognizing marital rape as a criminal offense would align Indian law with international human rights standards and reinforce the fundamental right to bodily autonomy and dignity. In addition to amending the IPC, reforms should also extend to **procedural laws**, ensuring that survivors have access to fair and efficient legal recourse. This includes provisions for **fast-track courts, strong evidentiary support, and victim protection mechanisms** to encourage reporting and prosecution of marital rape cases.

Furthermore, legal reforms should address **related issues such as spousal privileges and immunity**, ensuring that survivors are not denied justice due to outdated notions of marital rights. Amending laws related to domestic violence and cruelty under **Section 498A of the IPC and the Protection of Women from Domestic Violence Act (PWDVA), 2005**, to explicitly recognize marital rape as a form of abuse could provide additional avenues for legal redress.

Policy Measures

Beyond legal reforms, **comprehensive policy measures** are necessary to change societal attitudes and create a support system for survivors. **Public awareness campaigns** should focus on educating communities about consent within marriage and dispelling misconceptions that equate marriage with unconditional sexual access. These campaigns should engage **educational institutions, religious leaders, and media platforms** to challenge deep-seated patriarchal beliefs.

Strengthening **victim support services** is equally critical. This includes establishing **crisis intervention centers, helplines, psychological counseling, medical assistance, and legal aid services** for survivors. NGOs, women's rights organizations, and government agencies should collaborate to create safe spaces where survivors can seek help without fear of stigma or retaliation.

Additionally, **training programs for law enforcement officials, judicial officers, and medical professionals** must be implemented to improve sensitivity in handling marital rape cases. Police officers should receive **specialized training on gender-based violence** to ensure that complaints are taken seriously and survivors are not subjected to further trauma. Judges and prosecutors should be equipped with a nuanced understanding of marital rape and its

implications to ensure fair and just legal proceedings.

Ultimately, addressing marital rape requires a **multi-pronged approach** that combines **legal reforms, policy initiatives, and cultural transformation** to uphold the rights and dignity of individuals in marriage.

9. Conclusion

The criminalization of marital rape is a necessary step toward achieving gender justice in India. By recognizing marital rape as a criminal offense, India can uphold the constitutional rights of women, fulfill its international obligations, and challenge entrenched patriarchal norms. While challenges in implementation remain, they must not deter India from taking this crucial step.

