University College Stockholm

MASTER'S DEGREE PROJECT

Spring Semester 2024

# Preserving Human Rights in Marital Relations: A Critical Examination of the ***Criminalization of Marital Rape*** in India from a Human Rights Perspective

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**Abstract**

In India, the law does not consider marital rape as a criminal offence. This means that the legal provisions do not acknowledge that a husband can be held accountable for raping his wife. The reasons for this are numerous and can be found in a range of reports from the Law Commission, Parliamentary debates, and judicial decisions. There are various reasons for this, including the desire to uphold the importance of marriage as an institution and the availability of other legal solutions. Given the ongoing debate surrounding the criminalization of marital rape in India, it is important to thoroughly examine the potential consequences of such a move. In order to achieve this goal, the current research will gather information from a diverse range of secondary sources, such as books, journals, articles, and reports that are relevant to the topic being investigated. The research will also gather primary data from respondents to obtain firsthand perspectives on this matter. This paper provides an in-depth analysis of the perspectives presented by different scholars regarding the criminalization of marital rape in India. In contrast to the responses obtained from the respondents for this study, the majority of them suggest that marital rape should not be criminalized. In addition, the paper delves into the approach taken by the Indian judiciary regarding the criminalization of marital rape. This study aims to provide valuable insights for leaders, scholars, and academics to better understand the advantages and disadvantages of criminalizing marital rape in India.

**Keywords:** marital rape, India, legal provisions, IPC, BNS, human rights, criminalization

# Contents

**List of Abbreviations**

| **Abbreviation** | **Definition** |
|---|---|
| IPC | Indian Penal Code |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| NGOs | Non-Governmental Organizations |
| UOI | Union of India |
| UK | United Kingdom |
| PWDVA | Protection of Women from Domestic Violence Act |
| UN | United Nations |
| ICCPR | International Covenant on Civil and Political Rights |
| UDHR | Universal Declaration of Human Rights |
| BNS | Bharatiya Nyay Sanhita |
| CSI | Cultural and Societal Influence |
| CSM | Cultural Sanctity of Marriage |
| TVGR | Traditional Values and Gender Roles |
| BLA | Balanced Legal Approach |
| LPC | Legal and Procedural Nature |

*"Marital Rape is not about sex, but about violence, it is not about marriage, but about lack of consent. Rape is rape and it should be penalized whenever and wherever it occurs"- Shashi Tharoor*

## 1. Introduction

One of the respondents said, "The marriages as an institution is crumbling because you don't respect the agency of the woman. You rape her, so it is the act of rape within marriage that could be responsible for destruction of marriage. But it cannot be the act of complaining about that act, which could be the reason behind crumbling of marriages."

## 1.1 Research Background

"A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity"- Sol Wachtler. However, in the Indian context, Smriti Irani, the Union Minister for Women and Children's Development, told the Rajya Sabha that it is not a good idea to label every man as a rapist and every marriage as violent. Irani was replying to a question from the parliament about criminalizing marital rape in the country. She said, "Let me say, to condemn every marriage in this country as a violent marriage, and to condemn every man in this country as a rapist is not advisable in this august House," Marriage is a sacred institution that serves as the foundation of our current society. Due to the fact that it is considered to be extremely private, the state is unwilling to interfere with this delicate region. The purpose of this is to protect the privacy of citizens, and any intervention by the state in this area would be detrimental to the protection of this privacy. As a result, the state does not compel any relationship between two people to be married or divorced (Girgis et al., 2020). The refusal of the state to invade this private area, even in particular specific cases, can be troublesome. However, this resistance can be problematic. In the event that a wife is subjected to cruelty inside the context of a marriage, for instance, the state will be required to intervene in this domestic sector in order to criminalize the cruelty that the wife is subjected to. In the event that the state does not take this action, the woman will be unable to seek legal remedy. Because of this, it is essential for the state to occasionally extend its reach into the realm of private relationships (Rao Kallakuru and Soni, 2018). According to Articles 14 and 21 of the Constitution of India, rape committed within the context of a matrimonial relationship is a breach of the basic rights of a woman (Bajpai and Singh, 2020).

Rape has been outlawed in jurisdictions over most of the world; every country has recognized rape as an act which is a barbaric violation of human rights, particularly those of women. India has also made laws for the protection of women with regards to rape as a crime. The question is what is RAPE? According to Black Law Dictionary- Rape is defined as unlawful sexual intercourse committed by a man with a woman using force and against her will (11th ed. 2019). The modern concept of rape was developed in England in the late fourteenth century (Ohlson, 2006), and was embedded in Indian Constitution for the first time through the enactment of Indian Penal Code, 1860 (herein referred to as IPC). Section 375 defined and section 376 described its punishments. With the passing time there have been many amendments made to the definition and punishments for rape. But one thing the Britishers left behind is their deliberate act to decriminalize marital rape by adding an exception clause to section 375, called exception 2. The basis for such decriminalization can be found in late 17th century common law philosophy, particularly in the judgements made by Sir Matthew Hales and Sir William Blackstone that relied on a now debunked and discarded theory of marital rape, known as the doctrine coverture and the doctrine of implied consent (Reddy, 2022). These doctrines rely on the concept of marital rape exemption which is vestige of English common law. The exemption derived from three common law presumptions. **First**, at marriage a woman gave up her right to refuse to have sexual relations with her husband. **Second**, a married woman merged into the existence of her husband. **Finally**, at marriage a woman became the chattel of her husband (Lincoln, 1989).

The Indian legislature has the potential to play a significant part in reducing the number of cases of rape that occur within marriages in the country. However, there is a great deal of hesitation on the side of the Indian legislative with regard to the criminalization of rape committed within the context of marriage in India. A number of different proposals to make rape within marriage a criminal offence in India have been repeatedly rejected (Patel, 2018). In an effort to make rape within marriage a criminal offence in India, the Indian Parliament has been presented with a number of bills; however, none of these bills has been able to be enacted into any kind of legislation. In India, the legislators are the only ones who have the authority to make rape within a marriage a criminal offence; nevertheless, there is no promptness on their part in this regard. Generally speaking, the Indian legislative is of the opinion that making rape committed within a marriage a criminal offence in the country would have a negative impact on the venerated notion

of marriage in India and would result in an increase in the number of marriages that end in divorce within the country (Banerjee and Rao, 2022).

It is important to highlight the flaws with the dominant legal approach that the institutions of the state frequently utilize when it comes to the issue of consent within a marriage. This is because the Supreme Court considers petitions to criminalize rape that occurs within a marriage. An exception is made for "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age" in Section 375 of the Indian Penal Code (IPC), which is the section that criminalizes rape. Despite the fact that this exclusion, which strips a married woman of her right to life, dignity, and freedom of choice, does not provide any explanation for its existence, it does take away her bodily autonomy. The provision assumes that consent is within the scope of a marriage that is recognized by the law. Whenever something like this occurs, the concept of "marital rape" becomes incongruous with reality (Singh, 2022).

The age-old law that allows for this exemption raises a number of problems that need to be answered. Do the legislators or the courts have the authority to make a decision regarding the matter? To what extent are the concerns of the state regarding the protection of the institution of marriage valid? One of the most important aspects of the application of constitutional rights is the split that exists between the public and private worlds. Women who have been victims of rape within their marriages are deprived of the ability to seek legal redress as a consequence of the establishment of a private domain that is protected from the law (Priya, 2021).

The claim that there was no reason for rape alone to be shielded while other cases of violence by a husband towards a woman were criminalized was considered by the Law Commission in the year 2000. However, the Law Commission rejected this argument (Amanulla, 2021). The document voiced its concern that the criminalization of rape within the context of marriage would result in "excessive interference with the institution of marriage." Within the context of the case that was brought before the Delhi High Court, the government of the union argued that making rape within marriage a criminal offence may potentially undermine the institution of marriage and serve as a means of harassing spouses (Dotania, 2022). In light of the fact that the subject featured sensitive "socio-legal issues," Solicitor General Tushar Mehta emphasized that a "holistic view" was necessary during the investigation.

In 1890, the Queen Empress v Haree Mohan Maii (1891) case highlighted a tragic incident involving child marriage and marital abuse. Tragically, 10-year-old Phulmani Das lost her life in

1889 due to the abuse she endured. Shockingly, the perpetrator, Phulmani's husband, received only a 12-month sentence of hard labor. This light punishment was due to the legal age of consent being 10 at that time, and marital intercourse was not considered rape under Section 375 of the Indian Penal Code.

Moving forward to 1984, the Harvinder Kaur v Harmander Singh (1984) case brought attention to the reluctance of the legal system to intervene in familial matters. The Delhi High Court asserted that constitutional principles should not interfere with the sanctity of marriage, stating that Articles 21 and 14, which guarantee the right to life and personal liberty and ensure equality before the law respectively, should not extend into the private realm of the home and marital relationships. These cases are a setback in the history of Indian Judiciary for not taking a stand for the Indian women.

In many cases, the courts have avoided calling into question the exemption clause. In the case of Nimeshbhai Bharatbhai Desai v. State of Gujarat, the Gujarat High Court acknowledged that rape committed within the context of marriage was a humiliating offence; yet it did not strike down the exception clause nor did it push the state to act in this manner. The Delhi High Court issued a ruling that stated that forced sexual activity within the context of a marriage could not be termed rape. As a result, the court decided that an investigation into the facts was not necessary.

## 2. Statement of Problem

Despite the enormous progress that has been made in the recognition and protection of human rights, the issue of marital rape continues to be deeply rooted and ignored within India's legal and social environment. In this thesis, the problem statement revolves around the absence of legal recognition and effective protection against marital rape, which is a basic violation of individual's rights and dignity within intimate relationships. Despite being recognized as a form of gender-based violence by international human rights standards, including the "Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," marital rape continues to be largely ignored or trivialized within India's legal framework.

There are several factors that contribute to the complexity and contentiousness of the issue of criminalizing rape within marriage. These factors include cultural norms, societal views, and the complexities of the law. Marriage-based rape is exempt from legal examination, which contributes to a culture of impunity and quiet surrounding this form of abuse. Other forms of sexual violence are criminalized under Indian law, but rape within marriage is not. In addition to undermining the rights and autonomy of persons inside marriages, this conspicuous gap in legal protection also contributes to the perpetuation of gender inequality and encourages destructive power dynamics within intimate relationships.

In addition, there are several obstacles that prevent the effective criminalization of marital rape. These obstacles include the shame that is associated with the practice in society, the inadequacy of the legal frameworks that are in place, and a lack of awareness among attorneys and the public. There has been gradual progress, and real change has not yet been achieved, despite the efforts of civil society organizations and activists to lobby for law reform and increase awareness of the issue.

In addition, there is an immediate requirement for a human rights-based strategy to address the issue of rape within marriage in India. Interrogating the underlying norms and power structures that perpetuate impunity for criminals and deny survivors the justice and assistance they deserve is the goal of the thesis, which aims to do so by situating the issue within the broader context of human rights. Within the context of married relationships, it seeks to investigate the extent to which existing legal frameworks are compatible with international human rights norms and to investigate potential routes for reform that give priority to the rights and dignity of persons.

In summary, the problem statement of this thesis underlines the critical necessity to face the persistent problem of marital rape in India through a human rights approach. It provides options for reform that support the ideals of equality, dignity, and justice for all individuals, regardless of their marital status, and it aims to uncover the structural impediments that preclude effective legal recognition and protection against marital rape among married individuals.

## 3. Aims and Objectives

The main aim of the current study is to comprehensively investigate the socio-legal dimensions of the issue of marital rape in India, with a specific focus on analyzing the ongoing debate surrounding its criminalization. The objectives of the research are as follows:

1. To examine the concept of rape within marriage and to analyze the effectiveness of existing legal frameworks and mechanisms in addressing marital rape cases in India.
2. To examine the socio-legal implications of criminalizing or not criminalizing marital rape on victims, perpetrators, and society as a whole.

## 3.1 Research Questions

1. What is the concept of rape within marriage and what is the effectiveness of existing legal frameworks and mechanisms in addressing marital rape cases in India?
2. What is the socio-legal implications of criminalizing or not criminalizing marital rape on victims, perpetrators, and society as a whole?

## 3.2 Research Methodology

The research methodology is an essential component of the study because it directs the way in which the purpose of the study must be attained in order for it to be considered successful. In the present study, a pragmatism research paradigm will be utilized. According to the pragmatism paradigm, the truth or reality can be uncovered through the collection of individual responses provided by the most relevant parties (Saunders et al., 2019). In addition, the research will make use of a qualitative research approach, which is in keeping with the strategy described above. Taking a qualitative approach to research will make it easier to obtain detailed, subjective information from the people involved (Gahuri et al., 2020). In addition to that, an exploratory research strategy will be used for this particular study. This will be of assistance in describing the significant trends and challenges within the area that is the subject of the research (Rahi, 2017). In conclusion, the research will take a deductive reasoning approach as its methodology.

In light of the fact that this study is filling a significant void in the existing research, a primary data collection approach is chosen. Primary sources of information will be utilized in the

data collection process. The primary data will be acquired from NGOs, Advocates, Judges, and Teachers using the interview method, and the data will be analyzed using thematic analysis.

## 3.3 Significance of the Study

As a result of its all-encompassing approach to an urgent human rights issue, this thesis holds a great deal of relevance. The purpose of this study is to shed light on a deeply rooted issue that affects a large number of people within India by concentrating on the criminalization of marital rape in India from the point of view of human rights. The collection of data primarily from teachers, non-governmental organizations (NGOs), judges, and advocates adds richness and depth to the study. With the primary collection of information approach, not only is a comprehensive picture of the legal and social framework surrounding marital rape provided but the perspectives of those who are directly involved in addressing the issue are also amplified. The thesis not only makes a contribution to the academic debate by including an examination of the perspectives of both legal professionals and grassroots organizations, but it also provides practical insights that may be used to inform policy decisions and advocacy efforts. Furthermore, by situating the problem within the broader framework of human rights, the thesis emphasizes the critical nature of addressing the issue of marital rape as a violation of fundamental freedoms and personal dignity. Consequently, this research has the potential to be a catalyst for genuine change by increasing awareness, promoting legislative reform, and advancing the cause of gender equality and human rights in India and beyond.

# 4. Literature Review

## 4.1 Rape Within Marriage

Sir Hale, who lived in Great Britain during the 18th century, is credited with developing a law that is frequently regarded as the basis for the immunity that is granted to the husband for forcing sex on his wife. According to this rule, “a husband could not be guilty of rape on his lawful wife, for their mutual matrimonial consent and contract, she had agreed to this, and this consent she cannot retract” (Hale et al., 1778). This rule stipulates that a husband cannot be found guilty of committing rape on his lawful wife. The foundation of Hale's concept is the doctrine of marital oneness, which is a perspective that is shared by the majority of cultures. According to Rebecca M. Ryan, marriage is regarded as a plan of the union, in which the complete matrix of individual identities is eliminated; hence, the husband and wife become one entity. To put it another way, the identity of the wife and the rights she possesses are eventually blended with those of her husband (Singh, 2022). As a consequence of this, the husband ensures that his wife is protected, and the wife ensures that she will obey her husband according to the instructions that he gives her (Ryan, 1995). Chibber (2008), and Parashar (2008) state that the majority of personal laws in India are religious in nature and that women are considered to be subjects of their husbands. By way of illustration, according to Hindu law, a girl is considered to be the present that her father gives to her new husband.

It is possible to draw the conclusion that the husband in many societies has social and religious justification for the assumption that he not only holds control over his wife but also 'owns' her. This is the case when these perspectives and traditions are taken into consideration. Furthermore, the most important responsibility of a married couple is to create an heir, ideally a boy, who will be able to carry on the family lineage and pay respect to the ancestors in the years to come. Therefore, the roles that a wife and a husband play in a marriage are established by the traditions that are prevalent in society. According to these traditions, the wife is expected to be obedient to her husband and to fulfill all of his desires and requirements, while the husband is obligated to protect his wife in order to maintain the integrity of his bloodline (Olivelle and Davis, 2018).

A rape is deemed to be a rape when it is perpetrated by a person who is unknown to the victim or by a person who is familiar to the victim (either a member of the victim's family or

another person). However, it is not considered a rape when a woman is raped by her husband. According to Iqbal v. State of Jharkhand (2013), the impact of such a rape is quite similar to the harm that occurs when the crime is perpetrated by a man who is not the husband. In addition, married rape is likely to be performed on multiple occasions; it is an act of recurrent violence, which is not recognized as a criminal offence simply due to the fact that it is committed within the context of a marriage. In such a scenario, the woman does not have any legal options available to her, despite the fact that she is subjected to the same level of physical and psychological humiliation on a regular basis as a victim who is raped by a stranger or a member of her own family (Kanodia and Ray, 2016).

According to Independent Thought v. Union of India (2017), a husband is allowed to rape his wife, but he is not allowed to molest her without facing consequences. This is due to the fact that the act of molestation is considered an offence and is considered to be punished under numerous articles of the Indian Penal Code, including Sections 354, 354-B, 354-C, and 354-D. According to this peculiar line of reasoning, the husband may be prosecuted with a lesser degree offence, but he cannot be charged with a more serious felony such as rape.

The crime of rape is a truly heinous act, causing not only physical harm to a woman but also inflicting lasting psychological damage. In the case of Bodhisattwa Gautam v. Subhra Chakraborty (1996), the Supreme Court made an observation that highlights the broader impact of rape. It emphasized that rape is not only a crime against an individual woman but also a crime against society as a whole. It deeply affects a woman's psychology and can lead to a severe emotional crisis. This action is a violation, impacting both fundamental rights and the rights protected by Article 21 of the Indian Constitution. According to numerous scholars, rape is viewed as an act of aggression that seeks to degrade and humiliate women.

In addition, in the State of Punjab v. Gurmit Singh (1996) case, the Supreme Court made a significant observation. They highlighted the profound impact of rape, stating that it not only harms the victim physically but also deeply degrades their spirit and sense of self. Several cases have made similar observations, including Bharwada Harjibhai v. State of Gujarat (1983), Delhi Domestic Working Women's Forum v. UOI (1995), and State of Haryana v. Janak Singh (2013).

According to Nussbaum (2000), in developing countries such as India, there are not yet accurate figures for rape, domestic violence, and sexual harassment. This is due to the fact that in numerous nations, domestic violence and sexual harassment receive little coverage, rape within

marriage is not recognized as a crime, and even rape committed by strangers is so barely punished that many women are discouraged from reporting the crime. In addition, the position of women in India is a very challenging subject to discuss, as there is probably no other country in the world that possesses a greater degree of inner plurality and distinction than India does.

## 4.2 Criminalization of Marital Rape in Various Countries

According to UK law, marital rape is classified as a type of sexual assault that goes against the Sexual Offences Act, 2003. Prior to 1992, marital rape was not recognized as a criminal offence, allowing husbands to assert their conjugal rights over their wives without their consent (Cowan, 2019). According to Friedman and Valenti (2019), the most fundamental component of the sexual equation is consent. If there is any question, or if you discover that you are using some power to entice someone into having sexual relations when it is obvious that they are not that interested in having sexual relations, you need to reevaluate what you are doing and the reason that you are doing it.

In 1991, the House of Lords, comprised of five lords, deliberated on the case of R v. R. The central issue at hand was whether a man could be charged with rape for assaulting his wife.

In the case of R v. R, the appellant entered into marriage on 11th August 1984. However, due to disagreements within the marriage, the wife decided to leave the matrimonial home and moved in with her parents on 21st October 1989. Upon her departure, she made it clear through the letter that she intended to seek a divorce. Later, the appellant had a conversation with his wife expressing his desire to pursue a divorce. On 12th November 1989, the individual entered the house of their spouse and attempted to engage in non-consensual sexual activity, while also assaulting them when they refused. The question that was brought before the court was whether a husband can be charged with raping his wife. Is sexual consent implied in a marriage without the need for further consent? The court ruled that the exclusion of marital rape from common law fiction has never been recognized or accepted in English law. He was found guilty of sexually assaulting his spouse. The husband received a three-year prison sentence for attempted rape, followed by an additional eighteen months for sexual assault.

Further, in the 1970s, several Australian states implemented significant reforms and conducted thorough analyses of laws pertaining to rape and other sexual offences. In 1975, the Mitchell Committee was established with the aim of advocating for reforms in laws pertaining to

sexual offences and rape (Featherstone and Featherstone, 2021). The report mentioned that consent for sexual intercourse is typically given at the time of marriage and cannot be revoked during the marriage. However, it does not align with modern perspectives on the matter. In today's society, it is important to recognize that a spouse should not be obligated to engage in sexual activity with their partner against their own wishes and without their consent. The wife who is subjected to her husband's sexual desires deserves the protection of family law, which grants her the right to leave her husband and seek a peaceful life. In this scenario, if she has left him and they are living separately, and he engages in non-consensual sexual intercourse with her, there is no justification for holding him accountable for rape (Rush, 2011).

In addition, the United States consists of fifty distinct federal states, each with its own set of federal laws. In the seventeenth century, Chief Justice Matthew Hale of that time discussed the legal perspective on the issue of rape within a marriage, emphasizing the concept of irrevocable consent. Within the institution of marriage, there existed a concept known as irrevocable consent, which granted men complete authority over their wives in matters of sexual relations. Unfortunately, this notion also created a loophole that exempted marital rape from legal consequences (Lin, 2017).

In Massachusetts, a landmark case in 1857 (Weishaupt v. Commonwealth) became the first in the United States to acknowledge and address the issue of Marital Rape as an exception to rape. It's challenging to fathom how a husband could face prosecution for the violent crime of rape. It is highly disruptive, surpassing the act itself. The women's movement that occurred in the 1970s resulted in significant legal changes in their favor. It was a goal that needed to be accomplished in legislatures that were predominantly male. The movement began with a different perspective, such as the outcomes of unplanned sexual encounters resulting in parenthood. This movement garnered support based on ethical and legal grounds. Eventually, the focus shifted towards the inherent rights of individuals to possess and govern their bodies.

In 1976, Nebraska became the first state to criminalize Marital Rape (Garg and Singh, 2022). By 1993, Marital Rape had been criminalized in all 50 states of the United States of America. It is concerning that some states do not differentiate between marital and non-marital rape, regardless of the relationship between the accused and the victim. Following Nebraska's decision to criminalize marital rape, other states have also taken steps to address this issue. Some states have passed bills recognizing women as independent individuals and criminalizing marital

rape, while others have relied on court cases involving marital rape to bring about change. The court ruled in favor of the women. It served as a precedent for all future cases of marital rape (Klarfeld, 2011).

## 4.3 Approaches of the Judiciary in India Regarding Marital Rape

There has been a considerable contribution made by the judicial system in India towards the protection and empowerment of women. In the case of Rafiq v. State of Uttar Pradesh (1980), J. Krishna Iyer made the following statement, which sheds light on the sympathy that the Indian judiciary has for women: When a woman is ravaged, not only is she subjected to physical harm, but she also experiences a profound sense of shame that will remain for all of eternity. In situations like these, the attitude of the court towards human rights cannot be slowed down by legal bigotry to any degree.

In the recent past, the Supreme Court of India has been issuing rulings that are infused with a contemporary approach. These opinions have been tearing down the traditional dogmatic outlook in favor of a more current perspective. The Supreme Court of India, for instance, is responsible for the decriminalization of homosexuality between consenting adults (National Legal Services Authority v. Union of India, 2014), and the elimination of the crime of adultery (Joseph Shine v. Union of India, 2018), and the opening of the Sabarimala temple to women of all ages (Indian Young Lawyers Association v. State of Kerala, 2018). In addition, the Supreme Court of India defended the rights of Muslim married women by stating that triple talaq, which is a proclamation of divorce that is uttered by a Muslim husband against his wife three times, constitutes an infringement of Article 14 of the Indian Constitution (Shayara Bano v. Union of India, 2017) and is therefore invalid.

J. Deepak Misra made the following observation in the case of Joseph Shine v. Union of India: Any system that treats a woman with indignity, unfairness, and inequality or discrimination invites the wrath of the Constitution. Any provision that would have received the stamp of approval a few decades ago may have to meet its own tombstone with the passage of time, rising constitutional principles, and growing perception. This may be the case for any provision that was able to receive the stamp of approval. It is not reasonable to expect a woman to think in the same way that men do or in accordance with what society wants. An idea like that is abhorrent because it destroys the very essence of who she is today. Additionally, it is time to bring up the fact that a

husband is not a master. There is a controlling parameter that is equality. All historical perceptions ought to be dismissed, and obituaries ought to be prepared for those who have passed away.

In the case of Independent Thought v. Union of India, the Supreme Court of India made the observation that Exception 2 of Section 375 ought to be applied to a married kid who is younger than 18 years old. According to the Court's ruling, the exception provision discriminates in an arbitrary and unreasonable manner between a girl child who is married and a girl child who is not married. In its decision, the Supreme Court emphasized the centrality of the right to self-determination, privacy, and physical integrity, stating that such discrimination is in violation of the spirit of the Constitution. It is possible that the observation made by the Court in this particular case would prove to be a key step in the fight against rape within marriages.

In addition, the Delhi High Court made the observation that "it is incorrect to say that (physical) force is necessary for rape." As a result, it is not absolutely necessary to search for injuries in the event of a rape. At this point in time, the definition of rape is much different. (India Times, 2014). As a result, the judiciary, which typically asserts that it is not the responsibility of the judiciary to make laws that criminalize rape within the context of marriage (Sakshi v. Union of India, 2004),has been making significant strides in safeguarding and empowering married women. According to Thera Fus, the judiciary in the United Kingdom was the one that launched the movement towards condemning the implicit consent hypothesis. Subsequently, the legislature that was in place at the time made it illegal to commit rape against a spouse in that country. According to Arora (2011), this is the ideal course of action for India to take in order to make rape within marriage a criminal offence.

## 4.4 Research Gap

Examining the criminalization of marital rape in India from a human rights perspective is an important and timely task, considering the various implications it has on individuals' rights, dignity, and agency within marital relations. Nevertheless, in the midst of numerous studies supporting the criminalization of marital rape in India, there is a noticeable lack of research on perspectives that are against such legislative measures. Although the prevailing discussion largely supports the criminalization of marital rape as a crucial measure to protect human rights, there is a noticeable lack of scholarly research exploring alternative perspectives.

Central to this research gap is the necessity of gaining a comprehensive understanding of the intricate arguments and socio-cultural contexts that contribute to the opposition to criminalizing marital rape in India. The existing literature emphasizes the importance of acknowledging marital rape as a violation of fundamental human rights. It aligns with international legal frameworks and feminist perspectives that support its criminalization. Nevertheless, without comprehensive empirical research exploring different perspectives, there is a danger of disregarding the intricate complexities of societal attitudes, cultural norms, and legal intricacies that contribute to opposition against legislative changes.

In addition, the lack of comprehensive examination of differing viewpoints on the criminalization of marital rape in India highlights a significant gap in scholarly research, which hinders a complete understanding of the socio-legal environment. Existing research tends to overlook the complex factors that contribute to resistance, such as patriarchal ideologies, perceptions of familial privacy, and concerns about the effectiveness of legal interventions. It is important to consider these interrelated elements, rather than solely focusing on advocating for legislative reforms. As a result, the lack of thorough analysis of opposing perspectives weakens the depth of academic discussions and restricts the ability to make well-informed policies that consider different rights and interests.

Moreover, the limited focus on opposing viewpoints regarding the criminalization of marital rape in India contributes to a divisive narrative that hinders productive discussions and the formation of agreements. To effectively address this research gap, future studies should take an inclusive and reflective approach by actively involving a wide range of stakeholders. This includes legal experts, policymakers, activists, and community members. By highlighting perspectives that question established norms and examine the consequences of legal changes, researchers can cultivate a deeper comprehension of the intricacies surrounding marital rape in India.

Furthermore, exploring different perspectives allows for a critical examination of the limitations and unintended consequences of legal interventions. This helps in developing more effective and culturally sensitive strategies to promote gender equality and human rights within marital relations. By exploring the various aspects of resistance to the criminalization of marital rape, experts can enhance the discussion by going beyond simplistic viewpoints and promoting inclusive strategies to combat gender-based violence.

Ultimately, the lack of research on opposing perspectives regarding the criminalization of marital rape in India highlights the importance of a comprehensive and inclusive approach to scholarly investigation. Through a thorough examination of different perspectives and a deep understanding of the intricate social and legal dynamics, researchers have the opportunity to enhance the conversation on human rights within marital relationships. This, in turn, can lead to the development of more impactful strategies for advancing gender equality and justice.

# 5. Theoretical Framework

## 5.1 The Feminist Theory

Marital rape is defined by scholars of feminist theory as a method of exerting social control and power over women by means of the patriarchal family structure. There are a few different expressions that feminists use to allude to the societal power that men have over women. Some of these terms are “patriarchal terrorism” and “license to rape.” According to Johnson (2017), the term “patriotic terrorism” describes the systematic use of violence by men in an unending endeavor to exert control over individuals who are female. According to Finkelhor and Yllo (1987), the marriage license is a “license to rape,” which means that men are able to control and dominate their wives through forced sex without fear of repercussions. This is because of the historical context of marriage, which includes the “Unities theory” and legislation such as that of Sir William Hale (Hale, 1847).

In the landmark judgement of Sakshi V. UOI (2004) where the petitioner had argued that contemporary feminist legal theory has effectively redefined rape as an experience characterized by humiliation, degradation, and violation, rather than simply as a matter of penile/vaginal penetration. By confining the definition of rape to narrow terms, as the respondent authorities and their representatives seek to do, it perpetuates the outdated notion that rape is solely about sexual intercourse rather than an act of violence. This limited understanding fails to acknowledge the psychological and emotional trauma inflicted upon survivors of rape.

Feminist theorists argue that rape is not primarily about sexual desire but about exerting power and control over women. For instance, when men perceive women as inherently inferior or as objects for their own gratification, they may use rape as a means to assert dominance. This can be seen in cases where rapists target vulnerable individuals or use physical force to overpower their victims, illustrating a desire for control rather than consensual intimacy. They further state how societal norms shape perceptions of gender and masculinity, influencing attitudes towards women and sexual behavior. For example, men who subscribe to traditional gender roles may view women as submissive and passive, leading them to believe they are entitled to control women's sexuality (Cahill, 2001). This belief system contributes to the objectification of women and perpetuates the idea that men have the right to assert their desires onto women, including through rape. Some men perceive women as existing solely to fulfill their sexual needs, disregarding

women's autonomy and consent. For instance, men who advocate to the notion that women constantly desire sex may justify rape by assuming that a woman's actions—even if non-sexual—are somehow inviting or consenting to sexual advances. This distorted perception of women's desires and behaviors can lead to the normalization of rape and the belief that women are to blame for the violence perpetrated against them (Lowell, 2010).

Thus, this theory examines marital rape as a method employed by society to exert dominance over women. It is widely believed that the exemption granted in cases of marital rape is a reflection of outdated laws that viewed women as the possessions of their husbands.

## 5.2 The Consent Theory

Consent is a crucial factor in determining whether an offence qualifies as rape or not (Buchhandler-Raphael, 2011). When both parties involved give their consent, sexual intercourse between a man and a woman is not considered an offence. However, if consent is absent, such an act is classified as rape. Although there is a clear understanding of the importance of consent, it unfortunately seems to disappear when it involves non-consensual sexual activity within a marriage (Kolade-Faseyi, 2018). It is perplexing how one's marital status can impact the definition of the offence of rape, which is solely based on the absence of valid consent as per the law. It appears that Indian lawmakers are still adhering to a long-standing doctrine established by Sir Mathew Hale in 1736. This idea is not only contrived but also indefensible. In today's world, it's challenging to find any credible authority who would endorse such a repugnant doctrine. It is noted that this example of male chauvinism does not align with the current opinion on the rights of husbands (Lesses, 2014). Consent serves as a crucial safeguard, providing protection for those who may be vulnerable. It serves as a crucial element in maintaining a fair balance between those in positions of power and those without, granting both parties the ability to negotiate. Nevertheless, the exemption clause places emphasis on the idea that in marital sex, the consent of the wife is deemed insignificant, as it is based on forced consent. However, in the Harnarain Singh v. State (1958) case, the Court made it clear that consent should not be mistaken for passive submission. Sexual intercourse should not be seen as an inherent right of a husband within a marriage, as this undermines the principles of equality and human dignity. Both the husband and wife must reach a mutual agreement each time, as sexual intercourse should be seen as a shared desire and a source of

pleasure for both partners. It should not be viewed as a duty that the wife is obligated to fulfill through threats or force (Hasday, 2000).

The consent theorists have over the years forgotten to adequately address the complexities of consent within various relationships, particularly focusing on the intimate relationship between a woman and her husband. It emphasizes the necessity of consent at every stage of this relationship, from marriage to sexual intercourse. They usually critique the historical dominance of patriarchal norms, which have led to the assumption that women will always consent and have relegated women's agency to secondary status. This perspective corelates with sexual consent theory, which emphasizes the importance of clear and ongoing consent in all sexual encounters. People specially men must understand the need for women to have independent agency in their decision-making processes, free from societal pressure or coercion. The society works in a regressive flow to conclude how patriarchal structures have often marginalized women's voices and autonomy, leading to instances where explicit non-consent is disregarded or minimized (Klopper & Human, 2007).

## 5.3 Power Dynamic Role

The unequal power relations that exist between men and women in society are reflected in the practice of rape within marriage, which is a sign of gender inequality. The power dynamic that exists between men and women within a marriage is the primary factor that contributes to the occurrence of marital rape (Mahoney and Williams, 1998). Throughout the course of human history, women have been seen to be the intellectual property of males, and marriage has been regarded as a transfer of ownership from a woman's father to her husband. Because of this view, the idea that a man has the right to engage in sexual acts with his wife, regardless of whether or not she consents to those behaviors, has come about. Because it supports the notion that males have the right to dominate women in all aspects of their lives, including sexually, such a mindset contributes to the perpetuation of gender inequity (Wertheimer, 2003).

For instance, in certain nations, marriage is seen as a contract, which grants males the authority to engage in sexual activity with their wives without first obtaining their agreement. In situations like these, the legislation is crafted to protect the rights of men rather than the rights of women, which contributes to the perpetuation of gender inequity. The perspective of radical/liberal feminists argues that rape is primarily driven by aggression rather than sexual desire. According

to Melani & Fodaski (1974), the motivation and dynamics of rape stem from hostility rather than a sexual need. Susan Brownmiller's book, “Against Our Will: Men, Women, and Rape” (1975), is widely recognized for bringing radical feminist ideas to a wider audience. The book offered a comprehensive account of rape, analyzing its social and political implications. It challenged the perception of rape as solely a sexual act, highlighting its connection to male dominance and the degradation of women. Additionally, it emphasized the political nature of rape, shifting the focus from individual incidents to a broader societal issue (Cahill, 2001). Brownmiller argued that rape is an act of power, asserting that its purpose is to intimidate women and keep them in a constant state of fear (Brownmiller, 1975). The shift in perspective that regards rape as driven by power rather than sex has had a significant impact in redirecting blame away from female victims. Consequently, the focus on the physical attractiveness and sexual history of rape survivors has become less significant, although remnants of this mindset still persist today. Terminology started to shift, replacing the term 'victims' with 'survivors,' and swapping 'rape' for 'sexual assault' to emphasize the violence of the assault rather than its sexual aspect. This change in terminology and practice also led to greater recognition of the severity of rape and its impact on the criminal justice system. However, it is important to acknowledge that the number of rape cases that do not result in convictions remains significant (Lonsway & Archambault, 2012).

In addition, when women are victims of rape in their marriages, it is frequently difficult for them to seek legal redress because of the gender disparity that exists in society. Women are not allowed to speak out against their spouses because of the social and cultural conventions that exist. It is also possible that the judicial system does not consider rape committed within a marriage to be a criminal offence, which makes it difficult for women to seek justice (Sharma, 2015). Moreover, women often find it difficult to leave violent relationships, especially those that involve rape within the marriage, because of the gender inequality that exists in terms of economic and social power at the time. The majority of the time, women may be financially dependent on their husbands, and as a result, they may lack the financial resources necessary to leave their marriage (Conner, 2013). Furthermore, the stigma that is attached to divorce in the communities in which women live may make it more challenging for them to leave their marriages under the influence of social standards. Moreover, rape within marriage is an example of gender inequality, which is a problem that has to be addressed since it contributes to the power imbalance that exists between men and women in romantic relationships (Chung, 2005).

In addition, societal expectations and negative attitudes towards divorce or ending a marriage can create a sense of isolation and exclusion for women, which can hinder their ability to reach out for help or guidance. The power dynamic role theory proposes that individuals in a relationship assume distinct roles and positions of authority, which are frequently shaped by societal structures and norms. In the case of domestic violence, the person who commits the abuse usually has a greater amount of power and control, while the person who experiences the abuse may feel a sense of powerlessness and vulnerability. The power dynamics at play in these situations may deepen the victim's feelings of dependency and create obstacles to escaping the abusive relationship, particularly when combined with larger societal disparities in access to resources and social assistance (Eagly et al., 2000).

## 5.4 Social Constructionism Theory

Muehlemhard and Kimes (2014) examined the application of social constructionism to the subject of marital rape. It was argued that definitions of marital rape are influenced by the perspectives of individuals in positions of authority within society. The legal history of marital rape is frequently referenced as evidence for this theory. Throughout history, the political arena has been predominantly occupied by men, resulting in their significant influence over the lawmaking process. This can be attributed to the prevailing notion of “separate spheres,” which confined women to the family and private realms, while men held sway over the political and public domains of life (Bennice & Resick, 2003). The lawmaking process has historically been dominated by men, resulting in laws that often prioritize areas such as property protection, which align with their interests. As mentioned earlier, the notion that women were considered their husbands' property resulted in the creation of exemptions for marital rape. The laws have had a significant impact on how rape is understood in modern times (Small and Tetreault, 1990). Instances of sexual violence committed by a spouse or partner are sometimes seen as less severe compared to assaults by strangers, resulting in these cases not being recognized as rape (Frese et al., 2004). In a study conducted by Simonson and Subich (1999), they discovered that in a sample of 219 male and female undergraduates, perceptions of marital rape differed from other forms of sexual assault. It was found that marital rape was perceived as less violent, less likely to be seen as a violation of women's rights, and believed to be less harmful compared to stranger, acquaintance, and date rape.

Perceptions of marital rape may be influenced by societal norms surrounding marriage, sex, gender roles, and the issue of rape.

# 6. Method and Materials

## 6.1 Introduction

Research methodology plays a crucial role in achieving the study's objectives. This chapter focuses on the methods utilized in the research to achieve the objectives of the study. The current study will utilize the “Research Onion” framework proposed by Saunders et al., (2019) as a guide for conducting the study.

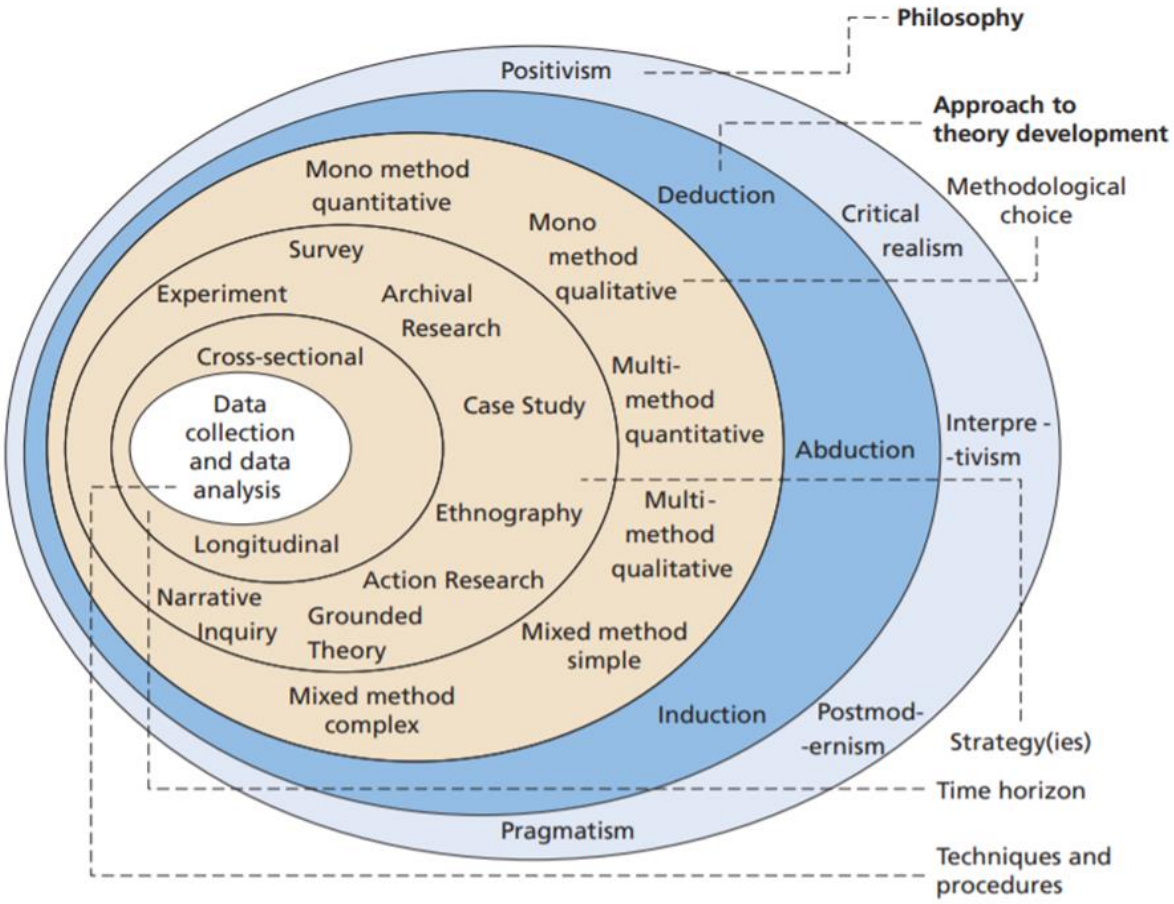


**Figure 1: Research Onion**

Source: Saunders et al., (2019)

Figure 1 showcases the research “Research Onion” as depicted by Saunders et al., (2019) to outline the systematic approach for selecting and defining study methods. To gain transparency on the advantages and the suitability of selecting each of the elements of a methodology, it is

anticipated that every researcher defines their methodology starting from the outermost layer, which is the choice of research philosophy/paradigm, and moving towards the innermost layer, which is the method of data collection and analysis. Thus, the current chapter will progress from the outermost to the innermost layer of the "research onion" by clearly explaining each component, its benefits, and the reasoning behind its inclusion in the current study.

## 6.2 Method

In social research, the concept of "paradigm" is utilized to describe the philosophical assumptions or fundamental beliefs that shape the actions and perspectives of the researcher (Lincoln et al., 2011). Pragmatism, as a research paradigm, emphasizes the importance of using the most effective philosophical and/or methodological approach for a specific research problem. Pragmatism, as a research paradigm, avoids engaging in controversial metaphysical concepts like truth and reality. On the other hand, it acknowledges the possibility of different realities that can be explored through empirical investigation (Creswell and Clark, 2017). This study will utilize the pragmatism research paradigm. Pragmatism involves research designs that prioritize practical decisions to find the most effective answers to the questions being investigated. This approach allows pragmatic researchers to conduct research in innovative and dynamic ways, ultimately finding solutions to research problems.

In addition, a qualitative research strategy allows for a more subjective approach to solving a research problem. It enables the exploration of a specific phenomenon and the gathering of information from various perspectives. One of the key benefits of a qualitative research strategy is its ability to delve into the perspectives of individuals and provide insights into the reasons behind those perspectives. However, one drawback of the qualitative research strategy is the limited sample size due to the time-consuming nature of data collection (Saunders et al., 2019). One can acquire qualitative data through the interview method or observation method. It allows the researcher to gain comprehensive insights into previously unknown aspects. The current study will utilize a qualitative research strategy to effectively address the objectives of the study. This will provide insights into the perspectives of professionals such as advocates, judges, teachers, and individuals from NGOs on the topic of marital rape. The utilization of a qualitative research strategy in the present study is bolstered by the interview instrument.

In addition, a research design focused on exploration will be utilized for this study. As the name implies, it prioritizes the study of research subjects rather than offering complete solutions to existing problems. This type of investigation is commonly conducted to examine a subject that has not yet been identified. It appears that there has been insufficient research conducted on the topic of decriminalization of marital rape in India. There is a significant body of research that supports the criminalization of marital rape in India, while there is a limited amount of research that opposes it.

Therefore, based on the research design mentioned earlier, a deductive reasoning approach would be appropriate. This is because the deductive approach focuses on a particular topic within a broader concept. This approach presents the findings and conclusions of a specific subject from a comprehensive perspective, covering all aspects from top to bottom. In addition, the deductive method is a way of seeking explanations. The deductive method involves creating and executing a systematic approach to assess a theory based on prior assumptions (Cramer-Petersen et al., 2019).

## 6.3 Materials

### 6.3.1 Data Collection

Due to the fact that it assists in the acquisition of pertinent evidence for the purpose of addressing the objectives of the research study, data collecting is an essential component of the research study. The method of data collection is selected on the basis of its practicability and conformity to the requirements of the research. It is recommended by Paradis et al. (2016) that the method that is utilized to collect data should be in accordance with the objectives of the study. There are two main sorts of data collection methods, which are primary data collection and secondary data collection. The main data collection method is utilized to a significant degree in situations when the study is attempting to fill a research void that has not been filled in the past. On the other hand, the secondary data-collecting method can be utilized in situations when the earlier researchers failed to recognize a certain pattern or concept that can be brought to light by a different researcher (Ghauri et al., 2020). Due to the fact that this study is attempting to fill a research void that has not been filled in the past, it will employ a primary data collection approach. The study will be able to gain a better grasp of the problem and the essential characteristics that ought to be taken into consideration when building a standard legal framework for marital rape.

The use of primary material is essential for the course of the current study since the study intends to investigate the socio-legal aspects of the problem of marital rape in India in a complete manner, with a particular emphasis on assessing the ongoing discussion surrounding the criminalization of this issue. In line with this, the research will involve conducting interviews with non-governmental organizations (NGOs), advocates, judges, and educators.

As part of the current investigation, a qualitative research approach has been chosen, and a semi-structured interview instrument will be utilized in order to collect information from the individuals who submitted their responses. Interviews are a form of qualitative research method that involves asking respondents open-ended questions in order to talk with them and gather facts about a subject. Interviews are conducted in order to understand the subject matter. Focus groups are confined to a small group of 10 people, but surveys are quantitative in nature. Interviews are analogous to focus groups and surveys when it comes to getting information from in the target market; nevertheless, the functioning of these three methods is completely different from one another.

Non-governmental organizations (NGOs), advocates, judges, and educators are the people who are the focus of the current research. A non-probability purposive sampling strategy will be utilized for the research project. In contrast to the approach of probability sampling, the method of purposive sampling is utilized in order to collect information from the people who are most pertinent to the study. It is not possible to use the probability sampling approach when there is a limited number of respondents to collect data from (Rahi, 2017). This is despite the fact that the method helps to eliminate the possibility of bias that may be caused by the selection of particular respondents. In the current study, the sample size is restricted to a maximum of ten to fifteen responders. This is in agreement with the idea that was stated by Saunders et al., (2019), which states that it is possible to get data through qualitative approaches with as little as one participant if the participant is able to provide the information that is most pertinent to the study. In order to conduct interviews, the study will make contact with respondents from non-governmental organizations (NGOs), advocates, judges, and educators, and then determine a certain time that is appropriate for conducting the interviews. It is planned to record and subsequently transcribe each and every one of the semi-structured interviews.

### 6.3.2 Laws Concerning Rape in India

Section 375 Of IPC (1860) states. Rape. —

A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions: —

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. — A medical procedure or intervention shall not constitute rape.

**Exception 2. — Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape.**

In India, there are strict laws implemented to hold accountable those who commit acts of rape. Section 376 of the Indian Penal Code outlines the consequences for the heinous crime of rape. However, when it comes to the issue of marital rape, there is a lack of specific legislation to address it. Section 375 of IPC is a law in India that offers a degree of protection to victims of marital rape. It is stated that if a husband engages in sexual intercourse with his wife who is under the age of 15, he can be charged with rape. However, the age of 15 years has been replaced with 18 years by the Supreme Court of India in the case of Independent Thought v. Union of India. Currently, the law in India states that if a husband engages in sexual intercourse with his minor wife, he can be held accountable for rape. However, a major wife does not have the same legal recourse. It is worth noting that Indian laws offer only limited protection to victims of marital rape. Marital rape is unfortunately not universally protected in India.

In addition, Explanation 2 which is attached to Section 375 addresses the matter of consent. Based on this explanation, 'consent' refers to a clear and voluntary agreement where a woman expresses her willingness to engage in a specific sexual act through words, gestures, or any form of communication. It's important to note that a woman who doesn't physically resist penetration should not be automatically considered as consenting to the sexual activity.

There are two exceptions that are associated with Section 375. There is a provision, known as Exception 1, which states that a medical procedure or intervention does not fall under the category of rape. Additionally, Exception 2 states that sexual intercourse or sexual acts between a husband and wife, where the wife is not under 15 years of age (now amended to 18 years), are not considered rape.

The Prevention of Women from Domestic Violence Act, 2005 (PWDV Act), is applicable in situations where married women face harassment and exploitation. While this Act does not classify marital rape as a crime, it does acknowledge it as a form of sexual assault under the definition of domestic violence (refer to Section 3 of the Act). Victims of marital rape have the option to seek civil remedies through the court, including judicial separation, compensation, and protection orders as provided by this Act. According to the Act, if a husband engages in sexual activity with his wife without her consent and against her will, the wife's only recourse is to seek judicial separation or divorce (Singh, 2022). The PWDV Act is an important tool to ensure the safety of married women, although it does not address the issue of marital rape.

### 6.3.3 International Perspective on Marital Rape

The UN Committee on Elimination of Discrimination Against Women (CEDAW) recommended ending marital impunity in India in 2013. CEDAW Article 1 defines "Discrimination of Women" a "any distinction made based on sex which has the effect of impairing...the exercise by women, irrespective of their marital status of human rights and fundamental freedoms in the...social, cultural, civil or any other field." An examination of CEDAW reveals India violates international human rights norms against rape and gender discrimination. The deliberate exclusion of marital rape in IPC is discriminatory under CEDAW because the victim's spouse's rape has been justified solely on her marital status, denying her the protection guaranteed to unmarried women. Thus, marital rape should be punished as unmarried rape.

In addition, India violates the ICCPR, UDHR, and CEDAW by not criminalizing marital rape. The IPC definition of rape discriminates against married women, violating ICCPR Article 26. In addition to race and sex, Article 26 of the ICCPR mandates domestic law to protect against discrimination on any other status. Article 26 of ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 5 of the Covenant prohibits India from deviating from any basic right. The IPC fails to ensure equal dignity for all women by not protecting married women. Article 1 of the UDHR states that all people are free and equal in dignity and rights. All humans have equal dignity and rights, hence married women have the same rights as unmarried women. Article 28 of the UDHR requires India to promote a social environment that supports married women. India can meet its UDHR responsibilities most directly by criminalizing marital rape through new law or revision (Patel, 2021).

### 6.3.4 Reasons for the Absence of a Comprehensive Legal Framework for Marital Rape in India

In 2000, the Law Commission dismissed an argument that questioned the need for rape to be treated differently from other forms of violence committed by a husband against his wife. The expressed concern about the criminalization of marital rape centered around the potential for excessive interference with the institution of marriage. The Verma committee put forth the argument that the immunity granted in such cases is based on an outdated belief that married women are the property of their husbands and have given irrevocable consent to their sexual needs.

A shift from the prevailing narrative became apparent in 2012 when a committee was formed under J.S. Verma, a retired judge of the Supreme Court, proposed the criminalization of marital rape. The Verma Committee put forth the argument that the concept of immunity was rooted in an antiquated belief that married women were the possessions of their husbands and had no choice but to give consent to their sexual desires.

It was recommended that the exception clause be removed, and that the consideration of marital relationships should not be used as a valid defense to determine the existence of consent.

However, the Criminal Law (Amendment) Bill, 2012, which was drafted in response to the Verma Commission report, did not include any provision to make marital rape a criminal offence. The Parliamentary Standing Committee on Home Affairs, which thoroughly reviewed the bill, dismissed any proposal to make marital rape a criminal offence. The committee expressed concerns about the potential increase in stress on the family system and the possibility of causing further injustice. It also noted that there were already existing remedies in place, such as Section 498A of the Indian Penal Code, the Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005), and other personal laws addressing the issue Marriage and divorce.

The government argued that criminalizing marital rape could potentially disrupt the institution of marriage and be misused to harass husbands. Additional arguments were based on purported Indian cultural norms. The government has stated that the idea of marital rape, as recognized globally, may not be entirely applicable in the Indian context due to the prevailing societal belief that marriage is a sacred institution. In the case before the Delhi High Court, the Union government argued that criminalizing marital rape could have an impact on the institution of marriage and potentially be used to harass husbands. The Solicitor General, Tushar Mehta, emphasized the need for a comprehensive perspective on the matter, given its involvement with sensitive socio-legal issues (Sabhapandit, 2023).

### 6.3.5 Limitations

There are some issues or hurdles that the researcher experiences that are beyond their control, and these are referred to as limitations. In light of this, it is possible that these limitations will have an impact on the conclusions of the study. It should be noted that the current study has the following limitations:

1. Due to the fact that the current research will make use of a qualitative data collection method in conjunction with a semi-structured interview instrument, there is a possibility that the views and opinions of the respondents will be influenced by bias. The reason for this is that they might not communicate their genuine ideas, which will undoubtedly have an impact on the findings of the study.
2. The research is restricted to India and the legal system of the country. As a consequence of this, the findings of the study could not be generally applicable to other regions of the world. The only thing that can be done with it is to utilize it as a reference.

### 6.3.6 Ethical Considerations

When carrying out research, the researcher should adhere to a set of ethical standards and regulations, particularly when collecting data, since this could result in a number of ethical violations (Saunders et al., 2019). Ethical issues can be underlined as a collection of principles and rules that the researcher should follow.

**Obtaining the Participants' Formal Consent to The Participation:**

An email will be sent to the participants in order to provide them with a formal permission form. This will ensure that the participants are not forced to take part in the current study. An additional article that will assist in teaching them about the goal of the current study and, as a result, how the data gathered via them will be used will be strategically included in the attachment (which will be strategically included). In addition to this, it will specify that participants are permitted to withdraw from the method of data collection until the data has been collated and analyzed.

**Maintaining Privacy, Confidentiality and Anonymity:**

The research will make a great effort to ensure that the identities of the respondents are not disclosed and that their anonymity is maintained. This will be done in order to maintain privacy, confidentiality, and anonymity. In addition to this, it will guarantee that the responses provided by the respondents are kept exclusively confidential. For this reason, the research will only make use of pseudonyms, and the data that is obtained will be stored electronically. Access to this information will be restricted to a small number of individuals, such as the supervisor.

# 7. Analysis

The current study aims to conduct an in-depth investigation into the socio-legal aspects of the problem of marital rape in India. A particular emphasis is placed on conducting this study with the intention of assessing the existing debate around the criminalization of the substance. For this purpose, interviews were carried out with the individuals who participated in the research, and significant inferences were formed from those interviews. The current section offers a comprehensive analysis of the results that were collected and establishes a connection between the findings of the study and the aims of the ongoing research. Furthermore, in order to prove the research's credibility and reliability, the section compares the results of the current study with those of the prior research studies that were carried out by a variety of academics.

## 7.1 Research Discoveries

### 7.1.1 To examine the concept of rape within marriage and analyzing the effectiveness of existing legal frameworks and mechanisms in addressing marital rape cases in India- RO1.

Rape within the context of a marriage is a critical problem that requires immediate attention and a complete solution. An examination of the legal framework in India finds that there are voids and difficulties in identifying and responding to instances of rape that occur inside the context of a marriage. The fact that there is no law that specifically criminalizes rape committed within a marriage and that there are still exclusions for married couples highlights the critical need for legal reforms. In order to achieve justice and uphold human rights, it is essential to acknowledge that rape committed within a marriage is a criminal offence and to provide survivors with adequate legal protections (Makam, 2023).

The Judiciary, legislature etc. are the agencies that make and interpret laws. Like the feminists says the people are equal under the eyes of law and there is a need for change the rape laws also. These pillars of democracy fear that criminalizing marital rape would lead to an increase in false accusations in a similar way where concerns existed for other crimes but haven't prevented their recognition. This argument is relevant in the context of debates in India where opponents of criminalization often cite the potential for false accusations as a reason to maintain the marital rape exemption (Lincoln, 1989). People usually say that marital rape is less severe than stranger rape

by emphasizing the emotional, psychological, and physical scars inflicted on victims. In a country like India, women are asked to suffer the ongoing physical abuse happening as it disrupts the institution of marriage. The culture and societal norms are prioritized over addressing such serious issues of marital rape and violence.

**Insights from the Interviews**

Responses that were acquired revealed that the majority of respondents were concerned about the exception for marital rape in Indian law. They stated that rape, which includes it occurring inside the context of marriage, is a serious breach of human rights because it has an impact on the victim's body, mind, and privacy. It was brought to their attention that the exemption undermines the dignity, consent, and bodily autonomy of a married woman, which can lead to the possible abuse of marital privileges among married women. A number of individuals brought attention to the decisions made by the Supreme Court and the reports released by the Law Commission, both of which condemned the exception but did not propose that it be removed due to the views of society and the worries regarding the instability of marital institutions.

A minority of respondents, on the other hand, were opposed to the idea of criminalizing rape within a marriage, despite the fact that they acknowledged the gravity of sexual violence. They contended that the statutes, such as Section 498A of the Indian Penal Code, Section 377 of the Indian Penal Code, and the Domestic Violence Act of 2005, all address sexual violence. False claims, the sacredness of marriage, and the possibility of misusing laws pertaining to marital rape during times of divorce or marital disagreement were among the issues that they voiced their concerns about. Additionally, they noted societal and cultural reasons, one of which was the idea of marriage as a hallowed institution.

In general, the majority of people pushed for the removal of the exception for marital rape, noting violations of human rights and the necessity of legal protection for married women. On the other hand, the minority underlined the existence of existing legal measures, societal norms, and the potential difficulties that could arise from criminalizing marital rape outright.

According to the findings of the literature analysis, there are only a handful of studies that do not advocate for the criminalization of rape committed within the context of marriage in India. The majority of the research that was carried out came to the conclusion that rape committed within a marriage should be considered a criminal offence in India. Thus, according to the literature

review, when it comes to the task of preventing rape within the context of marriage, gender equality appears to be an essential component of the problem. Eliminating gender stereotypes, challenging established gender norms, and promoting fair power dynamics inside marriages are all extremely important steps that must be taken in order to avoid and solve the problem of rape that occurs within conjugal relationships. It is imperative that the topic of gender equality be at the forefront of the conversation within the context of the legal, social, and cultural policies that are aimed at combating this type of violence.

**Justice Verma Committee: Reforming & Invigorating Anti- rape laws**

Justice Verma Committee was established with the purpose of making recommendations for changes to the Criminal Law. These changes were intended to facilitate a more expedient trial process and a more severe punishment for criminals who are convicted of perpetrating sexual assault against women. On January 23, 2013, the Committee submitted its report.

It was recommended by the Committee that the Indian Penal Code, 1860 should continue to include the gradation of sexual offences. According to the Committee's point of view, rape and sexual assault are not only acts of passion but rather a manifestation of power. The act of rape ought to be maintained as a distinct criminal offence, and it ought not to be restricted to penetration of the vagina, mouth, or anus. It is important that the definition of rape encompasses any sexual penetration that does not involve consent from the victim (Gangoli and Rew, 2018).

Both rape within marriage and rape outside of marriage are treated differently by the Indian Penal Code. Sexual intercourse that does not involve consent is illegal by the Indian Penal Code. There is, however, an exception to the crime of rape that pertains to acts of sexual intercourse that are carried out by a husband against his wife without her agreement. On the recommendation of the Committee, the exception for rape committed within a marriage should be eliminated. The institution of marriage should not be construed as an unchangeable assent to sexual relationships. As a result, the relationship between the victim and the accused should not be relevant when it comes to an investigation into whether or not the complainant gave their agreement to the sexual activity.

Furthermore, according to Section 354 of the Indian Penal Code, the offence of “assault or use of criminal force to a woman with the intent to outrage her modesty” is punished by a sentence of two years or more in jail. There is no definition of the term “outraging the modesty of a woman”

in the Indian Penal Code. In situations where it is not possible to provide evidence of penetration, the offence is classified as specified in Section 354 of the Indian Penal Code.

Among the recommendations made by the Committee was that sexual contact that does not involve penetration, should be considered sexual assault. To ensure that all forms of non-penetrative, non-consensual touching of a sexual character are included in the definition of the crime of sexual assault, the definition should be expanded. It is important to take into consideration the circumstances while determining whether or not an act is sexual in nature. It should not be necessary to demonstrate that sexual enjoyment was the motivation for the act in order to substantiate the offence. It is recommended that the offence be punished with a fine, imprisonment for a period of five years or both. The use of criminal force to disrobe a lady ought to be penalized by imprisonment for a period ranging from three to seven years.

Despite suggestions from committees such as the JS Verma committee and worldwide pressure from organizations like CEDAW, the majority of participants expressed their concerns regarding the government's lack of action in criminalizing marital rape. This was stated in the responses that were obtained. They raised attention to the fact that the government disregarded recommendations, instead enacted harsher punishments for crimes committed against women, and cited the preservation of institutions and the complications surrounding consent as reasons for not taking significant changes. A minority of participants, on the other hand, brought up the necessity of a gender-neutral approach to the law, highlighting the fact that sexual assault occurred inside the context of marriage should be considered rape regardless of the gender of the perpetrator. In addition to this, they emphasized the difficulties associated with proving consent and the cultural context of relationships, implying that there is a must for awareness and education regarding consent and gender equality in both society and educational systems worldwide. To summarize, the majority of respondents brought attention to the inaction of the government and expressed concerns about the preservation of institutions. On the other hand, the minority called for a gender-neutral approach and emphasized the significance of awareness and education in the context of addressing marital rape.

**Bhartiya Nyaya Sanhita: The new IPC**

The Bhartiya Nyaya Sanhita, 2023 ("BNS") is a comprehensive legislative initiative that was enacted on December 25, 2023, to replace the Indian Penal Code, 1860 ("IPC") as the new

penal code of India. The BNS aims to simplify and modernize the existing legal framework by addressing a wide range of issues and updating language to align with evolving norms. It introduces significant changes such as the deletion of sedition as an offense, the addition of transgender in the definition of gender, and the introduction of community service as a form of punishment for petty offenses. The BNS also prioritizes offenses against women and children and offenses against the state, while also bringing about changes to fines and punishments for various offenses (Naushad &Radhakrishnan, 2023). There are a few changes in the Bhartiya Nyaya Sanhita (BNS), 2023 that is now in existence in place of the IPC. “Offenses against Woman and Child” is the subject of a new chapter that has been included in the Bhartiya Nyaya Sanhita (BNS), 2023. The fact that this is included in the beginning of the statute, namely in Chapter V, expresses the significance that is placed on the prevention of crimes committed against women and children. The implementation of the supply of electronic First Information Reports, often known as e-FIRs, will facilitate the expeditious reporting of such serious offences that require prompt attention. The major changes are:

- The controversial exception for marital rape, remains unchanged. However, there has been a modification in the age requirement, with the age of consent for this exception raised to ensure that the wife is not below 18 years of age (which was 15 years in the IPC).
- The BNS consolidates the punishment for rape for women under 12 and under 16 into a single section, streamlining the legal framework.

Despite extensive discussions, the laws concerning rape have not been made gender neutral. The legislation continues to specify that only a female can be a victim and only a male can be a perpetrator.

There have been a few significant changes made to the provisions of the BNS in comparison to the provisions of the IPC. These changes have resulted in the sanctions becoming more severe and gender neutral. Those who are accused of committing rape are subject to a sentence of ten years to life imprisonment under section 64 (1), while those who commit aggravated types of rape are subject to a sentence of ten years to life imprisonment for the remainder of their natural life under section 64(2). Under the definition of rape, which is found in Section 63 of the Criminal Procedure Code and Section 375 of the Indian Penal Code, the age of consent for a married woman has been raised from 15 to 18 years old. This is another big development.

According to the second exception to section 375 of the Indian Penal Code, sexual activity between a man and his own wife is not considered to be rape if the wife is not younger than 15 years old. With regard to the BNS, Section 63 continues to maintain the marital rape exception.

In alignment with the marital rape exception, concerns were voiced by the majority of participants regarding the potential consequences that could arise from the removal of the exception in Section 375 of the Indian Penal Code (IPC) that pertains to rape committed within a marriage. They stated that making rape in marriage a criminal offence could result in fraudulent cases being brought against spouses and could further destabilize families. It was mentioned by some that women may be prevented from filing accusations against their spouses due to factors such as poverty, illiteracy, religious beliefs, and societal conventions. They also underlined the need for equity and equality in weddings, underlining the need to protect the rights, wishes, and consent of both men and women. However, they failed to mention the value of marriage.

On the other hand, a small percentage of the participants brought forth different points of view. A participant raised the topic of why the focus was just on men who committed rape within the context of the marriage, bringing attention to the fact that wives could also be the offenders. They urged for the dissolution of such marriages and pointed out that there are no laws that protect husbands from being subjected to sexual abuse or domestic violence at the hands of their wives. An additional participant voiced his disapproval of the recent changes that were made to legislation concerning sexual assault. He also highlighted the cultural relevance of marriage and said that the exception in Section 375 should be preserved because of the cultural norms that are prevalent in India.

However, there have been instances in which the Supreme Court of India has highlighted the significant violation of the fundamental right to live with dignity, as granted by the Constitution of India, in cases of rape. Therefore, it can be argued that the exclusion of marital rape from criminalization infringes upon the fundamental right of any married woman to live with human dignity. In addition, the exception clause of Section 375 (IPC) also infringes upon women's right to privacy. In the case of the State of Maharashtra v. Madhukar Narayan Mardikar (1991), it was recognized that the right to bodily integrity encompasses privacy. The court observed that even a woman with a certain lifestyle is entitled to privacy, and her privacy cannot be violated at will by anyone. It is important to understand that not everyone has the right to violate someone's personal boundaries whenever they please. She has the right to defend herself if someone tries to harm her

against her will. She deserves the same protection under the law. In spite of this ruling, married women continue to lack legal protection against the non-consensual sexual advances of their husbands. One could make the case that the privacy rights of married women are not adequately respected and that the Exception Clause goes against Article 21 of the Indian Constitution (Kanodia and Ray, 2016).

### 7.1.2 To examine the socio-legal implications of criminalizing or not criminalizing marital rape on victims, perpetrators, and society as a whole- RO2.

As per the responses obtained, regarding the role of cultural and societal elements in the legal debate surrounding the criminalization of marital rape in India, the majority of participants voiced their opinions. They brought attention to the problems that arise as a result of these influences, such as the cultural sanctity of marriage, conventional values and gender roles, and the requirement for a legal approach that is balanced. To be more specific, the responses that were received under the codes of Cultural and Societal Influence (CSI), Cultural Sanctity of Marriage (CSM), Traditional Values and Gender Roles (TVGR), and Balanced Legal Approach (BLA) reflected similar feelings. This is in alignment with the theories discussed earlier. The power dynamic role

One subset of participants, on the other hand, was more concerned with legal and procedural issues, highlighting the difficulties associated with criminalizing rape within the context of marriage from both a legislative and procedural perspective. Concerns of a Legal and Procedural Nature (LPC) were the category that their responses fell under. A number of questions were raised by these individuals regarding the methods of establishing marital rape, deciding the appropriate sentence, and taking into consideration the consequences and repercussions of such legislation. In general, the majority of participants brought attention to the enormous impact that cultural and sociological elements have on the legal discourse surrounding marital rape in India. On the other hand, a minority of participants emphasized the practical obstacles and considerations that are involved in the implementation of such laws.

The results that were collected from the interviews addressing the relevance of cultural and societal elements in the legal debate around the criminalization of marital rape in India reveal a complicated interplay between a variety of theoretical frameworks and views that are based in the real world. The power dynamic role theory is obvious in the responses that participants have given

regarding the unequal power dynamics that exist within marriages. In marriages, traditional gender roles often offer greater authority and influence on men over women. It may be difficult for women to come up with cases of marital rape because of the imbalance of power that exists between them and their partners. Women are often dominated by men and this culture of quiet and obedience may be perpetuated. The participants' understanding of these power relations highlights the significance of resolving them through legal reforms that value the autonomy and independence of all individuals within the context of marriage.

Similar to the previous point, the notion of consent appears as a prominent topic in the responses of the participants, particularly with regard to the requirement of explicit and unequivocal consent in all sexual interactions, including those that take place within marriage. It is a reflection of a larger societal mindset that marital consent is implicit and perpetual, neglecting the agency and bodily autonomy of spouses and that there are no legal penalties for sexual actions that occur within the context of a marriage that is not consented to by either partner. Participants identify themselves with the concepts of consent theory by expressing the significance of respecting individual boundaries and autonomy at all times, regardless of whether or not they are married.

The participants' worries regarding conventional values and gender roles that perpetuate the subordination of women within the context of marital relationships can be analyzed through the lens of feminist theory in order to gain a better understanding of these issues. The participant's acknowledgement of the cultural sanctity of marriage and the expectations placed on women to fulfill traditional roles and responsibilities brings to light the structural disparities and discrimination that women in Indian society are subjected to. Participants mimic feminist critiques of patriarchal structures that stress male power and control over women's bodies by defining marital rape as a type of gender-based violence. They have shown a deeper commitment to feminist values of justice and empowerment, which is reflected in their calls for legal reforms that challenge these long-standing practices and promote gender equality. Rape in all circumstances results in significant physical and mental trauma and has serious consequences (Deepak Gulati v. State of Haryana, 2013). The Supreme Court of India has consistently recognized the profound impact of rape, both on the physical and mental well-being of the victims.

Furthermore, the conversations that took place among the participants regarding the necessity of a balanced legal approach mirror findings from social constructionism. This theory

stresses the ways in which society's beliefs and norms impact our perception of rape and the implications that it can have. The fact that they have acknowledged the complexity and nuances involved in the criminalization of marital rape highlights the necessity of navigating cultural sensitivities and making certain that legal reforms are responsive to the various demands and viewpoints of all parties. Participants demonstrate their dedication to the development of a legal system that is more inclusive and equitable, and that upholds the rights and dignity of all individuals, regardless of gender or marital status, by participating in a conversation that takes into account the social and cultural context in which laws are enacted and enforced.

Further, the vast majority of respondents pointed to the existence of legal obstacles as a significant reason for the decision to not criminalize rape within marriage. The difficulties that they brought up included the fact that it is difficult to prove cases of abuse owing to a lack of proof, as well as the patriarchal ideas that are present in the American legal system. A significant number of participants stressed the societal norms that treat women as property, as well as the historical conception of rape as an assault on the honour and property of the family. In their argument, they maintained that in order to enhance women's equality and dignity, including economic and social independence, systemic changes are required.

On the other hand, a small percentage of respondents concentrated their attention on the cultural and societal variables that play a role in shaping the concept of rape in marriage. They discussed the disparity between urban and rural perspectives on marriage and sexual assault, pointing out that metropolitan areas have a greater propensity to advocate for the criminalization of marital rape in comparison to rural communities, which continue to adhere to traditional values and traditions. It was stated by these respondents that in the future, opinions concerning marital rape and divorce would shift as a result of changes in society as well as education.

In addition, there is a lack of criminalization of marital rape in India, which is one of the few countries that has not yet made it a criminal offence. The majority of the participants brought out the difficulties that are associated with this lack of criminalization. They talked about the historical background of the exemption to the Indian Penal Code that pertains to rape committed by a spouse, the previous attempts that were made to challenge this exception, and the ongoing talks and petitions that are being made to make it a criminal offence. The participants also brought up the sociological and legal barriers that influence the approach that the judiciary takes to dealing

with cases of marital rape. These barriers include patriarchal attitudes and concerns about the destabilization of marriage structures.

However, a minority of participants voiced their concerns regarding the potential for misuse and false charges in relation to the criminalization of rape within the context of marriage. In their argument, they stated that legislation should not give one gender more authority than another, and they expressed skepticism over the ability to differentiate between true cases and fake ones. Several of the participants also highlighted cultural concerns and different views towards sexual relations within marriage, which led them to argue that imposing Western conceptions of marital rape on Indian society might not be suitable. These viewpoints brought to light the complexities and disagreements that exist with regard to the interpretation of laws concerning rape in marriage, as well as the difficulties that the judicial system encounters when attempting to resolve this problematic matter.

# 8. Conclusion and Recommendations

## 8.1 Conclusion

The justification for the marital rape exception stems from the historical power dynamics within heterosexual marriages, where husbands were granted property rights over their wives. Numerous laws across the globe have restricted women from engaging in employment, participating in legal transactions, or applying for legal documents without the approval of their husbands. This rejection of personal autonomy also extended to the rejection of the ability to decline consent to sexual intercourse within the context of heterosexual marriage. As a result, the wife's agreement to the matrimonial contract was considered to be an irrevocable agreement to fulfill the "matrimonial duty" of sex. The marital rape exception states that sexual intercourse between a husband and wife, who are both adults, is not considered a criminal offence, regardless of whether it was consensual or not. In 2013, the Justice Verma Committee, established to propose changes to laws regarding sexual offences, made a recommendation to criminalize marital rape.

The Criminal Law (Amendment) Act 2013, which made changes to laws regarding sexual offences, did not align with this recommendation. One argument for keeping the exception was the idea that making marital rape a crime would be seen as an excessive intrusion into the marriage. In 2022, the Delhi High Court's division bench reached a split verdict on the constitutionality of marital rape in the case of RIT Foundation vs Union of India. Justice Rajiv Shakdher ruled that the marital rape exception is in violation of the constitution and the fundamental rights to equality, liberty, and dignity. "The woman, when entering into matrimony, does not relinquish her autonomy or surrender herself to her spouse, nor does she give unconditional consent to sexual intercourse," stated Justice Shakdher.

Justice C Hari Shankar held a different opinion, stating that the marital rape exception did not infringe upon any fundamental rights. "It would be contradictory to the fundamental principles of marriage, as recognized in this country if the husband could be considered the wife's rapist for engaging in non-consensual sexual activity," he stated. "The marital rape exception, rather than being deemed unconstitutional, serves a commendable purpose and is of utmost importance to the public, as it aims to preserve the institution of marriage," stated Justice Shankar. Justice Shankar argued against criminalizing marital rape, emphasizing the need to carefully consider the social

impact and questioning the legitimacy of courts legislating on this matter. This is the current case under consideration by the Supreme Court.

## 8.2 Recommendations

After critical analysis of the collected data and crucial inferences, the following recommendations are provided regarding the legal provisions of marital rape in India:

1. The criminalization of marital rape in India is a topic that raises two central questions. Firstly, is it within the state's authority to require a woman to engage in sexual intercourse with her spouse? Secondly, it is important to understand the role of the judiciary in safeguarding the constitutional rights of women as enshrined in Articles 14 and 21 of the Constitution. The judiciary promotes a formal approach when it comes to addressing women's rights in cases of marital rape, by upholding a clear distinction between public and private matters. This approach to constitutional rights has become a commonly accepted way of thinking over time. It recognizes constitutional rights as a necessary protection against the power of the state, stemming from the agreement between the state and its citizens. Despite the judiciary's reluctance to extend constitutional rights to cases of marital rape, there is a discernible influence of the state. Consider, for example, court-ordered restitution of conjugal rights. Section 9 of the Hindu Marriage Act, 1956 states that if a husband and wife do not live together 'without reasonable excuse', the court has the authority to grant a decree of restitution. The section has a negative impact on women, as they are frequently compelled to resume conjugal relationships with their husbands.
2. An objective approach to constitutional safeguards provides valuable insights. Experts such as Van der Walt, Jean Thomas, and Gautam Bhatia have put forward the idea that the institutions and structures within our society play a crucial role in shaping a range of norms, conventions, and patterns of conduct. These norms establish clear roles, functions, and power dynamics for individual actors, often in a structured manner. The law should thoroughly analyze the practices that are believed to violate rights between two parties, taking into account the background institutions and the relative position of the individuals involved.
3. The hierarchies established by institutions can be challenging to overcome, as they tend to be long-lasting and deeply ingrained. Therefore, it is crucial for the law to thoroughly

investigate practices that may infringe upon rights between two parties, taking into account the underlying institutions and the individuals' respective positions within them. This includes considering factors such as patriarchy, caste, and class.

4. When there is an imbalance of power between parties that allows one to infringe upon certain constitutional rights of the other, and this imbalance stems from their respective positions within the institution, it is important to ensure that constitutional rights can be enforced on a horizontal level.
5. Focus should be put on educating both men and women regarding consent, mutual respect, dignity and gender equality in marriage so that criminalizing marital rape is not required. Instead, if concepts of consent are promoted, marital rape can be avoided.
6. If marital rape is criminalized in India, the institution of marriage would fall apart and there will be increased chances of false accusations being put by women on their husbands. Therefore, criminalization of marital rape cannot be a possible solution to this problem. Instead, legal remedies that strengthen civil laws could be a possible solution. Legal reforms that provide civil remedies (related to domestic violence, and marital abuse) for victims of marital rape without necessarily criminalizing it could be a solution.
7. Alternative Dispute Resolution (ADR) mechanisms could be set up in order to address the issue of marital rape. This would preserve the dignity of the marriage institution by not criminalizing it, but instead offering opportunities for redressal and resolution.

These recommendations place an emphasis on resolving the problem of rape within marriages by means of comprehensive and multi-dimensional approaches that take into account the intricacies of the problem within the context of domestic violence in India. It is possible to take measures to prevent and address marital rape by combining legal reforms, education, support services, and community engagement. These efforts can be conducted while also taking into consideration concerns regarding the potential implications of criminalization on marriage and society.

Lastly, the research process has been interesting but at the same time challenging as it deals with a much needed and sensitive subject. Much knowledge has been acquired both about the criminalization of marital rape and its complexity regarding the proper implementation if the exception is removed. It is evident from the current research that the Supreme Court did not outlaw marital rape. In fact, it explicitly avoided adjudicating upon that matter, as was stated in the

landmark judgement of Independent Thought. While the Supreme Court's stance on Exception 2 in the Independent Thought case reflects a significant gap in judicial oversight, the incorporation of interviews alongside legal analysis has enriched the research process by providing firsthand perspectives. This analysis gives a new view on how the rape laws with regards to marital rape have been created and why. It is important to note that since the case had not been tried by a constitutional bench, i.e. a bench of more than five judges (there were only two in the present case), the constitutional validity of Exception 2 could not be dealt with despite the Court's clear disapproval of the provision in the judgement. Hence, looking at the possible and probable effects that can or will come from the amendment in the law cannot be foreseen at this point as the Supreme Court and the legislature has stalled the matter. There is not yet enough data or information about how women will react once this law comes in force. Much of the previous research has been confirmed in this study, but what has been newly discovered is how the law concretely violates women's rights in combat through the Court Case. It must be seen as completely unjustified nature of the laws against the married women. Therefore, an important finding is that legislation especially Indian Penal Code is outdated with regards to marital rape. By critically examining the methodological approach and advocating for legislative changes, this research aims to contribute to a more distinct understanding of marital rape legislation and pave the way for a more just and equitable society.

**References**

Amanulla, R. (2021). Need for Criminalizing the Marital Rape Under Section 375 of The Indian Penal Code.

Arora, P. (2011). Proposals to reform the law pertaining to sexual offences in india. Journal of Indian Law and Society, *3*, 233.

Bajpai, S., and Singh, K. K. (2020). Marital Rape and Legal Framework in India: A Critical Legal Analysis. *Supremo Amicus*, *22*, 54.

Banerjee, D., and Rao, T. S. (2022). The dark shadow of marital rape: Need to change the narrative. *Journal of Psychosexual Health*, *4*(1), 11-13.

Bennice, J. A., and Resick, P. A. (2003). Marital rape: History, research, and practice. *Trauma, Violence, & Abuse*, *4*(3), 228-246.

Brown, V., Haffner, G., Holmstrand, D., Oakum, C., Orbuch, E., Pavlock, V., and Pepperl, S. (2020). Rape and sexual assault. Georgetown Journal of Gender and the Law, *21*, 367-392.

Brownmiller, S. (1993). *Against our will: Men, women, and rape*. Ballantine Books.

Buchhandler-Raphael, M. (2011). The failure of consent: Re-conceptualizing rape as sexual abuse of power. Michigan Journal of Gender & Law, *18*, 147.

Cahill, A. J. (2001). *Rethinking rape*. Cornell University Press.

Chibber, S. A. (2008). Charting a new path toward gender equality in India: From religious personal laws to a uniform civil code. Indiana Law Journal, *83*, 695.

Chung, D. (2005). Violence, control, romance and gender equality: Young women and heterosexual relationships. In *Women's studies international forum* (Vol. 28, No. 6, pp. 445-455). Pergamon.

Conner, D. H. (2013). Financial freedom: Women, money, and domestic abuse. William & Mary Journal of Women and the Law, *20*, 339.

Cowan, S. (2019). Sense and sensibilities: a feminist critique of legal interventions against sexual violence. *Edinburgh Law Review*, *23*(1), 22-51.

Cramer-Petersen, C. L., Christensen, B. T., and Ahmed-Kristensen, S. (2019). Empirically analysing design reasoning patterns: Abductive-deductive reasoning patterns dominate design idea generation. *Design Studies*, *60*, 39-70.

Creswell, J. W., and Clark, V. L. P. (2017). *Designing and conducting mixed methods research*. Sage publications.

Denzin, N. K. (2018). The Sage handbook of qualitative research.

Dhonchak, Anupriya. (2019). Standard of Consent in Rape Law in India: Towards an Affirmative Standard. Berkeley Journal of Gender, Law & Justice, 34, 29-70.

Dotania, S. K. (2022). Criminalising Marital Rape: Yet Another Weapon to Harass Husband. *Part 2 Indian Journal of Integrated Research in Law*, *2*, 1.

Eagly, A. H., Wood, W., and Diekman, A. B. (2000). Social role theory of sex differences and similarities: A current appraisal. *The Developmental Social Psychology of Gender*, *12*(174), 9781410605245-12.

Featherstone, L., and Featherstone, L. (2021). Rape Law Reform in the 1970s and 1980s. *Sexual Violence in Australia, 1970s–1980s: Rape and Child Sexual Abuse*, pp.127-155.

Finkelhor, D., and Yllö, K. (1987). *License to rape: Sexual abuse of wives*. Simon and Schuster.

Frese, B., Moya, M., and Megías, J. L. (2004). Social perception of rape: How rape myth acceptance modulates the influence of situational factors. *Journal of Interpersonal Violence*, *19*(2), 143-161.

Friedman, J., and Valenti, J. eds. (2019). *Yes means yes!: Visions of female sexual power and a world without rape*. Seal Press.

Gangoli, G., and Rew, M. (2018). Continuities and change: the Law Commission and sexual violence. *Journal of Indian Law and Society*, *6*(3), 112-124.

Garg, S., and Singh, N. (2022). Marital Rape: Historical and Comparative Analysis. *MyLawman Socio Legal Review*.

Ghauri, P., Grønhaug, K., and Strange, R. (2020). *Research methods in business studies*. Cambridge University Press.

Ghauri, P., Grønhaug, K., and Strange, R. (2020). *Research methods in business studies*. Cambridge University Press.

Girgis, S., Anderson, R. T., and George, R. (2020). *What is marriage?: Man and woman: A defense*. Encounter Books.

Hale, M. (1847). *Historia placitorum coronae: The history of the pleas of the crown* (No. 61325-61341). RH Small.

Hale, S. M., Wilson, G., and Emlyn, S. (1778). *The History of the Pleas of the Crown*. T. Payne and others.

Hasday, J. E. (2000). Contest and consent: A legal history of marital rape. California Law Review, *88*, 1373.

https://indiankanoon.org/doc/623254/

India Times. (2014, July 18). Marriage doesn't mean wife always ready for sex, they have right to say no: HC on marital rape.

Johnson, M. P. (2017). Patriarchal terrorism and common couple violence: Two forms of violence against women. In *Domestic violence* (pp. 3-14). Routledge.

Kanodia, S., and Ray, R. (2016). Why Penalize Marital Rape. *IOSR Journal of Humanities and Social Science, 21*(9), 49-55.

Kanodia, S., and Ray, R. (2016). Why Penalize Marital Rape. *IOSR Journal of Humanities and Social Science, 21*(9), 49-55.

Klarfeld, J. (2011). A striking disconnect: Marital rape law's failure to keep up with domestic violence law. American Criminal Law Review, *48*, 1819.

Klopper and Human, If God is Male, then male is God, Pretoria University Law Press,2007, p.no-3

Kolade-Faseyi, I. (2018). Spousal rape in a globalized world. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 9*(1), 107-115.

Lesses, K. (2014). 'PGA v the Queen': Marital rape in Australia: The role of repetition, reputation and fiction in the common law. *Melbourne University Law Review, 37*(3), 786-833.

Lin, L. (2017). The Criminalization of Marital Rape: A Story of Progress and Pushback. *Body politics: What's the state got to do with it?* 31.

Lino, D. (2021). Conservative constitutional rights in 1940s Australia. Melbourne University Law Review, *45*, 1175.

Lincoln, J. A. (1989). Abolishing the marital rape exemption: the first step in protecting married women from spousal rape. Wayne Law Review, 35(3), 1219-1250.

Lonsway, K. A., and Archambault, J. (2012). The "justice gap" for sexual assault cases: Future directions for research and reform. *Violence Against Women*, *18*(2), 145-168.

Mahoney, P., and Williams, L. M. (1998). *Sexual assault in marriage: Prevalence, consequences, and treatment of wife rape* (pp. 113-163). na.

Makam, G. (2023). Marital Rape Laws in India: Bridging the Gap between Gender Equality and Criminal Justice. *Available at SSRN 4475468*.

Melani, L., and Fodaski, L. (1974). The psychology of the rapist and his victim. *Rape: The first sourcebook for women*, pp.82-93.

Muehlenhard, C. L., and Kimes, L. A. (2014). The social construction of violence: The case of sexual and domestic violence. In *Perspectives on Evil and Violence* (pp. 234-245). Psychology Press.

Nussbaum, M. C. (2000). *Women and human development: The capabilities approach* (Vol. 3). Cambridge university press.

Olivelle, P., and Davis, D. R. eds. (2018). *Hindu law: a new history of Dharmaśāstra*. Oxford University Press.

Paradis, E., Leslie, M., and Gropper, M. A. (2016). Interprofessional rhetoric and operational realities: an ethnographic study of rounds in four intensive care units. *Advances in Health Sciences Education*, *21*, 735-748.

Parashar, A. (2008). Gender inequality and religious personal laws in India. *The Brown Journal of World Affairs*, *14*(2), 103-112.

Patel, K. (2018). The gap in Marital Rape Law in India: Advocating for criminalization and social change. Fordham International Law Journal, *42*, 1519.

Patel, V. (2021). Marital Rape in India: An International Human Rights Law Violation. *Berkeley Journal of International Law*, pp. 2-3.

Priya, A. (2021). The Unheard Voices of Married Women Subject to Marital Rape. *Jus Corpus LJ*, *2*, p.546.

Rahi, S. (2017). Research design and methods: A systematic review of research paradigms, sampling issues and instruments development. *International Journal of Economics & Management Sciences*, *6*(2), 1-5.

Rahi, S. (2017). Research design and methods: A systematic review of research paradigms, sampling issues and instruments development. *International Journal of Economics & Management Sciences*, *6*(2), 1-5.

Rao Kallakuru, R., and Soni, P. (2018). Criminalisation of marital rape in India: Understanding its constitutional, cultural and legal impact. NUJS Law Review, *11*, 121.

Rape, Black's Law Dictionary (11th ed., 2019), Thomson Reuters

Reddy, Ravi Kaustav. (2022). Independent Thought v. Union of India: An Analysis from the Feminist Theory of Rape. Indian Journal of Law and Legal Research, 4, 1-10.

Rush, P. D. (2011). Jurisdictions of sexual assault: Reforming the texts and testimony of rape in Australia. *Feminist Legal Studies*, *19*, 47-73.

Ryan, R. M. (1995). The sex right: A legal history of the marital rape exemption. *Law & Social Inquiry*, *20*(4), 941-1001.

Sabhapandit, S. (2023). Criminalising Marital Rape in India. *The India Forum.*

Saunders, M., Lewis, P., and Thornhill, A. (2019). *Research methods for business students*. Pearson education.

Saunders, M. N., Lewis, P., and Thornhill, A. (2019). Research methods for business students (Eighth). *Harlow: Pearson education limited*.

Sharma, I. (2015). Violence against women: Where are the solutions?. *Indian Journal of Psychiatry*, *57*(2), 131-139.

Simonson, K., and Subich, L. M. (1999). Rape perceptions as a function of gender-role traditionality and victim-perpetrator association. *Sex Roles*, *40*(7), 617-634.

Singh, V. P. (2022). Judicial Approaches to the Criminalisation of Marital Rape. *Indian Journal of Gender Studies*, *29*(1), 10-32.

Singh, V. P. (2022). Judicial Approaches to the Criminalisation of Marital Rape. *Indian Journal of Gender Studies*, *29*(1), 10-32.

Singh, V. P. (2022). Judicial Approaches to the Criminalisation of Marital Rape. *Indian Journal of Gender Studies*, *29*(1), 10-32.

Small, M. A., and Tetreault, P. A. (1990). Social psychology,'marital rape exemptions', and privacy. *Behavioral Sciences & the Law*, *8*(2), 141-149.

Trisha Olson, The Medieval Blood Sanction and the Divine Beneficence of Pain: 1100-1450, Journal of Law and Religion (2014)

Wertheimer, A. (2003). *Consent to sexual relations*. Cambridge University Press.

**Case Laws**

Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) AIR 753.

Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1 SCC 490.

Deepak Gulati v. State of Haryana (2013) 7 SCC 675

Delhi Domestic Working Women's v. Union of India (1995) SCC (1) 14.

Harvinder Kaur v Harmander Singh AIR (1984) Del 66

Independent Thought v. Union of India AIR (2017) SC 4904.

Indian Young Lawyers Association v. State of Kerala (2018) SCC SC 1690.

Joseph Shine v. Union of India (2018) SC 1676.

Mohd. Iqbal v. State of Jharkhand (2013) 14 SCC 481.

National Legal Services Authority v. Union of India (2014) 5 SCC 438.

R v. R (1991) UKHL 12.

Rafiq v. State of Uttar Pradesh 1981 AIR 559.

Sakshi v. Union of India AIR (2004) SC 3566.

Shayara Bano v. Union of India (2017) 9 SCC 1.

State of Haryana v. Janak Singh (2013) 9 SCC 431.

State of Maharashtra v. Madhukar Narayan Mardikar (1991) 1 SCC 57

State of Punjab v. Gurmit Singh (1996) 2 SCC 384.

Queen Empress v Haree Mythee (1891) ILR 18 Cal 49

Weishaupt v. Commonwealth, 315 S.E. 2nd 847 (Va. 1984).