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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

LEGITIMIZING FORCED SEX IN MARRIAGE: THE UNCONSTITUTIONAL NEXUS BETWEEN RCR AND MARITAL RAPE EXEMPTION

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ABSTRACT

Restitution of Conjugal Rights (RCR) and the marital rape exception are not benign legal tools for preserving marriage but are potent instruments of coercion embedded within India's patriarchal legal framework. They systematically undermine spousal autonomy, particularly of women, violate fundamental constitutional rights to equality, dignity, and privacy, and perpetuate a vision of marriage antithetical to modern constitutional morality. Their abolition and criminalization, respectively, are imperative for realizing gender justice. This research paper will critically examine the legal and socio-cultural dimensions of RCR and the marital rape exception in India. It will begin by deconstructing RCR, tracing its colonial origins, analyzing its disproportionate impact on women, and evaluating the constitutional challenges it has faced, with a particular focus on landmark judicial pronouncements. Subsequently, the paper will dissect the marital rape exception, exploring its patriarchal underpinnings, its conflict with fundamental rights, the evolving judicial discourse, and the recommendations of various law reform committees. A crucial section will explore the pernicious synergy between RCR and the marital rape exception, illustrating how they can combine to create a framework of legally sanctioned coercion. The paper will then turn to international human rights law and comparative legal practices in jurisdictions like the United Kingdom, Canada, and Australia, which have abolished RCR and criminalized marital rape, to draw lessons for India. Finally, the paper will conclude with concrete recommendations for legislative and judicial reforms aimed at dismantling these coercive legal mechanisms and fostering a vision of marriage based on equality, autonomy, and mutual respect.

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1. INTRODUCTION

The Indian legal system, while founded on constitutional principles of equality and justice, exhibits persistent patriarchal undercurrents, particularly within the sphere of family law. Marriage, often venerated as a sacred and pious relationship in Indian society, is governed by a complex web of personal laws and statutory provisions. These laws, intended to regulate marital duties and rights, can inadvertently become instruments of coercion when they prioritize the institutional sanctity of marriage over the fundamental autonomy and dignity of the individuals within it, especially women. Historically, marriage in many cultures, including feudal England from which certain Indian laws derive, was conceptualized akin to a property transaction, wherein the wife was considered the husband's possession or chattel. This archaic understanding, viewing women first as the property of their fathers and subsequently their husbands, has cast a long shadow, subtly influencing the contours of modern legal provisions. The language embedded in matrimonial laws, such as the concept of "conjugal rights" and their "restitution," carries the historical weight of these proprietary notions. "Conjugal rights" are often framed as entitlements one spouse possesses over the other, primarily the right to the other's "society" and cohabitation. The term "restitution" itself implies the restoration of something that has been wrongfully withdrawn, subtly framing a spouse's autonomous decision to separate as a deprivation of the other's entitlement. This linguistic and conceptual framework inherently positions individual autonomy, particularly the choice to withdraw from a marital relationship, as subordinate to a spousal "right" to consortium, thereby normalizing coercion under a legal guise.

Two such legal provisions, the Restitution of Conjugal Rights (RCR) and the marital rape exception, stand out as particularly problematic. RCR, a remedy allowing a spouse to petition the court to compel the other spouse to resume cohabitation, and the marital rape exception, which shields a husband from prosecution for non-consensual sexual intercourse with his adult wife, are not isolated anachronisms. Instead, they function as interconnected components of a legal architecture that can systematically facilitate and legitimize coercion within marriage. When RCR legally compels a spouse, often the wife due to prevailing societal power dynamics, to cohabit with the other, and the marital rape exception concurrently denies her the ability to legally define forced sexual intercourse by her husband as rape, a state-sanctioned environment

of heightened vulnerability is created. The law, in effect, can force an individual into proximity with a potential abuser and then deny full legal recourse if sexual violence ensues. These provisions, therefore, demand critical scrutiny for their impact on individual liberty and gender justice.

2. RESTITUTION OF CONJUGAL RIGHTS: A RELIC OF PATRIARCHAL DOMINION

The legal remedy of Restitution of Conjugal Rights (RCR) is not an indigenous concept rooted in ancient Indian jurisprudence but a transplant from feudal England. In medieval England, marriage was often viewed as a property arrangement, and the wife was considered part of the husband's possessions, akin to other chattels. The ecclesiastical courts in England provided the remedy of RCR, compelling a deserting spouse to return to the matrimonial home. This concept was introduced into the Indian legal system during British colonial rule, notably through the Privy Council's decision in *Moonshee Buzloor Ruheem vs. Shumsoonissa Begum* (1867). This case treated the withdrawal from cohabitation as a breach against which specific performance could be sought, thereby embedding the notion of enforceable cohabitation into Indian law.

Following its colonial introduction, RCR found its way into various personal laws governing different religious communities in India, as well as secular marriage law. For Hindus, it is codified under Section 9 of the Hindu Marriage Act, 1955, which allows an aggrieved party to petition the district court for RCR if the other spouse has "without reasonable excuse, withdrawn from the society of the other". Similar provisions exist for Christians under Sections 32 and 33 of the Indian Divorce Act, 1869⁽³⁾, for Parsis under Section 36 of the Parsi Marriage and Divorce Act, 1936, and for those married under the Special Marriage Act, 1954, through Section 22. For Muslims, while not explicitly codified in a single statute, the remedy can be granted by courts based on general principles of Muslim law, justice, equity, and good conscience. The fundamental premise across these laws is that a spouse has a legal right to the "society and comfort" of the other, and the court can order the "guilty party" to live with the "aggrieved party". This historical lineage underscores that RCR was imposed upon the Indian legal landscape, carrying with it the patriarchal assumptions of spousal ownership and control prevalent in its country of origin, making its continued existence in a modern constitutional democracy highly questionable.

Evolution and Key Provisions of Restitution of Conjugal Rights in Indian Personal Laws

Personal Law / Statute	Statutory Provision	Conditions for Decree	Historical Origin within that Law
Hindu Marriage Act, 1955	Section 9	Withdrawal from the society of the other spouse without reasonable excuse; court satisfied with truth of statements and no legal ground to refuse relief.	Codified post-independence, but concept derived from British India.
Muslim Law	General principles of Muslim law; principles of justice, equity, good conscience	Withdrawal from society or neglect of marital obligations without lawful ground/reasonable cause.	Applied by courts based on interpretations of Muslim personal law, influenced by the general legal framework established during colonial rule.
Indian Divorce Act, 1869 (Christians)	Sections 32 & 33	Withdrawal from the society of the other spouse without reasonable excuse.	Directly incorporated from English ecclesiastical law during the colonial era.
Parsi Marriage and Divorce Act, 1936	Section 36	Where husband/wife has without lawful ground withdrawn from society or neglected to perform obligations, court may	Enacted during British rule, reflecting similar common law principles.

		decree RCR.	
Special Marriage Act, 1954	Section 22	Language identical to Section 9 of HMA: Withdrawal from the society of the other spouse without reasonable excuse.	Secular marriage law enacted post-independence, but retained the RCR remedy, likely due to its prevalence in existing personal laws.

Although the statutory provisions for RCR are framed in gender-neutral terms, ostensibly allowing either spouse to seek relief, the socio-legal reality in India reveals a starkly different picture. Scholars and judicial observations indicate that RCR is disproportionately invoked by husbands against wives. This disparity is not accidental but is rooted in the entrenched patriarchal structures of Indian society, where women often face significant socio-economic disadvantages, patrilocal residential norms prevail, and power imbalances within marriage are common. Women may encounter financial, familial, or social obstacles that deter them from approaching the court or effectively resisting such petitions.

The enforcement of an RCR decree against an unwilling wife can have devastating consequences for her autonomy, privacy, and dignity. It directly infringes upon her right to choose her place of residence and can curtail her career aspirations, as courts have historically upheld the husband's prerogative in deciding the location of the matrimonial home, sometimes even expecting the wife to relinquish her employment to comply with his wishes. For instance, the Punjab High Court, in one instance, opined that "a wife's first duty to her husband is to submit herself obediently to his authority, and to remain under his roof and protection". Such judicial pronouncements underscore the patriarchal ethos underpinning the application of RCR, reinforcing traditional gender roles where the wife's agency is subordinated to the husband's authority.

Furthermore, a decree for RCR intrudes deeply into the realm of personal privacy, compelling an individual to share intimate aspects of their life with someone they may no longer wish to

cohabit with. The state, through the judiciary, effectively mandates cohabitation, overriding the individual's most personal and intimate decisions regarding their life and relationships. This coercive aspect of RCR fundamentally demeans human dignity by treating an individual, particularly a woman in the Indian context, not as an autonomous being with inherent rights but as an object to be "restituted" to the matrimonial fold. The argument that RCR is merely about restoring "society" and not necessarily sexual relations often rings hollow, as forced cohabitation in a marital setting invariably carries the implication and pressure of sexual intimacy, a point forcefully made in the *T. Sareetha* judgment. Thus, the purported gender neutrality of RCR crumbles under the weight of societal realities and its practical application, revealing it as a tool that often reinforces patriarchal control over women's lives.

Constitutional Scrutiny: RCR in Conflict with Articles 14 and 21

The constitutional validity of RCR has been a subject of intense debate and judicial contestation in India, primarily centered on its conflict with the fundamental rights guaranteed under Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty) of the Constitution. Article 21, as expansively interpreted by the Supreme Court, encompasses the rights to privacy, dignity, and autonomy, all of which are arguably infringed by a court-mandated compulsion to cohabit against one's will. The challenge under Article 14 stems from the argument that while facially neutral, RCR disproportionately affects women and perpetuates gender inequality by reinforcing traditional power dynamics within marriage.

The T. Sareetha Anomaly: A Progressive Stance on Bodily Autonomy

A watershed moment in the constitutional challenge to RCR was the judgment of the Andhra Pradesh High Court in *T. Sareetha vs. T. Venkata Subbaiah* (AIR 1983 AP 356). In a remarkably progressive decision, Justice P.A. Choudary declared Section 9 of the Hindu Marriage Act, 1955, unconstitutional, branding the remedy as "savage and barbarous". The court's reasoning was anchored firmly in the protection of individual liberty and privacy under Article 21. Justice Choudary argued that a decree for RCR constitutes the "starkest form of governmental invasion of personal identity and an individual's zone of intimate decisions".

The judgment emphasized that compelling sexual cohabitation, which it saw as an inevitable consequence of forced restitution, strips an individual of control over their own body, subjects them to potential "humiliating sexual molestation," and negates their right to decide "when if at all her body should be allowed to be used to give birth to another human being". This was

seen as a direct violation of bodily autonomy and reproductive choice, integral aspects of personal liberty. The court held that the state has no legitimate interest in compelling unwilling spouses to live together, as such coercion cannot genuinely mend broken relationships. By prioritizing individual fundamental rights, particularly the right to privacy and dignity, over the institutional sanctity of marriage, *T. Sareetha* recognized the inherent coercion in RCR and its potential to facilitate sexual subjugation within the marital bond. The court explicitly linked RCR to forced sex and the violation of sexual and reproductive autonomy, a stance that remains highly relevant to contemporary debates on consent and marital power dynamics.

The Regressive Turn: Saroj Rani and the Sanctity of Marriage Doctrine

The progressive stance of *T. Sareetha* was, however, short-lived. The Supreme Court, in *Smt. Saroj Rani vs. Sudarshan Kumar Chadha* (AIR 1984 SC 1562), overruled the Andhra Pradesh High Court's decision and upheld the constitutional validity of Section 9 of the Hindu Marriage Act. The Supreme Court's reasoning diverged significantly, prioritizing the "social purpose" of RCR in preserving the institution of marriage. It argued that RCR offers a chance for reconciliation and aims to prevent the breakdown of marriage. Crucially, the Court opined that a decree for RCR does not necessarily enforce sexual intercourse, as "conjuality" encompasses a broader spectrum of companionship and mutual support beyond mere sexual relations.

The Supreme Court's decision in *Saroj Rani* was significantly influenced by the Delhi High Court's earlier judgment in *Smt. Harvinder Kaur vs. Harmander Singh Chaudhary* (AIR 1984 Delhi 66). The Delhi High Court had also upheld the constitutionality of RCR, arguing that it serves a legitimate social purpose by providing a "cooling-off period" and encouraging spouses to resolve their differences. It critiqued the *T. Sareetha* judgment for placing excessive emphasis on the sexual aspect of marriage, asserting that RCR aims to restore the broader "society" of the spouse, which includes companionship and mutual comfort.

The judicial oscillation between *T. Sareetha*'s rights-centric approach and *Saroj Rani*'s institution-centric approach reflects a deeper societal and legal ambivalence in India. While *T. Sareetha* boldly sought to extend the full protection of fundamental rights into the marital sphere, *Saroj Rani* and *Harvinder Kaur* demonstrated a judicial reluctance to allow individual autonomy to "disrupt" the traditional understanding of marriage as an enduring societal unit. The emphasis in *Saroj Rani* on the "social purpose" of preserving marriage, even though a

potentially coercive legal tool, signalled a prioritization of the institution over the concrete fundamental rights of the individuals within it, particularly the autonomy of the unwilling spouse. This approach suggests a hesitancy to fully confront the patriarchal power dynamics that RCR can reinforce, preferring instead to view it as a benign tool for marital preservation.

Ongoing Debates and the Need for Re-evaluation

Despite the Supreme Court's verdict in *Saroj Rani*, the constitutional questions surrounding RCR remain contentious. The persistence of challenges to its validity, such as the Public Interest Litigation filed by Ojaswa Pathak, underscores the inadequacy of the *Saroj Rani* reasoning in settling the debate. Pathak's petition argues that court-mandated RCR is a "coercive act" by the state, violating fundamental rights to sexual and decisional autonomy, privacy, and dignity under Article 21. These renewed challenges gain particular salience in the context of the Supreme Court's evolving jurisprudence on privacy, notably in *Justice K.S. Puttaswamy (Retd.) vs. Union of India* (which affirmed privacy as a fundamental right), and on spousal autonomy and equality in *Joseph Shine vs. Union of India* (which decriminalized adultery). These later judgments, with their strong emphasis on individual autonomy and dignity, provide fresh grounds for re-evaluating the constitutionality of a remedy that, at its core, involves state-sanctioned coercion in intimate personal relationships.

Landmark Judicial Pronouncements on Restitution of Conjugal Rights

Name of the Case and Court	Key Arguments (Petitioner/Respondent)	Judgment	Core Reasoning	Impact
<i>Moonshee Buzloor Ruheem vs. Shumsoonissa Begum</i> (1867)_Privy Council	Wife withdrew from husband's society. Husband sought her return.	Upheld RCR	Established the remedy of RCR in British India, treating withdrawal from cohabitation as a matter for which specific	Foundation al case introducing RCR into Indian law based on English principles.

			performance could be sought.	
<i>T. Sareetha vs. T. Venkata Subbaiah</i> (AIR 1983 AP 356)_ Andhra Pradesh High Court	Petitioner (wife) argued Sec 9 HMA violates Art 14, 19, 21 (privacy, bodily autonomy, dignity). Respondent (husband) sought RCR.	Struck Down RCR	Sec 9 is "savage and barbarous." Violates Art 21 (privacy, dignity, bodily autonomy, reproductive choice). State cannot coerce sexual cohabitation. Disproportionately affects women (Art 14). ⁽⁷⁾	Landmark progressive judgment prioritizing individual fundamental rights over institutional sanctity of marriage. Recognized coercive nature of RCR.
<i>Smt. Harvinder Kaur vs. Harmander Singh Chaudhary</i> (AIR 1984 Delhi 66)_ Delhi High Court	Husband sought RCR. Wife challenged constitutionality of Sec 9 HMA (violates Art 14, 21).	Upheld Sec 9 HMA	Sec 9 aims to preserve marriage, not enforce sexual intercourse. "Cohabitation" is broader than sex. Serves social purpose. Constitutional law should not intrude into the home.	Influential judgment that disagreed with <i>T. Sareetha</i> , emphasizing marital preservation. Paved the way for the Supreme Court's stance in <i>Saroj Rani</i> .

<i>Smt. Saroj Rani vs. Sudarshan Kumar Chadha</i> (AIR 1984 SC 1562)_ Supreme Court of India	Wife obtained RCR decree. Husband sought divorce after one year of non-cohabitation. Wife challenged constitutionality of Sec 9 HMA.	Upheld Sec 9 HMA	Overruled <i>T. Sareetha</i> . Agreed with <i>Harvinder Kaur</i> . Sec 9 serves a social purpose by providing a chance for reconciliation and preventing marriage breakdown. Conjugalility is not just sexual intercourse.	Definitive SC ruling upholding RCR, prioritizing institutional sanctity and reconciliation over arguments of fundamental rights violation as articulated in <i>T. Sareetha</i> . Remains the binding precedent.
<i>Ojaswa Pathak vs. Union of India</i> (Pending)_ Supreme Court of India	PIL challenging Sec 9 HMA, Sec 22 SMA, Order XXI Rules 32, 33 CPC as coercive, violating Art 21 (sexual/decisional autonomy, privacy, dignity).	Pending	Arguments focus on RCR being a "coercive act" by the state, inconsistent with evolved jurisprudence on privacy and autonomy (<i>Puttaswamy</i> , <i>Joseph Shine</i>).	Represents ongoing efforts to re-evaluate RCR's constitutionality in light of contemporary understandings of

				fundamenta l rights.
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Arguments for Abolition: Aligning with Global Trends and Upholding Fundamental Freedoms

The case for abolishing RCR in India is compelling, resting on its fundamental incompatibility with constitutional values and modern human rights standards. Critics argue that RCR is an archaic and "barbarous" remedy, a relic of a bygone era when wives were considered their husbands' property. Its enforcement constitutes a profound violation of fundamental rights, including the right to privacy, personal liberty, equality, dignity, and bodily autonomy. The very notion that a court can compel an adult to cohabit with another against their will is antithetical to the freedom of association and the right to make autonomous life choices. Mr. Khardekar, a drafting committee member of the Hindu Marriage Act 1955, vehemently opposed RCR, stating, "To say the least, this particular cause is uncouth, barbarous and vulgar. That the government should be abettors in the form of legalized rape is something very shocking". Lord Herschell also observed that the law of RCR as administered sometimes led to "barbarous" results.

Beyond constitutional infringements, RCR is criticized for its potential for misuse, particularly by husbands seeking to evade maintenance obligations, harass their wives, or force them to abandon their careers and relocate. The Law Commission of India in 2018 noted that RCR decrees often compel women to leave their jobs, undermining their economic independence and freedom. Furthermore, the remedy is largely ineffective in achieving genuine reconciliation between estranged spouses; forced cohabitation is unlikely to mend emotional rifts and may exacerbate existing tensions. As Flavia Agnes has noted, men increasingly file RCR suits as a retaliatory measure against wives seeking divorce or separation.

The international legal landscape further strengthens the argument for abolition. Many common law jurisdictions, which, like India, inherited RCR from English law, have long since recognized its anachronistic and coercive nature and have abolished it. The United Kingdom, the very source of this remedy for India, abolished RCR through the Matrimonial Proceedings and Property Act in 1970. Similarly, Canada undertook reforms at the provincial level in the late 1970s and early 1980s to do away with RCR, and Australia abolished it through the Family

Law Act of 1975. India remains one of the few legal systems where this "pernicious legal transplant" survives. This divergence highlights that India's retention of RCR is not merely a continuation of a shared legal tradition but an active choice that places it out of step with global trends towards greater spousal autonomy and the protection of individual rights within marriage. The fact that its countries of origin have discarded RCR underscores its incompatibility with contemporary values of liberty and dignity.

3. MARITAL RAPE: THE SANCTIONED VIOLATION WITHIN MATRIMONY

The Indian Penal Code (IPC), 1860, under Section 375, defines the offence of rape. However, Exception 2 to this section carves out a significant exclusion: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape". This age was subsequently interpreted by the Supreme Court in *Independent Thought v. Union of India* (2017) to be 18 years to align with other child protection laws. Despite the recent overhaul of criminal laws, this contentious exception has been largely retained in Section 63 of the Bharatiya Nyaya Sanhita (BNS), 2023, which states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. This provision effectively grants legal immunity to a husband who commits non-consensual sexual acts against his adult wife.

The Doctrine of Implied Consent and the Erasure of Female Agency

The historical underpinning of this marital rape exception is the archaic and deeply patriarchal doctrine of "implied consent" or "irrevocable consent." This doctrine, most famously articulated by the 17th-century English jurist Sir Matthew Hale, posited that upon marriage, a wife gives an irrevocable consent to sexual intercourse with her husband, which she cannot retract. Hale's dictum stated: "the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". This legal fiction was intertwined with the concept of "coverture" or the "unities theory," prevalent in Victorian England, under which a married woman's legal existence was subsumed into that of her husband. She was effectively considered his property or chattel, with no independent legal standing or agency, particularly concerning her body and sexuality.

The Indian Penal Code, drafted in the 1860s under British colonial rule, absorbed these

Victorian patriarchal norms. Thus, the marital rape exception is not an indigenous legal concept but a colonial imposition reflecting the misogynistic legal thought of that era. It is predicated on the notion that marriage extinguishes a woman's right to sexual autonomy and bodily integrity, reducing her to a mere instrument for her husband's sexual gratification. This erasure of female agency is fundamentally incompatible with the principles of individual dignity and equality that form the bedrock of India's constitutional democracy. The persistence of this exception signifies a failure to decolonize Indian law from its patriarchal vestiges and to recognize married women as autonomous individuals with the inalienable right to consent to every sexual act.

Constitutional Imperatives: Marital Rape vs. Equality, Dignity, and Bodily Integrity (Articles 14, 15, 21)

The marital rape exception enshrined in Indian law stands in stark contradiction to the fundamental rights guaranteed by the Constitution of India. Its continued existence is challenged primarily on the grounds that it violates Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), and Article 21 (Right to Life and Personal Liberty).

The exception creates an arbitrary and unreasonable classification between married and unmarried women, thereby violating Article 14. An unmarried woman is legally protected against non-consensual sexual acts by any man, whereas a married woman is denied this same protection against her own husband. This distinction lacks any intelligible differentia that has a rational nexus with the object of the rape law, which is to protect individuals from sexual violation. The marital status of a woman cannot be a legitimate basis for denying her equal protection of the law against a crime as heinous as rape. As argued by petitioners and legal scholars, this classification effectively treats married women as having a lesser right to bodily integrity and sexual autonomy than unmarried women.

Furthermore, the marital rape exception results in discrimination on the ground of sex and marital status, contravening Article 15 of the Constitution. Since the exception only immunizes husbands and not wives (as rape under Section 375 IPC is defined as an act committed by a man against a woman), and because it specifically applies within the context of marriage, it disproportionately impacts women, reinforcing their subordinate position within the marital relationship.

Most significantly, the exception is a profound infringement of Article 21, which guarantees the right to life and personal liberty, interpreted to include the right to live with dignity, the right to privacy, and the right to bodily autonomy and sexual self-determination. Forcing a woman to endure non-consensual sexual acts, even by her husband, is a gross violation of her bodily integrity and an affront to her dignity. Marriage cannot be construed as a lifelong consent to sexual activity, nor can it extinguish a woman's right to make autonomous decisions about her own body. The exception disregards the reality of intimate partner violence and perpetuates archaic stereotypes that deem women subordinate within marriage, presuming their irrevocable consent. By denying a married woman the right to say 'no' to sexual intercourse with her husband, the law effectively sanctions a severe form of physical and psychological violence, stripping her of her most basic human rights.

Judicial Engagement and Evolving Jurisprudence

The Indian judiciary has engaged with the issue of marital rape and the constitutionality of its exception with varying degrees of directness and progressiveness, reflecting the complex interplay between legal doctrine, constitutional rights, and societal norms.

Independent Thought v. Union of India (2017): Protecting Minor Wives

A significant judicial intervention came in the case of *Independent Thought v. Union of India* (2017). In this landmark judgment, the Supreme Court addressed the anomaly within Exception 2 to Section 375 of the IPC, which at the time did not consider sexual intercourse by a man with his wife, if she was not under 15 years of age, as rape. The Court effectively read down this exception to criminalize marital rape of minor wives aged between 15 and 18 years. The Court's reasoning was anchored in the need to harmonize the IPC with the Protection of Children from Sexual Offences (POCSO) Act, 2012, which sets the age of consent at 18 years and criminalizes sexual activity with minors, irrespective of marriage.

The Supreme Court held that Exception 2, in its application to minor wives, was arbitrary, unreasonable, and violative of their fundamental rights under Articles 14 (equality), 15 (non-discrimination), and 21 (right to life with dignity, bodily integrity, and autonomy) of the Constitution. The Court emphasized that a girl child does not lose her right to dignity and bodily integrity merely by virtue of marriage and that allowing non-consensual sexual intercourse with a minor wife would have grave repercussions on her physical and mental health. While this judgment was a crucial step in protecting child brides from sexual exploitation within marriage,

the Supreme Court explicitly stated that it was not ruling on the broader issue of marital rape concerning adult women, leaving that critical gap unaddressed. Nevertheless, the constitutional principles articulated in *Independent Thought*—particularly concerning bodily autonomy, dignity, and the arbitrary nature of classifying individuals based on marital status for the purpose of denying protection from sexual violence—provide a strong jurisprudential basis for challenging the marital rape exception for adult women.

The Delhi High Court Split Verdict (RIT Foundation & Ors. vs. Union of India, 2022): Divergent Paths to Justice

The question of marital rape of adult women came directly before the Delhi High Court in a batch of petitions, including *RIT Foundation & Ors. vs. Union of India*, culminating in a split verdict in May 2022. The two-judge bench offered starkly contrasting opinions, encapsulating the central tensions in this debate.

Justice Rajiv Shakdher, in his opinion, struck down Exception 2 to Section 375 IPC as unconstitutional. He reasoned that the exception violates Articles 14, 15, 19(1)(a) (freedom of speech and expression, including the right to say 'no'), and 21 of the Constitution. He emphasized that marriage does not imply irrevocable consent and that a woman's right to bodily autonomy, dignity, and the right to withdraw consent at any point are fundamental. He argued that the classification between married and unmarried women for the purpose of rape law is manifestly arbitrary and unreasonable, conveying that forced sex outside marriage is "real rape" while forced sex within marriage is somehow lesser or permissible. Justice Shakdher asserted that non-consensual sex in marriage is an antithesis to the modern understanding of matrimony as a relationship of equals and leaves deep physical and psychological scars.

Conversely, Justice C. Hari Shankar upheld the constitutional validity of the marital rape exception. His reasoning centered on the premise that the legislature, in its wisdom, chose to treat non-consensual sexual acts within marriage differently to protect the institution of marriage. He argued that marriage carries an "inexorable incident of a legitimate expectation of sex" and that the distinction made by the law is based on an intelligible differentia having a rational nexus to this object. He further opined that striking down the exception would amount to judicial legislation, creating a new offence, which falls within the domain of the legislature. He also raised concerns about the practical difficulties in proving or disproving consent within the intimate setting of a marriage.

This split verdict, now pending appeal before the Supreme Court, vividly illustrates the ongoing legal and ideological battle. Justice Shakti Chaudhary's opinion resonates with a rights-based, individual-centric approach, affirming that constitutional guarantees must extend into the marital sphere. Justice Chandrachud's opinion, on the other hand, reflects a more traditional, institution-centric view, prioritizing the perceived sanctity of marriage and legislative deference.

The Shadow of Joseph Shine vs. Union of India (2018): Implications for Spousal Autonomy

The Supreme Court's judgment in *Joseph Shine vs. Union of India* (2018), which decriminalized adultery by striking down Section 497 of the IPC, has significant, albeit indirect, implications for the marital rape debate. The Court, in *Joseph Shine*, held Section 497 to be unconstitutional as it violated Articles 14, 15, and 21. The judgment strongly emphasized individual autonomy, sexual privacy, and the equality of spouses within a marriage. It critiqued the archaic notion underlying adultery law that treated the wife as the property of her husband and denied her agency.

The principles enunciated in *Joseph Shine* fundamentally challenge the patriarchal underpinnings of marriage that view women as subordinate or as possessions. By affirming that marriage is a partnership of equals and that each spouse retains their individual dignity and autonomy, the judgment implicitly undermines the very foundation of the marital rape exception – the idea of implied or irrevocable consent. If spouses are autonomous individuals with the right to make personal choices regarding their sexuality and relationships, as affirmed in *Joseph Shine*, then the notion that marriage grants a husband an unfettered right to sexual intercourse with his wife, irrespective of her consent, becomes legally and morally untenable. The emphasis on sexual autonomy and privacy within the matrimonial sphere in *Joseph Shine* strengthens the argument that non-consensual sexual acts within marriage are a violation of fundamental rights and should be recognized as rape.

Voices for Reform: Law Commission Reports and the Justice Verma Committee's Call for Criminalization

The discourse on reforming the marital rape law in India has been significantly shaped by various Law Commission reports and expert committee recommendations, reflecting an evolving understanding of women's rights and the nature of consent within marriage.

The **42nd Law Commission Report (1971)** was one of the earliest official documents to touch upon the issue. While it acknowledged the problematic nature of the marital rape exception, particularly in situations where spouses were living separately but the marriage technically subsisted, it did not make a definitive recommendation for its deletion or retention. The report noted that if a husband has sexual intercourse with his separated wife against her will, "he cannot be charged with the offence of rape. This does not appear to be right". This hesitant acknowledgment marked the beginning of a long and arduous debate.

The **172nd Law Commission Report (2000)** revisited the issue with more pointed arguments. It questioned the rationale for shielding rape within marriage when other forms of spousal violence were criminalized. The report argued that there was no logical reason to exempt marital rape from the ambit of criminal law. However, despite these strong observations, the Commission ultimately recoiled from recommending the criminalization of marital rape, citing concerns that such a move would "excessively interfere with the institution of marriage" and could lead to its destabilization. This decision reflected the prevailing societal and institutional anxieties about altering the traditional dynamics of marriage. The government later requested the Law Commission to redeliberate on the subject during its comprehensive review of the Criminal Justice System.

A significant turning point came with the **Justice J.S. Verma Committee Report (2013)**, constituted in the aftermath of the 2012 Delhi gang rape case to recommend amendments to criminal law. This committee unequivocally and forcefully recommended the deletion of Exception 2 to Section 375 IPC and the explicit criminalization of marital rape. The report asserted that the marital relationship should not be considered as an irrevocable consent to sexual acts and that the marital status of the victim and accused should be irrelevant in determining consent. It highlighted the sexist assumption underlying the immunity: that "women being the property of men and irrevocably consenting to the sexual needs of their husband". The Verma Committee's recommendations were widely hailed as progressive and rights-affirming.

However, despite these strong recommendations, the Union Government and the Parliament Standing Committee on Home Affairs (2013) rejected the proposal to criminalize marital rape when enacting the Criminal Law (Amendment) Act, 2013. The arguments against criminalization reiterated concerns about the stability of the family system, potential misuse of

the law, and the perceived adequacy of existing provisions like Section 498A IPC (cruelty by husband or relatives) and the Protection of Women from Domestic Violence Act, 2005. This legislative reluctance, in the face of expert advice, underscores the deep-seated societal and political resistance to recognizing marital rape as a distinct criminal offense. The journey from hesitant acknowledgment by early Law Commissions to a clear call for criminalization by the Verma Committee indicates a significant evolution in legal and expert thinking, even if legislative action has lagged.

Sociological Scars: The Impact of Non-Criminalization on Mental Health, Underreporting, and Perpetuation of Violence

The non-criminalization of marital rape in India inflicts profound sociological scars, impacting not only the individual victims but also perpetuating a broader culture of gender inequality and violence within the ostensibly private sphere of marriage.

One of the most severe consequences is the devastating impact on the mental health of women subjected to spousal sexual violence. Studies indicate a significant association between marital rape and adverse mental health outcomes, including clinical depression, Post-Traumatic Stress Disorder (PTSD), and suicidality. Women who experience sexual coercion by their intimate partners report a range of psychological sequelae, including loss of interest in daily activities, anxiety, and feelings of worthlessness. The trauma is often compounded by the fact that the perpetrator is someone in whom the victim had placed trust, leading to a profound sense of betrayal and emotional distress.

The legal vacuum surrounding marital rape contributes significantly to its chronic underreporting. Victims are often unaware that non-consensual sexual acts by their husbands constitute a violation of their rights, especially when the law itself provides an exception. Social stigma, fear of reprisal from the husband and his family, economic dependence, the pressure to maintain family honor, and the normalization of such violence within patriarchal structures create formidable barriers to disclosure and help-seeking. National Family Health Survey (NFHS-5, 2019-21) data indicated that 32% of married women reported spousal violence, but only a small fraction (around 10%) sought help. A 2014 International Council for Women survey found that 14% of women reported being victims of marital rape, while over a third of men admitted to forcing their spouses to have sex. This underreporting masks the true scale of the problem, making it difficult to formulate effective interventions and perpetuating a cycle

of silence and impunity.

Crucially, the non-criminalization of marital rape perpetuates violence against women and reinforces their subordinate status within marriage and society. By failing to recognize marital rape as a crime, the legal system implicitly condones it, sending a message that a husband's sexual entitlement trumps his wife's bodily autonomy and consent. This legal lacuna strengthens patriarchal norms that view wives as the sexual property of their husbands and normalizes sexual coercion as a part of marital life. The argument frequently advanced by the state and conservative sections of society – that criminalizing marital rape would "destroy the institution of marriage" – itself reveals a deeply problematic understanding of marriage. It implicitly suggests that the "institution" being protected is one where male sexual access is guaranteed, regardless of female consent. This fundamentally conflicts with constitutional values of equality, dignity, and individual autonomy, which should be the bedrock of any modern, just marital relationship. The failure to criminalize marital rape is thus not merely a legal oversight but a systemic endorsement of a patriarchal order that devalues women's fundamental human rights.

Case Name & Citation	Key Issue(s)	Petitioner's Arguments	Respondent's Arguments	Judgment	Core Reasoning	Impact
<i>Independent Thought vs. Union of India</i> (2017) 10 SCC 800	Constitutionality of Exception 2 to Section 375 IPC for minor wives (15-18 years).	Exception 2 arbitrary, discriminatory (violates Art 14, 15, 21), conflicts with POCSO Act.	Exception protects consensual child marriages, a social reality; marriage implies consent.	Read down Exception 2; sexual intercourse with wife aged 15-18 is rape.	Exception arbitrary, violates Art 14, 15, 21 for minor girls. Inconsistent with POCSO. Bodily integrity and dignity	Protecting minor wives. Set precedent on applying constitutional rights within marriage for minors, but explicitly excluded adult marital rape.

					paramount .	
<i>Nimeshbhai Bharatbhai Desai vs. State of Gujarat</i> (2018)	Whether husband can be charged with rape of adult wife	Marital rape is a non-consensual act of violence.	Exception 2 to Sec 375 IPC provides immunity.	Court called for abolition of marital rape exception, terming it "regressive, sexist, illogical". However, directed case under Sec 377 (unnatural offenses) due to existing law.	Highlighted unconstitutionality of the exception, but bound by existing statutory language. Showed judicial inclination towards reform.	
<i>RIT Foundation & Ors. vs. Union of India</i> (2022) (Delhi HC Split Verdict)	Constitutionality of Exception 2 to Sec 375 IPC for adult wives.	Exception violates Art 14, 15, 19(1)(a), 21 (equality, dignity, bodily autonomy, right to withdraw consent).	Exception protects institution of marriage; striking it down is judicial legislation; marriage has legitimate expectation	Split Verdict: Justice Rajiv Shaktiher struck down the exception. Justice C. Hari Shankar	<i>Justice Shaktiher:</i> Violates Art 14, 15, 21; marriage not irrevocable consent; dignity & autonomy	Encapsulated the core legal conflict. Matter appealed to Supreme Court, highlighting urgent need for definitive

			of sex; existing laws (DV Act) provide remedies.	upheld it.	paramoun. <i>Justice Shankar:</i> Intelligible differentia; preserves marriage; legislative domain.	ruling.
<i>Joseph Shine vs. Union of India</i> (2018) 3 SCC 39	Constituti onality of Sec 497 IPC (Adultery).	Sec 497 arbitrary, discriminato ry against men, treats women as husband's property, violates Art 14, 15, 21.	Sec 497 protects sanctity of marriage.	Struck down Sec 497 IPC as unconstituti onal.	Adultery law archaic, paternalisti c, infringes autonomy, dignity, privacy (Art 14, 15, 21). Spouses are equal partners.	Affirmed individual autonomy and equality within marriage, undermining notions of spousal ownership and implied consent, relevant to marital rape debate.

Summary of Key Law Commission and Committee Recommendations on RCR and Marital Rape

Report	Year	Key Recommendations on RCR	Key Recommendations on Marital Rape	Core Justification	Legislative Action Taken
42nd Law	1971	No specific	Acknowledged that a	Implied that	No

Commission Report		recommendation for abolition of RCR.	husband having sex with his separated wife against her will not being rape "does not appear to be right." No explicit recommendation to criminalize.	consent differs if couple lives apart. Concern about legal anomaly.	immediate legislative change on marital rape. RCR provisions remained.
59th Law Commission Report (on HMA & SMA)	1974	Recommended retaining RCR, suggesting it could be a ground for divorce if not complied with for a period. (Implied from general discussions on matrimonial remedies)	Not directly addressed in detail for adult wives.	RCR seen as a step towards reconciliation or, if failed, as proof of marriage breakdown.	Amendments to HMA later incorporated non-resumption of cohabitation after RCR decree as a ground for divorce.
172nd Law Commission Report (Review of Rape Laws)	2000	Not the primary focus, but general context of matrimonial remedies.	Questioned validity of Exception 2 to Sec 375 IPC, arguing other spousal violence is criminalized. Ultimately rejected criminalization.	Fear that criminalizing marital rape would "compromise the institution of marriage" and lead to excessive interference.	Marital rape exception was not removed.
Justice J.S.	2013	Not the primary focus.	Strongly	Marriage	Recommen

Verma Committee Report (Amendments to Criminal Law)			recommended deletion of Exception 2 to Sec 375 IPC and criminalization of marital rape.	should not be considered irrevocable consent. Marital relationship cannot be a shield for rape. Exception based on sexist assumption of women as property.	dation to criminalize marital rape was rejected by the government /Parliament Standing Committee during Criminal Law (Amendment) Act, 2013, citing protection of family system and potential misuse. (9)
Law Commission of India Report No. 277 (Wrongful Prosecution)	2018	While not directly on abolition, noted that RCR decrees force women to leave jobs, contrary to their freedom.	Not the primary focus of this report.	Concern for women's freedom and economic independence .	No specific action on RCR based on this observation.

4. THE INTERTWINED NATURE OF COERCION: RESTITUTION OF CONJUGAL RIGHTS AS A PRECURSOR TO MARITAL VIOLENCE

A decree for the Restitution of Conjugal Rights (RCR), by its very nature, compels an unwilling spouse, predominantly the wife in the Indian socio-legal context, to return to the matrimonial

home and cohabit with the other spouse. This forced cohabitation, mandated by the state through its judicial arm, inherently creates a situation of heightened vulnerability for the unwilling party. The power imbalance that often characterizes marital relationships, particularly in patriarchal settings, is exacerbated when one spouse is legally coerced into proximity with the other. In such an environment, the ability of the unwilling spouse to refuse sexual advances is severely compromised. The *T. Sareetha* judgment astutely recognized this danger, with Justice Choudary observing that an RCR decree could lead to "humiliating sexual molestation" and subject the victim to forcible procreation against her will. The court explicitly stated that a decree for RCR implies enforcing marital intercourse, thereby transferring the choice to have intercourse or not, and to procreate or not, from the individual to the state. This legal compulsion to share a domestic space under duress can thus become a direct precursor to non-consensual sexual acts, as the unwilling spouse is placed in a situation where resisting sexual demands becomes exceedingly difficult, if not impossible, without risking further conflict or abuse. The state, by enforcing RCR, effectively facilitates an environment where sexual autonomy is gravely imperiled.

The compounded violation when marital rape is not a crime

The coercive potential of RCR is dangerously amplified by the existence of the marital rape exception in Indian law. If a wife is compelled to return to her husband through an RCR decree and is subsequently subjected to non-consensual sexual intercourse, Exception 2 to Section 375 of the IPC (now Section 63 of the BNS) means that this act is not legally considered rape. While she might have recourse under civil laws like the Protection of Women from Domestic Violence Act, 2005, for sexual abuse, humiliation, or violation of dignity, the specific crime of rape, with its attendant criminal sanctions and societal condemnation, remains unrecognized. This creates a perverse legal paradox: the law first coerces an individual into a situation ripe for abuse (forced cohabitation) and then fails to provide adequate criminal protection against one of the most severe forms of violation (rape) within that coerced environment.

This interplay between RCR and the marital rape exception constructs what can be described as a "conjugal cage." The wife's body and sexuality are implicitly treated as marital property, accessible to the husband once the state has enforced her return to the matrimonial home. This demonstrates a systemic failure to recognize and protect individual sexual autonomy within the institution of marriage. The argument advanced in *Saroj Rani* that RCR is primarily about "companionship" and not necessarily about enforcing sex appears particularly tenuous when

viewed through this lens. If companionship is forced, and within that forced companionship, sexual autonomy is not legally protected from spousal rape, then "companionship" can become a euphemism for a coerced existence where sexual violation is legally permissible. The law, in this combined effect, not only fails to protect but actively contributes to a framework that can legitimize and perpetuate sexual coercion in the name of preserving conjugality.

5. INTERNATIONAL HUMAN RIGHTS LAW AND COMPARATIVE BEST PRACTICES

India, as a signatory to various international human rights treaties, has obligations to ensure the protection of women from all forms of violence and discrimination. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is particularly pertinent. Articles 1, 2, 3, 5, and 16 of CEDAW collectively mandate States Parties to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices that constitute discrimination against women and to ensure equality in marriage and family relations. The marital rape exception, by denying married women equal protection of the law against sexual violence compared to unmarried women, and RCR, by disproportionately impacting women's autonomy and potentially forcing them into abusive situations, arguably contravene these provisions. The CEDAW Committee, in its General Recommendation No. 19 (updated by General Recommendation No. 35), has explicitly defined gender-based violence against women to include acts that inflict physical, mental, or sexual harm or suffering, occurring within the family or domestic unit, and has called for the criminalization of marital rape. GR No. 35 specifically states that marital rape is rape based on a lack of freely given consent and takes into account coercive circumstances. These recommendations underscore that the absence of laws criminalizing marital rape is contrary to the ideals of gender equality and human dignity.

Various UN human rights bodies have repeatedly urged India to address these issues. The UN Committee on the Rights of the Child, in its 2014 Concluding Observations on India, urged the State party to "ensure that all forms of sexual abuse of girls under 18 years of age, including marital rape, are fully criminalised". Similarly, the CEDAW Committee, in its 2014 Concluding Observations, urged the Indian government to amend the Criminal Law (Amendment) Act to ensure that marital rape is defined as a criminal offense. The UN Special Rapporteur on Violence against Women, its causes and consequences, in a 2023 report, also

urged India to amend its laws to criminalize marital rape, aligning with previous committee recommendations. Joint submissions to the UN Human Rights Committee for India's Universal Periodic Review have highlighted that "marital rape of non-minors is expressly excluded from rape provisions... This is despite repeated calls by international actors... for removal of the marital rape exception". India's continued retention of the marital rape exception and the RCR provision, despite these clear international standards and specific recommendations, raises serious questions about its commitment to fulfilling its international obligations concerning the protection of women's human rights and the elimination of gender-based violence. This persistent gap suggests a prioritization of domestic socio-cultural considerations, often patriarchal in nature, over binding international commitments.

Lessons from the UK, Canada, and Australia in Criminalizing Marital Rape and Abolishing RCR

The legal trajectories of other common law jurisdictions, particularly the United Kingdom, Canada, and Australia, offer valuable lessons for India, as these countries share a similar legal heritage concerning RCR and historical marital rape immunities but have since undertaken significant reforms. In the **United Kingdom**, the country from which India inherited these legal concepts, Restitution of Conjugal Rights was abolished by Section 20 of The Matrimonial Proceedings and Property Act 1970. This legislative reform followed recommendations that a court order compelling adults to live together was an inappropriate method for reconciliation. Subsequently, marital rape was judicially criminalized by the House of Lords in the landmark case of *R v R* (1991). The Law Lords declared that the marital rape exemption was a "common law fiction" and an "anachronistic and offensive" legal doctrine that no longer formed part of English law, emphasizing that marriage is a partnership of equals and a wife does not give irrevocable consent to sexual intercourse. This was later codified in statute, for instance, by the Sexual Offences Act 2003, which defines rape based on lack of consent without any marital exemption.

Canada also moved to abolish RCR at the provincial level during the late 1970s and early 1980s⁽⁴⁾. Marital rape was explicitly criminalized in 1983 through amendments to the Criminal Code, which replaced the offence of rape with a series of sexual assault offences applicable to all individuals regardless of marital status. The law now emphasizes that no person is deemed to consent to sexual activity by virtue of being married.

Australia followed a similar path. The Family Law Act 1975 abolished RCR nationwide. The criminalization of marital rape occurred progressively across its states and territories. South Australia was the first state to legislate against marital rape in 1976. New South Wales followed by completely removing marital immunity for rape in 1981, with other states and territories enacting similar reforms between 1985 and 1992. Current legislation in Australian states, such as Section 61KA of the Crimes Act 1900 (NSW), explicitly states that marriage is not a defense to any sexual offence.

The evolution of laws in these countries demonstrates a clear international trend towards recognizing and protecting spousal autonomy, bodily integrity, and the right to consent within marriage. The fact that these common law nations, which once upheld similar patriarchal legal doctrines, have decisively moved to abolish RCR and criminalize marital rape, powerfully underscores the anachronistic nature of their persistence in India. It suggests that India's retention is less about adherence to an immutable legal tradition and more about the enduring strength of domestic patriarchal norms that resist alignment with global human rights standards and the principles of gender justice. These comparative examples provide strong persuasive authority for similar reforms in India, debunking arguments that such changes are unworkable, culturally inappropriate, or alien to common law systems.

Country	Status of RCR	Status of Marital Rape	Key Legislative Act(s) or Landmark Judgment(s)
India	Exists (Sec 9 HMA, Sec 22 SMA, etc.); Upheld by Supreme Court (<i>Saroj Rani</i> , 1984).	Exception for adult wives (above 18) exists (Exception 2, Sec 375 IPC; Sec 63 BNS). Marital rape of minor wife (15-18) criminalized (<i>Independent Thought</i> , 2017).	Hindu Marriage Act, 1955 (Sec 9); Special Marriage Act, 1954 (Sec 22); Indian Penal Code, 1860 (Sec 375, Ex 2); Bharatiya Nyaya Sanhita, 2023 (Sec 63, Ex 2); <i>Saroj</i>

		Delhi HC split verdict (2022) on adult marital rape.	<i>Rani vs. Sudarshan Kumar Chadha; Independent Thought vs. UOI; RIT Foundation vs. UOI.</i>
United Kingdom	Abolished (1970).	Fully Criminalized.	Matrimonial Proceedings and Property Act 1970 (Sec 20 for RCR); <i>R v R</i> (1991) UKHL 12 (judicially criminalized marital rape); Sexual Offences Act 2003 (codified).
Canada	Abolished at provincial levels (late 1970s-1980s).	Fully Criminalized (as sexual assault by spouse) (1983).	Criminal Code amendments (1983) for sexual assault; Various provincial Family Law Acts for RCR abolition.
Australia	Abolished (1975).	Fully Criminalized (state/territory level, 1976-1992).	Family Law Act 1975 (RCR abolition); Various state/territory Crimes Acts (e.g., Crimes Act 1900 (NSW), Sec 61KA).

6. FORGING A PATH TOWARDS GENDER JUSTICE: RECOMMENDATIONS FOR LEGAL REFORM

The deeply entrenched nature of RCR and the marital rape exception within India's legal framework, despite their clear conflict with constitutional principles and international human rights standards, necessitates urgent and comprehensive reforms. These reforms must be legislative, judicial, and societal to effectively dismantle these instruments of coercion and pave the way for genuine gender justice within marriage.

Legislative Imperatives: Repealing RCR provisions and unequivocally criminalizing marital rape by removing the exception

The most direct and effective path to reform lies in decisive legislative action. Firstly, Parliament must repeal all provisions enabling the Restitution of Conjugal Rights. This includes Section 9 of the Hindu Marriage Act, 1955, Section 22 of the Special Marriage Act, 1954, Sections 32 and 33 of the Indian Divorce Act, 1869, Section 36 of the Parsi Marriage and Divorce Act, 1936, and any other equivalent provisions under personal or general laws. The state has no legitimate interest in compelling unwilling spouses to cohabit. Marital reconciliation, if it is to occur, must be a voluntary process based on mutual desire, not judicial coercion. Alternative dispute resolution mechanisms, such as mediation and counselling, can be strengthened to support couples seeking amicable resolutions, but these must remain voluntary and non-coercive.

Secondly, and crucially, Parliament must unequivocally criminalize marital rape by deleting Exception 2 to Section 375 of the Indian Penal Code (and its equivalent, the exception under Section 63 of the Bharatiya Nyaya Sanhita, 2023). This legislative amendment should make it clear that sexual intercourse or sexual acts by a man with his wife without her free and voluntary consent constitutes rape, irrespective of their marital status. The definition of consent must be affirmative, meaning an "unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act," as already outlined in Explanation 2 to Section 375 IPC. It must also be emphasized that consent is specific to each sexual act and can be withdrawn at any time. The Justice Verma Committee's strong recommendation to delete the exception provides a clear roadmap for this legislative change.

Judicial Responsibility: Reinterpreting laws through the lens of constitutional morality and fundamental rights

While legislative reform is paramount, the judiciary, particularly the Supreme Court, bears a significant responsibility to interpret existing laws and scrutinize new ones through the prism of constitutional morality and fundamental rights. The Supreme Court should seize the opportunity presented by pending appeals (such as those arising from the Delhi High Court's split verdict in *RIT Foundation*) to definitively rule on the constitutionality of the marital rape exception for adult women. Such a ruling should prioritize the fundamental rights of women to equality (Article 14), non-discrimination (Article 15), and life with dignity, bodily autonomy, and privacy (Article 21), aligning with the progressive reasoning of Justice Rajiv Shukdhara and the principles laid down in *Independent Thought*, *K.S. Puttaswamy*, and *Joseph Shine*. Similarly, the Supreme Court should reconsider the constitutionality of RCR, taking into account the compelling arguments regarding its violation of fundamental rights and its anachronistic nature, as articulated in *T. Sareetha* and subsequent critiques. The reasoning in *Saroj Rani*, which upheld RCR based on the "social purpose" of preserving marriage, needs urgent re-evaluation in light of the evolved understanding of individual autonomy and the state's limited role in compelling intimate personal choices. A judicial pronouncement that unequivocally affirms that marriage does not extinguish individual fundamental rights, including sexual and decisional autonomy, would send a powerful message and pave the way for a more just and equitable marital jurisprudence.

Addressing Implementation Challenges: Sensitization, evidentiary reforms, and victim support mechanisms

Criminalizing marital rape and abolishing RCR are necessary first steps, but their effective implementation will require addressing significant societal and institutional challenges. One of the primary concerns raised against criminalizing marital rape is the difficulty of proving lack of consent within an intimate relationship and the potential for misuse of the law. While the fear of misuse is often disproportionately emphasized and reflects underlying societal biases against women's testimonies, it is crucial to institute procedural safeguards to prevent false accusations while ensuring that genuine victims receive justice.

Addressing these challenges requires a multi-pronged approach:

- **Gender Sensitization:** Comprehensive and ongoing gender sensitization training for police personnel, judicial officers, prosecutors, and medical professionals is essential

to ensure that complaints of marital rape are handled with sensitivity, impartiality, and an understanding of the dynamics of intimate partner violence. This training should aim to dismantle patriarchal biases and rape myths.

- **Evidentiary Reforms:** While the burden of proof generally lies with the prosecution, consideration could be given to nuanced evidentiary approaches in marital rape cases, given their private nature. For instance, as suggested in some academic discourse, where a relationship of control or dominance is established, a rebuttable presumption of absence of consent could be explored, shifting the onus to the accused to prove consent. However, any such reform must be carefully calibrated to avoid undermining the presumption of innocence. The current Explanation 2 to Section 375 IPC, stating that non-resistance does not equal consent, should be strongly emphasized.
- **Victim Support Mechanisms:** Robust and accessible support services for survivors of marital rape are critical. These include confidential counseling, legal aid, safe shelter homes, medical assistance, and financial support to help them rebuild their lives.
- **Public Awareness Campaigns:** Large-scale public awareness campaigns are needed to educate society about consent, marital rape as a crime, and the rights of married women. These campaigns should challenge patriarchal norms that condone sexual violence within marriage.

The argument that laws protecting women are prone to misuse should not be a deterrent to enacting necessary protections. As noted, laws against theft, robbery, and other serious crimes are also susceptible to misuse, but their necessity is not questioned. The focus must be on creating a legal and social environment where genuine victims of marital rape feel empowered to report abuse and receive justice, while also ensuring fair trial procedures. Ultimately, true reform requires not just changes in legal texts but a fundamental shift in societal attitudes towards marriage, consent, and gender equality. Marriage must be reconceptualised not as a hierarchical institution based on duty and implied consent, but as a partnership of equals grounded in ongoing, affirmative consent and the inviolable autonomy of each individual.

7. CONCLUSION: RECLAIMING CONJUGALITY AS A PARTNERSHIP OF EQUALS

This research paper has critically examined two deeply problematic legal provisions within the Indian patriarchal legal framework: Restitution of Conjugal Rights (RCR) and the marital rape exception. It has demonstrated that both these provisions, far from being benign instruments for preserving marital harmony or reflecting unique cultural norms, are relics of a colonial and

patriarchal past. RCR, which empowers courts to compel an unwilling spouse to cohabit with the other, and the marital rape exception, which shields a husband from criminal liability for non-consensual sexual acts against his adult wife, function as potent tools of coercion. They systematically undermine the fundamental rights of individuals, particularly women, to autonomy, dignity, equality, and privacy. The historical analysis revealed their origins in an era where wives were considered chattel, and marriage implied an irrevocable surrender of a woman's sexual agency. The constitutional scrutiny highlighted their inherent conflict with the core values of the Indian Constitution, despite judicial attempts in cases like *Saroj Rani* to rationalize RCR by prioritizing institutional sanctity over individual liberty. The synergistic effect of RCR potentially forcing proximity, and the marital rape exception denying recourse for sexual violation within that coerced proximity, creates a legal architecture that can legitimize and perpetuate spousal abuse.

The imperative to abolish RCR and unequivocally criminalize marital rape is not merely a matter of legal tidiness but a profound issue of gender justice and human rights. The continued existence of these provisions in Indian law stands in stark contrast to the nation's constitutional commitments and its obligations under international human rights conventions like CEDAW. The experiences of other common law jurisdictions, such as the UK, Canada, and Australia, which have long since discarded these archaic laws, demonstrate that such reforms are not only feasible but essential for a modern, rights-respecting society.

The arguments against reform—often citing the protection of the institution of marriage, potential for misuse of laws, or the unique nature of Indian society—fail to withstand critical scrutiny. These arguments frequently mask a deeper reluctance to dismantle patriarchal power structures within the family and to fully recognize women as autonomous individuals with inalienable rights, irrespective of their marital status. The fear of "misuse" cannot be a justification for denying justice to countless genuine victims of marital coercion and violence. True protection of the institution of marriage lies not in enforcing cohabitation or sanctioning non-consensual sex, but in fostering relationships based on equality, mutual respect, and ongoing, affirmative consent.

The struggle to abolish RCR and criminalize marital rape in India is, therefore, a critical battle for the soul of Indian constitutionalism. It is a test of whether the Constitution's transformative vision of individual dignity, liberty, and equality will fully permeate the so-called "private"

sphere of marriage, or whether this sphere will remain partially insulated by patriarchal traditions and institutional inertia. The path towards genuine gender justice requires decisive legislative action to repeal these coercive laws, coupled with a judiciary that consistently interprets marital relations through the lens of fundamental rights and constitutional morality. Such reforms are not an attack on marriage itself, but on a model of marriage that is rooted in inequality and coercion. By dismantling these legal vestiges of patriarchy, India can take a significant step towards transforming marriage into a true partnership of equals, where the dignity, autonomy, and consent of both spouses are paramount, thereby strengthening the ethical and just foundations of conjugality in a modern, democratic society. The future trajectory of gender justice and family law in India hinges on the successful navigation of this crucial reform.

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