

**BREAKING THE SILENCE: A COMPARATIVE  
LEGAL ANALYSIS OF ABOLISHING THE  
MARITAL EXCEPTION TO RAPE  
IN SRI LANKA**

by

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## Abstract

### **Breaking the silence: A Comparative Legal Analysis of Abolishing the Marital Exception to Rape in Sri Lanka**

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Sri Lanka continues to legally permit husbands to commit the crime of rape against their wives, a stance that has increasingly been recognized as unjust and unlawful in many other jurisdictions since the last quarter of the 20th century. A prominent trend has emerged, acknowledging the fallacy of the marital exception to rape and pushing for its elimination. Among the various methods to criminalize marital rape, one significant step would be to make the marital exception inadmissible under the law, thereby granting legal recognition to the offense of marital rape in Sri Lanka. Another viable approach, which hinges largely on the discretion of the legislature and judiciary, is to equate the legal recognition of marital rape with non-marital rape. Sri Lanka is one of many jurisdictions that have initiated discussions on abolishing marital immunity in the context of penalizing marital rape. Nevertheless, like many other similar efforts, Sri Lanka's approach has been conspicuously ineffective and remains unamended. This research explores the critical need to abolish the marital exception to rape in Sri Lanka through a comparative legal analysis with Canadian law. The study offers a critical examination of Sri Lanka's current legal framework, which effectively legitimizes marital rape by maintaining the outdated notion that marriage implies irrevocable consent to sexual intercourse. This antiquated concept infringes on fundamental individual rights and undermines principles of equality and justice. Through a thorough review of legal doctrines and case laws employing the black letter research methodology, this research emphasizes the urgent need for legislative reform in Sri Lanka to criminalize marital rape. It provides detailed recommendations inspired by the progressive legal approach adopted in Canada, highlighting a path toward recognizing marital rape as a criminal offense and ensuring equal protection under the law for all individuals. It advocates for the abolition of the marital exception to rape and the establishment of a legal framework that recognizes marital rape as a criminal offense. The study outlines specific legislative changes needed to achieve this goal, including amendments to the Penal Code of Sri Lanka and the introduction of comprehensive legal definitions of consent and sexual violence. The research underscores the urgent need for Sri Lanka to reform its laws to protect the rights of women and uphold the principles of equality and justice. By drawing on the Canadian legal framework, which recognizes the autonomy and dignity of individuals within marriage, the study offers a roadmap for Sri Lanka to eliminate the marital rape exception and ensure that all individuals are afforded equal protection under the law. In conclusion, this research highlights the critical need for Sri Lanka to address the pervasive issue of marital rape through comprehensive legal reform. The abolition of the marital exception to rape is not only a matter of legal necessity but also a crucial step towards achieving gender equality and protecting human rights. By adopting a comparative approach and learning from the Canadian legal experience, Sri Lanka can create a more just and equitable legal system that respects the autonomy and dignity of all individuals.

**Key Words:** *Criminalizing, Marital Rape, Sri Lanka, Canada*