
CRIMINALIZATION OF MARITAL RAPE: A CONSTITUTIONAL DEBATE

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INTRODUCTION

Marriage, in Indian society, has traditionally been regarded as a sacred and inviolable institution. The union between two people establishes a relationship which involves mutual respect and shared responsibilities. The law needs to address challenging issues when domestic violence becomes a form of forced marriage. One such question—long avoided yet increasingly urgent—is whether non-consensual sexual intercourse by a husband with his wife should constitute rape under Indian criminal law. The Indian Penal Code from 1860 defines rape through Section 375 which contains Exception 2 to state that a man cannot commit rape when he has sexual intercourse with his wife who has reached the age of 18. This marital rape exception exists as a colonial leftover which maintains the legal principle that married partners give everlasting consent to sexual relations. The Adult married women protection law from 2013 continues to enforce its exception which protects adult married women from sexual assault despite major legal changes which followed the Criminal Law (Amendment) Act. The judiciary has received a challenge regarding the constitutional validity of this exception which is currently being reviewed by the Supreme Court of India. The matter requires us to study how criminal law interacts with constitutional rights and gender equality and the developing understanding of marriage. This article provides a critical examination of the constitutional debate about India's marital rape criminalization from the perspective of a final-year law student. The study investigates the historical foundations and constitutional provisions and judicial precedents and comparative perspectives and the social and legal effects of maintaining or abolishing the marital rape exception.

HISTORICAL BACKGROUND

The marital rape exception finds its origin in English common law. Sir Matthew Hale established in the 17th century that a husband could not face rape charges for having sexual relations with his wife because marriage established permanent sexual consent between them.

The legal system operated under the coverture doctrine which stated that a woman lost her independent legal existence to her husband at the time of marriage. The Indian Penal Code from 1860 which British colonial authorities created contains this understanding. Women at that time existed under a patriarchal system which denied them basic rights to make independent choices. Marriage established sexual rights for the husband while the wife lost her power to grant consent which continued throughout their marriage. The legal and social setting of the world has changed substantially since 1860. Today, women live as separate legal entities, carrying the same rights as members of society under the Constitution. The idea that marriage constitutes the permanent loss of rights for women is contrary to the current principles of the Constitution. The presence of marital rape exceptions brings the legal system to an important question: does the legal system's basic principles exist in a constitutional democracy that values both equality and human dignity? *The Evolution of Rape Law in India.* The Indian rape law has experienced major changes since the 2012 Delhi gang rape. The Criminal Law (Amendment) Act 2013 created new rules which defined rape and explained consent along with establishing severe penalties for offenders. The amendments required that consent needs to be established through elements which include explicit consent and voluntary agreement and effective communication. The focus shifted from resistance to autonomous personal rights. The law still maintained its exception which permitted rape within marriage despite this advancement. The Supreme Court decision in *Independent Thought v. Union of India* established that sexual intercourse with a wife below 18 years of age constitutes rape which partially reduced the exception. The Court created a legal framework which reconciled the Indian Penal Code with the Protection of Children from Sexual Offences Act (POCSO) by establishing that child marriage cannot nullify statutory protections. The question about whether non-consensual sexual acts with an adult wife equal rape remains unanswered.

CONSTITUTIONAL DIMENSIONS

(1) Article 14: Equality Before Law

Article 14 guarantees equality before the law and equal protection of the laws. The marital rape exception creates a classification between married and unmarried women. The law provides protection to an unmarried woman who experiences non-consensual sexual intercourse through Section 375 IPC. A married woman, however, is denied this protection solely because of her marital status. A classification achieves constitutional validity when it demonstrates two

requirements which include intelligible differentia together with rational nexus linking the classification to its intended goal. Rape law exists to safeguard bodily integrity while it punishes people who engage in sexual activities without their partner's consent. The rational nexus test fails because the rule which denies protection to married women appears to be an arbitrary decision. The Supreme Court declared the adultery provision of Section 497 IPC unconstitutional in *Joseph Shine v. Union of India* because marriage does not diminish a woman's independence. The Court established that constitutional morality must take precedence over social standards. The reasoning in *Joseph Shine* directly challenges the patriarchal assumptions underlying the marital rape exception.

(2) Article 15: Prohibits discrimination

Article 15 prohibits discrimination on grounds of sex. The exception demonstrates its discriminatory impact against women because Indian law defines rape through its requirement of a male perpetrator and a female victim, according to current gender-neutral discussions. The exception to the rule creates gender stereotypes through its assertion that wives must provide their husbands with sexual access. The presumption maintains existing power imbalances which the Supreme Court has been establishing through its legal decisions that support actual equality between men and women.

(3) Article 19 and 21: Autonomy, Privacy, and Dignity

Article 21 has developed into a legal framework that protects multiple rights which include human dignity and physical integrity and the right to make personal decisions. The Supreme Court established in the case of *K.S. Puttaswamy v. Union of India* that people possess an inherent right to privacy which safeguards their existence and personal freedom. Privacy includes the right to control one's body and make private life choices. The judgment determined that people have the right to make choices about their personal relationships. The Court recognized reproductive rights, which are essential for personal freedom, in the case of *Suchita Srivastava v. Chandigarh Administration*. The act of forcing someone to engage in sexual activity against their will constitutes a fundamental breach of their freedom to choose. The Court established sexual independence through its ruling in *Navtej Singh Johar v. Union of India* which abolished the ban on consensual same-sex relationships while upholding both human dignity and constitutional principles. The constitutional protection of sexual autonomy establishes that married women have the right to deny their spouses permission for sexual

intercourse.

THE DELHI HC VERDICT

The Delhi High Court reached a divided decision in the case *RIT Foundation v. Union of India* which occurred in 2022. Justice Rajiv Shakti declared that the marital rape exception should be abolished because it violates Articles 14 and 21 of the Constitution. He argued that a person who enters marriage still maintains the right to provide their consent. Justice C. Hari Shankar, however, upheld the exception, emphasizing that criminalization could have far-reaching social consequences and that reform should come from the legislature. The split verdict demonstrates how judicial activism competes with legislative authority. The matter now awaits authoritative determination by the Supreme Court of India.

COMPARATIVE JURISPRUDENCE

Across the globe, there has been a shift towards criminalizing marital rape. In the UK, the exemption was removed in the landmark case of *R v R* (1991), where the court held that the principle of irrevocable consent was outdated. Canada, Australia, South Africa, and many European countries have also recognized marital rape as a criminal act. India's continuation of the exemption is not only inconsistent with international human rights obligations, which include the CEDAW Convention, but international law is not binding on the country, and its interpretation of the Constitution is relevant.

ARGUMENTS AGAINST CRIMINALIZATION

The opponents of criminalization have the following arguments to present against it:

Protection of the Marital Institution: There is a concern that the criminalization of marital rape may destabilize the institution of marriage.

The Possibility of Misuse: There is the possibility of false accusations in marital disputes.

Evidentiary Problems: It may be difficult to establish the lack of consent in marital situations.

The existence of Civil Remedies: There is the existence of the Protection of Women from Domestic Violence Act, 2005, which provides protection to women and recognizes the existence of sexual abuse.

The arguments against the criminalization of marital rape need to be analyzed in detail. While the possibility of the abuse of the law is present in all laws, the Supreme Court has held that the possibility of the abuse of the law cannot be allowed to deny protection to genuine victims of crime.

ARGUMENTS IN FAVOR

Recognition of Individual Autonomy: Marriage is not equivalent to perpetual consent. Consent is to be free, informed, and continuous. Constitutional Morality: There is a need to follow constitutional morality rather than patriarchal morality. Deterrence: There is a need to deter domestic sexual violence through the imposition of criminal law. Equality: There is a need to treat married women at par in the application of the criminal law.

SOCIOLOGICAL ASPECT

The issue is not simply legal but also deeply social in nature. Patriarchal values often make it socially unacceptable for women to report cases of sexual violence in marriage. Women may feel socially pressured to accept forced intercourse as part of their “marital duty.” While criminalization cannot completely eradicate such patriarchal values, it can act as the catalyst for social change. Law can act as the agent for change in the way society thinks.

LEGISLATIVE CONSIDERATION

If Parliament decides to enact a law criminalizing marital rape, it is crucial that the law is drafted carefully. Some of the safeguards that can be incorporated into the law include:

Establishing evidentiary requirements.

Protection from frivolous charges.

Arrangements for counseling and mediation, where appropriate, without trivializing the crime.

Gender-neutral formulations as a part of broader reforms.

THE BROADER CONSTITUTIONAL PHILOSOPHY

"The Constitution of India is a vision of a transformative society... Fundamental rights have

been held to be dynamic and must be interpreted accordingly." In the cases of Joseph Shine and Navtej Singh Johar, the Supreme Court has held that dignity and autonomy take precedence over morality. Similarly, the exception of marital rape cannot be justified under the transformative vision of the Constitution. Marriage cannot be a constitutional black hole where fundamental rights do not apply.

CONCLUSION

Criminalizing marital rape is one of the biggest constitutional battles that India is currently engaged in. It is a test of the balance between tradition and transformation, legislative prerogative and constitutional review, and societal morality and constitutional morality. The marital rape exception, which was based on colonial and patriarchal attitudes, is no longer tenable under the present constitutional scheme of Articles 14, 15, and 21 of the Constitution of India. Further, the fact that there may be difficulties of proof and that there may be potential for abuse of the provision cannot be allowed to deny the equal protection of the law to married women. Moreover, the Constitution of India does not recognize the hierarchy of victims of rape based on their marital status. Criminalizing marital rape is not simply a question of punishment; it is a question of principle that consent is the essence of all sexual relationships, including marriage. Criminalizing marital rape is not simply a question of punishment; it is a question of principle that a woman's body is her own, regardless of her marital status. As India waits with bated breath for the final verdict from the Supreme Court of India, the stakes of the case cannot be overstated.