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## **BEYOND SACRED VOWS: THE CASE FOR CRIMINALISING MARITAL RAPE**

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### **ABSTRACT**

Marital rape has emerged as a critical issue at the crossroads of morality and law, which was once shrouded in societal taboos. This paper examines the legal history of marital rape in India, tracing its evolution from a social stigma to a representation of equality within marriage. Examining the shortcomings of the existing legal system, especially the controversial exception to Section 375 of the Indian Penal Code (IPC), the paper examines the moral dilemma of balancing individual rights within the institution of marriage. It highlights the moral imperative of recognizing consent as non-negotiable, even within the sacred institution of marriage. The paper thoroughly analyses the potential challenges and arguments against criminalization of marital rape by weighing the pros and cons. It also discusses the detrimental impact of marital rape on families and calls for legislative changes in areas where equality and justice are of utmost importance. The paper makes a case for the urgency of criminalizing marital rape and argues that it is an important step for ensuring bodily autonomy for all women irrespective of their marital status. It ultimately sheds light on the paradox that lies in the fact that discussions about women's safety often focus on public spaces, neglecting the reality of what happens at her home, where she should feel the safest.

## **I. INTRODUCTION**

*“In India marital rape exists de facto but not de jure”<sup>1</sup>*

Marriage, historically regarded as a sacred institution, has often existed as a realm insulated from the reach of the law—a sanctuary for love and familial bonds. Yet, lurking within the confines of this sanctity is a contentious issue that has long remained veiled in societal norms and legal obscurity: marital rape. The central question that guides this research is whether criminalization of marital rape should be encompassed within the purview of the existing legal framework and subject to punitive measures under the Indian Penal Code, 1860 (“the Code”).<sup>2</sup>

This is an argumentative paper that commences with a historical retrospection of marital rape, tracing its evolution from an unspoken taboo to a rallying cry for justice. While criticising the clandestine role played by courts in encouraging non-consensual consummation the paper analyses the inadequacies of the standing legal institutions. Subsequently, it delves into the heart of the matter—potential arguments for legalising marital rape and aims to counter each in a satisfactory manner. To further substantiate, it conducts a comparative examination with civil statutes that impose penalties under the IPC, while adding a lens of fundamental rights of women. Ultimately the paper takes into account the impact that follows on families.

## **II. THE EVOLUTION**

The notion of marital rape exemption originated under the British legal system with Justice Matthew Hale's assertion in 1736 that a husband couldn't be guilty of raping his wife due to the mutual consent inherent in marriage.<sup>3</sup> This principle was explicitly included in Section 375 of the Indian Penal Code when enacted in 1860 and has persisted since then.<sup>4</sup>

However, this doctrine gradually lost legitimacy in the 20th century in its country of origin. In the case of *R. v. Miller*, Justice Lynskey remarked that previous judicial statements supporting

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<sup>1</sup> Saurabh Mishra and Sarvesh Singh, *Marital Rape — Myth, Reality and Need for Criminalization*, EASTERN BOOK COMPANY - PRACTICAL LAWYER, (Accessed: 08 October 2023), <https://www.ebc-india.com/lawyer/articles/645.htm>.

<sup>2</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

<sup>3</sup> Syed Raiyyan, *An Analysis of Marital Rape in India: An overview in BNS, 2023*, LEGALONUS, [https://legalonus.com/an-analysis-of-marital-rape-in-india-an-overview-in-bns-2023/#\\_ftnref3](https://legalonus.com/an-analysis-of-marital-rape-in-india-an-overview-in-bns-2023/#_ftnref3), (Accessed: 08 October 2023).

<sup>4</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

a complete marital rape exemption were not legally binding but rather incidental remarks.<sup>5</sup> Nonetheless, it wasn't until 1991, in *R v. R*, that this principle was abolished.<sup>6</sup> The House of Lords upheld the conviction of a man for raping his wife, asserting that modern marriage no longer implied irrevocable submission to sexual intercourse under all circumstances.

This ruling was not viewed as establishing a new offense but rather as the elimination of an outdated and offensive legal fiction. Subsequently, in its 205th report in 1992, the UK's Law Commission examined marital rape laws and proposed a Draft Bill to criminalize marital rape under the Sexual Offences Act of 1956. Since then, many countries, following suit, have criminalized marital rape.<sup>7</sup> Paradoxically, while India initially inherited its marital rape exemption from the United Kingdom, it has staunchly retained this stance even after the UK's evolution towards criminalization.

This historical context of marital rape legislation in India reveals a convoluted path characterized by legal exemptions and subsequent<sup>8</sup> Exception 2 to Section 375 of the IPC exempted unwilling sexual intercourse between spouses above fifteen years of age, later<sup>9</sup> It implied that marriage, under the law, equated to irrevocable implied consent, disregarding the concept of marital rape.

In *Sakshi v. Union of India*<sup>10</sup> case, the Supreme Court recognized flaws in the existing legal framework concerning marital violations, prompting legislative recommendations. However, the 172<sup>nd</sup> Law Commission report,<sup>11</sup> resisted criminalizing marital rape due to concerns about excessive State intervention in marital relationships. A significant shift occurred in 2013 when the Justice Verma committee<sup>12</sup> strongly recommended the removal of the marital rape exception and the criminalization of marital rape. The said recommendation was rooted in the belief that the exception deprived women of their fundamental rights yet marital rape

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<sup>5</sup> *R. v. Miller*, [1954] 2 Q.B. 282.

<sup>6</sup> *R v. R*, [1991] UKHL 12.

<sup>7</sup> Syed Raiyyan, *An Analysis of Marital Rape in India: An overview in BNS, 2023*, LEGALONUS, [https://legalonus.com/an-analysis-of-marital-rape-in-india-an-overview-in-bns-2023/#\\_ftnref3](https://legalonus.com/an-analysis-of-marital-rape-in-india-an-overview-in-bns-2023/#_ftnref3), (Accessed: 08 October 2023).

<sup>8</sup> Section 375, Indian Penal Code, No. 45 of 1860, INDIA CODE.

<sup>9</sup> Exception 2, Section 375, Indian Penal Code, No. 45 of 1860, INDIA CODE.

<sup>10</sup> *Sakshi v. Union of India*, AIR 2004 SC 3566, (India).

<sup>11</sup> *Law Commission of India*, Review of Rape Laws, Report No. 172 (March 2000), available at <http://www.lawcommissionofindia.nic.in/rapelaws.htm> (last visited on February 6, 2016).

<sup>12</sup> *Justice Verma Committee reports*, PRS LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>, (Accessed: 08 October 2023).

legislation in India currently only covers two groups of married women: those under 15 years of age and those separated from their husbands.<sup>13</sup>

### **III. MORALITY V. LEGALITY**

The struggle between what is considered morally right and what is lawful in the context of marital rape highlights the complexities of legislating within intimate relationships. What was once considered acceptable, with the belief that a wife must always comply with her husband's sexual desires, is no longer tolerated in modern society. Consequently, there is a heightened emphasis on safeguarding human rights and dignity. The right to individual privacy, especially in matters of bodily autonomy and protection against exploitation, is now seen as fundamental, even within the confines of marriage. Addressing this ethical dilemma necessitates legal reforms that cater to the change's societal dynamics. The imperative here is to acknowledge that all women, regardless of their marital status, have the fundamental right to control their bodies, a principle that should be enshrined in the law. As Catherine Mackinnon affirms, the private sphere is not to protect the privacy of the woman, but the privacy of the man — carving out an exclusive, secluded sphere for domestic interests is simply to preserve the man's use of unrestrained power.<sup>14</sup> Hence, safeguarding the dignity women within the institution of marriage is not only a moral duty but also a legal imperative, as this legal provision not only contradicts the principles of gender equality enshrined in the Constitution but also runs counter to international human rights norms. Natural law theory argues that laws should reflect evolving societal values, and as such, the existing legal framework should be amended to criminalize marital rape, it being morally impermissible.<sup>15</sup>

### **IV. THE INVISIBLE HAND OF COURTS**

Courts and legislatures in India often act as the “invisible hand” conferring conjugal rights and obligations, on wives.<sup>16</sup> Section 9 of the Hindu Marriage Act (“HMA”) recognizes the controversial concept of Restitution of Conjugal Rights (RCR).<sup>17</sup> It is becoming a tool for

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<sup>13</sup> Section 376A, Indian Penal Code, No. 45 of 1860, INDIA CODE.

<sup>14</sup> Mishra and Singh, *supra* note 1, at 1.

<sup>15</sup> Natural Law in Ethics, INVESTOPEDIA, <https://www.investopedia.com/terms/n/natural-law.asp#:~:text=Investopedia%20%2F%20Jessica%20Olah-What%20Is%20Natural%20Law%3F,by%20society%20or%20court%20judges>, (last visited Oct. 8, 2023).

<sup>16</sup> Elizabeth Beaumont, *Gender justice V. the 'invisible hand' of gender bias in law*, JSTOR, (2016), <https://www.jstor.org/stable/44076500>, (Accessed: 08 October 2023).

<sup>17</sup> Section 9, Hindu Marriage Act, No. 25 of 1955, INDIA CODE.

husbands to exert coercion through the justice system. It is contended that such laws burden women by closing all possible doors at an escape from a marriage that violates their bodily autonomy. RCR disproportionately affects wives, which makes the provision one-sided. In *T. Sareetha v. T. Venkata Subbaiah*, the Court held Section 9 HMA to be unconstitutional, as it was seen to violate human dignity and resulting in loss of personal identity.<sup>18</sup> The Supreme Court, in *Saroj Rani v. Sudarshan Kumar Chadha*, upheld RCR's constitutionality, overlooking its practical implications.<sup>19</sup> This legal enforcement of “cohabitation” in the name of saving marriage risks marital rape, undermining women's fundamental liberties. The case of *Bhikhaji v. Rukhmabai* highlighted the potential for forced sexual relations and inequality in marital obligations.<sup>20</sup> It is maintained that this inevitably underlines the troubling role of the legal system as an “invisible hand” that can inadvertently enable instances of marital rape, perpetuating a serious infringement on individual rights and dignity within the institution of marriage. Hence, the law should not encourage forced cohabitation and should not protect a raping husband.

## **V. BRIDGING THE LEGAL GAP**

The long-drawn debate on marital rape has bred various arguments for and against its criminalisation. For effective understanding, both sides of the coin must be considered. This is done through the lens of the landmark case of *RIT foundation v. Union of India*.<sup>21</sup>

### **A. The impracticality**

The argument against the criminalization of marital rape often hinges on the perceived impracticality of proving such cases, positing that it would further burden the legal system.<sup>22</sup> However, it is contended that this is crucial, despite the difficulty in proving it. Courts have acknowledged the challenges of pinpointing the exact moment when a sexual act becomes non-consensual, but this difficulty is not unique to marital rape cases; it applies to all rape proceedings.

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<sup>18</sup> *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP 356, (India).

<sup>19</sup> *Saroj Rani v. Sudarshan Kumar Chadha*, 1984 AIR 1562, (India).

<sup>20</sup> *Bhikhaji v. Rukhmabai*, (1885) ILR 9 Bom 529, (India).

<sup>21</sup> *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404, (India).

<sup>22</sup> *Deeptilata Nayak and Aman Srivastava, Criminalization of marital rape law in India is still a taboo*, PEN ACCLAIMS, (Jan 2020), <http://www.penacclaims.com/wp-content/uploads/2020/02/Deeptilata-Nayak-1.pdf>.

Critics further question the feasibility of criminalising an intricate family dynamic. However, the fear of complexity should not deter the establishment of an institution that safeguards women. There must be a forum that instils fear in potential rapist husbands. Currently, men can perpetrate rape within marriage with impunity, knowing they will not bear the legal consequences. It is suggested that recognizing marital rape as a crime will send a clear message that such actions will not go unpunished, potentially acting as a deterrent.

### **B. Potential Misuse**

Concerns about dissatisfied and vengeful wives falsely accusing innocent husbands of marital rape have been raised repeatedly.<sup>23</sup> Critics worry that introducing this legislation could potentially open the floodgates for distressed women to use it as a weapon against their spouses.<sup>24</sup> However, it is essential to consider that rape trials carry a significant social stigma, making it unlikely that women would subject themselves to such emotional and public scrutiny purely out of spite. Many women depend on their husbands for financial support, further deterring them from making false allegations without careful thought. The criminal justice system, with its built-in safeguards such as the stringent requirement of proof beyond a reasonable doubt, makes it exceedingly difficult for baseless allegations to prevail. Denying protection to genuine victims due to the remote potential for misuse is unjustifiable, especially when the legal process involves rigorous scrutiny.

Historically, concerns of misuse have accompanied the introduction of laws aimed at protecting women. To address this, stringent counter-laws, such as Section 211 of the Code, which deals with filing false charges, can be implemented.<sup>25</sup> Instead of allowing the fear of misuse to hinder progress, it should reinforce trust in the legal system's ability to fairly adjudicate cases while ensuring justice for victims without compromising the rights of the accused. In addressing the grave issue of marital rape, we must prioritize the welfare of marginalized women over potential misuse concerns.

### **C. Implied consent**

The contention that marriage inherently implies consent to sexual intercourse challenges the

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<sup>23</sup> *Id.*

<sup>24</sup> *id.*

<sup>25</sup> Section 211, Indian Penal Code, No. 45 of 1860, INDIA CODE.

very core of matrimonial relationships, irrespective of whether they are viewed as sacred unions or contractual agreements.<sup>26</sup> The interpretation of Section 375 in the landmark Independent Thought judgment unequivocally asserts that sexual intercourse with one's spouse who is above the age of 18 does not constitute rape, deeming consent as immaterial.<sup>27</sup> Justice C Harishankar emphasized non requirement of wife's consent, citing exception 2, and supported married or unmarried classification as valid.<sup>28</sup>

This argument overlooks a crucial point: marriage can never imply consent to harm or violence. The law explicitly forbids the notion that marriage grants one party the authority to inflict harm or violence upon the other, undermining the fundamental principles of marital relationships and the legal framework. In the same judgement, Justice Rajiv Shakdher highlighted the importance of consensual sex in fostering a healthy marital partnership, contrasting it with non-consensual sex. The idea that marriage implies automatic consent to sexual intercourse contradicts the principles of mutual respect, dignity, and safety that underlie all healthy relationships and the core tenets of the law. Consent remains an essential element in any intimate relationship, even within marriage.

#### **4. Corrodes the institution of marriage**

The argument against criminalizing marital rape often cites concerns that such laws would disrupt marriages and lead to anarchy in families. In 2019, the former Chief Justice of India articulated his opposition to criminalizing marital rape, stating that it could destabilize the family platform, which he believed upholds essential family values.<sup>29</sup> Justice C Hari Shankar contends that the exception in question serves to shield the marital sphere from the slur of rape, effectively immunizing the marital relationship from the disgrace that accompanies it, regardless of the nature of the sexual activity within the marital bond, be it consensual or non-consensual.

However, it is crucial to challenge the notion that marital rape laws disrupt marriages. A marriage where a husband commits rape is inherently fractured, and preserving marriages

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<sup>26</sup> Nayak and Srivastava, *supra* note 17, at 4.

<sup>27</sup> Independent Thought v. Union of India, AIR 2017 SC 4904, (India).

<sup>28</sup> *Id.*

<sup>29</sup> Nupur Thapliyal, *Breaking: Delhi High Court Passes Split Verdict On Criminalizing Marital Rape, Justice Rajiv Shakdher Holds Exception 2 Of Section 375 IPC Unconstitutional*, LIVELAW, (May. 11, 2022), <https://www.livelaw.in/top-stories/delhi-high-court-passes-split-verdict-on-criminalizing-marital-rapejustice-rajiv-shakdher-holds-exception-2-of-section-375ipc-unconstitutional-198832?infinitemscroll=1>.

should not supersede the fundamental objective of criminal law: protecting an individual's bodily integrity and human rights. Upholding justice and equity must take precedence over preserving marriages. The law cannot condone forced cohabitation or shield a husband who commits rape, as demonstrated by discussions on Restitution of Conjugal Rights (RCR).<sup>30</sup> Justice Shakti Chandra rightly points out that allowing husbands sexual access without consent contradicts human rights principles and legitimates a “license to rape”.

Recognizing marital rape as grounds for divorce is a critical step in addressing this issue. The Delhi High Court, in 2016, deemed the denial of sex as “mental cruelty”.<sup>31</sup> It is contended that when a woman reports marital rape, reconciliation becomes implausible, as there is no room for “corrective behaviour”. Thus, it is asserted that, divorce becomes the only viable recourse, underscoring the urgency of legal recognition. In conclusion, criminalizing marital rape is necessary to protect human rights and ensure justice, even if it challenges traditional views of marriage.

## **5. Availability of other women centric legal frameworks**

Another contention against the criminalization of marital rape often revolves around the existence of laws designed to protect women, notably the Domestic Violence Act (“DV Act”), with a specific focus on Section 3.<sup>32</sup> The DV Act fails to address the most heinous form of sexual abuse—marital rape. It underscores a significant shortcoming in the legal framework, as even if marital rape were recognized as a form of sexual abuse, the remedies available under the Domestic Violence Act remain inadequate, offering only civil remedies. To rectify this situation, it is imperative to ensure that marital rape is treated with the severity it warrants, akin to the punishment prescribed for rape under Section 376 of the Code.<sup>33</sup>

One major impediment to achieving this alignment in punishments is the courts' adherence to the concept of an “ideal rape victim”. The Farooqui case<sup>34</sup> exemplifies this issue, where the Court's assessment of the accused's liability hinged on the prior romantic relationship between the parties and their familiarity. This perspective cast doubts on the victim's credibility,

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<sup>30</sup> Section 9, Hindu Marriage Act, No. 25 of 1955, INDIA CODE.

<sup>31</sup> *Denying sex to spouse for a long time is mental cruelty, ground for divorce: High Court*, INDIA TODAY (May. 11, 2022), <https://www.indiatoday.in/india/story/denying-sex-to-spouse-a-long-time-mental-cruelty-ground-for-divorce-high-court-340411-2016-09-11>.

<sup>32</sup> Section 3, The Protection of women from Domestic Violence Act, 2005, No. 43 of 2005, INDIA CODE.

<sup>33</sup> Section 376, Indian Penal Code, No. 45 of 1860, INDIA CODE.

<sup>34</sup> *Mahmood Farooqui v State*, 243 (2017) DLT 310, (India).



insinuating those previous acts of intimacy implied consent to subsequent activities, such as oral sex. The problematic “idealistic” victim mindset in the courts tends to recognize rape only when it conforms to a stereotypical scenario involving two strangers in a dark alley, leaving the woman traumatized and helpless. Such a perspective detrimentally affects the rights of women, particularly married women, as the element of “familiarity” can lead courts to downplay the severity of the harm inflicted upon them. Furthermore, some courts have failed to grasp the gravity of marital rape by comparing it unfavourably to stranger rape. This approach is exemplified by a statement by a judge in the RIT foundation case,<sup>35</sup> asserting that the degree of outrage experienced by a wife compelled to have sex with her husband against her will is not equivalent to that felt by a woman assaulted by a stranger. It highlights the pressing need to challenge established norms within the legal system to better safeguard the rights and dignity of married women.

A comprehensive re-evaluation of the legal system's stance on marital rape to protect married women's rights and dignity effectively is thus necessitated. Penalties for marital rape should mirror those for rape under Section 376 of the Code,<sup>36</sup> regardless of marital status. Marriage should not lead to lighter sentences, nor should the absence of physical resistance serve as a valid defence. In cases of marital rape, wives should have the option to seek divorce decrees, with clear legal provisions addressing this issue. It is maintained that this approach rectifies legal gaps, ensuring that marital rape is penalized adequately while granting victims the necessary legal recourse to secure justice and safeguard their rights and dignity.

## **VI. ANCILLARY ARGUMENTS**

### **A. In comparison to defamation and bigamy**

The courts' hesitance in classifying marital rape as a “personal matter” rather than a “public wrong,” has hindered its criminalization. The Supreme Court in 2015 dismissed a woman's plea to criminalise marital rape even though she had been a victim of repeated acts of sexual violence at the hands of her husband. Justice AR Dave and Justice R Banumathi, ruled that she was “espousing a personal cause and not a public cause”.<sup>37</sup> This paper contends that this argument is fallacious and draws parallels between marital rape and offenses like defamation

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<sup>35</sup> RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404, (India).

<sup>36</sup> Section 376, Indian Penal Code, No. 45 of 1860, INDIA CODE.

<sup>37</sup> State v. Vikash, Cri. MA No. 9083/2007, (India).

and bigamy. The legislative intent in categorising a law as civil or criminal primarily considers the scope of its impact on the parties involved. When the act is of such a grievous nature that its repercussions extend beyond the immediate parties to impact society as a whole, the legislature deems it necessary to prescribe punitive measures under criminal law.

The harm caused by defamation is primarily reputational and financial, however, in the case of Subramanian Swamy,<sup>38</sup> the Supreme Court upheld the constitutionality of the criminal offence of defamation punishable under Section 500 IPC<sup>39</sup> and reasoned that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public wrong. Subsequently, Bigamy has civil definition under Section 17 HMA,<sup>40</sup> but can be punished under Section 494 of the IPC<sup>41</sup>. In Sarla Mudgal,<sup>42</sup> the Court held that the apostate husband would be guilty of bigamy, a civil law, under Section 494 of the IPC, keeping in mind the grievous nature and heinously of the crime committed.

Bigamy and Defamation, while a crime under IPC, is relatively less grave compared to the physical and psychological harm inflicted by marital rape. This discrepancy in legal treatment underscores the urgency of addressing marital rape within the legal framework.

## **B. Fundamental wrong**

When a woman is subjected to forced sexual intercourse by her husband, her ability to exercise the right to life enshrined in Article 21<sup>43</sup> is cast into doubt, and her dignity is gravely compromised. In *Bodhisattwa Gautam v. Subhra Chakraborty*,<sup>44</sup> the Supreme Court eloquently labelled rape as a violation of fundamental rights. Paradoxically, the legal system fails to uphold this assertion by not recognizing marital rape. The exception 2 in Section 375 of the Code, raises constitutional concerns. Justice Shakti Chaudhary has asserted that the marital exception, violates Articles 14, 15, 19(1)(a), and 21 of the Constitution, and thus, is deemed unconstitutional.

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<sup>38</sup> Subramaniam Swamy vs Union of India, AIR 2016 SC 2728, (India).

<sup>39</sup> Section 500, Indian Penal Code, No.45 of 1860, INDIA CODE.

<sup>40</sup> Section 17, Hindu Marriage Act, No. 55 of 1955, INDIA CODE.

<sup>41</sup> Section 494, Indian Penal Code, No.45 of 1860, INDIA CODE.

<sup>42</sup> Sarla Mudgal v. Union of India, AIR 1995 SC 1531, (India).

<sup>43</sup> INDIA CONST. art. 21.

<sup>44</sup> Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SCC 490.

## **VII. HOW MARITAL RAPE AFFECTS FAMILIES**

Marital rape has profound repercussions on both individuals and families. It corrodes the bedrock of trust in a marriage, which is typically rooted in love, respect, and mutual consent. To be a woman getting raped in her marriage, being unable to raise her voice as it would enable a stigma is a consequence of the lack of legal frameworks. It is rooted in patriarchal norms and perpetuates the notion that one spouse has control over the other's body. Consequently, this grave breach of trust can have far-reaching and deleterious effects on the entire family unit.

Children may witness the abuse, even if it is not directed at them. Exposure to such violence can have profound and negative effects on their emotional and psychological well-being. Furthermore, marital rape can have severe and lasting effects on the mental health of the survivor, as they may suffer from trauma, anxiety, depression, or even post-traumatic stress disorder, which can affect their ability to function within the family unit. This not only affects the individual but also has repercussions for the overall family dynamics. It is suggested that the criminalization of marital rape can strengthen the institution of marriage by sending a clear message that consent is non-negotiable.

## **VIII. CONCLUSION**

The research paper looked into the complex issue of marital rape and addressed the question of whether it should be criminalized under the current legal framework. It also contemplated subjecting such offences to penal measures under the IPC. At the intersection of morality and law, marital rape, has long veiled in silence and societal norms, and it necessitates careful thought and action. When someone you trust the most betrays your faith, it defiles your spirit; it not only causes harm to women's body but also undermines their trust in their husbands. The historical evolution of marital rape from a taboo to emblem of gender justice mirrors the importance of individual rights within the scared institution of marriage. It makes us confront the harsh realities of marriage.

The power of the judiciary to impact family dynamics is demonstrated in Restitution of Conjugal Rights cases, which frequently downplay the involvement of courts. The advantages and disadvantages of criminalizing marital rape can be better understood by comparing it to bigamy and defamation legislations.

The prohibition of marital rape is morally imperative, and this reality stands out in the complex web of cultural, legal, and ethical ramifications. The paper argued that consent does not vanish when a couple gets married. Conclusively, the inclusion of marital rape in the Domestic Violence Act and the IPC goes well beyond a mere legislative amendment; it is an essential stride towards achieving a fair and equal society. It will balance the sacredness of marriage and human rights. The recently passed Bharatiya Nyaya Sanhita retains the marital rape exception – that our national parliament, in 2023, squandered a golden opportunity to remove this exception from our criminal law, yet they abstained from so.<sup>45</sup> The fight for gender equality and social justice will advance tremendously with this measure, which would affirm that no one should endure violence, even inside the sacred institution of marriage.

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<sup>45</sup> <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023>