
BETWEEN CONSENT AND CONJUGALITY: THE CASE FOR CRIMINALIZING MARITAL RAPE IN INDIA

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ABSTRACT

Marital rape remains a legally unrecognized offense in India due to the exception under Section 63 Exception 2, which shields husbands from prosecution for non-consensual intercourse with their wives. This legal stance is rooted in patriarchal notions of marriage, where conjugal rights are often perceived as superseding individual bodily autonomy. This paper examines the conflict between consent and conjugality, highlighting the legal, constitutional, and human rights implications of the marital rape exception. It critically analyzes the jurisprudence on restitution of conjugal rights and its impact on women's right to bodily autonomy and dignity. A comparative analysis of jurisdictions that have criminalized marital rape demonstrates the feasibility and necessity of such legal reform in India. The study also explores socio-cultural resistance to criminalization and its potential implications on gender justice. The paper argues that criminalizing marital rape is essential to upholding constitutional principles of equality, dignity, and personal liberty. The paper concludes with recommendations for legislative reforms, judicial intervention, and public awareness initiatives to address this pressing issue.

Keywords: Marital Rape, Consent, Conjugal Rights, Gender Justice, Criminalization

1. Introduction

Marital rape remains a significant yet unrecognized issue in India's legal framework, raising critical concerns about consent, bodily autonomy, and gender equality. The historical roots of marital rape laws can be traced to colonial-era legal doctrines that uphold the notion of implied consent within marriage. This assumption, embedded in Section 63 of the "Bharatiya Nyaya Sanhita, 2023"¹ grants husband immunity from prosecution, thereby denying married women legal protection against sexual violence. The persistence of this legal exemption reflects broader societal and institutional resistance to recognizing women's autonomy within marriage. Consent is a fundamental principle in sexual relationships, forming the basis for distinguishing between lawful intercourse and sexual violence. The failure to recognize marital rape as a crime perpetuates the notion that marriage overrides individual autonomy, contradicting constitutional guarantees of equality, dignity, and personal liberty. In contrast, many jurisdictions, including the United Kingdom, Canada, and South Africa, have reformed their legal systems to criminalize non-consensual intercourse within marriage, aligning with international human rights standards².

This research adopts a doctrinal methodology, analyzing statutory provisions, judicial precedents, and international legal frameworks to assess the need for criminalizing marital rape in India. Through the examination of legal, social, and policy considerations, the study aims to contribute to the discourse on gender justice and legal reform.

2. Conceptual and Theoretical Framework

2.1 Understanding Marital Rape

Marital rape refers to non-consensual sexual intercourse or any other form of sexual violence perpetrated by a spouse within marriage. Unlike other forms of sexual assault, marital rape is often shielded from legal recognition due to the doctrine of implied consent, which assumes that a wife has given perpetual consent to sexual relations upon marriage³. The key elements of marital rape include the absence of voluntary consent, coercion (physical, emotional, or financial), and the violation of bodily autonomy. While most rape laws criminalize forced

¹ Bharatiya Nyaya Sanhita, No. 45, § 63, Acts of Parliament, 2023 (India)

²Minakshi Yadav, *A Step Towards Criminalizing Marital Rape*, 6 SUPREMO AMICUS 232 (2018).

³ V. Yadav, *Criminalizing Marital Rape in India*, 4 INDIAN J.L. & LEGAL RES. 1 (2022).

sexual intercourse, India's legal framework continues to provide immunity to husbands under Section 375 of the Indian Penal Code, reinforcing the notion that marriage legitimizes forced sexual relations.

2.2 Gender Perspective

A critical gendered distinction exists between rape and marital rape, with the latter often dismissed due to societal and legal biases. While rape laws are designed to protect women from sexual violence, the exclusion of marital rape from criminal liability reflects deep-seated patriarchal assumptions. The perception that sexual intercourse is an inherent obligation in marriage disregards the agency of women and reinforces gender hierarchies. Feminist scholars argue that treating marital rape differently from other forms of sexual violence perpetuates gender-based discrimination and denies married women the legal protections afforded to unmarried women⁴.

2.3 Theories of Consent and Bodily Autonomy

Feminist jurisprudence emphasizes the principle of bodily integrity, asserting that women have an inalienable right to control their bodies, regardless of marital status. The denial of this right through legal immunity for marital rape contradicts fundamental human rights and gender justice principles. Feminist legal theory critiques the traditional construction of consent, arguing that true consent must be affirmative, voluntary, and revocable. The lack of recognition of marital rape thus reflects a failure to uphold women's bodily autonomy.

Social contract theory, which underpins modern legal and political systems, asserts that individuals enter into a contract with the state to safeguard their rights. However, the exclusion of married women from legal protections against rape suggests that the state fails to uphold its obligation to ensure equal rights for all citizens⁵. This legal lacuna reinforces the notion that marriage subordinates women's rights to those of their husbands, contradicting constitutional guarantees of equality and liberty.

⁴Karan Dhillon, *Criminalizing Marital Rape in India: A Step Towards Sustainable Development*, 13 OIDA INT'L J. SUSTAINABLE DEV. 19 (2020).

⁵Bhavya Dayal, *Marital Rape: A Non-Criminalised Crime in India?*, 4 INDIAN J.L. & LEGAL RES. 1 (2022)

2.4 Patriarchy and the Institution of Marriage

Historically, marriage has been constructed as an institution that prioritizes male authority and control over women's bodies. In many legal systems, marriage was once viewed as transferring a woman's autonomy to her husband, making consent to sexual relations an irrevocable obligation. This historical perception continues to shape contemporary legal frameworks that refuse to recognize marital rape.

Marriage plays a crucial role in shaping legal and societal perceptions of consent. The assumption that marital relations inherently include a right to sexual access disregards the evolving understanding of marriage as a partnership based on mutual respect and equality. The continued legal immunity for marital rape reflects an outdated patriarchal framework that denies women full personhood within marriage, necessitating urgent legal reform⁶.

3. Legal Position on Marital Rape in India

3.1 Indian Penal Code and the Marital Rape Exception

The Indian Penal Code (IPC)⁷ under Section 375 defines rape but explicitly exempts sexual intercourse by a husband with his wife, provided she is not under 18 years of age. This exception, rooted in colonial-era legal frameworks, perpetuates the notion that marriage implies perpetual consent to sexual relations. The marital rape exception not only denies legal recourse to victims but also reinforces the belief that a wife is the property of her husband, lacking autonomy over her own body. Despite amendments in criminal laws to strengthen protections against sexual violence, this exception continues to shield perpetrators of marital rape from prosecution, thereby institutionalizing gender inequality.

The Bharatiya Nyaya Sanhita (BNS)⁸, 2023, which replaces the IPC, retains the same legal position on marital rape. Section 63 of the BNS, which defines rape, includes "Exception 2", stating: *"Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."*⁹

⁶Atharva Deshmukh, *Need of Criminalisation on Marital Rape in India: Legal Analysis and Advocacy*, SSRN (2024)

⁷ Indian Penal Code, § 375, No. 45, Acts of Parliament, 1860 (India).

⁸ Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023 (India).

⁹ Bharatiya Nyaya Sanhita, § 63, No. 45, Acts of Parliament, 2023 (India).

This provision reaffirms the long-standing legal immunity for marital rape, disregarding the necessity of consent in sexual relationships. While the BNS introduces reforms in criminal law, it fails to address this critical gap, continuing to deny married women the same legal protection against sexual violence as unmarried women¹⁰.

3.2 Judicial Precedents and Interpretations

Indian courts have been reluctant to recognize marital rape as a crime, often citing legislative intent and societal values as justifications for upholding the exemption. However, some judicial pronouncements have indirectly questioned the validity of the marital rape exception. In *Independent Thought v. Union of India*¹¹ (2017), the Supreme Court held that sexual intercourse with a minor wife (under 18 years) would constitute rape, effectively narrowing the scope of the marital rape exception. While this decision was a step forward, it stopped short of addressing the broader issue of marital rape among adult women. Similarly, various High Court rulings have reflected conflicting views, with some advocating for legal reform while others maintaining the sanctity of the marital rape exemption under existing laws.

3.3 Constitutional and Human Rights Implications

The marital rape exception violates fundamental rights enshrined in the Indian Constitution, particularly Articles 14¹² (equality before law), 19¹³ (freedom and dignity), and 21¹⁴ (right to life and personal liberty). By denying legal protection against sexual violence to married women, the law discriminates on the basis of marital status, thereby violating the principle of equality under Article 14¹⁵. Additionally, forced sexual intercourse within marriage violates a woman's dignity and bodily autonomy, contradicting the right to live with dignity under Article 21¹⁶.

India's international legal obligations also mandate the recognition and criminalization of marital rape. Treaties such as the Convention on the Elimination of All Forms of Discrimination

¹⁰ Shreyam Sharma and Preeti Akankshya Kujur, *Even a Wife Is Entitled to a 'NO'-A Call for Criminalizing Marital Rape*, JUS CORPUS LJ. 2021;2:176.

¹¹ *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

¹² INDIA CONST. art. 14.

¹³ INDIA CONST. art. 19.

¹⁴ INDIA CONST. art. 21.

¹⁵ INDIA CONST. art. 14.

¹⁶ INDIA CONST. art. 21.

Against Women (CEDAW), the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR)¹⁷ affirm the right to be free from all forms of violence, including within marriage. The failure to criminalize marital rape places India in violation of these global human rights commitments.

3.4 Arguments against Criminalization

Opponents of criminalizing marital rape argue that it could undermine the institution of marriage by increasing conflicts between spouses and encouraging legal intervention in private relationships. They contend that marriage creates a unique bond of intimacy that should not be subject to state control. However, such arguments ignore the fundamental principle that consent cannot be assumed or overridden within any relationship.

Another common argument is the potential misuse of marital rape laws, with concerns that false allegations may be used to harass husbands. While false cases are a possibility in any legal system, they should not be a reason to deny justice to genuine victims. Proper legal safeguards, such as stringent evidence requirements and due process, can address concerns of misuse without denying protection to survivors¹⁸.

The issue of proof and the burden of evidence also emerges as a challenge, with critics arguing that marital rape cases would be difficult to prove. However, this challenge is not unique to marital rape and applies to all sexual offenses, which often rely on the credibility of the victim's testimony and circumstantial evidence. Legal reforms, such as sensitized investigation mechanisms and evidentiary guidelines, can ensure fair adjudication while addressing evidentiary concerns.

3.5 Consequences of Non-Criminalization

The continued legal immunity for marital rape has severe social, psychological, and legal consequences for women in India. The absence of legal recognition denies survivors justice and reinforces a culture of silence, where women are discouraged from speaking out against sexual violence in marriage. Many women remain trapped in abusive relationships due to fear

¹⁷Vikas Kumar, *Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India*, 6(3) *DIGNITY: A J. ON ANALYSIS OF EXPLOITATION & VIOLENCE* 6 (2021).

¹⁸Akansha Rajput, *A Critical Analysis of Marital Rape in India*, 4 *INDIAN J.L. & LEGAL RES.* 1 (2022).

of societal stigma, financial dependence, and the lack of legal recourse. This legal vacuum further emboldens perpetrators, as they are assured of complete impunity under the existing law.

Psychologically, marital rape leads to severe trauma, depression, anxiety, and post-traumatic stress disorder (PTSD). Studies have shown that survivors of marital rape experience similar, if not more, devastating effects as victims of non-marital sexual violence, as the betrayal comes from a trusted partner. The lack of legal recognition exacerbates their suffering, as they are left without institutional support or protection¹⁹.

The non-criminalization of marital rape contradicts India's constitutional principles and international commitments. While India has enacted progressive laws addressing sexual harassment and domestic violence, the marital rape exception remains an archaic remnant of colonial law. By failing to recognize marital rape, the legal system implicitly upholds the idea that marriage negates a woman's right to say no, thereby undermining the fundamental tenets of gender equality and human dignity. The non-recognition of marital rape affects broader legal interpretations of women's rights and autonomy. It sends a message that marriage legitimizes coercion, reinforcing patriarchal structures that subordinate women. This legal gap weakens the fight against gender-based violence and hinders India's progress toward achieving equal rights for women²⁰.

In conclusion, the failure to criminalize marital rape perpetuates systemic injustice, denies women their fundamental rights, and reinforces harmful patriarchal norms. The urgent need for legal reform is not just a matter of criminal law but a fundamental issue of human rights and gender justice. Recognizing marital rape as a crime is essential to upholding the principles of equality, dignity, and autonomy for all women in India.

4. Conjugal Rights and Marital Rape

4.1 Concept of Conjugal Rights

Conjugal rights refer to the mutual rights and obligations of spouses in a marriage, including

¹⁹Arya Sudhir Nikam, *Viewpoint on the Criminalization of Marital Rape in India*, 2 INDIAN J. INTEGRATED RES. L. 1 (2022).

²⁰Sambhavi Pandey, *Marital Rape: A Crime, Not Criminalized*, 1 INT'L J.L. MGMT. & HUM. 44 (2018).

cohabitation, companionship, and sexual relations. These rights are legally recognized in many jurisdictions, with the expectation that spouses will fulfill their marital duties. The concept of conjugal rights stems from traditional views of marriage as a contract that establishes legal obligations between partners. Among these obligations, the right to sexual relations has often been interpreted as an inherent aspect of marriage. However, this interpretation raises concerns regarding consent, as it assumes an automatic entitlement to sexual access, potentially undermining individual autonomy and bodily integrity.

4.2 Restitution of Conjugal Rights (RCR) in Indian Law

In India, the doctrine of restitution of conjugal rights (RCR) is codified under Section 9 of the Hindu Marriage Act, 1955. This provision allows a spouse to seek legal intervention if the other spouse withdraws from cohabitation without reasonable cause. If the court finds no valid justification for the withdrawal, it can order the erring spouse to resume marital life. While the provision is theoretically gender-neutral, it has been criticized for disproportionately affecting women, often compelling them to return to marital homes against their will. Judicial perspectives on RCR have been divided, with some courts upholding it as a means to preserve marriage and others questioning its compatibility with fundamental rights. Critics argue that enforcing cohabitation infringes upon personal liberty and autonomy, particularly for women who may be subjected to coercion or abuse.

4.3 Tension Between Conjugal Rights and Consent

The enforcement of conjugal rights through legal means raises serious concerns about bodily autonomy and the right to individual agency. The notion that a spouse can be compelled to cohabit and engage in marital relations contradicts the fundamental principle that consent must be freely given and revocable at any time. In “Joseph Shine v. Union of India” (2018)²¹, the Supreme Court struck down Section 497 of the IPC, which criminalized adultery, emphasizing that women are not the property of their husbands and have agency over their own bodies. The ruling reaffirmed the constitutional values of dignity, equality, and personal liberty. The same principles apply to marital rape and the enforcement of conjugal rights, where the idea of perpetual consent within marriage is incompatible with evolving constitutional jurisprudence.

²¹ Joseph Shine v. Union of India, (2019) 3 S.C.C. 39 (India)

4.4 The Need for a Consent-Based Approach in Marriage

A consent-based approach to marriage recognizes that consent to cohabitation or sexual relations cannot be assumed to be permanent. The right to withdraw consent at any point is essential to ensuring bodily autonomy and dignity. International legal frameworks, including those established by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), emphasize that marital rights should be based on mutual respect and voluntary participation. Countries that have abolished RCR or criminalized marital rape recognize that marriage does not override personal autonomy. India must move toward a legal framework that prioritizes consent, ensuring that marital rights do not become instruments of coercion²².

5. Comparative Legal Analysis

5.1 Countries That Criminalized Marital Rape

Several countries, including the United States, the United Kingdom, Canada, and South Africa, have recognized and criminalized marital rape, affirming that consent is essential in all sexual relationships, including marriage. In the United States, all 50 states have criminalized marital rape through legislative reforms and judicial interventions, although the degree of punishment varies. The United Kingdom abolished the marital rape exemption in *R v. R* (1991), recognizing that marriage does not imply irrevocable consent. Canada removed the exemption in 1983, aligning its rape laws with principles of equality and bodily autonomy. South Africa criminalized marital rape under the Sexual Offences Act of 1993, acknowledging the harm and trauma experienced by victims. The evolution of laws in these countries reflects a shift from patriarchal legal frameworks to those centered on human rights and gender equality²³.

5.2 Lessons for India

Criminalizing marital rape is essential for advancing gender justice in India, ensuring that women's autonomy and dignity are upheld within marriage. The experiences of other countries demonstrate that legal reforms, when combined with awareness campaigns and institutional

²² Atharva Deshmukh, *Need of Criminalisation on Marital Rape in India: Legal Analysis and Advocacy*, SSRN Working Paper No. 4960506 (May 15, 2024)

²³ Bhavesh Gupta & Meenu Gupta, *Marital Rape: Current Legal Framework in India and the Need for Change*, 1 GALGOTIAS J. LEGAL STUD. 16 (2013).

support, can significantly improve justice for survivors. However, implementation challenges such as evidentiary concerns, societal resistance, and potential misuse must be addressed through comprehensive legal safeguards, sensitized law enforcement, and judicial training. Recognizing marital rape as a crime is a necessary step toward gender equality and fulfilling India's constitutional and international human rights commitments.

6. Socio-Legal Implications of Criminalization

6.1 Impact on Gender Equality and Women's Rights

The criminalization of marital rape is crucial for achieving gender equality and protecting women's rights. The current legal framework in India, which exempts marital rape from prosecution, reinforces patriarchal norms that deny women autonomy over their bodies. By recognizing marital rape as a crime, the law would affirm that consent is indispensable in all sexual relationships, regardless of marital status²⁴. This would align India's legal system with constitutional guarantees of equality under Article 14 and the right to dignity under Article 21. Criminalization would also empower women to seek justice against sexual violence within marriage, thereby challenging deeply ingrained societal norms that prioritize the institution of marriage over individual rights.

6.2 Role of Law Enforcement and Judiciary

Effective implementation of marital rape laws requires the active role of law enforcement and the judiciary. Sensitization of police officers, medical professionals, and judicial authorities is essential to ensure that complaints are taken seriously and survivors receive adequate support. Many countries that have criminalized marital rape have faced challenges in enforcement due to biases within the justice system. Therefore, India must strengthen institutional mechanisms, including special training for law enforcement personnel and clear guidelines for evidence collection, to ensure effective prosecution²⁵.

6.3 Public Perception and Cultural Resistance

One of the biggest challenges to criminalizing marital rape in India is the cultural resistance

²⁴Rudraksh Jain, *Struggles in Criminalizing Marital Rape*, 7 INT'L J.L. MGMT. & HUM. 758 (2024).

²⁵Ayushi Raghuwanshi, *Marital Rape- A Legalised Form of Oppression*, 4 INDIAN J.L. & LEGAL RES. 1 (2022).

rooted in traditional views of marriage. Many still believe that marriage grants men unconditional sexual rights over their wives, making it difficult to accept that forced intercourse within marriage constitutes rape. This perception is reinforced by religious and social institutions that uphold patriarchal family structures. Addressing these deeply entrenched beliefs requires sustained efforts in education and legal reform.

6.4 Need for Sensitization and Awareness

Public awareness campaigns and educational initiatives are essential to changing societal attitudes toward marital rape. Schools, media, and community programs should emphasize the importance of consent in marriage. Legal reforms must be accompanied by comprehensive sensitization efforts to ensure that victims feel empowered to report abuse and that society recognizes marital rape as a serious violation of human rights²⁶.

6.5 Judicial Interpretation

Dilip Pandey & Ors. v. State of Chhattisgarh²⁷

The case of “*Dilip Pandey & Ors. v. State of Chhattisgarh* (CR.R. No. 177 of 2021)” highlights the legal contradictions surrounding marital rape in India. The Chhattisgarh High Court examined charges under Sections 376 (rape), 377 (unnatural offenses), and 498-A (cruelty) of the IPC, with a primary focus on the issue of sexual violence within marriage. The complainant, a legally wedded wife, alleged that her husband forcibly engaged in sexual intercourse against her will and subjected her to unnatural sexual acts. While the court upheld the charges under Sections 377 and 498-A, it discharged the husband from the rape charge under Section 376, citing Exception 2 to Section 375 IPC, which states that a husband’s sexual intercourse with his wife (above 15 years of age) does not constitute rape. This ruling reinforces the existing legal position that marital rape is not recognized as an offense in India.

However, the court upheld the charge under Section 377 IPC, which criminalizes "carnal intercourse against the order of nature," including forced anal or oral sex and the insertion of

²⁶ A. Padgaonkar, *Making Marital Rape Visible: A Socio-Legal Perspective*, in *Emerging Trends in Globalization* 53 (July 23, 2021).

²⁷ Raveena Rao Kallakuru & Pradyumna Soni, *Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural and Legal Impact*, 11 *NUJS L. REV.* 121 (2018)

objects. The ruling demonstrates that while the law protects a wife from certain forms of sexual violence, it fails to recognize her right to bodily autonomy in cases of forced vaginal intercourse. Additionally, the complainant alleged physical and emotional cruelty, particularly in relation to dowry demands, which led to the framing of charges under Section 498-A IPC. The court found sufficient *prima facie* evidence to support these allegations, reinforcing the legal protection against domestic violence and dowry-related harassment.

This case serves as a crucial example of the inconsistency in Indian law regarding consent in marriage. It underscores the fact that while marital status does not exempt a husband from punishment for unnatural sex (under Section 377), it does grant him immunity from prosecution for forced vaginal intercourse (under Exception 2, Section 375). This highlights the patriarchal bias in Indian law, where implied consent is assumed in marriage, effectively denying wives the right to refuse sexual intercourse. The ruling raises significant concerns about the need for legal reform to recognize marital rape as an offense, aligning Indian law with international human rights standards. This legal contradiction strengthens the argument for abolishing the marital rape exception and ensuring that all non-consensual sexual acts, regardless of marital status, are treated as rape under Indian law.

Gorakhnath Sharma v. State of Chhattisgarh²⁸

The case of *Gorakhnath Sharma v. State of Chhattisgarh* (CRA No. 996 of 2024) presents another crucial instance highlighting the legal contradictions in India's approach to marital rape. The appellant, the husband of the deceased victim, was convicted under Sections 376 (rape), 377 (unnatural offenses), and 304 (culpable homicide not amounting to murder) IPC by the trial court. The prosecution alleged that the appellant forcibly engaged in unnatural sex with his wife, leading to severe rectal injuries that eventually resulted in her death. The victim's dying declaration, recorded before a magistrate, implicated the appellant, stating that she suffered severe injuries due to forced intercourse. Despite this, the Chhattisgarh High Court overturned the conviction, ruling that the charges under Sections 376 and 377 IPC were not applicable due to the marital relationship between the accused and the victim.

A significant aspect of the judgment is the court's reliance on Exception 2 to Section 375 IPC,

²⁸ Gorakhnath Sharma v. State of Chhattisgarh, CRA No. 996 of 2024

which excludes sexual intercourse between a husband and wife from the definition of rape. The court extended this logic to Section 377 IPC, holding that unnatural sex between spouses cannot be criminalized under Indian law. This interpretation represents a dangerous precedent where even severe non-consensual sexual violence, leading to life-threatening injuries, is not considered a punishable offense within marriage. The judgment also raises questions about the status of consent in sexual relationships, as it implies that a wife's right to bodily autonomy is significantly diminished once she enters marriage.

Furthermore, the acquittal under Section 304 IPC highlights a flawed approach to domestic violence and sexual crimes within marriage. Despite medical evidence confirming that the victim sustained fatal injuries due to forced sexual acts, the court did not attribute criminal liability to the husband, emphasizing lack of direct evidence beyond the dying declaration. This judgment reflects institutional reluctance to recognize and penalize marital sexual violence, reinforcing the patriarchal belief that marriage grants men unchecked sexual access to their wives.

This case serves as a critical illustration of the urgent need for legal reform in India. It underscores the inconsistency in criminalizing unnatural sex (Section 377) in general but exempting it when committed by a husband. Moreover, it exposes the legal loophole that prevents women from seeking justice for sexual violence within marriage, leaving them with little recourse even when faced with life-threatening assault. The case strengthens the argument for abolishing the marital rape exception in Section 375 IPC and ensuring that all non-consensual sexual acts—whether vaginal, anal, or otherwise—are punishable, regardless of the marital status of the perpetrator.

7. Conclusion and Recommendations

7.1 Summary of Key Findings

The legal exemption of marital rape under Section 63, Exception 2 of the Bharatiya Nyaya Sanhita, 2023, denies married women legal protection against sexual violence, violating their constitutional rights to equality (Article 14), dignity, and personal liberty (Article 21). The research highlights how this exception reinforces patriarchal norms, treating women as subordinate to their husbands and depriving them of bodily autonomy. A comparative analysis with countries like the United States, the United Kingdom, Canada, and South Africa shows

that criminalizing marital rape has strengthened gender justice and legal protections for women. However, challenges such as evidentiary concerns, fear of false cases, and cultural resistance highlight the need for a balanced and well-implemented legal framework.

7.2 The Need for Legislative and Judicial Reforms

The legislature and judiciary must work together to recognize marital rape as a criminal offense and ensure effective enforcement mechanisms. While the Supreme Court has upheld women's autonomy in landmark cases like *Independent Thought v. Union of India* (2017) and *Joseph Shine v. Union of India* (2018), explicit statutory reforms are necessary to provide a clear legal recourse for survivors. The judiciary should interpret constitutional protections broadly, ensuring gender equality and human rights prevail over outdated marital doctrines.

7.3 Strong Recommendations for Policy and Legal Reforms

7.3.1. Amend the Bharatiya Nyaya Sanhita (BNS) and Criminal Laws

- Remove Section 63, Exception 2 from the BNS, ensuring that all non-consensual sexual acts, including within marriage, are recognized as rape.
- Amend procedural laws to provide strict evidentiary standards, including provisions for in-camera trials, protection of survivor identity, and medical evidence protocols to prevent misuse while ensuring justice.
- Establish harsh penalties for marital rape, equivalent to those for other forms of sexual violence, sending a strong legal message against spousal coercion.

7.3.2. Strengthen Institutional and Support Systems for Survivors

- Set up dedicated helplines and crisis centers for victims of marital rape.
- Provide state-funded legal aid, shelters, psychological counseling, and financial assistance to survivors, ensuring they can exit abusive marriages without economic dependence.

- Train police officers, medical professionals, and judges to handle marital rape cases sensitively, preventing victim-blaming and biased attitudes.

7.3.3. Launch Nationwide Awareness Campaigns and Education Initiatives

- Introduce school and university curricula on consent, gender equality, and bodily autonomy to challenge deep-seated patriarchal beliefs.
- Run large-scale media campaigns to shift public perception, making it clear that marriage does not equal perpetual consent.
- Engage religious and community leaders in discussions to combat cultural resistance and dispel myths surrounding marital rape.

7.4 Future Research Directions

Further research on marital rape in India is essential to drive informed policy changes and legal reforms. Empirical studies should be conducted to assess the prevalence and impact of marital rape, providing statistical data to support legislative amendments. Currently, the absence of comprehensive data on marital rape in India weakens policy arguments, making it difficult to advocate for change. Large-scale surveys and qualitative research involving survivors' experiences can help policymakers understand the extent of the issue and the barriers to reporting.

A comparative legal analysis of countries that have criminalized marital rape can offer insights into best practices for implementation. Examining the legal frameworks of the United States, the United Kingdom, Canada, and South Africa can provide valuable lessons on how India can effectively integrate marital rape laws while addressing concerns related to evidence, misuse, and enforcement challenges.

Interdisciplinary research involving law, sociology, and psychology is also crucial to developing survivor-centric legal and social reforms. Understanding the psychological trauma of marital rape, the socio-economic consequences for survivors, and the effectiveness of support systems will aid in designing policies that prioritize rehabilitation and justice. A multi-disciplinary approach can ensure that legal reforms are complemented by societal change, fostering greater awareness and support for survivors.

7.5 Conclusion

Criminalizing marital rape is not just a legal necessity but a moral imperative to uphold constitutional rights, gender justice, and human dignity. The government must take immediate action to remove outdated exemptions, ensuring that marriage does not shield perpetrators from accountability. A comprehensive strategy combining legal reform, judicial activism, institutional support, and societal awareness is essential to ending marital rape and ensuring that no woman is forced to endure sexual violence under the guise of marriage.