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# **ANALYZING THE DIFFERENCE IN PUNISHMENT FOR THE OFFENCE OF RAPE UNDER THE PRINCIPAL CRIMINAL LAW - BASED UPON THE MARITAL STATUS OF THE VICTIM, IN THE LIGHT OF GENDER JUSTICE AND INFLUENCE OF PATRIARCHAL IDEOLOGY OVER THE LAW**

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## **ABSTRACT**

The contention of the second wave of feminism which is said to be observed from 1960s to 1980s mainly revolves around the term ‘patriarchy’ and oppression of women by men in some or the other aspect. Patriarchy seems to be deeply rooted in the thought process of the law makers till date as even after almost 75 – years of enactment of the Constitution which guarantees ‘equality before law, and equal protection of laws,’ it is observed that the essence of equality and reasonable classification has not been completely understood and implemented by the lawmakers as even today, the framing of laws on the lines of patriarchal ideology is observed. This seminar paper makes an attempt to highlight certain differences that prevail in the principal criminal law that is the Bhartiya Nyaya Sanhita, (previously known as the Indian Penal Code), with regard to the punishment been prescribed to a person accused for the offence of rape. Provisions under sections 63, 64, and 65 of the BNS are the major sections that would be discussed in detail in this seminar paper. Also, the rationale behind prescribing different punishments for the same offence of rape, the only difference being the marital status of the victim. Also, the major issue that whether such difference in the punishment to the accused is a reasonable classification or not would be discussed, and would it be appropriate to contend that the law is influenced by the idea of patriarchy in this regard.

**Keywords:** Reasonable Classification, Patriarchy, Punishment for Rape, Bhartiya Nyaya Sanhita

## 1. Introduction:

Laws are meant to protect individuals from harm and ensure justice is served equally. However, there are instances where legal provisions create discriminatory distinctions, either intentionally or unintentionally. One such disparity exists in India's rape laws, where the punishment for committing rape of a minor girl differs based on whether she is married or unmarried. This inconsistency not only raises questions about gender justice but also highlights the deep-rooted patriarchal influence in lawmaking.

Under Indian law, sexual intercourse with a girl below 18 years of age is considered statutory rape, meaning that even if the girl gives consent, it is legally invalid. This is based on the understanding that minors are incapable of making informed decisions regarding their bodily autonomy. As a result, rape of an unmarried girl below 18 is treated as a grave crime, with strict punishments ranging from 20 years in prison to life imprisonment or even the death penalty in rare cases. However, if the same girl is married, the situation changes drastically. The law does not extend the same level of protection to a married minor girl, and the punishment for rape in such cases is often less severe or unclear.

This distinction in punishment raises serious constitutional concerns. The Indian Constitution guarantees equality before the law<sup>1</sup> (Article 14), prohibits discrimination<sup>2</sup> (Article 15), and protects the right to life and personal liberty<sup>3</sup> (Article 21). When the law treats two minor girls differently based on their marital status, it violates these fundamental rights. Marriage should not strip a girl of her legal protection against sexual violence.

### 1.1 The Problem with the Law

This inconsistency exists primarily because of Exception 2 to Section 63 of the Bhartiya Nyaya Sanhita, 2023, which states that sexual intercourse by a husband with his wife is not considered rape, provided she is not below 18 years of age.<sup>4</sup> Although the Supreme Court, in *Independent Thought v. Union of India* (2017)<sup>5</sup>, increased this threshold to 18 years under the

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<sup>1</sup> Article 14, The Constitution of India.

<sup>2</sup> Article 15, The Constitution of India.

<sup>3</sup> Article 21, The Constitution of India.

<sup>4</sup> S. 63, The Bhartiya Nyaya Sanhita, 2023.

<sup>5</sup> *Independent Thought v. Union of India*, 2017 (10) SCC 800.

BNS, which was 16 years under the IPC. The law still does not recognize marital rape for adult women and remains unclear on the severity of punishment for rape of married minor girls.

The question that arises is: Why should an unmarried girl below 16 receive stricter legal protection than a married girl of the same age? The harm suffered by both is the same, and their ability to consent is equally questionable under the law. However, the legal system continues to treat marriage as an exception, effectively allowing child marriage to become a shield for rapists in some cases.

Section 65 of the Bhartiya Nyaya Sanhita, 2023 makes provision regarding punishment for rape in certain cases. Here the wording of the law is clear that if any person commits rape of a girl who is less than 16 years of age shall be punished with rigorous imprisonment of not less than 20 years which may extend to imprisonment for life which shall mean imprisonment for remainder of that person's natural life.<sup>6</sup> Whereas, when it comes to section 63 of the Sanhita which makes an exception. The physical act committed with a woman who is married with the accused and is below the age of 18 years is punishable under section 64 of the Sanhita which provides a comparatively lesser punishment that is '*rigorous imprisonment of either description not less than ten years which may extend to life imprisonment.*'<sup>7</sup> The reading of the text of the law reflects the disparity in the law which leads to a discrimination on the victim on the basis their marital status.

## 1.2 A Constitutional and Human Rights Issue

The difference in punishment based on marital status is not a reasonable classification under Article 14 of the Constitution. For a classification to be valid, it must have a clear, logical basis and serve a legitimate purpose. However, in this case, there is no rational justification for why a married minor girl should be less protected than an unmarried minor girl. Instead, this distinction appears to be rooted in patriarchal notions of marriage, where a wife is expected to submit to her husband.

From a human rights perspective, this distinction contradicts international conventions such as the United Nations Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), both of which

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<sup>6</sup> S. 65, The Bhartiya Nyaya Sanhita, 2023.

<sup>7</sup> S. 64. The Bhartiya Nyaya Sanhita, 2023.

India has ratified. These treaties emphasize that all children must be protected from sexual violence, irrespective of marital status.

### 1.3 The Role of Patriarchy in Lawmaking

Historically, Indian laws regarding women's rights have been influenced by patriarchal norms. During colonial rule, women were often treated as property of their husbands, and this mindset carried over into the legal system even after independence. The idea that marriage legitimizes sexual intercourse, even in cases of minors, continues to be reflected in present-day laws.

Despite growing awareness and judicial progress, legislative changes in criminalizing marital rape or ensuring equal punishment for rape of all minor girls have faced strong resistance. Arguments against these changes often cite protection of family structure, concerns about false cases, and cultural traditions, but these justifications do not hold ground when compared to the fundamental rights of the victim.

Further, it is observed that there are only 74 women candidates in the Lok Sabha, 2024<sup>8</sup> out of the 543 total seats which means there is merely 13.63% representation and involvement of women in the process of law making.

### 1.4 Why This Issue Matters

The distinction in punishment affects real lives. Child marriages, though legally prohibited, still occur in many parts of India. A girl who is forced into marriage at 15 or 16 is already vulnerable, and if she faces sexual violence within that marriage, she should have the same legal recourse as an unmarried girl. However, under current laws, she does not. This not only affects the justice she receives but also sends a wrong message - that marriage, even if forced or unlawful, reduces a girl's rights over her own body.

If India truly values gender equality and child protection, it must remove this legal disparity and ensure that all minor victims of rape receive the same level of legal protection,

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<sup>8</sup> Lok Sabha Elections 2024 Analysis of Criminal Background, Financial, Gender and Other Details of MP's, National Election Watch, available at: [https://www.myneta.info/LokSabha2024/index.php?action=summary&subAction=winner\\_women&sort=candidate](https://www.myneta.info/LokSabha2024/index.php?action=summary&subAction=winner_women&sort=candidate), last seen: 18/03/2025.

regardless of their marital status.

### **1.5 The Way Forward**

To address this issue, the Indian government and judiciary must take decisive action:

1. Amend Section 63 BNS to eliminate distinctions based on marital status for minor victims.
2. Ensure equal punishment for rape of all minor girls, married or unmarried.
3. Strictly enforce child marriage laws, so that marriage cannot be used to shield sexual offenders.

This issue is not just about legal inconsistencies - it is about how society values the rights and dignity of girls. As long as the law continues to differentiate between married and unmarried minors in rape cases, it legitimizes harmful patriarchal norms and denies equal justice to victims. The time has come for a legal system that prioritizes individual rights over outdated societal norms and ensures that every child, regardless of her marital status, is equally protected under the law.

### **2. Reading the Law:**

The century old statute, The Indian Penal Code, 1860 was repealed by the parliament in the year 2023 and a new law was drafted to codify the principal criminal law of India called as the Bhartiya Nyaya Sanhita, 2023 which came into force from 1<sup>st</sup> of July 2024. In this Sanhita, majority of the provisions are taken as it is from the IPC, 1860. The only major change observed here is seen with regard to the restructuring of the sections and the chapterisation of the law. Here, in this new criminal laws, one noteworthy change is observed that various landmark judgments of the Hon'ble Supreme Court are codified in the provisions.

Speaking about the provisions regarding the offence of Rape and its punishments, it is observed that from the landmark judgment of *Independent Thought v. Union of India* the age prescribed in the second exception of section 63 has been increased from 16 to 18 years. Further, there is no much difference in the punishments prescribed for the offence of rape under the new law.

The major concern of this research is that there is a difference being occurred with regard to the punishments prescribed for rape. The difference is created on the basis of the marital status. It is seen from the reading of the text of the law (sections 63, 64 and 65) that the law makes this difference by providing more stringent punishment for committing rape of a woman who is below 16 years of age and is unmarried. Whereas, the punishment is lesser when rape is caused by the husband of a minor victim who may at times be of less than 16 years of age.

*‘Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.’*<sup>9</sup> This is the second exception to the offence of rape discussed under section 63 of the BNS. This section implicates that if wife is not below 18 years of age, physical act committed without consent does not amount to the offence of rape. Another major point which is reflected here is that, if the age of the wife is less than 18 years of age (maybe less than 16 also), the offence which takes place in this situation is of rape which is defined under section 63 of the Sanhita and punishable under section 64 of the Sanhita. *‘Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.’*<sup>10</sup> This punishment is invoked when offence falls under the definition prescribed under section 63 of the BNS.

Whereas, section 65 of the Sanhita lays down a stringent punishment for the offence of rape in certain cases which reads as, *‘Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.’*<sup>11</sup> Considering the age of the victim as per this section, the stringent punishment can be held as significant as such offence is heinous in nature stringent punishment is necessary, but this rigidity is diluted in sections 63 and 64 by prescribing a lesser punishment where the victim can belong to the same age group the only factor considered by law for such difference being in that case is the accused is the husband of the victim.

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<sup>9</sup> Supra 4.

<sup>10</sup> Supra 7.

<sup>11</sup> Supra 6.

### 3. View as per the Constitution:

Laws are meant to protect individuals and ensure justice is served fairly. However, when legal provisions create unjustified distinctions between people in similar situations, they become discriminatory rather than protective. One such inconsistency in Indian law relates to the punishment for rape, where the severity of punishment depends on whether the minor victim is married or unmarried.

Under Indian law, if a girl below 16 years of age is a rape victim, the punishment is a minimum of 20 years in prison, which may extend to life imprisonment or even the death penalty in extreme cases. However, if the same girl is married, the law does not extend the same level of protection. This distinction is not only illogical and discriminatory but also violates fundamental constitutional principles such as equality before the law (Article 14), protection against discrimination (Article 15), and the right to dignity and personal liberty (Article 21).

Section 63 of the BNS defines rape and establishes that sexual intercourse with a girl below 18 years of age is statutory rape, irrespective of consent.

Section 65 of BNS states that if the victim is below 16 years of age, the punishment shall be a minimum of 20 years, which may extend to life imprisonment or death.

Exception 2 to Section 63 BNS states that sexual intercourse by a husband with his wife is not rape, provided the wife is not below 18 years of age. This has been laid down by the Supreme Court in *Independent Thought v. Union of India* (2017), where the marital rape exception for girls below 18 was struck down. However, the legal ambiguity regarding punishment in such cases still persists.

#### 3.1 In the light of Article 14:

*'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'*<sup>12</sup> Article 14 guarantees equal protection of the laws but does not prohibit classification if it is based on a reasonable and justifiable distinction. However, the

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<sup>12</sup> Article 14, The Constitution of India.

classification must satisfy two key conditions, as laid down in multiple Supreme Court judgments:

- **Intelligible Differentia:** There must be a clear and reasonable basis for distinguishing between two groups.
- **Rational Nexus:** The classification must have a direct and logical connection with the objective the law seeks to achieve.

If a classification fails to meet these two tests, it is considered arbitrary and unconstitutional under Article 14. The difference in punishment for rape based on the marital status of the victim clearly fails both tests. The fundamental flaw in the law is that it treats rape differently based on whether the minor victim is married or unmarried, even though the harm suffered by the victim is the same. A minor girl below 16 is legally incapable of giving consent to sexual intercourse, irrespective of whether she is married or not.

Both a married and an unmarried minor girl suffer the same physical, psychological, and emotional trauma due to rape. The age of the victim, not her marital status, should be the determining factor in legal protection and punishment. Since the injury, trauma, and violation of bodily autonomy remain the same, there is no reasonable basis to classify victims differently based on marriage. The law artificially divides victims into two categories - married and unmarried - without any logical justification, thus failing the test of intelligible differentia.

The second test for reasonable classification is that the distinction must have a rational nexus with the objective the law aims to achieve. The objective of rape laws is to protect victims from sexual violence and ensure strict punishment for offenders. However, reducing the punishment for rape based on marital status does not serve this objective. Instead, it weakens legal protection for minor girls who are married. The law effectively grants impunity to husbands for raping their minor wives, undermining the purpose of criminal law, which is to protect all individuals equally. Since the legal distinction does not serve any legitimate purpose, it fails the rational nexus test and is therefore arbitrary and unconstitutional.

The Supreme Court has consistently ruled that classifications must not be arbitrary, discriminatory, or based on outdated social norms. The following judgments reinforce the argument that different treatment of married and unmarried minor girls in rape laws violates



## Article 14.

In *E.P. Royappa v. State of Tamil Nadu* (1974) The Supreme Court ruled that arbitrariness is the very antithesis of equality.<sup>13</sup> If a law creates an unfair distinction without a rational basis, it violates Article 14. Granting different punishments for rape based on marital status is arbitrary, as the victim's harm remains the same.

In *Navtej Singh Johar v. Union of India* (2018), the Court decriminalized consensual same-sex relationships, holding that laws cannot reinforce outdated social norms at the cost of individual rights<sup>14</sup>. Similarly, the assumption that marriage reduces a girl's right over her own body is a patriarchal norm that must not dictate legal protection against rape.

In *Joseph Shine v. Union of India* (2018) striking down the adultery law, the Supreme Court emphasized that marriage does not take away a woman's autonomy and dignity<sup>15</sup>. If a married woman has equal rights in other aspects of life, why should she receive weaker legal protection against rape?

In *Independent Thought v. Union of India* (2017) the Supreme Court struck down the marital rape exception for minor girls below 18, ruling that child marriage cannot be used as a shield for rape<sup>16</sup>. However, the legal framework still does not ensure equal punishment for all rapists, regardless of the victim's marital status, leaving an incomplete protection for married minors.

### 3.2 In the light of Article 15:

*'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.'*<sup>17</sup> While the provision allows for reasonable classification, such classification must be justifiable and not arbitrary. However, the difference in punishment for rape of married vs. unmarried minors is an unjustified classification that directly discriminates against married minor girls. The offence of rape is the same, whether the victim is married or unmarried. However, the punishment varies based on marital status,

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<sup>13</sup> *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.

<sup>14</sup> *Navtej Singh Johar v. Union of India*, 2018 INSC 790.

<sup>15</sup> *Joseph Shine v. Union of India* (2018), AIR 2018 SC 4898.

<sup>16</sup> *Supra* 5.

<sup>17</sup> Article 15 (1), The Constitution of India.

leading to unequal treatment of victims. This differential treatment does not serve a legitimate purpose. Instead, it reinforces the outdated idea that a husband has greater rights over his wife's body than any other person. The law fails to recognize that marriage does not eliminate a woman's fundamental right to bodily autonomy.

The Supreme Court of India has repeatedly ruled that laws must not discriminate against women based on outdated societal norms.

In *Anuj Garg v. Hotel Association of India* (2008), the Supreme Court ruled that laws based on gender stereotypes violate Article 15<sup>18</sup>. The assumption that marriage diminishes a girl's right to legal protection is a clear gender stereotype. In *Charu Khurana v. Union of India* (2015), the Court stated that women cannot be subjected to restrictions simply because of traditional societal roles<sup>19</sup>. Similarly, the law cannot justify lower punishment for rape simply because the victim is married. Thus, differentiating punishment for rape based on marital status directly contradicts Article 15(1) and is unconstitutional.

*'Nothing in this article shall prevent the State from making any special provision for women and children.'*<sup>20</sup> Article 15(3) allows the State to make special provisions for women and children to ensure their protection and empowerment. It is a progressive provision meant to remove historical disadvantages faced by women. However, the difference in punishment for rape of married minors contradicts the very purpose of Article 15(3).

The primary objective of Article 15(3) is to enhance legal protection for women and children. However, by lowering the punishment for raping a married minor, the law weakens legal protection for a vulnerable group. A married minor girl is equally in need of protection as an unmarried minor. However, the law denies her the same level of justice. The State has a duty to protect all women and children equally. By maintaining different punishments for rape based on marital status, the law fails in its constitutional obligation under Article 15(3).

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court held that laws must be interpreted in a way that provides maximum protection to women against gender-based violence<sup>21</sup>. Differentiating punishment for rape based on marital status goes against this

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<sup>18</sup> *Anuj Garg v. Hotel Association of India*, AIR 2008 SC 663.

<sup>19</sup> *Charu Khurana v. Union of India*, (2014) 12 S.C.R. 259.

<sup>20</sup> Article 15(3), The Constitution of India.

<sup>21</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

principle. In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991), the Court ruled that every woman, regardless of her background or status, has the right to bodily integrity and dignity<sup>22</sup>. This means that a married minor girl must be given the same protection as an unmarried minor girl.

Thus, the current legal framework violates Article 15(3) by failing to protect married minor girls adequately.

### 3.3 In the light of Article 21:

*'No person shall be deprived of his life or personal liberty except according to procedure established by law.'*<sup>23</sup> Over the years, the Supreme Court has expanded the meaning of 'life' to include the right to live with dignity. This means that a person's life is not limited to mere survival but must include dignity, autonomy, and freedom from degrading treatment. In *Francis Coralie Mullin v. Union Territory of Delhi* (1981), the Supreme Court held that the Right to Life under Article 21 includes the right to live with human dignity<sup>24</sup>. In *Vishaka v. State of Rajasthan* (1997), the Court emphasized that sexual violence violates a woman's dignity and is against the constitutional values of gender justice<sup>25</sup>. In *Justice K.S. Puttaswamy v. Union of India* (2017), the Court reaffirmed that bodily autonomy is a fundamental right protected under Article 21<sup>26</sup>.

Since rape is a grave violation of bodily autonomy and dignity, the law must treat all victims equally. However, by differentiating punishment based on marital status, the legal system denies married minor girls the full protection of Article 21.

The essence of the Right to Life under Article 21 is the freedom to control one's own body and make personal choices. The law recognizes that a minor girl below 18 years cannot give valid consent for sexual intercourse. However, if she is married, the law assumes that she has consented to sexual intercourse with her husband, even though she is still a minor. This distinction is illogical and unconstitutional, as marriage cannot take away a girl's fundamental

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<sup>22</sup> *State of Maharashtra v. Madhukar Narayan Mardikar*, AIR 1991 SC 207.

<sup>23</sup> Article 21, The Constitution of India.

<sup>24</sup> *Francis Coralie Mullin v. Union Territory of Delhi*, 1981 AIR 746.

<sup>25</sup> *Supra* 21.

<sup>26</sup> *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

right to bodily autonomy.

The Supreme Court has held in multiple cases that consent is central to sexual autonomy. In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991), the Court ruled that every woman, irrespective of her status, has the right to refuse sexual advances<sup>27</sup>. However, by treating forced sex within marriage differently, the law denies married minor girls the right to say no, violating their personal liberty under Article 21.

The marital rape exception is based on the outdated belief that a wife is the property of her husband. However, the Supreme Court has repeatedly stated that marriage does not take away a woman's fundamental rights. In *Joseph Shine v. Union of India* (2018), the Court struck down adultery laws that treated women as the property of their husbands<sup>28</sup>, reaffirming that marriage does not reduce a woman's autonomy.

Further, rape victims, regardless of marital status, experience severe psychological trauma, including depression, anxiety, and post-traumatic stress disorder (PTSD). However, the law's differential treatment reinforces the belief that a married girl must accept sexual violence as part of her marital duties, deepening her trauma. An unmarried minor girl who is raped receives strong legal protection, while a married minor girl is left with little to no recourse. This social and legal neglect forces many married minors to suffer in silence, denying them justice and rehabilitation.

#### **4. Patriarchal Influence on Law Making:**

The Indian legal system, like many others, has been shaped by patriarchal values that have historically placed women in subordinate positions. This influence is particularly visible in laws related to sexual violence and rape, where punishment varies based on the marital status of the victim. The differentiation in punishment for rape of a minor girl depending on whether she is married or not reflects deep-seated patriarchal biases that view women primarily in relation to men, rather than as individuals with independent rights.

Feminist jurisprudence, which examines the law through the lens of gender justice, provides critical insights into how patriarchy shapes legal frameworks, reinforcing gender

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<sup>27</sup> Supra 22.

<sup>28</sup> Supra 15.

inequality and limiting women's rights. In the case of rape laws, the difference in punishment suggests that a married minor girl's autonomy over her body is less important than preserving the institution of marriage. This not only denies married minor girls equal protection under the law but also normalises sexual violence within marriage.

Patriarchy influences legal systems in ways that protect male dominance while controlling women's bodies and sexuality. This is evident in:

- Differentiated punishments for rape based on marital status – implying that a married girl's body is the property of her husband.
- Marital rape exception in the BNS – reinforcing the belief that forced sex in marriage is not rape.
- Lack of legal recognition of a wife's right to bodily autonomy – making it difficult for married women to seek legal protection against sexual violence from their husbands.

The distinction in punishment for rape of a minor girl based on her marital status is a clear example of how patriarchal notions influence legal provisions. It reflects the historical view that marriage legitimizes sexual access to a woman's body, thereby making forced sex within marriage less serious or even acceptable.

Feminist jurisprudence is a legal theory that examines how the law perpetuates gender inequalities and seeks to reform laws to achieve true gender justice. It challenges:

- Male-centric interpretations of law that ignore women's experiences.
- Laws that treat women as property or dependent on men.
- Legal norms that prioritize societal institutions (like marriage) over individual rights.

Further, it is observed that the number of female members in the parliament are only about 13.63% of the total capacity of the Lok Sabha<sup>29</sup> which is a clear minority of women in the process of lawmaking. There is a need to undertake certain reforms to overcome this issue and enhance the women participation in lawmaking due to which certain issues created by law

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<sup>29</sup> Supra 8.

which attacks the dignity of the women can be taken care of. The notion that 'law is male' has to be falsified by undertaking such measures and balancing the laws in a more neutral manner has to be done so that such constitutional inconsistencies could be worked upon and enact such laws that could ensure justice to every stratum of women irrespective of their marital status and the person committing the offence against them.

Another considerable point regarding the inconsistency in the law can be traced back to the period when the law was enacted for the very first time. The initial penal code of India was drafted by the British Government wherein no representation of women was observed and also the social, political and economic conditions at certain instances were ignored by the law makers. This can also be held as a major reason for the disparity prevailing in the law as the new criminal law enacted by the parliament is very much influenced from the older law.

Considering the above arguments, it can be held that the law has an influence of patriarchal ideology till date and even after 75 years of adopting the Constitution, such a major issue prevails in the criminal law in India. An attempt to exploit women in the name of preservation of the institution of marriage is in continuity which now requires a serious observation by the lawmakers and hence there is a need to amend these provisions of the law to equally safeguard the victims irrespective of their marital status and who the accused is.

## **5. Conclusion:**

The legal system is meant to uphold justice, fairness, and equality for all individuals, regardless of their gender or marital status. However, the disparity in punishment for the crime of rape based on the marital status of the victim reflects a deep-rooted patriarchal bias that continues to influence legal provisions. This differentiation not only violates fundamental constitutional principles such as equality (Article 14), non-discrimination (Article 15), and the right to life and dignity (Article 21) but also normalizes the idea that a woman's bodily autonomy is secondary to her marital status.

Through this research, it has been established that the Bhartiya Nyaya Sanhita contains provisions that differentiate the punishment for rape based on whether the victim is married or not. This distinction is neither reasonable nor justifiable under constitutional scrutiny. It sends the problematic message that forced sex within marriage is less serious than rape outside of

marriage, thereby undermining a woman's right to bodily autonomy, dignity, and self-determination.

The Indian Constitution guarantees equal protection of the law to all individuals. However, the discriminatory approach towards punishment for rape based on marital status violates this guarantee. The principle of reasonable classification under Article 14 allows for differential treatment only when there is an intelligible differentia (a valid distinction) and a rational nexus (a reasonable connection to the purpose of the law). However, in the case of rape laws, the distinction between married and unmarried victims serves no legitimate legal objective. Instead, it reinforces outdated social norms that prioritize the institution of marriage over a woman's fundamental rights.

Furthermore, Article 15 of the Constitution explicitly prohibits discrimination on the grounds of sex. The differentiation in punishment for rape based on marital status amounts to indirect discrimination, as it assumes that once a woman is married, she loses certain protections under the law. The essence of Article 15 is to empower women and protect them from societal inequalities, but these legal provisions do the exact opposite—they make married minor girls more vulnerable to exploitation.

The violation of Article 21 (Right to Life and Personal Liberty) is even more alarming. The Supreme Court has repeatedly held that the right to life includes the right to dignity, bodily autonomy, and privacy. By reducing the severity of punishment for rape based on marital status, the law denies married minor girls their fundamental right to live with dignity and free from sexual violence.

This research also highlights how patriarchal ideology has historically influenced the drafting and interpretation of laws. The differentiation in punishment stems from an outdated societal belief that marriage grants a husband sexual rights over his wife. This belief is deeply embedded in patriarchal traditions where women are seen as subordinates to their husbands.

The influence of patriarchy in lawmaking is evident in multiple ways:

- The marital rape exception under Section 63 of the BNS reflects the belief that a husband has a right over his wife's body.
- The differentiation in punishment for raping a married minor girl versus an unmarried

minor girl treats marriage as a justification for reduced legal protection.

- The legal system prioritizes protecting the institution of marriage over protecting individual rights, reinforcing the idea that women exist primarily in relation to men.

Feminist jurisprudence challenges these patriarchal biases in lawmaking and argues that women's rights should be based on their individuality, not their relationships with men. Marriage should never be a justification for reducing legal protections against sexual violence. The idea that a minor girl's rape is a graver offence if she is unmarried but less severe if she is married is not only illogical but also inhumane.

The differentiation in punishment has severe social and psychological consequences for women:

- Normalization of Marital Rape: When the law fails to punish rape within marriage with the same severity, it sends a message that sexual violence by a husband is not a serious crime. This discourages women from reporting abuse and keeps them trapped in coercive relationships.

- Denial of Justice: Married minor girls are left with limited legal remedies when they face sexual violence from their husbands. The law, instead of protecting them, makes them invisible victims.

- Violation of International Human Rights Standards: India is a signatory to various international conventions such as CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), which emphasize that all forms of sexual violence should be equally condemned, regardless of marital status. The current laws fail to meet these international commitments.

To ensure true gender justice, the law must be reformed to eliminate the discriminatory distinction in rape punishments. The following steps must be taken:

1. Uniform Punishment for Rape, Regardless of Marital Status: The law must recognize all rape as equally grave offences, ensuring that no woman is denied justice simply because she is married.



2. Criminalization of Marital Rape: The marital rape exception in Section 63 BNS must be abolished, as it contradicts the principles of equality and dignity.

3. Prioritizing Women's Autonomy Over Marital Norms: The legal system should shift from a marriage-centric approach to a consent-based approach, where a woman's right to say no is respected, irrespective of her marital status.

4. Judicial Interpretation Favouring Women's Rights: Courts should interpret existing laws in a manner that upholds constitutional principles rather than reinforcing outdated social structures.

5. Comprehensive Legal Education and Awareness: There must be greater awareness about women's legal rights, especially among young girls who are married off at a young age and remain unaware of their legal protections.

The disparity in punishment for rape based on the marital status of the victim is an example of how law can be misused to maintain patriarchal structures rather than ensure justice. The Indian Constitution, which promises equality, dignity, and freedom to all, cannot permit such an unjust distinction to exist. Marriage cannot and should not be a reason for reducing a girl's legal protections against sexual violence. It is time for India's legal system to move beyond archaic patriarchal norms and recognize that every woman—married or unmarried—deserves equal protection under the law. A just legal framework must ensure that a woman's right to bodily autonomy and dignity is upheld at all times, without exception. Until these discriminatory laws are reformed, the fight for gender justice remains incomplete.

**BIBLIOGRAPHY:**

1. The Constitution of India.
2. The Indian Penal Code, 1860.
3. The Bhartiya Nyaya Sanhita, 2023.
4. Independent Thought v. Union of India, 2017 (10) SCC 800.
5. E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.
6. Navtej Singh Johar v. Union of India, 2018 INSC 790.
7. Joseph Shine v. Union of India (2018), AIR 2018 SC 4898.
8. Anuj Garg v. Hotel Association of India, AIR 2008 SC 663.
9. Charu Khurana v. Union of India, (2014) 12 S.C.R. 259.
10. Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
11. State of Maharashtra v. Madhukar Narayan Mardikar, AIR 1991 SC 207.
12. Francis Coralie Mullin v. Union Territory of Delhi, 1981 AIR 746.
13. Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.
14. Lok Sabha Elections 2024 Analysis of Criminal Background, Financial, Gender and Other Details of MP's, National Election Watch, available at: [https://www.myneta.info/LokSabha2024/index.php?action=summary&subAction=winner\\_women&sort=candidate](https://www.myneta.info/LokSabha2024/index.php?action=summary&subAction=winner_women&sort=candidate).