



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Marital Rape and Gender Justice: Analysing International Human Rights Law

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Received 26 February 2025; Accepted 26 March 2025; Published 29 March 2025

India's marital rape is an ongoing human rights issue at the intersection of legal, social, and cultural norms. Spousal rape has been condemned by all countries in the world and viewed as grave sexual abuse. Yet, India continues to hold out against criminalisation under Section 375 of the Indian Penal Code (IPC).¹ This legislative vacuum extends patriarchal tendencies that confer unlimited sexual rights to husbands against wives, paramount to women. Yet, Indian men's control, bodily integrity, and right to equality in marriage.² The position of marital rape in India is examined here, tracing its cultural and historical origins and examining the wider social attitudes that legitimize marital violence. The very deeply entrenched stigma of marital rape leads the victims to shy away from seeking justice because they are socially stigmatized and legally disadvantaged. This paper highlights a piece of recent discourse on criminalisation and activism within civil society, legislation's role, and a shift in cultural viewpoint toward making consent the foundation for all relationships. Indian law must be harmonized with general principles of universal human rights to establish justice for the survivors and eradicate entrenched gender discrimination that perpetuates marital rape. It would require a three-pronged approach—comprising legal reform, public education, and survivor protection services—to end the

¹ Sajal, 'Marital Rape: A Legal, Social, and Human Rights Issue' (Legal Service India) <<https://www.legalserviceindia.com/legal/article-18964-marital-rape-a-legal-social-and-human-rights-issue.html>> accessed 21 February 2025

² *Ibid*

systematic trivialization of marital violence. Rape within marriage must be legislated and made a criminal offense as a precursor to achieving gender justice and a society that respects the values of dignity, equality, and human rights for everybody.

Keywords: *marital rape, gender justice, human rights law, legal framework in India.*

INTRODUCTION

Marital rape is sexual intercourse by a husband without the consent of his wife.³ It is one of the types of sexual violence that denies a woman the right to her bodily dignity and autonomy. Marital rape has been recognized as a gross violation of human rights all over the world, and it is penalized by most nations in their codes. In India, however, no marriage that denies rape is explicitly criminalized in the provisions of law, which is a grave deficiency in protecting the rights of women in marriage. Section 375 of IPC, criminalizing rape, contains an exception to de facto legalize marital rape if the wife is above 18 years of age.⁴

This legal loophole reflects very deep-rooted patriarchal presumptions, which treat marriage as a most sacred institution wherein consent is presumed, and women are even less than equals of their husbands.⁵ The problem of marital rape in India is an area of convergence of legal, cultural, and human rights issues. To a certain extent, the law has not given married women the same degree of protection from sexual violence as it has given to unmarried women. To a certain extent, culturally idealized depictions of the institution of marriage and restatement of patriarchal gender roles are to be faulted for the victimization of women who are, by circumstance, victims of marital rape. As a result, victims of marital rape do not only endure physical and emotional harm but also inordinate amounts of social stigma, alienation, and limited access to justice.⁶ Despite increasing consciousness and activism by civil society groups, the Indian state has been painfully sluggish in criminalizing marital rape. Among the strongest

³ 'Human Rights Watch Submission to the UN Special Rapporteur on Violence Against Women' (*Human Rights Watch*, 28 October 2020) <<https://www.hrw.org/news/2020/05/22/human-rights-watch-submission-un-special-rapporteur-violence-against-women>> accessed 21 February 2025

⁴ Indian Penal Code 1860, s 375

⁵ *Ibid*

⁶ Sejal (n 1)

arguments presented by policymakers is perhaps the one asserting that this would erode the institution of marriage and lead to more false accusations. But this argument does not address the issue of consent per se and the right of a woman to her own body, whether married or not.

LEGAL FRAMEWORK AND STATUS OF MARITAL RAPE IN INDIA

The legal framework of marital rape in India is a controversial and complex issue, usually based on traditional, patriarchal constructions of gender and marriage relations. Indian law does not criminalize marital rape, mainly because Indian Penal Code (IPC) has an exception. The definition of rape is given by Section 375 of the IPC, but with the exception that intercourse by a husband without consent with his wife will not be rape if the wife is over 18 years of age.⁷ This exception, labeled as Exception 2 to Section 375, effectively legalizes marital rape, and the married woman has no legal recourse against sexual violence at the hands of her husband.⁸

Marital rape in India has its roots in colonial legislation relying heavily on English common law, which had never recognized rape within marriage. Marriage was assumed to confer a husband's implied consent to sexual relations, which has remained uppermost in Indian law.⁹ The archaic legal tenet draws upon the patriarchal worldview that marriage is a granting of property rights within the body of the wife, thereby erasing her need for open consent to sexual activity.¹⁰

India's legal system provides women with very little protection against sexual violence within marriage. The Protection of Women from Domestic Violence Act (PWDVA), 2005, offers some relief to women because they can go to the courts requesting civil relief in the form of protection orders and residence orders against violent husbands.¹¹ The act does not criminalize rape within marriage and is more in general concerned with domestic violence as emotional, physical, and economic abuse.

⁷ Indian Penal Code 1860, s 375

⁸ Indian Penal Code 1860, s 375 ex 2

⁹ Rebecca Mason, 'Women, Marital Status, and Law: The Marital Spectrum in Seventeenth-Century Glasgow' (2019) 58(4) *Journal of British Studies* <<https://doi.org/10.1017/jbr.2019.86>> accessed 21 February 2025

¹⁰ *Ibid*

¹¹ Protection of Women from Domestic Violence Act 2005

Most Indian legal and judicial institutions have struggled with the question of marital rape. The Justice J.S. Verma Committee constituted in response to the 2012 Delhi gang rape case, suggested criminalizing marital rape because consent should be sustained in marriage. The report by the committee charged the legal exception of marital rape as being against women's rights under the Indian Constitution. But Indian authorities have been slow to accept this recommendation because they are convinced that making marital rape a criminal act would destroy marriages and allow for false accusations.

The regulatory framework that covers marital rape in India plays a very crucial part in the prevention and combating of the offense of spousal rape against human rights and the promotion of gender equality. This section elaborates on provisions such that they exist within the law and how marital rape is treated within the legal system of India.

The IPC, or the Indian Penal Code, is India's cornerstone law to be enacted for sex offences in the year 1860. Using Section 375 of the IPC, rape was legally defined as the rape of a woman's vagina unwillingly, involuntarily, or under certain conditions. IPC makes one exception to it in Section 375(2), where the sexual intercourse of a man with his wife above 15 years has not been raped. The exception again supports the presumption of implied consent within marriage institutions and does not appreciate the importance of consent as an integral component of any sexual relationship. The exception given in Section 375(2) of the IPC has been criticised for reinforcing patriarchal values and undermining married women's bodily autonomy and agency. It disregards the idea that consent must be lucid, sustained, and provided freely in any sexual relationship, including marriage.

The lack of specific law-making marital rape an offense in India has been cause for concern. But worth mentioning here is that provisions under the IPC can be invoked to deal with non-consensual sex within a marital relationship. Section 498A of the IPC¹² regarding cruelty by a husband or his family members is to be used in prosecuting sexual abuse in a marriage where the acts qualify as cruelty.

¹² Indian Penal Code 1860, s 498A

Additionally, Section 377 of the IPC, under which consensual same-sex sexual acts were criminalised until decriminalisation in 2018, has been utilised to tackle instances of non-consensual sex in same-sex marriages.¹³ Indian courts have also been instrumental in interpreting and enforcing the existing law on marital rape. The courts have been able to comprehend the essence of consent in marriage and have recognised that non-consensual sex would be a crime under the IPC. Judicial actions have attempted to impose wives' rights in marriage and establish legal redress for sexual violence in marriage.

It is surprising, however, that it is difficult with no law against marital rape and poor response to and prosecution of marital rape cases. The absence of clear legal recognition can contribute to underreporting, social stigma, and difficulty in producing evidence and proving non-consensual sex in marriages. There have been calls for legislative reforms in recent years to specifically criminalize marital rape in India. It requires legal recognition, safeguarding, and compensation of marital rape victims.

Criminalizing marital rape has been regarded as a step towards gender equality, bodily autonomy, and guaranteeing all people the right to be able to say no to any sexual behavior, whether single or married.

The Bhartiya Nyaya Sanhita (BNS) Section 63 exempts the husband's coercive sex with his wife above 18 years of age from rape.¹⁴ Section 67 of the BNS does criminalise sexual behaviour by a husband separated from his wife.¹⁵

- **Section 63 of BNS** excludes forced sexual intercourse by a husband with his wife above 18 years from the definition of rape.
- **Section 67 of BNS** punishes sexual acts by a husband who is separated from his wife. The punishment is imprisonment for a period which can be penalised and last for at least 2 years, but it can even last up to 7 years.

¹³ Indian Penal Code 1860, s 377

¹⁴ Bhartiya Nyaya Sanhita 2023, s 63

¹⁵ Bhartiya Nyaya Sanhita 2023, s 67

GENDER EQUALITY AND MARITAL RAPE

Marital rape places into the public eye significant gender equality and women's rights protective concerns in marriage. The topic of gender intersectionality, power, and the ways marital rape affects gender equality is covered in this section.¹⁶ Unequal power dynamics and patriarchal gender roles with long histories are at the basis of marital rape societies. It is the product of women's previous subordination and the treatment of women's bodies as their husbands' property. The marital rape laws seek to overcome and remove these patriarchal institutions because it is a fundamental fact that consent is the quintessential feature of sexual encounters regardless of whether marital or not. Marital rape institutes and goes on practicing gender inequality by ignoring the body autonomy and agency of women. It denies women control over their bodies and reiterates the idea that they do not need consent in marriage. Denial of sexual autonomy of women in marriages reiterates the societal norm that women must adhere to traditional gender roles and prioritise the needs and wants of their husbands.

The acknowledgment of marital rape as a violation of women's human rights is crucial to the realization of gender equality. It upholds that women are entitled to refuse any sex, including sexual intercourse in marriage, and that their decision has to be consensual and voluntary and respected in accordance. Marital rape as an offense proves the regard with which societies value gender equality and women's preservation of rights. Marital rape legislation also gives recognition to gender's intersection with other identities like class, race, and religion. Women from marginalized backgrounds typically have multiple vulnerabilities because they also face other barriers to obtaining justice and protection for marital rape. Marital rape and gender violence have a disproportionate effect on women from marginalized groups and further exacerbate the already existing gender inequalities.

Comparative analysis of global legal systems offers the importance of knowing marital rape as a human rights violation and an impediment to the realization of gender equality. International treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) emphasise consent, autonomy over one's body, and non-discrimination in marital

¹⁶ 'Ending Violence Against Women' (*UN Women*, 2020) <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women>> accessed 18 February 2025

relationships. They require reforms of the law criminalizing marital rape and comprehensively addressing survivors.

Addressing Marital rape must be the multi-faceted strategy of law reforms, public agitation, and social attitude and norm changes efforts. Legalization and criminalization of marital rape are moves towards gender equality. Education, advocacy, and services, however, have a significant role to play in averting unwanted gender roles, with an emphasis on consent and empowering marital rape victims. Marital rape is inextricably linked with gender inequality and women's rights abuse within marriage. Marital rape must be framed as a human rights violation against women, and criminalizing it is a positive move toward realizing gender equality. By challenging distressing patriarchal power relations, making consent possible, and strengthening survivors, communities can make efforts toward building a more just and equal society for everyone.

HISTORICAL AND CULTURAL BACKGROUND OF MARITAL RAPE

The persistence of marital rape in India, even though universally condemned, is rooted strongly in the history and culture of India. Historical understandings of marriage, gender, and sexual relations have profoundly shaped the legal and social position of women in marriage, which has made violent sexual relations in marriage the norm.

Historical Origins: India's juridical accommodation of marital rape traces its roots back to colonial law, which was significantly reliant on British common law. In British law, in keeping with the 18th-century theory of coverture, a wife did not possess an independent legal personality separate from that of her husband.¹⁷ This very principle was put into practice in colonial India when the wife was considered to have consented to all sexual relations with her husband during marriage and, therefore, legalised any such involuntary act of sexual intercourse or coitus within wedlock. Implied consent due to marriage was codified in legislation in each corner of the world at that time, and Indian law borrowed the same presumption, too, a belief that prevails even now.¹⁸ The British code of law evolved such archaic

¹⁷ Andrew Burrows, 'We Do This At Common Law But That In Equity' (2002) 22(1) Oxford Journal of Legal Studies <<https://www.studocu.com/my/document/taylors-university/equity-and-trusts-i/burrows-2002-22-ojls-1/14285433>> accessed 21 February 2025

¹⁸ *Ibid*

laws over the years and criminalized marital rape in the 1990s. Indian law did not evolve in such a manner to any considerable extent. The persistence of the exception of marital rape in IP is one such persistence of colonial legislations, which have been blended with conservative social norms that have further checked legal reforms in India.

Cultural and Religious Influences: In India, the cultural definition of marriage is mixed with religious and traditional beliefs that perceive the institution of marriage. Hindu religion, which is the subscribed faith of the majority in India, finds marriage both sacramental and religious. Wives, through this view, are typically deemed to be in a moral obligation to submit to their husbands' desires, including sexual needs, without even thinking. Archaic bridal promises, such as the Hindu saptapadi (seven pledges), stress the wife's obedience and submission to her husband and advocate the precept that she shall obey her husband in everything.

Cultural values also borrow from Manu Smriti, the ancient texts that reinforce patriarchal values and grant men immense power over their wives.¹⁹ The texts place women below men and highlight the sacredness of marriage, undermining women's autonomy and the fact that a wife's body belongs to her. Up to now, these beliefs have run deep, especially in rural settings, where gender roles remain rigid, and the idea of a wife having sexual independence is frequently confronted.

THE PSYCHOLOGICAL IMPACT OF MARITAL RAPE ON A WOMAN

One of the most underreported crimes that most women experience is marital rape. There are so many Marital rape cases across the nation that go unreported as well as are kept secret. It must brush it aside. A few years ago, most governments weren't interested in treating marital rape as a crime since women were viewed as possessions or things in the minds of men. Marital rape was also scored less of a crime because it wasn't carried out by a common stranger but one that was legally obligated to them. Compared to the US and even the UK, the number of instances in developing nations is far higher. Finding out if men and women have an equal number of resources to split between them is the focus of equality theory. It looks at the

¹⁹ Priyanka Thukral Mahajan et al., 'Indian Religious Concepts on Sexuality and Marriage' (2013) 55 Indian Journal of Psychiatry <<https://doi.org/10.4103/0019-5545.105547>> accessed 21 February 2025

contribution and benefits that both contribute to society, and how they enable them to act as a unit. The nearer that women approach this type of balance, the more threatened men become and try to find ways of stopping women from progressing.

Men in India chose for punishing women for their struggle for freedom and equality by sexually assaulting them and committing more sexual assaults as well as marital rape. Men have the urge to humiliate women whenever they feel danger and seek to exercise their superiority in degrading manners. Marital rape and mental illness are common among women who experience domestic violence, which can impair their cognitive development.

INTERNATIONAL HUMAN RIGHTS LAW AND THE RIGHTS VIOLATED BY MARITAL RAPE

The following sections list the most significant and particular fundamental rights that are infringed by the crime of spousal rape. Along with core human rights like the right to liberty, life, and personal security, equal treatment under the law, and non-discrimination, marital rape also violates jus cogens norms, namely the committee against torture.²⁰ It also violates rights fundamental to the autonomy and dignity of a person, like the right to equality in the family and to health.²¹ Marital rape also offends the broad array of other rights that have been established under national laws, regional human rights instruments, and transitional and national courts. Effective judicial redress, Sexual self-determination, compassionate treatment, human dignity, safety, privacy, psychological and physical integrity, individual integrity, sexual and reproductive choice, and health are among these rights.

The U.N. has repeatedly reaffirmed that violence against women undermines or denies women's human rights and their exercise of fundamental freedoms, whether people encounter violence in their private or public lives. The CEDAW Committee has explicitly recognised these rights as being undermined or wholly denied by gender violence. These rights are enshrined in the principal human rights conventions, which most states have subscribed to. The fundamental international covenants for safeguarding human rights are ICCPR, the Convention Against

²⁰ International Covenant on Civil and Political Rights 1976

²¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

Torture (or Torture Convention), ICESCR, and CEDAW. Human rights covenants place obligations on the state to control the conduct of protectors. Like all other human rights abuses, marital rape is not enumerated in the instruments. As explained in the previous section, treaty bodies such as the CEDAW Committee have realized such rights to encompass the prohibition of marital rape. In acceding to such conventions, states subject themselves to the jurisdiction of treaty bodies to enforce state compliance directly and to supply substantive content of rights and character of obligations through general comments and recommendations. The debate now focuses on the concrete and most fundamental human rights which are breached in marital rape.

THE RIGHT NOT TO BE SUBJECT TO TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

Rape and domestic violence are covered by the right not to be subjected to inhuman treatment or punishment. The Torture Convention is violated when a non-state party commits rape or gender-based violence, according to the Committee against Torture. Because marital rape (1) causes severe pain and suffering, (2) is committed for an improper purpose that includes coercion, intimidation, or discrimination, and (3) is approved of or tolerated by a state official, it meets all the criteria for an act of torture under Article 1 of the Convention Against Torture.²² The Convention Against Torture does not have the requirement of both physical and mental suffering to undergo something to be classified as an act of torture, marital rape is intentionally inflicted and constitutes an act that may result in severe pain and suffering, both physical and psychological.

Even when committed by private individuals, rape has been compared to torture and brutal treatment under international criminal law if the state has approved or encouraged it. The conceptual definitions of rape and torture are somewhat different between international criminal law, which addresses individual culpability, and international human rights law, which addresses state accountability. International law on sexual violence against women is universal and convergent, however, as evidenced by the unqualified condemnation definition

²² 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (OHCHR, 10 December 1984) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>> accessed 21 February 2025

of rape as torture in both disciplines and the need that rape committed by non-State actors be made a crime. The standard of due diligence is not complied with if the state does not prevent, punish, and afford solutions for victims of gender-based abuse or if the government supports and encourages non-state actors to engage in acts not sanctioned by the Convention with impunity.

The General Comment also says that re-responsibility is on the state and should be taken as authors to concur in or assent to such unauthorised acts. The inaction or indifference of the state toward such crimes is assumed to give a form of encouragement and/or de facto permission. States' failure to criminalize rape in marriage, therefore, constitutes such encouragement or de facto permission for such a crime.

The Committee Against Torture has singled out women as a social group that is particularly vulnerable to torture by private persons in their homes. In the Committee's terms, the contexts in which [women] are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.

The Torture Convention requires the State Parties to protect women who are at risk of domestic violence and/or rape by guaranteeing the implementation of further beneficial preventative and protective measures, as well as by thoroughly pursuing and punishing any acts of violence and abuse against these people. The Committee Against Torture is adamant about the extent of measures that states must take because women are a social group that is vulnerable to violence in intimate relationships. Such actions include making torture a crime punishable under its penal code, by at least the criteria of Article 4 and the constitutive elements of torture as listed in Article 1 of the Convention Against Torture. It also includes providing that there are no loopholes in the law by which the perpetrators can escape criminal penalties. Being such the character of marital rape as an act of torture, Convention obliges the state to impose criminal penalties.²³

²³ 'Report of the UN Committee Against Torture: Twenty-Fifth Session (13-24 November 2000) and Twenty-Sixth Session (30 April-18 May 2001)' (*Refworld*, 26 October 2001) <<https://www.refworld.org/docid/3f2ceacc4.html>> accessed 21 February 2025

The Right to Life: Intimate partner violence, as well as domestic violence, was noted as a prominent cause of disability and death across the globe. Honour killings could be cited as extreme scenarios where women are murdered with intent and premeditation for allegedly violating community, family, or religious norms. In most cultures, one of these expectations includes a man's sexual right over his wife or otherwise.

Marital rape has severe health consequences, including miscarriage, fistula, urinary tract infections, and sexually transmitted diseases like HIV, whose impact can be fatal. Even in societies where there is no pressure on one to sexually please one's partner in society, the threat of marital violence can coerce women into sex against their will. In exceptional circumstances, marital rape was associated with marital murder, where husbands kill their wives, often with impunity in the guise of defense like defense of honor or crime of passion.

The right to life is an international human right stipulated by international treaties, like Article 6 of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee has classified violence against women as an infringement of this right.²⁴ States must implement laws sternly, such as criminal sanctions, against the perpetrators of marital rape. Indian and other state's domestic jurisprudence have recognized marital rape as an offense of basic human rights, declaring that lacking awareness about domestic violence is responsible for breaches of the right to life. Marital rape needs to be criminalized based on the responsibility of the state for ensuring women's right to life.

Right to Liberty and Security of Person: Marital rape grossly infringes on a person's bodily and psychological security and undermines women's control over personal autonomy in their bedrooms. The ICCPR's Article 9 guarantees the right to liberty and security and has been safeguarded since early human rights documents like the French Declaration of the Rights of Man and of the Citizen (1789) and the Universal Declaration of Human Rights (UDHR).²⁵

Marital rape places the victims in a situation of repeated exposure to assault, as the perpetrator most often lives with the victim and holds social and economic power over her. In the absence

²⁴ International Covenant on Civil and Political Rights 1976

²⁵ *Ibid*

of laws criminalizing marital rape, husbands may indulge in unlimited sexual violence at their pleasure within the law and society and enhance women's vulnerability.²⁶

Marital rape exceptions within the law perpetuate the notion that women are incapable of withholding sexual consent in marriage, stripping them of their bodily and sexual autonomy. Violently married women are not offered a remedy in the law, and in those societies with robust patriarchal traditions, exiting the marriage can face them with economic destruction, social isolation, and further violence. When marital rape isn't recognized by law, laws leave women's right to liberty and security to patriarchal conceptions of family unity and marital harmony. To comply with international human rights standards, states should criminalize marital rape and offer effective legal protection to the victims.

The Right to Freedom from Discrimination: Human rights law's fundamental principle is the right to be free from discrimination and is incorporated into all of the main treaties, for instance, CEDAW. Non-criminalization of marital rape involves discrimination on a two-tier level: it makes a distinction between violence against women and other kinds of violence and between non-marital and marital rape.

The relationship between discrimination and gender-based violence has been known for a long time. The general Recommendation of the CEDAW Committee defined gender-based violence as one of the forms of discrimination that incapacitates women from being in a position to enjoy rights and freedoms equal to men. The application of general strategies for mitigating violence against women, particularly legal protection against all forms of sexual violence, is required of state parties to CEDAW.²⁷

In a 2012 report, the UN Special Rapporteur on Violence Against Women emphasised that states bear an obligation to extend to preventing, investigating, and punishing violence against women the same degree of commitment they would provide in other cases of violence. Spousal rape must be criminalized, and strict sanctions must be imposed under the law by states as part of

²⁶ *Ibid*

²⁷ 'Convention on the Elimination of All Forms of Discrimination against Women New York' (OHCHR, 18 December 1979) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>> accessed 21 February 2025

their duty of due diligence. International human rights mechanisms like the Inter-American Court of Human Rights and the European Court of Human Rights have held that declarations which provide impunity for violence against women violate their human rights convention obligations. Therefore, failing to criminalize marital rape continues to entrench gender discrimination and violate international legal norms.

The Right to Equality in the Family: Gender equality cannot be achieved in a society where women are denied the ability to agree to sex in marriage. The presumption that marriage is continuous consent to sex demeans women to sexual property. In societies where marital rape is tolerated by law, Systematic violations of women's equality within the family occur.²⁸

Certain legal regimes retroactively render rape invalid upon the marriage of the rapist with the victim. For instance, the Venezuelan, Indonesian, Cameroon, Chad, Danish, and Russian penal codes state that the rapist is forgiven or pardoned if he marries the victim. The laws express the misogynist understanding that a woman's worth rests in her chastity and deepen the concept of sexual violence in marriage as not criminal.

Additionally, in most states, the legal codification of male dominance in the family leaves women susceptible to marital rape. Iran, Chile, Rwanda, Honduras, and the UAE are some countries with juridical frameworks putting husbands at the pinnacle of the household, solidifying the perception that wives owe their sexual orders. Regarding violence against women, the UN Special Rapporteur has observed that various kinds of coercion, including economic dependence and threats of divorce, are employed to secure compliance by women in marriage.

The CEDAW Committee stressed that states are required to use positive measures for the abolition of gender-stereotypical cultural and legal traditions as well as male dominance. The criminalization of rape within marriage is a measure that has to be undertaken to dismantle gendered and entrenched inequalities and make marriage based on mutual respect instead of

²⁸ 'Human Rights Watch Submission to the UN Special Rapporteur on Violence Against Women' (*Human Rights Watch*, 22 May 2020) <<https://www.hrw.org/news/2020/05/22/human-rights-watch-submission-un-special-rapporteur-violence-against-women>> accessed 21 February 2025

force. Failure to do so disobeys international human rights law and consolidates prejudice against women in the system of the family.

CONCLUSION

Marital rape constitutes an infringement of human rights, perpetuating gender injustice and undermining the tenets of dignity, justice, and bodily autonomy. With the world legal systems now unambiguously recognizing sexual violence as a crime in marriage, Indian laws are closed off to criminalizing rape in marriage. This legislative lacuna not only does nothing to shield women from intimate partner violence but also reinforces long-standing patriarchal norms that regard marriage as a union in which consent is taken for granted, not constantly reiterated.²⁹

The lack of criminalizing marital rape is a consequence of common social attitudes that commodify violence against women and discourage survivors from reporting abuse. The social construction of marriage as a site of privacy, accompanied by associated stigma and fear of exclusion, silences victims and works against legal and social reform processes. Such institutional barriers require an array of interventions, from legal reform, judicial sensitivity, and social consciousness to survivor-empowering interventions.

Comparative analysis of law confirms that the majority of jurisdictions have, in law as well as practice, recognized and criminalized marital rape as evidence of an international consensus on the need for legislation protecting against this in marriage. The persistence of exceptions to marital rape in India is the reverse of international human rights standards, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which obligates states to abolish discriminatory provisions within laws that hurt gender equality.

For India to provide gender justice, it must make its justice system comply with global human rights standards by formally acknowledging and penalizing marital rape. Legal reform is

²⁹ Anushri Joshii, 'The Justice Verma Committee Report 2013: A Comprehensive Analysis of Legal Reforms in India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/legal/legal/article-17870-the-justice-verma-committee-report-2013-a-comprehensive-analysis-of-legal-reforms-in-india.html>> accessed 21 February 2025

insufficient—firm measures have to be followed to reorient social mores, increase societal awareness, and empower the victims to obtain justice. Civil society, activists, and legal professionals have to work harder toward challenging myths about marital rape and providing a liberal legal landscape with an assurance of consent and bodily autonomy.

Briefly put, the reaction to marital rape is statutory and moral as well. A right to equality, dignity, and freedom from violence cannot be secondary to marriage. By criminalizing marital rape and by legislating it as such, India would be well on her way to establishing a more just and equitable society, a society in which women are not adjuncts of their husbands but are individual human beings who are deserving of equal protection under the law. Marital rape must cease for the successful implementation of gender justice and for the reason that the institution of marriage, being a social institution, would ensure the essence of respect, consent, and human dignity.