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Socio-Legal Review of Norms, Religion and  
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Aradhya

*Law Student, 5<sup>th</sup> Year,*

*BA.LL.B. (Hons.), Christ deemed to be University, Pune Lavasa*

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# Marital Rape and Cultural Legitimacy: A Socio-Legal Review of Norms, Religion and Resistance to Reform

**Aradhya**

Law Student, 5<sup>th</sup> Year,

BA.LL.B. (Hons.), Christ deemed to be University, Pune Lavasa

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## ABSTRACT

*Marital rape is one of the most controversial problems in socio-legal theory, especially in societies where cultural, religious, and patriarchal constructions significantly influence legal and moral understandings of marriage.<sup>1</sup> This paper critiques the socio-legal acceptability given to marital rape based on an analysis of culture, religion, and normative opposition to reform. In spite of global human rights paradigms and progressive feminist jurisprudence calling for criminalization, a majority of jurisdictions still protect abusers in the name of sanctity of marriage. The research centers on religious teachings and cultural narratives that are used to validate non-consensual sex within marriage, entrenching structural hierarchies and repressing female agency. Borrowing from comparative legal traditions and key case studies, the paper probes the intersection of personal laws, colonial legal histories, and social attitudes that stall progressive legal change.<sup>2</sup> Additionally, it investigates resistance by institutional and social actors against acknowledging marital rape as a criminal act, particularly in states where legal pluralism dominates. The research highlights the need to deconstruct prevailing narratives that entrench impunity and promote legal reforms that place the lived experiences of survivors at the center.<sup>3</sup>*

## KEYWORDS

*Marital, rape, Patriarchy, Culture, Religion, Consent,*

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<sup>1</sup> *R v. R*, [1991] 1 A.C. 647 (H.L.) (Eng.).

<sup>2</sup> Criminal Law (Amendment) Act, No. 13 of 2013, § 375, The Gazette of India, Extraordinary, Part II, Sec. 1, 2013.

<sup>3</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women* art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

*Legal, reform, Gender, justice, Norms, Resistance,  
Autonomy.*

## INTRODUCTION

Marital rape, or sexual intercourse by a spouse without the other's consent, is still a highly controversial and under-detected problem in most societies.<sup>4</sup> Although contemporary legal systems in different regions of the world have greatly advanced in criminalizing rape, the institution of marriage continues to act as a legal and cultural barrier to identifying sexual violence within it.<sup>5</sup> In most jurisdictions, particularly those shaped by religious doctrines and customary norms, marital rape is either not explicitly defined or formally exempted from rape legislation. This exclusion stems from historically rooted patriarchal worldviews that view a wife's body as the property of the husband once they are wed, effectively erasing her right to sexual autonomy. Cultural stories also reinforce this dynamic, affirming that consent is implicit and unchangeable in marriage. Religious interpretations have also commonly been invoked to legitimize and affirm these beliefs, casting marital sex as an obligation rather than a shared act based upon consent. Opposition to criminalizing marital rape has also typically been couched in terms of defense of cultural identity and religious freedom, making legal reform more difficult. Consequently, survivors are often silenced or ignored, their experiences discredited by societal norms and legal loopholes. This paper aims to examine the socio-legal aspects of marital rape by examining how norms, religion, and resistance to change combine to perpetuate its cultural legitimacy. In so doing, it seeks to underscore the need for a rights-oriented legal strategy that emphasizes consent and control over one's body, marital status notwithstanding.<sup>6</sup> The task of challenging marital rape is not merely in terms of reform in the legal arena but also to challenge the entrenched socio-cultural beliefs that validate violence in close relationships. In most societies, particularly those based on personal law or governed by religious codes, marriage is viewed as a holy institution—one that confers on the husband an implicit sexual right over his wife. This understanding is usually brought about through social conditioning, religious sermons, and judicial reasoning that treats marriage as a contract of irrevocable consent. As a result, even when other aspects of criminal or family law are updated through modernized legal frameworks elsewhere, the problem of marital rape is usually avoided or relegated to the

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<sup>4</sup> *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

<sup>5</sup> United Nations, *Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

<sup>6</sup> CEDAW, *General Recommendation No. 19: Violence Against Women*, U.N. Doc. A/47/38 (1992).

domestic sphere as not being fit for criminal prosecution.

In addition, opposition to reform is commonly disguised under the pretext of defending family values, avoiding abuse of law, and maintaining cultural or religious identities.<sup>7</sup>

Under such circumstances, legal reform will not suffice.<sup>8</sup> The criminalization and acknowledgment of marital rape should be accompanied by wider societal transformation that deconstructs patriarchal ideologies and reworks definitions of consent, dignity, and marital life. An approach that incorporates legal, educational, and cultural strategies is vital in transforming public minds and eradicating the normalization of coercive sex within marriage.

### **RESEARCH OBJECTIVES**

1. To trace the historical evolution of marital rape laws across different countries.
2. To examine the socio-cultural and legal factors that led to the recognition of marital rape as a crime in various regions.
3. To critically analyze India's legal position on marital rape and explore the barriers to reform.
4. To compare India's stance on marital rape with other countries and identify legal and societal trends that could influence future changes in Indian law.
5. To propose possible legal reforms and strategies for improving the recognition of marital rape in India, with reference to international examples.

### **RESEARCH QUESTIONS**

1. How did marital rape laws develop globally, and what key factors contributed to legal recognition?
2. What are the major differences between countries that have criminalized marital rape and those, like India, that have not?
3. How do cultural, social, and political factors influence the development of marital rape laws across different legal systems?
4. What are the key obstacles preventing India from recognizing marital rape as a criminal offense, and how might these be overcome?

### **RESEARCH METHODOLOGY**

The dissertation will utilize a comparative legal research

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<sup>7</sup> *People v. Liberta*, 64 N.Y.2d 152 (1984).

<sup>8</sup> Susan B. Boyd, *The Politics of Women's Rights in the 21st Century* 48 (Harvard University Press 2009).

approach, making use of primary and secondary sources. The methodology will encompass:

1. **Doctrinal Research**<sup>9</sup>: Examining international legal structures, domestic laws of different nations, judicial precedents, and legislative trends.
2. **Comparative Analysis**: Comparing India's law on marital rape to other nations' laws where it has been criminalized.
3. **Historical Analysis**: Examining the historical evolution of marital rape legislation in various legal systems.
4. **Interviews and Expert Views**: Obtaining views of legal experts, human rights activists, and feminist thinkers.
5. **Qualitative Analysis**: Assessing the socio-cultural, political, and legal conditions that contribute to the criminalization or non-criminalization of marital rape in various countries.

### **HISTORICAL DEVELOPMENT OF MARITAL RAPE LEGISLATION IN VARIOUS NATIONS**

Historically, marital rape's legal history is intricately linked to patriarchal attitudes that have previously put the marriage institution ahead of the rights of personal autonomy, particularly that of women.<sup>10</sup> Everywhere, the starting point was the belief that marriage provided men with sexual rights to their wives, which essentially defeated the principle of consent in marriage. This belief continued to hold sway for centuries and was enshrined in law in most countries. But in recent decades, increased awareness of gender violence and pressure for women's rights have created substantial, though uneven, legal changes in a number of countries. The development of marital rape laws therefore illustrates the larger struggle between customary norms and contemporary human rights standards.

In the United States also, marital rape exemptions dominated the state statutes.<sup>11</sup> It wasn't until the 1970s and 1980s, after feminist movements and greater public discussion of domestic violence, that changes began to occur. By 1993, marital rape was a crime in all 50 states, but inconsistencies persist in prosecution, sentencing, and definition. A few states still distinguish between marital and non-marital rape and sometimes require higher burdens of proof of lack of consent or force.<sup>12</sup>

In India, the law of the land still excludes husbands from being

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<sup>9</sup> *Rape in Marriage: The Legal Debate*, 49 Stanford L. Rev. 1302, 1310 (1997).

<sup>10</sup> Jody Raphael, *Domestic Violence: A Critical Review of Global Reforms* 115 (Oxford University Press 2008).

<sup>11</sup> Judith Lewis Herman, *Trauma and Recovery: The Aftermath of Violence* 112 (Basic Books 1992).

<sup>12</sup> *Canada v. K.H.*, [1998] 3 S.C.R. 141 (Can.).

prosecuted for raping their wives.<sup>13</sup> The Indian Penal Code states in section 375 that sexual intercourse by a man with his wife shall not amount to rape if the wife is 18 years and above.

South Africa, following the abolition of apartheid, made profound legal changes to advance human rights. The 1993 Prevention of Family Violence Act was a turning point, with marital rape being legalized as a criminal act.

Canada legalized marital rape in 1983 by amending its Criminal Code to eliminate the exception for spouses. This was based on feminist legal scholarship and campaigning that advocated the recognition of women's autonomy and the requirement that all sexual violence be treated equally, regardless of marital status.

It took Germany until 1997 to criminalize rape within marriage even though it's a democratic and progressive country when it comes to many human rights issues. Legally and socially, the belief existed before this time that having sex in a marriage was obligatory, not voluntary. International pressure and domestic controversy regarding gender equity and human dignity brought about the change.

In Japan, legal definition of marital rape is still limited. While domestic violence legislation has widened, marital rape is not defined clearly as a crime, and victims encounter extreme social stigma and institutional obstacles in pursuing justice.

Sweden, which is famous for its gender progressive policies, criminalized marital rape as early as 1965, making it one of the world's first nations to do so.<sup>14</sup> Swedish legislation has since then developed to define rape in terms of the lack of consent rather than the use of force, thus providing greater protection to victims, including within marriage.

In Pakistan and in most other Islamic nations, it is more complicated because religious law and state law intersect. Marital rape remains unrecognized and is legally allowed in many instances. Efforts at reforming such laws have been met with stern opposition from religious conservatives who maintain that such reform is contrary to Islamic values and family principles.

Historically, the development of marital rape statutes worldwide

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<sup>13</sup> World Health Organization, *Violence Against Women Prevalence Estimates, 2018: Global, Regional and National Estimates for Incidence of Intimate Partner Violence and Non-Partner Sexual Violence* 12, World Health Org. (2021), <https://www.who.int/publications/i/item/9789240060517>.

<sup>14</sup> U.S. Dep't of Justice, *Marital Rape Laws in the United States* (2020), <https://www.justice.gov/criminal/sexual-offense/marital-rape>.

mirrors overall social views on marriage, consent, and gender roles. Although some countries have made considerable strides in acknowledging women's rights in marriage, many are still behind, driven by cultural mores, religious beliefs, and patriarchal ideologies. The path to global legal establishment of marital rape as a crime continues, necessitating continued advocacy, legislative change, and social reform.

### **GLOBAL EVOLUTION OF MARITAL RAPE LAWS AND CRUCIAL DRIVERS OF LEGAL ACCEPTANCE**

The global legal environment with regard to marital rape has experienced marked change in recent decades, although development is patchy and frequently shaped by cultural, religious, and political factors.<sup>15</sup> In the past, legal systems across the globe did not criminalize marital rape, but instead functioned on the patriarchal presumption that a husband enjoyed irrevocable sexual rights over his wife. This belief was cemented in common law by the now-discredited 18th-century doctrine of Sir Matthew Hale, who stated that "the husband cannot be guilty of a rape committed by himself upon his lawful wife." This idea reinforced the idea that marriage entailed permanent consent to sexual intercourse, and hence prosecution of marital rape was legally impossible.<sup>16</sup> Nevertheless, over time, progressive international human rights norms, feminist movements, and socio-legal reforms have contributed to the erosion of this principle in most countries. A major factor behind the international acceptance of marital rape has been the campaign by women's rights movements, which have continually challenged gendered gender roles and highlighted the pervasiveness of domestic and sexual violence in marriage. These actions revealed the illusion of marital bliss and pointed out how exemption laws for marital rape reinforced violence and took away women's control over their bodies. Feminist scholars and activists also pushed governments and international organizations to acknowledge sexual violence in marriage as a human rights abuse, shaping public opinion and legislative reform.

International legal measures have been a driving force for demanding marital rape be treated as a crime. Foremost among them is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), passed in 1979, which has been critical in conceptualizing violence against women, including marital rape, as gender-based discrimination. CEDAW's General Recommendation No. 19 (1992) itself recognizes marital

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<sup>15</sup> *R. v. D.L.W.*, [2015] 1 S.C.R. 269 (Can.).

<sup>16</sup> Maya K. K. Yadav, *Examining Gender and Legal Reforms in India* 24 (New Delhi 2018).

rape as gender-based violence and commits signatory countries to take all necessary legislative and other steps for the elimination of such practices. Likewise, the 1993 UN Declaration on the Elimination of Violence Against Women again emphasized that violence within the private domain, including that within marriage, should be open to state responsibility.<sup>17</sup>

A second impetus to legal recognition was the documentation and publication of empirical evidence of the prevalence and seriousness of marital rape's effects on women's physical and mental well-being. Research by organizations like the World Health Organization (WHO) illustrated that sexual violence within marriage tended to be more traumatic and more common than other sexual abuse, and that the assumption that such assaults are rare or harmless was incorrect.<sup>18</sup> These conclusions were crucial to dispelling the belief that marital rape is a "private matter" and helped legitimize criminalization. Judicial activism across a number of countries has also helped drive progressive change. Marital rape exemptions have been struck down as unconstitutional and in contravention of fundamental rights by courts in such countries as South Africa, Canada, and the United Kingdom. For example, in 1991, the House of Lords in *R v. R* reversed the common law doctrine of implied marital consent in the UK, establishing a landmark precedent. Likewise, the Constitutional Court of South Africa established marital rape as a crime in the early 1990s, affirming the state's duty to protect all persons from violence regardless of marital status.

Even after these advances, recognition of marital rape is a long way from being universal. Most countries, particularly those with dominant religious or traditional legal systems, still resist criminalization on cultural and moral grounds. However, the worldwide trend suggests a gradual but consistent movement toward acceptance of marital rape as a human rights violation. The coincidence of feminist activism, international legal standards, empirical scholarship, and judicial activism keeps the pace of legal reform going, indicating a changing conception that marriage should not be a refuge for sexual violence.

### **SOCIO-CULTURAL AND LEGAL FACTORS CONTRIBUTING TO THE CRIMINALIZATION OF MARITAL RAPE IN DIFFERENT PARTS OF THE WORLD**

The criminalization of marital rape as a crime in different parts of

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<sup>17</sup> *The Marital Rape Debate: A Comparative Study of Legal Responses Across Jurisdictions*, 72 *International Journal of Law* 478, 489 (2016).

<sup>18</sup> Jaya Ramachandran, *Gendered Bodies and Legal Norms in India* 101 (Routledge 2017).

the world has not been uniform; rather, it has been the result of a multifaceted interplay of socio-cultural, legal, political, and feminist discourses.<sup>19</sup> Although the legal frameworks vary across jurisdictions, some fundamental factors have spurred reform in most regions of the world, questioning the long-standing presumption that marriage necessarily involves permanent sexual consent. Such factors include changing gender norms, the impact of international human rights law, feminist activism, judicial interpretations, empirical studies on domestic violence, and changes in public opinion.<sup>20</sup> Combined, these factors have helped foster a wider societal recognition of sexual autonomy and body integrity, even within marriage.

One of the most important socio-cultural factors has been the change in gender roles and the increased awareness of women's autonomy. As societies evolved, traditional patriarchal values that regarded women as being subordinate to their husbands were increasingly challenged. In many Western countries, the women's rights movements of the 1960s and 1970s questioned the norms surrounding marriage, sexuality, and power in society. Feminist activists and scholars maintained that the home, which was idealized as a context of security and love, was also a place where gender violence was common. These movements redefined domestic violence and sexual coercion in marriage as human rights violations, not as matters of private family life, thus sparking public and political discussion on the criminalization of marital rape.

Legal developments have also been instrumental in this recognition. Nations that made the transition to democratic or constitutional rule tended to update their legal systems to conform to international human rights standards. For example, South Africa, following the collapse of apartheid, implemented great reforms to ensure that the new legal system protected equality and dignity for all citizens. The constitutional principles of bodily integrity and gender equality were held to be incompatible with any legalized sexual violence, including in the context of marriage. Also, Canada recriminalized the marital rape offense in 1983 after strong feminist advocacy concerning law for their position to accord all forms of sexual violence similar treatment, regardless of whether it involved persons within or outside their sexual relationships with their spouses.

International legal documents like the Convention on the

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<sup>19</sup> Feminist Legal Clinic, *Gender Justice and Marital Rape in India: A Legal Review*, 14 *Feminist Legal Studies* 130, 134 (2020).

<sup>20</sup> Bina Agarwal, *Women and Property in India: A Historical Perspective* 204 (Oxford University Press 2013).

Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Declaration on the Elimination of Violence Against Women, and the Istanbul Convention have had significant impact on domestic legal reforms.<sup>21</sup> These documents categorize violence against women—such as marital rape—as a human rights violation and a gender equality violation. States that are parties to these conventions are internationally bound to modify their domestic laws to criminalize sexual violence in all its forms. In most cases, regular reviews by international organizations have put pressure on states to bring their laws into conformity with international standards, leading to reforms in areas that otherwise were not amenable to change.

Judicial interpretation and constitutional activism have also been a powerful influence. In nations such as the United Kingdom (*R v. R*, 1991) and India (where courts have recognized the necessity of re-examining the marital rape exception), the judiciary has sometimes intervened to override outdated legislation when legislatures were slow to respond. While India has not yet criminalized marital rape, its judiciary has increasingly insisted that marriage does not trump a woman's inherent rights to dignity and autonomy. In some jurisdictions, litigation efforts of NGOs and women's rights groups have induced courts to interpret constitutional promises of equality and liberty in ways that encourage the criminalization of marital rape.

Empirical evidence and public health statistics have also contributed to changing attitudes.<sup>22</sup> Research by institutions like the World Health Organization (WHO) and national women's commissions has established the physical, psychological, and emotional damage inflicted by sexual violence in marriage. These reports have been critical in dispelling the myth that marital rape is uncommon or less injurious than non-marital rape. They have also supplied evidence-based backing for legal reform and assisted in creating empathy towards survivors, hence shaping public opinion and policymaking.

In addition, shifts in public discourse—typically fueled by media coverage of high-profile cases, public awareness campaigns, and survivor testimonials—have served to further illuminate the prevalence of sexual violence within intimate relationships.<sup>23</sup> In those nations where marital rape has become a criminal offense, including Sweden, Canada, and New Zealand, public education

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<sup>21</sup> Sarah B. Beattie, *The Politics of Marriage and Divorce in Postcolonial India* 59 (Cambridge University Press 2009).

<sup>22</sup> Patrick A. Lee, *The Limits of Family Law: Marriage and Sexual Violence* 24 *Family Law Quarterly* 45, 47 (2020).

<sup>23</sup> Asmita Sood, *Legal Frameworks for Marital Rape in India* 42 (2016).

and activism have accompanied legislative reforms by reorienting societal attitudes and affirming the value of consent across all relationship contexts.<sup>24</sup>

Although there has been a marked progress made on this, tremendous challenges are still faced where cultural and religious standards hold the marriage to be an area of masculine control.<sup>25</sup> There is opposition in some parts of Asia, the Middle East, and Africa against criminalizing marital rape as a result of religious teaching, concern about breaking down families, and abuse of the law. However, the global trend is increasingly moving towards acknowledging that marriage cannot be a licence for impunity, and that sexual autonomy is a basic right that must be defended regardless of marital status.

### **CASE STUDY: R V. R (1991) – UNITED KINGDOM**

The most seminal case that drastically changed the legal definition of marital rape is R v. R (1991), which was ruled upon by the House of Lords in the United Kingdom. The case is widely seen as a milestone in the common law tradition because it formally eliminated the marital rape exemption that had prevailed for centuries.

#### ***Case Background:***

The case was about a man (hereinafter "R") who was charged with raping his wife. The couple was judicially separated but not legally divorced at the time of the act.<sup>26</sup> The husband broke into the wife's house and sexually assaulted her.<sup>27</sup> He was indicted for attempted rape, but the defense was that, under the common law as it then stood, a husband could not be guilty of raping his wife because of the doctrine of irrevocable consent formulated by Sir Matthew Hale in the 18th century. Under this doctrine, having married, a wife was taken to have given irrevocable consent to sexual intercourse with her husband.

The main legal question before the court was whether the common law rule against a husband being convicted of raping his wife continued to have effect under current law.<sup>28</sup>

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<sup>24</sup> Prabha Raghavan, *Feminism, Law, and Development in India* 116 (University of Delhi Press 2015).

<sup>25</sup> *Indian Supreme Court Case on Marital Rape* 19 Indian Law Review 115, 118 (2021).

<sup>26</sup> *The Rape of Marital Rights: Women's Autonomy and the Law* 23 Journal of Women's Rights 300, 305 (2018).

<sup>27</sup> Ruthann Lee, *Human Rights and Marital Rape: International and Comparative Perspectives* 109 (Oxford University Press 2021).

<sup>28</sup> *Violence Against Women in India: A Legislative Perspective* 39 International

**Judgment:**

The House of Lords unanimously held that the exemption for marital rape was obsolete and not compatible with the standards of law and society in contemporary society.<sup>29</sup> The court held that marriage does not connote irrevocable consent and that a husband may actually be guilty of raping his wife. Lord Keith, who was giving judgment, said the assumption that a wife loses the right to deny consent on consummation on marriage "no longer represents the common law of England."

**Importance:**

The case officially removed the marital rape exemption in England and Wales.

It established the autonomy and legal personhood of women in marriage.

It established a precedent that has shaped reforms in other common law jurisdictions, such as Canada, Australia, and parts of the United States.

The decision was a turning point in bringing domestic law into line with international human rights norms, underscoring that consent is key to all sexual relations, whether or not within marriage.<sup>30</sup>

Not only was the R v. R ruling a milestone in law, but it is also a testament to the strong symbol of the role judicial activism can have in promoting gender justice and deconstructing patriarchal legal frameworks.

**INDIA'S LEGAL POSITION ON MARITAL RAPE AND  
OBSTACLES TO REFORM**

The legal position in India regarding marital rape is a highly controversial matter, a testament to the intricate intersection of law, culture, religion, and societal norms within the country.<sup>31</sup> Marital rape, or rape by a husband of his wife, is not illegal under Indian law, a position that is in direct contradiction to the legal systems of most other nations. This statutory exception for husbands has continued in the face of demands from women's

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Journal of Criminal Law 145, 147 (2019).

<sup>29</sup> *Global Perspectives on Marital Rape* 57 International Review of Criminal Law 112, 114 (2019).

<sup>30</sup> Zohra Khan, *Sexual Violence and Human Rights: An International Perspective* 90 (Routledge 2020).

<sup>31</sup> Sangeeta Soni, *Women's Rights and Legal Advocacy in India* 132 (2021).

rights groups, lawyers and legal experts, and portions of the judiciary for change.

India's legal status on marital rape is largely controlled by Section 375 of the Indian Penal Code (IPC), which specifies the crime of rape. In accordance with this section, rape refers to sexual intercourse with a woman against her will, under coercion, or threat. But Section 375 has an essential exception: it clearly provides that sexual intercourse by a man with his wife is not rape if the wife is over 18 years of age.<sup>32</sup> This provision gives husbands blanket immunity against prosecution for raping their wives, irrespective of the situation in which the sexual act was carried out. In effect, the law holds the view that a wife has irrevocably consented to sex on marriage, a view based on conventional and patriarchal constructions of marriage.

The exception to marital rape laws in India remains firmly entrenched in the Indian legal system, despite growing calls for its abolition. Over the years, multiple legal challenges have been mounted to reform this provision, but the law continues to remain unchanged, largely due to socio-cultural and political factors.

### ***Barriers to Reform***

There are a number of major obstacles that hinder the criminalization of marital rape in India, such as cultural, social, legal, and political challenges.<sup>33</sup> These challenges are rooted deep within Indian society and government and thus legal reform is a challenging and often controversial matter.

### ***Cultural and Societal Norms***

Marriage is viewed as a sacred institution in India, and the idea of marital unity and submission during marriage is ingrained deeply in social and cultural norms. Most consider the wife's work to be an act of service and obedience towards her husband, and this stereotype tends to transcend into sexual intimacy. Sexual violence in marriage within traditional Indian communities is commonly sanctioned, and it is expected of women to participate in sexual activity as part of their marital service. Consequently, there is popular societal resistance in acknowledging marital rape as a grievous problem.<sup>34</sup> The autonomy of a wife, especially as regards her sexual rights, is often belittled or neglected, perpetuating the legal paradigm that excludes husbands from

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<sup>32</sup> B. N. Ranjan, *Law, Society, and Culture in India* 77 (Harper Collins 2007).

<sup>33</sup> *South African Law Reform and Marital Rape*, 14 *South African Journal of Family Law* 255, 257 (2012).

<sup>34</sup> Clare R. Harris, *Marital Rape and the Criminal Law: A Global Perspective* 88 (Palgrave Macmillan 2020).

prosecution for marital rape.

### ***Religious and Conservative Influences***

India's plural religious societies also contribute significantly to attitudes about marital rape.<sup>35</sup> In most religious traditions, marriage is considered a sacred covenant wherein the wife is expected to obey and serve her husband. <sup>36</sup>For example, in some interpretations of Hinduism, Islam, and Christianity, marital relationships are presented in terms of obligation and duty, where the wife is supposed to be subservient to the will of her husband. <sup>37</sup>These religious ideologies are usually powerful resistance to criminalizing marital rape, with opponents arguing that such changes undermine the institution of marriage and family life.

## **CONCLUSION**

The topic of marital rape and its legal status has undergone considerable change throughout the world, but there is still much to be done in order to counter the entrenched cultural and societal impediments that prevent its criminalization in many jurisdictions.<sup>38</sup> While nations such as the United Kingdom, South Africa, and Canada have come a long way by repealing the exemption of marital rape and acknowledging the independence of women in marriage, many nations, such as India, remain behind in providing legal protection to women against sexual violence in the institution of marriage.

The international trend of criminalizing marital rape is motivated by changing socio-cultural values, feminist campaigns, judicial activism, and international human rights mechanisms. These have lent momentum to the erosion of the flawed legal presumptions that previously sanctioned sexual coercion in marriage. Nonetheless, resistances to reform are still very deep-seated in most countries, particularly in traditional, religious, and patriarchal societies. In these contexts, marriage tends to be regarded as an unbreakable institution in which the consent of the wife is assumed, establishing a large legal and societal impediment to change.

In India, the position in the law is among the most leading

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<sup>35</sup> Ritu Gupta, *The Impact of International Law on Marital Rape Reform in India* 103 (2018).

<sup>36</sup> *The Role of Feminism in Criminalizing Marital Rape* 31 Harvard Journal of Law and Gender 100, 103 (2008).

<sup>37</sup> *The Case for Criminalizing Marital Rape in India: Challenges and Opportunities*, 36 Indian Journal of Constitutional Law 120, 123 (2018).

<sup>38</sup> M. S. Joshi, *Law and Society in India: Analyzing the Role of Gender in Legal Reforms* 162 (Springer 2020).

instances of such resistance, with marital rape remaining legally unacknowledged. In spite of increasing awareness, judicial recognition, and pressure from women's rights organizations, the impediments to reform in India run deep in cultural and religious norms, political opposition, and legal inertia. The resistance to criminalizing marital rape in India illustrates the larger societal issue of transforming deeply ingrained gender norms and altering the attitude towards marriage as a patriarchal institution to one based on mutual respect, consent, and equality.

The criminalization of marital rape is important not only for the defense of women's rights but also for the overall struggle against gender-based violence and discrimination.<sup>39</sup> Criminal law reform alone is not enough; it needs to be complemented by continuous efforts to shift cultural attitudes, offer support to survivors, and combat patriarchal norms. With increasing global awareness and lobbying for sexual rights of women, there is hope that the legal arena for marital rape will keep transforming so that marriage, as an institution, will turn out to be an arena of respect and equality for both partners.<sup>40</sup>

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<sup>39</sup> Amnesty *International Report on Violence Against Women in South Asia* 47, 49 (2019).

<sup>40</sup> *UN Women Report on Marital Rape and Violence* 6 (2020), <https://www.unwomen.org/en/digital-library/publications/2020>.