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MARITAL RAPE EXCEPTION UNDER IPC: A VIOLATION OF ARTICLE 14 AND 21

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ABSTRACT

Marital rape means forcing a wife to have sexual relations without her consent. In India, the law under Section 375 of the Indian Penal Code (IPC) defines rape but also includes an exception. This exception says that sexual intercourse by a husband with his wife is not rape if the wife is above 18 years of age. This research paper studies whether this exception is fair and constitutional. It examines how the exception violates the fundamental rights guaranteed under Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty) of the Constitution of India. The paper also looks at important court cases and compares Indian law with other countries. The study uses a doctrinal method by analyzing laws, judgments, and legal principles. The paper concludes that the marital rape exception is outdated, unfair, and against the dignity of women, and it should be removed to ensure justice and equality..

Keywords: Marital Rape, IPC Section 375, Article 14, Article 21, Consent, Gender Justice

INTRODUCTION

Marriage is usually understood as a very special and respectful relationship between two people. It is often described as a bond built on trust, love, care, and mutual understanding. In an ideal situation, both husband and wife support each other emotionally and physically, and they make decisions together with respect for each other's feelings. Society also gives a high value to marriage and treats it as an important institution.

However, in reality, not all marriages are happy or equal. Sometimes, one partner may misuse their power and control the other partner. This becomes a serious problem when a husband forces his wife to engage in sexual activity without her consent. Such an act is known as **marital rape**. It is important to understand that even within marriage, forcing someone into a sexual

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act is a violation of their dignity and personal freedom.

Consent plays a very important role in any relationship. Consent means a clear and voluntary agreement to do something. It should be given freely, without any fear, pressure, or force. If a person says “no,” or is not in a position to give consent, then any sexual act becomes wrong and harmful. This basic idea applies to all individuals, whether they are married or unmarried.

In India, rape is considered a serious criminal offence under Section 375 of the Indian Penal Code (IPC).³ This law explains different situations in which sexual intercourse is treated as rape. It focuses mainly on the absence of consent of the woman. However, the same section also contains an exception, which creates a major legal and moral problem. According to Exception 2 of Section 375, sexual intercourse by a man with his own wife is not considered rape, provided that the wife is not below eighteen years of age.⁴

This means that if a husband forces his wife into sexual intercourse without her consent, the law does not treat it as rape. This exception is based on an old belief that once a woman is married, she gives permanent consent to her husband for sexual relations. Such thinking treats the wife as if she has no control over her own body after marriage.

This legal position raises a very important and serious question: **Does marriage take away a woman’s right to say “no”?** In a modern democratic society, the answer should clearly be no. Marriage cannot and should not be seen as a license for one partner to violate the rights of the other.

The Constitution of India guarantees certain fundamental rights to all citizens. These include the right to equality under Article 14 and the right to life and personal liberty under Article 21.⁵ These rights are not limited by marital status. Every woman, whether married or unmarried, has the right to be treated equally and to live with dignity and freedom.

The marital rape exception directly goes against these constitutional values. It creates an unfair difference between married and unmarried women by denying protection to one group. It also

³ Indian Penal Code, 1860, § 375.

⁴ Ibid., Exception 2 to § 375.

⁵ The Indian Penal Code, 1860, s. 375, Exception 2.

ignores the importance of consent and violates a woman's right to dignity, privacy, and bodily autonomy.

In recent years, courts in India have started discussing this issue more seriously. There is a growing understanding that old legal rules based on outdated social beliefs must be changed to match present-day values of equality and human rights. Many legal experts, activists, and scholars believe that the marital rape exception is unjust and needs to be removed.

This research paper argues that the marital rape exception under the IPC is unconstitutional because it violates Articles 14 and 21 of the Constitution. It tries to explain in simple terms why this exception is unfair, how it affects women, and why there is a need for legal reform. The paper also looks at court decisions and compares Indian law with other countries to show that change is both necessary and possible.

Objective-

The following objectives are defined as:

- i. To understand the concept of marital rape and the importance of consent within marriage.
- ii. To examine the legal provision under Section 375 of the Indian Penal Code, 1860, especially Exception 2.
- iii. To analyse whether the marital rape exception violates Article 14 of the Constitution of India (Right to Equality).
- iv. To examine whether the exception violates Article 21 of the Constitution (Right to Life and Personal Liberty), including dignity and privacy.

Meaning of Marital Rape-

Marital rape means forcing a wife to have sexual intercourse without her consent. In simple words, it is when a husband has sexual relations with his wife even when she does not agree or is not willing. Consent is the most important part of any sexual relationship. If there is no consent, then the act becomes wrong and harmful.

Consent means a clear and free agreement. It should be given without fear, pressure, force, or misunderstanding. If a woman says "no," or if she is forced, threatened, or unable to give

consent, then it cannot be treated as consent. This principle applies to all women, whether they are married or not.

In many societies, including India, there has been a long-standing belief that marriage gives a husband a permanent right over his wife's body. This idea comes from old traditions where women were treated as dependent on their husbands. However, in modern times, such thinking is not acceptable because every individual has personal rights and freedom.

Marital rape is not only a physical act but also a serious violation of a woman's dignity, privacy, and bodily autonomy. It can cause both physical harm and emotional suffering. Even within marriage, a woman has the right to make decisions about her own body.

In India, the legal system does not fully recognise marital rape as a crime due to Exception 2 under Section 375 of the Indian Penal Code, 1860.⁶ This exception states that sexual intercourse by a husband with his wife is not considered rape if the wife is above eighteen years of age. Because of this, many acts that would otherwise be considered rape are not punishable when they occur within marriage.

Therefore, marital rape can be understood as a situation where the idea of consent is ignored within marriage, and the wife is denied her basic rights. Recognising marital rape is important for ensuring equality, dignity, and justice for women.

Legal Position of Marital Rape in India

In India, the law relating to rape is given under Section 375 of the Indian Penal Code, 1860⁷. This section explains different situations in which sexual intercourse is considered rape, mainly focusing on the absence of consent of the woman. It clearly states that if a woman does not agree, or if her consent is obtained by force, fear, or fraud, then the act amounts to rape.

However, the same section also contains an important exception, which creates a major legal issue. Exception 2 to Section 375 states that sexual intercourse by a man with his own wife is not rape, provided that the wife is not below eighteen years of age.⁸ This means that if a husband

⁶ The Indian Penal Code, 1860, s. 375, Exception 2.

⁷ The Indian Penal Code, 1860, s. 375.

⁸ Ibid., Exception 2 to s. 375

forces his wife into sexual intercourse without her consent, it is generally not treated as rape under Indian law.

This exception is based on an old legal idea that a wife gives permanent consent to her husband after marriage. In earlier times, women were considered dependent on their husbands, and their individual rights were not recognised. But in modern society, such thinking is outdated and does not match the principles of equality and dignity.

The legal position in India has slowly started to change through judicial decisions. In *Independent Thought v. Union of India*, the Supreme Court held that sexual intercourse with a minor wife would amount to rape, even within marriage.⁹ This judgment was important because it limited the scope of the marital rape exception and recognised the rights of minor girls.

Further, in *RIT Foundation v. Union of India*, the Delhi High Court gave a split decision on the validity of the marital rape exception¹⁰. One judge held that the exception is unconstitutional as it violates the fundamental rights of women, while the other judge upheld its validity. This shows that the issue is still debated and not fully settled in Indian law.

At present, marital rape is not fully criminalized in India. A wife may seek protection under other laws, such as the Protection of Women from Domestic Violence Act, 2005, but this law mainly provides civil remedies and not strict criminal punishment for rape.¹¹

Therefore, the current legal position in India is unclear and incomplete. While the law recognises rape as a serious offence, it fails to provide equal protection to married women. This creates a gap in the legal system and raises serious questions about justice, equality, and fundamental rights.

Violation of Article 14 (Right to Equality)

Article 14 of the Constitution of India guarantees that all persons are equal before the law and should receive equal protection of the law.¹² This means that the law should treat everyone fairly and should not create unfair differences between people without a valid reason.

⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹⁰ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404

¹¹ The Protection of Women from Domestic Violence Act, 2005

¹² The Constitution of India, art. 14.

The marital rape exception under Section 375 of the Indian Penal Code creates an unfair difference between **married women and unmarried women**.¹³ If a woman is unmarried and is forced into sexual intercourse without her consent, it is considered rape. However, if the same act happens to a married woman by her husband, it is not treated as rape under the law. This clearly shows unequal treatment.

This classification based on marital status is not reasonable. Marriage does not change the basic rights of a woman. A married woman is still an individual and should have the same protection as any other woman. Denying her protection only because she is married goes against the principle of equality.

The Supreme Court has stated in many cases that any classification under law must be reasonable and should have a proper connection with the objective of the law.¹⁴ In the case of marital rape, there is no strong or valid reason to exclude married women from protection against rape.

In *Joseph Shine v. Union of India*, the Supreme Court struck down the law on adultery and observed that old ideas treating women as the property of their husbands are unconstitutional.¹⁵ The Court emphasized that women have equal rights and dignity, and marriage does not take away their individuality.

The marital rape exception is based on similar outdated thinking. It assumes that a wife has no independent control over her body after marriage. This idea is not acceptable in a modern constitutional system that values equality and human dignity.

Therefore, the marital rape exception violates Article 14 because it creates an unreasonable and unfair distinction between married and unmarried women. It denies equal protection of the law and treats women differently without any justified reason.

¹³ The Indian Penal Code, 1860, s. 375, Exception 2.

¹⁴ *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

¹⁵ *Joseph Shine v. Union of India*, (2018) 2 SCC 189

Violation of Article 21 (Right to Life and Personal Liberty)

Article 21 of the Constitution of India guarantees the right to life and personal liberty to every person.¹⁶ This right is very wide and includes the right to live with dignity, the right to privacy, and the right to make personal choices about one's own body.

The marital rape exception violates this right because it ignores a woman's consent within marriage. When a husband forces his wife into sexual intercourse without her consent, it directly affects her dignity and freedom. A woman has the right to decide what happens to her body, and this right does not end after marriage.

The Supreme Court has clearly stated that the right to life under Article 21 includes the right to live with dignity.¹⁷ Forcing a woman into sexual acts against her will is a violation of her dignity and self-respect. It treats her as an object rather than as an equal human being.

In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognized the right to privacy as a fundamental right under Article 21.¹⁸ This includes the right to bodily autonomy, which means that every individual has control over their own body. Marital rape goes against this principle because it denies a woman the freedom to make decisions about her own body.

Further, in *Suchita Srivastava v. Chandigarh Administration*, the Court held that a woman has the right to make choices related to her body and reproductive rights.¹⁹ This judgment highlights that personal liberty includes the freedom to accept or refuse sexual relations.

The marital rape exception fails to protect these rights. It allows a husband to force sexual relations without facing punishment, which is against the idea of personal liberty. It also ignores the emotional and physical harm suffered by the woman.

Therefore, the marital rape exception violates Article 21 because it takes away a woman's right to dignity, privacy, and bodily autonomy. It does not respect her personal choices and treats her unequally within marriage.

¹⁶ The Constitution of India, art. 21

¹⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 2

¹⁸ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁹ *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

Judicial Approach in India

The judiciary in India has played an important role in discussing the issue of marital rape and women's rights. Although marital rape is not fully criminalized, courts have started examining whether the exception under Section 375 of the Indian Penal Code is fair and constitutional.

In *Independent Thought v. Union of India*, the Supreme Court made an important decision by reading down the marital rape exception.²⁰ The Court held that sexual intercourse with a wife below eighteen years of age would amount to rape, even if she is married. This judgment was significant because it recognized that the rights of a minor girl cannot be taken away by marriage.

In *RIT Foundation v. Union of India*, the Delhi High Court dealt directly with the question of whether the marital rape exception is constitutional.²¹ The Court gave a split judgment. One judge held that the exception violates the fundamental rights of women, including equality and dignity, and should be struck down. The other judge, however, upheld the exception, stating that such changes should be made by the legislature and not the courts. This split decision shows that the issue is still unsettled in Indian law.

Apart from these cases, the Supreme Court in *Joseph Shine v. Union of India* struck down the adultery law and emphasized that women are not the property of their husbands.²² The Court stated that marriage does not reduce a woman's dignity or her right to equality. This reasoning is important in understanding why the marital rape exception is problematic.

Similarly, in *Justice K.S. Puttaswamy v. Union of India*, the Court recognized the right to privacy and bodily autonomy as fundamental rights.²³ These principles support the idea that consent is necessary in all relationships, including marriage.

Overall, the judicial approach in India shows a gradual shift towards recognizing the rights and dignity of women within marriage. However, the courts have not yet completely removed the marital rape exception. The issue remains under debate, and a clear legal position is still awaited.

²⁰ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

²¹ *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404.

²² *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

²³ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

Comparative Analysis

A comparative analysis helps in understanding how different countries deal with the issue of marital rape. It also shows whether India's legal position is in line with modern legal systems or not.

In many countries, marital rape is recognized as a criminal offence. These countries have accepted that marriage does not mean permanent consent for sexual relations. The law in these countries treats forced sexual intercourse within marriage in the same way as any other rape.

In the **United Kingdom**, marital rape was recognized as a crime in the case of *R v. R* in 1991.²⁴ The court rejected the old idea that a husband cannot be guilty of raping his wife. It clearly stated that a wife has the same rights as any other woman, and her consent is necessary.

In the **United States**, marital rape is considered a crime in all states. Earlier, there were some exceptions, but over time, laws were changed to provide equal protection to married women. Today, the law recognizes that forced sexual relations within marriage is a serious offence.

Similarly, in **Canada**, marital rape has been fully criminalized.²⁵ The law treats all women equally, whether married or unmarried, and gives importance to consent in every situation.

These countries have moved forward by recognizing the importance of dignity, equality, and personal freedom. They no longer follow outdated beliefs that deny women control over their bodies after marriage.

In contrast, India still retains the marital rape exception under Section 375 of the Indian Penal Code.²⁶ This shows that Indian law is not fully aligned with modern legal standards. While some progress has been made through judicial decisions, complete legal reform is still needed.

Therefore, the comparative analysis shows that many countries have already removed the marital rape exception and provide equal protection to all women. India can learn from these legal systems and take steps to ensure justice, equality, and dignity for married women as well.

²⁴ *R v. R*, [1991] UKHL 12.

²⁵ Criminal Code, RSC 1985, c C-46 (Canada).

²⁶ The Indian Penal Code, 1860, s. 375, Exception 2

Issues and Challenges

Even though there is growing awareness about marital rape, there are many challenges that make it difficult to recognize and criminalize it in India. These challenges are social, legal, and practical in nature.

One of the main challenges is the **social mindset**. In many parts of society, marriage is seen as giving a husband full control over his wife. People often believe that a wife cannot refuse her husband. Because of this thinking, many cases of marital rape are not even reported.

Another major issue is the **fear of misuse of law**. Some people argue that if marital rape is criminalized, it may be misused. However, this argument is often used to delay legal reform. Every law can be misused, but that does not mean the law should not exist. Proper safeguards can be created to prevent misuse.

There is also a serious problem of **lack of awareness**. Many women do not even know that forced sexual acts within marriage are wrong. They may accept such behaviour due to social pressure or lack of education about their rights.

Difficulty in proving the offence is another challenge. Marital rape usually happens in private spaces, and it is often difficult to collect evidence. This makes it harder for victims to prove their case in court.

From a legal point of view, the existence of Exception 2 under Section 375 of the Indian Penal Code creates a major barrier.²⁷ As long as this exception remains, it prevents the law from recognizing marital rape as a crime.

There is also a concern about **protecting the institution of marriage**. Some argue that criminalizing marital rape may harm marital relationships. However, a relationship based on force and lack of consent cannot be considered healthy or respectful.

Therefore, these challenges show that the issue of marital rape is complex. However, they should not be used as reasons to deny justice. Instead, they highlight the need for better laws,

²⁷ The Indian Penal Code, 1860, s. 375, Exception 2.

awareness, and support systems for women.

Suggestions and Reforms

To address the issue of marital rape and ensure justice for women, certain legal and social reforms are necessary. These reforms should aim to protect the dignity, equality, and freedom of women within marriage.

Firstly, the most important step is to **remove Exception 2 from Section 375 of the Indian Penal Code, 1860**. This exception prevents the law from recognizing marital rape as a crime. Its removal will ensure that married women receive the same protection as unmarried women.

Secondly, the law should clearly recognize the importance of **consent within marriage**. Marriage should not be treated as giving permanent consent for sexual relations. A woman must have the right to say “no” at any time, and her decision must be respected.

Another important reform is to make the law more **gender-sensitive and victim-friendly**. Police officers, judges, and other authorities should be trained to handle such cases with care and understanding. This will help victims feel safe while reporting such offences.

There is also a need to **increase awareness** about marital rape and women’s rights. Many people still follow outdated beliefs about marriage. Awareness programs through education, media, and social campaigns can help change this mindset.

Further, proper **support systems** should be created for victims. This includes counseling services, legal aid, and protection from abuse. Women should feel supported and not afraid to seek help.

The law can also include **safeguards against misuse**, so that false cases can be prevented. This will help in maintaining a balance between protecting victims and avoiding misuse of legal provisions.

In conclusion, these reforms are necessary to bring Indian law in line with constitutional values and modern human rights standards. Recognizing marital rape as a crime is an important step towards ensuring equality, dignity, and justice for all women.

Conclusion

The issue of marital rape is a serious and sensitive matter that affects the dignity and rights of women. This research paper has examined the legal position of marital rape in India, especially the exception provided under Section 375 of the Indian Penal Code, 1860.²⁸ It has been observed that this exception creates an unfair situation where married women are denied protection against forced sexual acts by their husbands.

The study has clearly shown that the marital rape exception violates the fundamental rights guaranteed under the Constitution of India. It goes against Article 14 by treating married and unmarried women differently without any reasonable basis.²⁹ It also violates Article 21 by denying women their right to live with dignity, privacy, and personal liberty.³⁰

The analysis of judicial decisions indicates that the courts have started recognizing the importance of women's rights within marriage. However, the law is still not fully settled, and the marital rape exception continues to exist. This creates a gap in the legal system and prevents complete justice.

The comparative analysis has shown that many countries have already criminalized marital rape and have recognized that consent is necessary in all relationships. India, however, still follows an outdated approach that does not fully protect married women.

The challenges discussed in this paper, such as social mindset, lack of awareness, and fear of misuse, are real but should not be used as reasons to deny justice. Instead, they highlight the need for better laws and awareness.

In conclusion, marriage should be a relationship based on respect and equality, not control or force. A woman does not lose her fundamental rights after marriage. Therefore, the marital rape exception must be reconsidered and removed to ensure that all women are treated equally under the law and are able to live with dignity and freedom.

²⁸ The Indian Penal Code, 1860, s. 375, Exception 2.

²⁹ The Constitution of India, art. 14.

³⁰ The Constitution of India, art. 21.