
FROM PATRIARCHY TO PARTNERSHIP: TRACING THE EVOLUTION OF FAMILY LAW WITH A CRITICAL LENS ON MARITAL RAPE

Utsa Kushwaha, Symbiosis Law School, Noida

ABSTRACT

Changes in society's opinion about marriage, gender, and rights influence the progress of family law. In this essay, I look at how family law changed, starting with favoring patriarchy and now ensuring equality and justice. This research shows that reforms in laws and court decisions can bring personal laws into line with the constitution, mainly to protect people's rights and stop domestic violence.

The debate between old beliefs and human rights makes marital rape an important issue to look at in this study. Because traditional beliefs place more importance on a united marriage than on the right of one spouse to choose, the Indian law still excludes marital rape as a criminal offense in Section 375 of the Indian Penal Code (now Section 63 of the Bharatiya Nyaya Sanhita). This essay also takes a close look at the religious and legal background of this exemption, showing that it first developed because of patriarchy and a reluctance to challenge marriages.

The research looks into how the marital rape exception causes unfairness to gender justice, personal autonomy, and consent and covers the insight from case law, international laws, and laws in other countries. It reviews court judgments that address the exception and find inconsistencies in India's commitment to ensuring women's rights.

Based on the study, preserving these exemptions prevents more advancement in gender equality and views marital rape as another issue handled by family law. Based on what works in similar nations, the report proposes that the idea of marriage be changed to respect individuals' rights and mutual regard, focusing on marital rape as a crime.

It points out that it is urgent for laws regarding marital rape to be effectively changed to agree with today's justice standards by examining the changes in family law over time. It supports changing outdated traditions that support injustice and wants a law system that finds harmony between people's freedoms and their family relationships.

1. INTRODUCTION

Family law reform shows how society is shifting from favouring men in families to putting more importance on fairness, independence, and mutual respect among everyone. In India's history, rules for families were guided by religious and cultural traditions that focused on preserving family, as well as keeping men in charge and women submissive. Due to this system, women were not given the same rights in marriage or the family, as it gave men the main say and made the women follow their husbands' decisions. A movement towards including all people and respecting rights has appeared in family law, mainly due to constitutionalism, efforts by human rights groups, and women's jurisprudence.

Another important step in this process is the rise of acceptance for women's equality in marriage and families. In 1955, 1954, and 2005, reforms in laws have dealt with spousal rights, divorce, support, and abuse protection through the Hindu Marriage Act, the Special Marriage Act, and the Protection of Women from Domestic Violence Act. This change reflects going from regarding marriage as an important religious ceremony for men to Americans today understanding it as a relationship between equals. Even so, the law has many gaps, and the main one is that marital rape is not considered a crime.

Forced sexual contact between a husband and his wife, as long as she is not a minor, is expressly excluded from the definition of rape under Section 63 of the Bharatiya Nyaya Sanhita (previously Section 375 of the Indian Penal Code, 1860). Because marriage confers irrevocable agreement, this exemption stems from colonial era legal concepts, such as Sir Matthew Hale's notorious 17th century declaration that "a husband cannot rape his wife."¹ Despite the fact that many nations have repealed these antiquated laws and made marital rape a crime, India maintains this exception, upholding a patriarchal system that denies women the right to sexual consent and physical autonomy.

Besides ensuring women's rights, working against marital rape is significant for the reason that it changes the way family law values people working as partners rather than giving authority to one person. It shows that society at large accepts spousal abuse and does not really deal with issues of gender-based violence in marriage. The attitude that a marriage is more valued than

¹ Sir Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* (1736)

a wife's consent, which is against the constitutional laws on equality, dignity, and personal liberty, is supported by India's decision not to consider marital rape as a crime.

The development of family law has been significantly aided and hindered by judicial rulings. For example, For Muslim women, the landmark case of *Shah Bano Begum v. Mohd. Ahmed Khan* ² sparked significant legal reform. Shah Bano, a Muslim woman, sought maintenance after her husband divorced her via triple talaq. The decision of the Supreme Court referred to Section 125 of the Code of Criminal Procedure (later known as Section 144 under the new Bharatiya Nagarik Suraksha Sanhita), meaning maintenance should be assured for all wives, regardless of their religion. This judgment, balancing personal law with constitutional guarantees, triggered the enactment of the Muslim Women (Protection of Rights on Divorce) Act ³, 1986. The case of *Danial Latifi v. Union of India* ⁴ previewed the decisions made by the Supreme Court on this Act. The court stated that during the 3-month period, after divorce, Muslim women must be provided for reasonably and fairly, securing their well-being in this time. 'Nafqah' is the word for 'maintenance' found in Muslim law of India, and it is referring to the total expenditure a man spends on his family. It can change for every family and depends on how much money they have. A Muslim woman's right to maintenance does not rely on whether she is able to provide for herself or not; it is an absolute right she has. The Sharia law requires a Muslim man to care for his wife by 'Nafqah' in all situations. They show how courts have been adjusting their approach to combining religious laws with the principles found in the constitution. As per an article in The Indian Express, the Supreme Court in 2024 ruled that, "a Muslim woman's right to claim maintenance under criminal law cannot be extinguished even if she has claimed her rights in personal law. ⁵ " This step was done following the landmark judgment issued in *Danial Latifi* in 2001. The last concern is if the Muslim Women (Protection of Rights on Divorce) Act, 1986 can have a greater effect than a general statute, which is the Code of Criminal Procedure (current Bharatiya Nagarik Suraksha Sanhita). Justice Nagarathna and the Bench decided that even with codes of law, a person's rights to parallel remedies must not be obstructed by any religious custom.

² Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

³ Flavia Agnes, *Family Law Volume I & II* (Oxford Univ. Press 2016)

⁴ *Danial Latifi v. Union of India*, (2001) 7 SCC 740

⁵ Indian Express, SC Verdict on Muslim Women's Right to Maintenance: A Promise of Dignity, *The Indian Express* (Oct. 26, 2024), <https://indianexpress.com/article/opinion/editorials/sc-verdict-on-muslim-womens-right-to-maintenance-a-promise-of-dignity-9447833/>.

On the other hand, the way the judicial system handles marital rape exposes the ongoing shortcomings in the implementation of gender justice in family law. The Supreme Court declared in *Independent Thought v. Union of India*⁶ that if a wife is a minor, any sexual act she takes part in is rape, so marital rape protections should not apply in that case. Even though it was a good move, the ruling did not extend the same protection to adult women, which proved the judges' hesitation to challenge old marriage norms. The differences in India's legal response to marital rape are further highlighted by the principles established in *State of Karnataka v. Krishnappa*⁷, where the Court acknowledged sexual assault as a violation of bodily autonomy and privacy.

Many nations have recognized marital rape as a violation of human rights and have changed their family laws to make it a crime⁸. The United States, the United Kingdom, and a number of European countries are among the jurisdictions that have transcended outdated legal frameworks and placed a strong emphasis on consent as a fundamental component of marriage⁹. India's persistent opposition to such change maintains structural inequity within its legal system in addition to separating it from international human rights norms.

It is important to link marital rape to family law development to see why it is so difficult to change our patriarchal traditions into equal partnerships. On top of being a criminal law subject, this paper proposes that handling marital rape should form the basis for reforming marriage under Indian family law¹⁰. This study aims to draw attention to the pressing need for reform that brings family law into line with international human rights standards and constitutional values by dissecting the historical, legal, and cultural foundations of the marital rape exception¹¹.

At the end of the day, marriage should be treated as an equal union that depends on mutual respect and consent for family law to change from patriarchal to partnership. Making marital rape illegal is a major move that would cut down on old traditions and introduce a new system

⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800

⁷ *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75

⁸ Comm. on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on Gender-Based Violence Against Women, (2017)

⁹ Radhika Coomaraswamy, Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. E/CN.4/1995/42 (1995)

¹⁰ Martha C. Nussbaum, *Sex and Social Justice* (Oxford Univ. Press 1999)

¹¹ Vrinda Grover, Marital Rape and the Indian Penal Code: The Need for Criminalization, 48(39) Econ. & Pol. Weekly 37 (2013)

in which both genders are respected and have the same rights applied to them¹². This study aims to add to the current discussion on changing family law in India to reflect the values of justice, equity, and partnership by examining court rulings, legislative developments, and comparative legal viewpoints.

2. THE EXCEPTION UNDER SECTION 375 OF IPC, 1860

When the Indian Penal Code was drafted in 1860s, India was still a colony under the British who followed the then Victorian laws which were significantly patriarchal in nature. India was under such influence and there was no sense of equality between woman and men. According to the popular Unitary Theory¹³, women had no rights, since they were seen as men's property. If women were not married, they were their fathers' property, and after their father's death, they went to their brothers. A man's wife and he were believed to be one by law, so the husband had complete control over his wife's body. So, back then, people did not believe a husband could rape his wife since a wife is already considered part of the family. The inclusion of Section 375 from the Indian Penal Code in the Macaulay's Draft Penal Code was made in Clause 359 and the final version emerged in the 1960s.

With time, women knew their rights and were no longer regarded as "property" of men, so the laws became old-fashioned since people's opinions were changing. Some of the men's rights groups¹⁴ have stated that being forced into performing sex with your wife without her permission is regarded as sexual abuse instead of marital rape. Because of this patriarchal view, some women also worried about being branded "egoistic" for saying that women should have the right to report rapes by their husbands to the Parliament¹⁵. It was assumed that a woman's marriage to a man meant she automatically gave him the right to have sex with her whenever he wanted. Women were seen to be ready to obey their husbands' wishes and surrender themselves to him, knowing this was what she would do to receive safety from the other

¹² Saptarshi Mandal, The Impossibility of Marital Rape: Contestations Around Marriage, Sex, Violence, and the Law in Contemporary India, 49(41) Econ. & Pol. Weekly 54 (2014)

¹³ Blackstone's Commentaries: A Profile, *ThoughtCo* (Apr. 2, 2020), <https://www.thoughtco.com/blackstone-commentaries-profile-3525208>

¹⁴ Marital Rape: Forcible Sex by Husband Can't Be Labelled Rape, at Worst Sexual Abuse; Wife Has Other Remedies, NGO Tells Delhi High Court, *LiveLaw* (Dec. 14, 2023), <https://www.livelaw.in/top-stories/marital-rape-forcible-sex-by-husband-cant-be-labelled-rape-at-worst-sexual-abuse-wife-has-other-remedies-ngo-tells-delhi-high-court-190338>

¹⁵ Men Welfare Trust Opposes Judicial Intervention to Criminalize Marital Rape, *LiveLaw* (Dec. 15, 2023), <https://www.livelaw.in/top-stories/men-welfare-trust-opposes-judicial-intervention-to-criminalize-marital-rape-190487>

dangers of the society, like men¹⁶. It claims that the law dealing with crime and the laws that affect individuals should be kept apart and should not affect each other's functioning. The union of two people in marriage is a private matter, so it is looked after under personal law. If rape became accepted in the religion, it would mean that the laws of society would have to deal with it. As a 'sacred' institution, religion is not the kind of thing we should feel comfortable questioning. It has also been said that using the term marital rape in India is impossible because of reasons such as low education levels, poverty, various social customs and beliefs, and the idea in society that marriage is sacred¹⁷.

Rebecca John (an amicus curiae to the case of criminalizing marital rape) has argued ¹⁸ that the waste material paragraph in Exception 2 of Section 375 was considered by the British colonizers 200 years ago and they did not know much about the Indian culture. Since it does not match Indian culture, particularly weddings, it makes no sense to obey this law.

As pointed out by the Supreme Court senior advocate and additional solicitor general, Pinky Anand, "the discrimination between married and unmarried women is fatal to the understanding of gender roles ¹⁹". For my view, the issue should not depend on whether someone is married or unmarried. It should mean not regarding women as a possession and respecting that they are individual people with rights. The Karnataka High Court ruled that rape happens regardless of the gender of the rapist or of the victim.

One of the most frequently asked questions is that when was the topic of "marital rape" discussed for the first time? It was in the 42nd Law Commission Report of 1971 ²⁰. The court said that when a couple are married and live together, the woman has given her consent to sexual activity and any talk of "rape" in marriage should not exist. Still, it did not state whether the marital rape law should be kept or abolished. It was pointed out in following reports, taking the case of the 172nd Law Report of 2000, that if every other form of abuse in marriage was

¹⁶ Coverture in English and American Law, *ThoughtCo* (Apr. 4, 2020), <https://www.thoughtco.com/coverture-in-english-american-law-3529483>

¹⁷ Marital Rape: The Concept and Maneka Gandhi's Views in the Indian Context, *Indian Express* (Dec. 17, 2023), <https://indianexpress.com/article/business/budget/imarital-rape-concept-maneka-gandhi-indian-context/>

¹⁸ Marriage Exception in Rape Law an Instrument of Oppression, HC Told, *Hindustan Times* (Dec. 17, 2023), <https://www.hindustantimes.com/cities/delhi-news/marriage-exception-in-rape-law-an-instrument-of-oppression-hc-told-101642719215517.html>

¹⁹ Marital Rape: Why Time Has Come to Remove Exception in the Rape Law Provision, *Firstpost* (Mar. 24, 2022), <https://www.firstpost.com/india/marital-rape-why-time-has-come-to-remove-exception-in-the-rape-law-provision-10331621.html>

²⁰ Law Comm'n of India, Report No. 42: Indian Penal Code, <https://www.scribd.com/doc/315029642/Law-Commission-of-India-Report-No-42-Indian-Penal-Code>

treated as a crime, marital rape should also be treated that way. Nevertheless, the idea that society might not want the law to become too forceful in a marriage ended up making it easy to dismiss the thought of making marital rape a crime. It was not until 2012 when Justice J.S. Verma Committee report²¹ advocated the criminalisation of this matter and commented on the ‘implied consent’ theory clarifying that women are not the “property” of men and shall not be treated as such. However, the Amendment²² of 2013 in the Criminal Act did not criminalise marital rape. They explained this position by saying that if marital rape becomes a crime, the family system might be undermined even further and more justice might be done to its members. They decided to solve the problem of marital rape by letting family structure and customs develop since it involved private issues of individuals following various religions. For this reason, state-specific laws have not made the issue of marital rape clear to many in India.

Historically for the first time in 2015, an NGO named ‘RIT Foundation’ challenged the legality of marriage exception by filing a petition in the Delhi High Court. Following the Supreme Court judgment of *Independent Thought v. Union of India* (2017), many other petitions were filed including the petitions filed by All India Democratic Women’s Association (AIDWA), RIT Foundation and three other petitioners. Different concerns related to these petitions were debated at the Delhi High Court; a person cannot use the “implied consent theory” to require their spouse to have sex. No matter whether they are married or single, women are not supposed to be treated like someone’s property. People in these relationships are allowed to withhold consent for all kinds of sexual activity. Every woman has the right to deny someone and keep her dignity and privacy.

However, people who support this exception say that women who are abused in marriage are already protected by the Protection of Women from Domestic Violence Act, 2005, Section 498A of the IPC and the Hindu Marriage Act, 1955. Overall, it is easy to see that these laws pinned on marital rape do not solve every aspect of the problem.

3. EVOLUTION OF FAMILY LAW IN INDIA IN CONTEXT OF MARITAL RAPE

Marital rape or forced sex by a spouse is a subject that has caused disagreements and sensitivity

²¹ Justice J.S. Verma Comm., Report of the Committee on Amendments to Criminal Law, (2013), <https://spuwac.in/pdf/jsvermacommittereport.pdf>

²² Gov’t of India, The Criminal Law (Amendment) Act, 2013, <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>

around the world. There has been significant improvement in handling and dealing with this act via family law in India. The shy and social acceptance of marital rape has ended due to modern opinions, focus on women's rights, and courts recognizing personal dignity.

Historically, in India, marriage was regarded like a sacrament, and men were considered the main partners in the marriage. This attitude saw marital rape as acceptable because it thought the wife's permission was always there. According to Flavia Agnes, patriarchal ideals ingrained in Indian culture justified these abuses and marginalized women's bodily autonomy²³.

Due to such efforts as activism, urban living, and schooling, people are becoming more open-minded. The women's rights movement of the 1970s and 1980s paved the way to challenge – or even doubt – patriarchal traditions. Because of the #MeToo movement, women were able to talk openly about sexual assault, especially within their marriages. The National Family Health Survey (NFHS) reports²⁴ indicate that women are becoming more conscious of their rights and that the taboo around marital rape is gradually eroding.

The law allowing marital rape while India was under colonial rule led to how its family law was shaped. Under IPC 375, a person could not be convicted of rape during marriage if the victim was above the age of 15, which was the law made in 1860. This section was meant to address a law in Britain called common law, saying that if a husband raped his wife, he could not be found guilty because of the 'doctrine of irrevocable consent'.²⁵

Indian courts have a history of trivializing claims of marital rape, reflecting cultural prejudices of that particular time against women. The Calcutta High Court affirmed the husband's right to conjugal relations in *Queen Empress v. Haree Mythee*²⁶, highlighting the fundamental nature of marital rights. The Court upheld the sanctity of marriage over individual liberty by refusing to criminalize forced sexual acts in the case of a man accused of disproportionate physical abuse of his wife.

In the late 20th and early 21st centuries, how the law sees marriage relationships changed. India's laws have been improved by highlighting the need for women's equality thanks to international human rights instruments like CEDAW. The Supreme Court decided to make it

²³ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 2001)

²⁴ Nat'l Family Health Survey (NFHS-5), 2019-21, available here

²⁵ *R v. Clarence*, [1888] 22 Q.B.D. 23

²⁶ *Queen Empress v. Haree Mythee*, (1889) I.L.R. 17 Cal. 49

illegal for men to rape girls who are between 15 and 18 years old and married in *Independent Thought v. Union of India* ²⁷ marked a change in emphasis from marital conventions to individual dignity. In his ruling, Justice Madan B. Lokur stressed that the constitutional and international treaty, guaranteeing values of equality and child welfare, was violated by the marital rape exemption for children. The ongoing discussion about marital rape is best illustrated by the case of *X v. State NCT of Delhi* ²⁸. According to Justice Rajiv Shakdher, allowing marital rape exception insults a woman's bodily freedom and dignity. Sticking to local customs and the believed respect for marriage, Justice C. Hari Shankar allowed the exemption to be in place. The decision reveals how hard it is for judges to combine age-old social traditions with laws outlined in the constitution.

In addition, the Supreme Court ruled in *Joseph Shine v. Union of India* ²⁹ that under the Indian Penal Code (now the Bharatiya Nyaya Sanhita), section 497 was ruled unconstitutional and adultery was taken off the list of crimes. Even though it did not speak about marital rape directly, the ruling stated clearly that spouses in marriage have equal rights. Marriage is no exception; the law should always respect the dignity and freedom of every individual, as said by Justice D. Y. Chandrachud. Since it pointed out that consent and respect are important in marriage, this decision helped people argue for removing the marital rape exemption.

The impact of international human rights jurisprudence on Indian courts is another noteworthy development. Judges have been urged to take a more progressive stand on gender-based violence by cases such as *Vishaka v. State of Rajasthan* ³⁰, that created regulations for sexual harassment at work. Because of CEDAW, international rulings, and rulings from the UK and South Africa, Indian courts are reviewing old views about marital privilege. South Africa's famous 1993 decision of *State v. Baloyi* ³¹ has been brought up by Indian scholars and advocates many times, which made marital rape a crime, as a paradigm for reform. As per an article by Legal Information Institute ³², despite the magistrate's interdict, which prevented the officer from hurting his wife and child, the accused was found guilty since he did still strike his wife and prevented her from leaving. Owing to his appeal, the Transvaal High Court

²⁷ *Independent Thought v. Union of India*, (2017) 10 SCC 800

²⁸ *X v. State NCT of Delhi*, (2022) SCC Online Del 2641

²⁹ *Joseph Shine v. Union of India*, (2018) 2 SCC 189

³⁰ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

³¹ *S v. Baloyi*, (2000) 2 SA 425 (CC)

³² *S v. Baloyi* (Minister of Justice and Another Intervening), 2000 (2) SA 425 (CC) (S. Afr.), https://www.law.cornell.edu/women-and-justice/resource/s_v_baloyi

decided that Section 3(5) in the Prevention of Family Violence Act was unfair since it asked him to admit guilt. In deciding to overturn the High Court's decision, the Constitutional Court stated the main aim of an interdict is to defend someone who suffers from domestic abuse and confirm that society abhors such behaviour. For this reason, the investigation was speeded up and didn't include the regular step of charging and pleading to be fair to the complainant.

Because of these changes, it is clear the judiciary understands that Indian family law should progress toward modern ideas about gender justice. Even though there are still disagreements here and there, legal thinking is shifting from old marriage models to focusing on personal rights.

Marital rape is now seen by the judiciary with more consideration for the victim's rights, as it moves away from thinking only through a patriarchal lens. Traditionally, Indian courts have supported the usual roles in marriage and focused on its importance, as most society views it. Experts like Kalpana Kannabiran point out that earlier evaluations did not give women much personal freedom and were guided by strong patriarchal conceptions³³. Its strength grew after colonial days, as the principle of "marital exemption" goes back to old notions related to coverture. Because policymakers understand more international human rights, the ideas of feminist legal theory, and constitutional rights, court attitudes have changed in recent years. Scholarly research by writers like Nivedita Menon³⁴ demonstrates how shifting socio-legal discourses and worldwide feminist movements have impacted the judiciary's transformation. The significance of gender equality, consent, and bodily autonomy within the institution of marriage has been acknowledged more and more in contemporary views.

Furthermore, as scholars like Mrinal Satish and Aparna Chandra³⁵ have observed, rulings such as that in *Independent Thought v. Union of India* (2017) shows that courts are increasingly questioning traditional beliefs and laws. Such a change comes from better laws as well as from more people realizing the harmful effects of marital rape. The process continues to develop, since there are still some decisions that lean toward conservative ways of thinking.

After reading so much about how the origin of laws in the past was due to a patriarchal mindset but one might question the reason as to why men felt the necessity to dominate women? With

³³ K. Kannabiran, *Gender and Law: Themes, Issues, and Practices* (Orient BlackSwan 2013)

³⁴ N. Menon, *Seeing Like a Feminist* (Zubaan 2012)

³⁵ M. Satish & A. Chandra, Criminal Law and Gender Justice in India, in *The Oxford Handbook of the Indian Constitution* 825 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016)

reference to an article ‘Why Family Laws are usually patriarchal: an evolutionary perspective’ on Scroll ³⁶, the first approach is to look at the differences between humans and other primates. Showing that male humans rely on dominance and authority more than do the males of similar monkey species, anthropologist Barbara Smuts reported this in her research. This didn’t involve people’s biological differences in reproduction because females are incapable and males are stronger than females, but has to do with males and females forming group coalitions amongst themselves, as discussed by primatologist Richard Wrangham. Based on Wrangham’s research, it seems that males in early human societies preferred to organize groups together to stop any despot from leading, unlike apes, whose group is controlled by just an alpha male. As several years passed, the leadership of the group fell to the "alpha alliance", instead of just the alpha male. They collaborated to increase their influence over other people. However, Wrangham revealed that sometimes men raised doubts about who the babies were fathered by, which Wrangham called a big threat. There are situations where many males have a share in paternity. Perhaps the basis of marriage was to address the issue of paternity. Marriage allowed men to have unquestioned fatherhood and means to convince the woman to have sex with them. Consequently, women had more competition since other women attempted to secure partners who were rich, powerful, and able to defend them against other men. Because of this, patriarchy was always maintained by all members of the society. Wrangham believes that because of alpha alliances, societies grew to favour institutions that made men dominate over the rest. At this period, patriarchy was first put in place. The basic values of the alpha alliance were based on law and religion, which eventually made these institutions the main focus of family law. It is normal for people to violate the rules set by institutions. A lot of women push against being sexually demanding, and numerous men are gender-equal. Sex-equal family laws have been established in Switzerland, Morocco, Turkey, and Botswana, thanks to the hard work done by feminists and renovation groups after their creation.

4. CONCLUSION

India is making progress in rejecting age-old sexist traditions, which is clear from more concern about marital rape. In a society where people for a long time disregarded marital rape, those same people are now acknowledging the importance of women’s rights during marriage. Lately, courts have made decisions such as the ones seen in *Joseph Shine v. Union of India*

³⁶ A. Patel, Why Family Laws Are Usually Patriarchal: An Evolutionary Perspective, *Scroll.in* (Dec. 15, 2023), <https://scroll.in/article/1071042/why-family-laws-are-usually-patriarchal-an-evolutionary-perspective>.

(2018) and *Independent Thought. Union of India* (2017) points out that traditional ideas of privilege in marriage should not be valued, and instead people should care about equality and the agreement of both partners. CEDAW and feminist legal thinking have contributed greatly to a progressively held opinion on marital rape in India.

Still, these transformations have not removed all the issues that exist. Since the Indian Penal Code does not recognize marital rape in Section 375, it promotes the idea that marriage gives men the right to have non-consensual sex. Most people in this culture believe in old and male-oriented customs, so women will usually remain silent due to the fear of being humiliated, shunned, or not legally protected. Although the system has developed, the judiciary today reflects many different attitudes, for example, in *X v. The State NCT of Delhi* (2022) is part of the Ministry's data.

Judges should always be involved in learning and awareness programs to ensure their law interpretations are not affected by what society or their own biases may tell them. It means introducing the ideas of feminist legal theories and gender studies into the education of judges. Discussing topics of equality, respect, and consent with boys and men is important to change the way society regards these issues. Better gender awareness can be achieved if parents and teachers help children from an early age. For social change and new laws to take place, academics, activists, and other groups should keep urging for changes, continue carrying out studies, and make sure survivors have a platform to speak.

Statistics on marital rape in India demonstrate a wider effort to overcome old patriarchal beliefs and create a more equal and just society. It takes contributions from all areas of society, culture, and law to achieve this objective. Developing a community where every individual's rights, autonomy, and dignity are protected equally, whether married or not, should be the key objective. It is vital that these changes actually help and benefit women across the nation as laws and social standards are updated. Along with legal recognition, making respect for consent, respect for each other, and supporting gender equality among married couples a cultural value is necessary to prevent marital rape.