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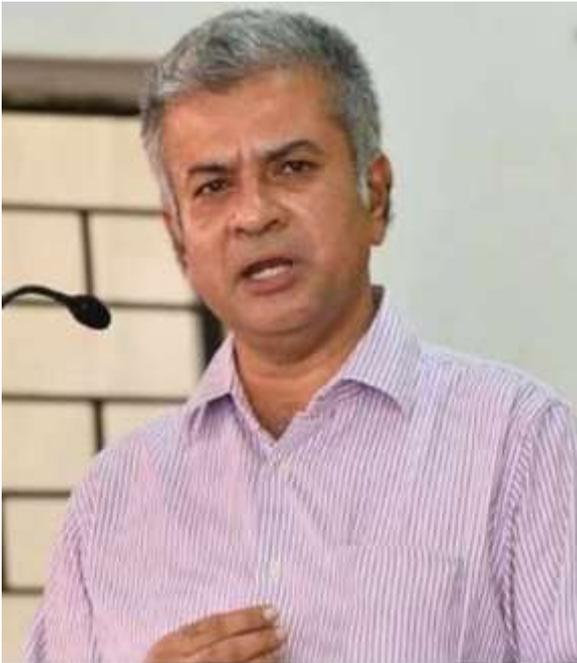
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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

"BETWEEN THE SHEETS AND THE STATUTES": THE SILENCE OF INDIAN LAW ON MARITAL RAPE

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Abstract

Despite India's progressive legal landscape on gender justice, the criminalization of marital rape remains elusive. The statutory immunity granted to husbands under Exception 2 of Section 375 of the Indian Penal Code, now replicated in the Bharatiya Nyaya Sanhita, 2023, starkly contradicts the ideals of constitutional morality, bodily autonomy, and gender equality enshrined in Articles 14, 19, and 21 of the Constitution. This paper examines how the law's silence legitimizes violence within marriage, fostering impunity and perpetuating archaic patriarchal norms that treat the wife as the husband's sexual property. Through a socio-legal lens, the article critiques the colonial legacy of spousal immunity, evaluates judicial hesitance, and contrasts India's position with progressive international practices. It also debunks common arguments against criminalization, such as misuse, evidentiary difficulties, and threats to the sanctity of marriage. By placing the debate in the broader context of human rights and consent-based jurisprudence, this study advocates for a consent-focused, gender-sensitive legal reform. The paper concludes with recommendations for a holistic approach that harmonizes criminal law with constitutional guarantees and international obligations.

Keywords: Marital rape, constitutional morality, consent, gender justice, criminal law reform, BNS 2023

1. Introduction

Marriage in India has long been viewed as a sacred institution, traditionally insulated from legal interference. However, this sanctity often masks structural inequalities and systemic violence within marital relationships. One of the most glaring blind spots in Indian criminal

jurisprudence is the absence of recognition for marital rape. Despite being a grave violation of bodily autonomy and dignity, Indian law continues to provide statutory immunity to husbands who engage in non-consensual sexual acts with their wives.

The persistence of this immunity stems from a colonial-era mindset that views the wife as the property of her husband, with sexual access implied by the marital contract. This legal fiction stands in stark contrast to modern principles of human rights, constitutional morality, and gender justice. As societies evolve, so too must the law reflect a progressive understanding of consent—one that applies universally, irrespective of marital status.

In recent years, there has been growing national and international pressure to criminalize marital rape. Yet, both legislative inertia and judicial reluctance have resulted in continued silence. The issue remains politically sensitive, socially taboo, and legally unresolved—leaving countless women vulnerable within the very relationship that is supposed to protect them.

2. Legal Framework and the Marital Rape Exception

Section 375 of the Indian Penal Code, before its repeal, excluded sexual acts by a husband with his wife from the definition of rape, through Exception 2. The Bharatiya Nyaya Sanhita, 2023 continues this immunity under Section 63(2), retaining the notion that marriage equals perpetual consent.¹

This legislative exception is not only outdated but also inconsistent with other progressive legal developments in India. For instance, the Protection of Women from Domestic Violence Act, 2005 recognizes sexual abuse within marriage as a form of domestic violence.² However, this recognition exists only in civil law and not in criminal jurisprudence—creating legal confusion and denying victims access to effective criminal remedies.

Globally, over 100 countries—including the United Kingdom, Nepal, and South Africa—have criminalized marital rape.³ International human rights instruments such as CEDAW have repeatedly urged member states to treat all forms of sexual violence, including that within

¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63(2).

² Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3(a).

³ UN Women, *Marital Rape Laws Globally*, Policy Brief (2022).

marriage, as criminal offences.⁴ India's failure to do so places it in breach of both moral and legal international obligations.

3. Constitutional Conflict: Articles 14, 19, and 21

The continued legality of marital rape in India presents a direct conflict with the constitutional rights guaranteed under Part III of the Constitution. Article 14 ensures equality before the law and equal protection of the laws.⁵ By granting husbands immunity from prosecution for rape, Exception 2 of Section 63(BNS) creates an unreasonable classification between married and unmarried women, violating the essence of substantive equality. It allows a husband to do, with legal impunity, what no other man can—commit rape.

Further, Article 21 guarantees the right to life and personal liberty, which has been interpreted to include the right to dignity, bodily integrity, and privacy.⁶ In *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court emphasized that a woman's right to make choices regarding her body, including sexual autonomy, is a fundamental aspect of Article 21.⁷ However, the marital rape exception renders this right meaningless within marriage, effectively reducing a wife's autonomy to the discretion of her husband.

Additionally, Article 19(1)(a) guarantees the freedom of speech and expression. While at first glance it may seem unrelated, its connection becomes clear when considering the chilling effect the legal immunity has on victims. Survivors of marital rape often fear social backlash, disbelief, and institutional denial, which effectively silences their right to express and seek redressal for the violence they experience.⁸

The doctrine of constitutional morality, as evolved by the judiciary in cases like *Navtej Singh Johar v. Union of India*, insists that social morality must yield to constitutional values.⁹ In this light, retaining a law that protects marital rape stands as an affront to the Constitution's promise of equality, liberty, and dignity.

⁴ CEDAW Committee, *General Recommendation No. 35 on Gender-Based Violence*, UN Doc. CEDAW/C/GC/35 (2017).

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 21.

⁷ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 SCC 1.

⁸ Madhu Mehra, *Marital Rape and the Indian Legal System*, Partners for Law in Development (2021).

⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

4. Judicial Approach and Legislative Paralysis

Despite the constitutional concerns surrounding the marital rape exception, Indian courts have shown reluctance in directly challenging its validity. The judiciary has often acknowledged the gravity of the issue but has deferred the matter to the legislature, citing the principle of separation of powers. This has created a legal deadlock, where courts are unwilling to overrule the exception, and the legislature remains hesitant to amend it.

In *Independent Thought v. Union of India*, the Supreme Court read down Exception 2 of Section 375 IPC to exclude sexual intercourse with a minor wife (below 18 years), thereby harmonizing it with the Protection of Children from Sexual Offences (POCSO) Act.¹⁰ However, the Court expressly limited the scope of its ruling to minor wives and refrained from commenting on adult marital rape, leaving the broader issue unresolved.

A more recent example is the split verdict by the Delhi High Court in 2022 in *RIT Foundation v. Union of India*.¹¹ While Justice Rajiv Shakdher held that Exception 2 was unconstitutional for violating Articles 14 and 21, Justice C. Hari Shankar upheld its validity, stressing that criminalizing marital rape could destabilize the institution of marriage. The split has left the matter pending before the Supreme Court, where a constitution bench is yet to deliver a final ruling.

Meanwhile, successive governments have avoided taking a firm position. Despite the Justice Verma Committee's strong recommendation in 2013 to remove the marital rape exception, the UPA and later the NDA governments declined to act.¹² The justification often cited involves potential misuse of the law, difficulties in evidence, and the supposed sanctity of marriage—all of which ignore the fundamental rights of women within marriage.

This ongoing judicial-legislative hesitation underscores the structural resistance to gender-sensitive reforms in criminal law, especially when they question patriarchal assumptions embedded in personal relationships. The courts have laid the constitutional groundwork, but the final reform requires legislative courage.

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

¹¹ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1359.

¹² Justice Verma Committee Report on Amendments to Criminal Law (2013), at 113–114.

5. Debunking Common Myths Against Criminalizing Marital Rape

Despite growing recognition of marital rape as a serious human rights issue, Indian law continues to exempt it from criminal sanction. Defenders of the status quo often invoke a set of familiar arguments to justify the marital rape exception. These arguments – ranging from fears of legal misuse to appeals to marital privacy – do not withstand academic or empirical scrutiny. This chapter examines five prevalent myths surrounding the criminalization of marital rape in India and demonstrates why none of them provides a valid reason to deny married women equal protection under the law.

Misuse of Law: An Overstated Fear

One oft-repeated concern is that criminalizing marital rape will invite a flood of false allegations by vindictive wives, leading to harassment of husbands. This notion mirrors similar fears voiced about other women-protective laws. In truth, the mere possibility of misuse exists with every criminal law; it is not a problem unique to marital rape. Indian courts have emphasized that potential abuse of a law “does not impart to it any element of invalidity,” since the remedy for misuse lies in better implementation, not in withholding legal protection to victims¹³. The criminal justice system has built-in safeguards – from evidentiary standards to perjury prosecutions – to filter out false cases. Empirical data from jurisdictions that criminalize marital rape do not show any epidemic of fabricated complaints. Therefore, the specter of misuse is an overstated fear, insufficient to justify an absolute legal bar against marital rape prosecutions. Legitimate victims should not be denied justice today because of a speculative risk that some might misapply the law tomorrow.

The “Institution of Marriage” Argument

Another argument posits that recognizing marital rape as a crime will somehow destroy the sanctity of marriage and lead to an erosion of the institution of family. Critics claim that allowing wives to charge their husbands with rape would destabilize marriages and encourage divorce. This reasoning misconstrues both the role of law and the nature of marriage. A marriage can be a strong social institution without granting one spouse a license to violate the bodily integrity of the other. Indeed, forced sex gravely undermines the mutual trust and respect that form the foundation of marriage – far more than any legal intervention does. The Supreme

¹³ *Sushil Kumar Sharma v. Union of India*, (2005) 6 S.C.C. 281 (India) (noting that the possibility of abuse of a legal provision does not invalidate the law)

Court of India has flatly rejected the notion that criminalizing spousal rape would threaten marital unity. In *Independent Thought v. Union of India* (2017), the Court observed that “marriage is not institutional but personal – nothing can destroy the ‘institution’ of marriage except a statute that makes marriage illegal and punishable.”¹⁴ In other words, penalizing violent behavior within marriage does not break the institution; rather, it upholds the fundamental personal rights of both partners. Protecting a wife’s autonomy and dignity through law is consistent with strengthening the true essence of marriage.

It is also important to recognize that the marital rape exception is rooted in archaic patriarchal notions incompatible with modern constitutional values. The concept dates back to the doctrine of coverture and the outdated assumption that a wife is the husband’s property or that marriage implies irrevocable consent to sex. Such ideas blatantly contradict the principles of equality and individual autonomy enshrined in the Indian Constitution. In recent jurisprudence, the Supreme Court has dismantled analogous patriarchal relics – for instance, by invalidating the adultery law that treated a wife as her husband’s chattel. In *Joseph Shine v. Union of India* (2018), the Court condemned the notion that women can be reduced to property within marriage, underscoring that spouses are independent persons with equal dignity. The continued exemption of marital rape rests on a similar discredited premise – that a wife’s personhood is subsumed by marriage – which has no place in a constitutional democracy¹⁵. Criminalizing marital rape, therefore, is not an attack on marriage; it is a long-overdue affirmation that marriage *cannot* be a shelter for egregious misconduct or a zone of impunity for sexual violence.

Evidentiary Challenges in Perspective

Opponents of reform often argue that marital rape is too difficult to prove in court. They point out that incidents typically occur in private, between spouses, leaving little to no eyewitness evidence and making it hard to distinguish consent from coercion. While evidentiary challenges are real, they are not unique to marital rape. Most sexual and domestic abuses happen behind closed doors, yet the law does not and should not ignore those crimes merely because proof can be challenging. Courts regularly adjudicate rape cases (as well as domestic violence cases) based on the survivor’s testimony, corroborative medical evidence, and surrounding

¹⁴ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India) (rejecting the argument that criminalizing marital rape would imperil the institution of marriage).

¹⁵ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India) (striking down the adultery offence as founded on patriarchal notions of women’s subordination in marriage).

circumstances, even in the absence of third-party witnesses. The standard safeguards of criminal law – presumption of innocence, proof beyond reasonable doubt, and judicial scrutiny of testimony – apply with equal force in marital rape cases. *Difficulty in proof is an issue for the trial process, not a justification for denying the existence of the offense.* Moreover, retaining the marital rape exception creates an absurd scenario: even if a wife has clear evidence of brutal sexual assault by her husband (for example, severe injuries documented by doctors), the criminal law currently offers her no recourse for rape. Eliminating the exception would simply allow genuine cases to be heard and decided on the evidence, as with any other crime. Hard cases might indeed result in acquittals for lack of proof – just as they do in other rape cases – but that is no rationale for a blanket immunity. Rather than preemptively disqualifying all marital rape claims, the focus should be on improving investigative techniques and judicial sensitivity to appropriately handle these cases. In sum, evidentiary difficulty is a challenge to be managed, not an excuse to perpetuate a legal vacuum around marital rape.

Marital Privacy and State Intervention

Some jurists and legislators invoke the right to privacy in marital relations as a reason to keep the law out of the “bedroom.” They contend that the state should not police intimate relations between husband and wife, framing marital rape allegations as an intolerable intrusion into family life. This argument misconceives the nature of privacy rights vis-à-vis violence. While marital privacy is certainly a value to be respected in consensual matters, it cannot serve as a shield for criminal acts. No society that upholds the rule of law would allow one family member to abuse another under the pretext of privacy. Indian law already intervenes in the private sphere to address domestic violence, child abuse, and other intra-family crimes – rightly so, because *privacy ends where violence begins*. The Supreme Court’s landmark rulings on the fundamental right to privacy (such as *Justice K.S. Puttaswamy v. Union of India*, 2017) make clear that privacy is not absolute; it coexists with other fundamental rights and can be subject to reasonable limits in the interests of justice. A wife’s right to life, bodily integrity, and dignity (guaranteed under Article 21 of the Constitution) surely outweigh an abusive husband’s claim to a zone of immunity within marriage. Recognizing marital rape as an offense simply affirms that a marriage does not give one person a special privilege to harm another. It sends a message that sexual violence is unacceptable regardless of the relationship between perpetrator and victim. Far from undermining privacy, criminalization would enhance the personal security and autonomy that true marital intimacy is built upon. In short, *privacy* in marriage is about respecting mutual agency – not about empowering one spouse to violate the other behind closed

doors.

Civil Remedies vs. Criminal Sanctions

A final common position is that even if marital rape is reprehensible, dedicated criminal provisions are unnecessary because women already have adequate civil remedies. Detractors argue that an abused wife can seek divorce or protection orders under the civil law (for instance, the Protection of Women from Domestic Violence Act 2005), or file a criminal complaint under general laws like Section 498A of the Indian Penal Code (cruelty by husband). These alternatives, it is claimed, address the issue without need to label the husband a “rapist.” This line of reasoning, however, ignores the qualitative difference between civil *relief* and criminal *accountability*. Civil remedies are no substitute for criminal justice when it comes to a violent offense as serious as rape. For example, a divorce may end a marriage but it does not penalize the conduct – it offers the victim an exit, not recognition of her injury as a crime. Similarly, a protective order under the domestic violence law can provide temporary safety and maintenance, but it cannot put the abuser behind bars or deliver the societal condemnation that a criminal conviction carries. Section 498A (cruelty) addresses harassment and cruelty in marriage, but it does not explicitly recognize sexual violence and has been interpreted in practice to mainly cover physical beatings or dowry-related cruelty; it falls short of capturing the gravity of a rape. In short, the existing civil and hybrid remedies, while important, leave a glaring gap: they fail to treat non-consensual sex in marriage with the same seriousness as other rapes.

Both expert bodies in India and international authorities have underscored that this gap must be closed. The Government’s own *Justice Verma Committee* (2013) – constituted after the Nirbhaya case to reform sexual violence laws – unequivocally recommended criminalizing marital rape by deleting the exception in the IPC. The committee stressed that a woman’s marriage cannot be treated as irrevocable consent to all sexual acts, and that the victim’s relationship with the offender should be irrelevant in determining rape¹⁶. In making this recommendation, Justice Verma’s panel explicitly rejected the notion that marriages would be harmed by such a reform; instead, it affirmed that protecting women’s sexual autonomy is fully in line with constitutional principles of equality, dignity, and freedom within marriage. On the

¹⁶ Justice J.S. Verma et al., *Report of the Committee on Amendments to Criminal Law*, at 113 (2013) (India) (recommendation to remove the marital rape exception, emphasizing that marriage is not irrevocable consent to sex).

international front, India has obligations under human rights law to address marital rape. The U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), in its 2014 review of India, expressed concern over the marital rape exception and urged India to ensure that “marital rape is defined as a criminal offence” in its law¹⁷. This aligns with a broader global consensus that violence against women – whether by a stranger or a spouse – must attract penal consequences. By relying solely on civil remedies, India remains an outlier and fails to meet evolving standards of justice for women. Criminalization would fill this normative gap by providing survivors of marital rape the same legal redress and societal acknowledgment afforded to other rape victims.

Each of the justifications traditionally offered for India’s marital rape exemption crumbles upon close examination. Fears of false cases or familial disharmony are either overstated or founded on patriarchal conceptions that the law can no longer endorse. Practical challenges in proof and prosecution do not differentiate marital rape from other hidden crimes that the legal system routinely confronts. And alternative remedies, while useful in their domain, cannot obviate the need to treat rape as a crime, regardless of the victim’s marital status. In sum, none of the common myths against criminalizing marital rape provides a defensible basis for maintaining legal silence. To the contrary, both constitutional morality and India’s international commitments demand that the law protect women’s sexual autonomy within marriage. It is high time to repudiate these myths and reform the law – affirming that rape is rape, even within marriage, and that Indian women married or unmarried are equally entitled to the law’s protection against sexual violence.

6. Comparative International Perspective

India’s continued legal exception for marital rape places it in sharp contrast with many modern legal systems that recognize the autonomy and dignity of married women. A comparative analysis of jurisdictions that have criminalized marital rape reveals a common trajectory: the rejection of outdated patriarchal notions and the embrace of consent-based legal frameworks.

The **United Kingdom** abolished the marital rape exemption through judicial interpretation in the landmark case of *R v. R* (1991), where the House of Lords held that a husband could be

¹⁷ Comm. on the Elimination of Discrimination Against Women, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India*, ¶ 11(c), U.N. Doc. CEDAW/C/IND/CO/4-5 (2014) (urging India to criminalize marital rape in its legal framework)

convicted of raping his wife.¹⁸ The Court emphasized that the common law fiction of irrevocable consent within marriage was outdated and incompatible with modern conceptions of individual rights. This judgment marked a critical shift, setting a precedent for many other common law countries.

Nepal became a regional leader in South Asia by criminalizing marital rape through legislative action in 2006. Section 219 of its Penal Code treats non-consensual sex between spouses as a punishable offense, subject to slightly reduced sentencing, thereby balancing evidentiary concerns with recognition of the crime.¹⁹ Nepal's example is especially relevant for India, given shared cultural contexts and a similar legal heritage rooted in common law.

South Africa has similarly removed the marital rape exemption. The **Sexual Offences Act of 2007** defines rape in a gender-neutral, consent-based manner and explicitly states that marriage is not a defense. The South African Constitutional Court has reinforced that any sexual act without consent—regardless of relationship—violates the dignity and equality guaranteed by the Constitution.²⁰

These legal reforms underscore a global trend toward ensuring that **marital status does not nullify a person's sexual autonomy**. Importantly, in all three jurisdictions, fears surrounding misuse and familial instability have not materialized on any significant scale. Instead, these nations have taken steps to integrate survivor-sensitive practices, including victim counseling, training for law enforcement, and legal aid programs, to ensure balanced implementation.

India, in contrast, continues to maintain a legal fiction that is both socially regressive and constitutionally suspect. Its position is increasingly isolated, not only in the Global North but also among neighboring democracies. The persistence of the marital rape exception in India reflects not a lack of legal feasibility, but a lack of political will.

7. Recommendations and Conclusion

The path forward requires both **legislative clarity and judicial courage**. Based on constitutional principles and international best practices, the following policy

¹⁸ *R v. R*, [1991] UKHL 12.

¹⁹ Nepal Penal Code, 2017, § 219.

²⁰ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (South Africa).

recommendations are proposed:

- 1. Immediate repeal of Exception 2 of Section 63 of the Bharatiya Nyaya Sanhita**, which grants blanket immunity to husbands from rape prosecution. This repeal should be accompanied by an amendment defining rape in a **consent-based, relationship-neutral** manner.
- 2. Procedural safeguards**—such as prior sanction before arrest, special evidentiary thresholds, or independent review mechanisms—can be designed to address concerns of false reporting without undermining the criminalization itself.
- 3. Judicial training and police sensitization** programs must be institutionalized to ensure that marital rape cases are handled with the same seriousness and procedural respect as other rape cases.
- 4. Integration with civil remedies**, such as fast-tracking criminal cases for women already under protection orders or in divorce proceedings, can help bridge the gap between safety and justice.
- 5. Public awareness campaigns** led by the Ministry of Women and Child Development, in collaboration with NGOs, must aim to shift public opinion and educate communities about sexual consent in marriage.

From a constitutional perspective, the continuation of the marital rape exception is indefensible. It violates the equality mandate of **Article 14**, the right to dignity and bodily autonomy under **Article 21**, and the non-discrimination clause of **Article 15**. The Supreme Court has consistently held that constitutional rights do not stop at the doorstep of the family. In *Navtej Singh Johar v. Union of India*, the Court reaffirmed that social morality must yield to constitutional morality.²¹ The logic of that ruling must extend to intimate spousal relations as well.

In conclusion, **marital rape is not a private matter; it is a public wrong disguised as domestic silence**. The law must not turn away simply because the setting of the crime is marital. Justice demands that India finally break its silence—both legal and moral—on this issue. A society that claims to value gender justice cannot selectively abandon its principles at the threshold of marriage. Criminalizing marital rape is not merely a legal reform; it is a constitutional imperative.

²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

Webliography:

1. United Nations Women, *Marital Rape Laws Around the World*, <https://www.unwomen.org>
2. Partners for Law in Development (PLD), *Marital Rape and the Indian Legal System*, <https://pldindia.org>
3. Justice Verma Committee Report (2013), Ministry of Home Affairs, <https://www.mha.gov.in/sites/default/files/JSVermaCommitteeReport.pdf>
4. CEDAW Committee Observations – India, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx
5. National Crime Records Bureau (NCRB) Reports, <https://ncrb.gov.in>
6. Supreme Court of India Judgment Portal, <https://main.sci.gov.in/judgments>
7. Law Commission of India Reports, <https://lawcommissionofindia.nic.in>
8. UN Women – Gender Equality and Law, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women>
9. The Wire, *Why India Needs to Criminalise Marital Rape*, <https://thewire.in>
10. Scroll.in, *Marital Rape in India: Legal Loopholes and Human Rights*, <https://scroll.in>

Reports Referred:

1. Justice J.S. Verma Committee Report on Amendments to Criminal Law, **Government of India, 2013.**
2. National Crime Records Bureau (NCRB) Annual Reports, **Ministry of Home Affairs, Government of India.**
3. CEDAW Committee – Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India, **U.N. Doc. CEDAW/C/IND/CO/4-5 (2014).**
4. Law Commission of India, 172nd Report **on Review of Rape Laws, 2000.**
5. United Nations Women – Progress of the World’s Women: In Pursuit of Justice, **2011–2012.**
6. Partners for Law in Development, *Marital Rape and the Indian Legal System*, **2021.**
7. World Health Organization (WHO), *Understanding and Addressing Violence Against Women*, **2012.**