
DIGNITY OVER THE SACRED BOND: THE NEED TO RECOGNISE “NO” WITHIN MARRIAGE

Mitali Sinha, Mitali Chauhan and Bhartendu Vimal, LL.B. (Hons.), University of Allahabad

ABSTRACT

Marriage in our society has been framed as a social institution with mutual rights and obligations, often neglecting individual dignity and autonomy within the intimate relationship. This article tries to examine the concept of consent in the marital context and evaluate how consent is misunderstood, practised and enforced in marital relationships.

By legal analysis, exploring legislative framework and societal tradition, the study shows how traditional notions of conjugal rights have always obscured bodily dignity and privacy, especially for women. While marriage is considered a socially and legally sanctioned union, it is often assumed that consent, once given at the time of marriage, is perpetual and irrevocable. The study emphasises that marriage does not give an implied license over the body of one spouse to the other, as dignity is inseparable from bodily autonomy and personal agency, both of which must be respected and preserved within marriage.

The article further explores the statutory tyranny under the Indian Criminal Law in the light of Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023, which grants legal exemption to husbands for their non-consensual sexual act with their wives, and also the social, cultural and economic factors that silence or affect the refusal within marriage like:- financial dependency, conservative gender norms and patriarchal power influence. The research also comparatively analyses the recent development and landmark judicial interpretations, indicating a global shift towards acknowledging that consent is continuous, revocable and indispensable irrespective of marital status. Conclusively, the article emphasises the urgent need to recognise and respect the articulation of “NO” within marriage.

Keywords: Marital Rape, Consent, Patriarchal Mindset, Spousal Sexual Violence, Psychological Trauma

INTRODUCTION

Sexual violence against married women or marital rape in India remains a social evil often influenced or exacerbated by social and cultural norms and economic factors that contribute to its normalisation and under-reporting. All across the country, the occurrence rate of sexual abuse among married women who are married is high. The report of the National Family Health Survey 4 (NFHS 4) shows that between 6.7 and 25 per cent of married women are victims of spousal sexual abuse.

Marriage within different societies and cultures is attributed to many basic and personal functions that provide structure for sexual gratification and other regulations. The most important function concerns procreation, the care of children and their education and socialisation. But what happens when that very sacred bond becomes a space where one partner's autonomy is silently taken away?

The only evolution we can witness in marriage right now is that marriage remains a bastion of patriarchal ideology, where the 'ideal' woman is defined by her submissiveness and the 'ideal' man is defined by his authority, reinforcing a structure where only one party is fully honoured”.

Even though marriage seems equitable, the patriarchal norms can lead to situations where a man's dominance is assumed and accepted by his wife happily, which continues to reflect a gendered imbalance. Such entrenched male dominance in marriage not only reinforces authority but also translates that into control over a wife's bodily autonomy, where exception of obedience blurs the boundaries of consent and individual rights, which reflects a mindset that normalises coercion and undermines consent. The conversion of the symbolic authority of the husband into normalising the coercive practise of intimacy is deeply rooted in this patriarchal attitude. At the heart of this issue lies a deep legal and moral paradox as the Constitution guarantees dignity, equality, and personal liberty, and the institution of marriage is still treated as a shield against accountability.

The Legal Fiction of Marital Unity and Doctrine of Coverture.

The idea that a husband cannot be guilty of raping his wife is not a modern legal gap—it is a deeply embedded historical construct. Its origins can be traced back to **English common law, particularly through the writings of Sir Matthew Hale in the 17th century.** Hale wrote that

‘the husband cannot be guilty of a rape committed by himself upon his lawful wife, for their mutual matrimonial consent and contract, and in this the wife has given up herself in this kind unto her husband, which she cannot retract. This notion became the foundation of what is now known as the “marital rape exemption”, as he also said in marriage, a wife irrevocably consents to sexual intercourse, making it legally impossible for a husband to rape his wife.

This notion is closely derived from the **Doctrine of Coverture**, a legal fiction where a married woman’s legal identity was effectively merged with her husband. She could not own property independently, enter into contracts, or claim rights separate from him. In essence, the wife was not seen as an autonomous individual but as an extension of her husband’s legal and social existence, as the whole legal identity was submerged into her husband’s identity.

This doctrine provides a symbolic authority of husband over their wife and completely normalises the idea that consent within marriage is permanent and unquestionable. Since a woman had no separate legal identity, the possibility of her refusing her husband was legally inconceivable. The law did not recognise her autonomy over her own body, reinforcing a system where marital relations were governed by duty rather than choice. The whole concept is designed to uphold the patriarchal value of treating women as their assets.

In the eyes of the law, a married woman did not exist as an individual, as her identity was subsumed entirely into that of her husband. A legal and social vacuum was created around women, where their choices, voices, and autonomy were systematically excluded. This space was narrow and controlled by husbands.

That deeply rooted notion from British colonial rule extended its legal and social framework to India; these principles were transplanted into Indian criminal law, particularly within Exception 2 to Section-63 of Bharatiya Nyaya Sanhita, 2023. The exception to rape within marriage openly reflects not indigenous cultural values alone, but a continuation of colonial-era legal thinking that prioritised the institution of marriage over individual rights. These ideas blurred the very notion of consent within marriage, giving rise to legal consequences that enabled the infringement of women’s rights and contributed to the normalisation of marital rape in society.

Socio-Cultural Factors and The Erasure of Refusal

The phrase “**Erasure of Refusal**” refers to how a married woman’s ability or right to say “No”

to non-consensual sexual intercourse is socially, legally and culturally denied and ignored within marriage. Numerous socio-cultural factors are deeply connected to the issue of marital rape, particularly in societies where marriage is considered a sacrosanct institution. Some of the factors are as follows-

1. **Presumed Male Authority-** In a society where the patriarchal tradition is prevalent, the husband has always been seen as the authority figure for his wife and women are socialised to be submissive, subordinate and expected to be obedient and sexually available and to conform to their husband's desire. This type of pre-defined gender roles and power imbalance normalises coercion and forceful sex in marriage.
2. **Stigma and Honour Burden-** In our community, the responsibility to carry the burden of family reputation or honour is often on the shoulders of women and speaking about sexual violence within marriage is stigmatised by society and treated as a taboo to discuss or report. This stigma attached to reporting rape by a spouse is often higher than that of stranger rape, as it is viewed as a betrayal of the family unity. Victims are often seen and held responsible for bringing shame to the family and violating societal expectations of a "good wife".
3. **Financial Dependency-** Many women are financially dependent on their husbands, making it difficult for women to resist, report or leave the abusive marriage. This dependence and fear of social isolation force them to accept unwanted sexual acts.
4. **Internalised Belief and lack of Awareness-** Some women have an internalised belief that "sex is their duty or an unspoken tradition, not a choice" They don't label their experience as assault because in many communities or in remote areas, women don't even know that there is a concept of marital rape that exists. The myth that rape only occurs between strangers, making it difficult for women to recognise non-consensual sex with their husband as rape
5. **Lack of Legal Recognition-** The Indian Criminal Law and many other criminal justice systems do not recognise marital rape as an offence, like Exception 2 to Section 63 of Bharatiya Nyaya Sanhita, 2023¹ exempt marital rape and provides legal immunity to husbands for their forceful sexual intercourse with their wives. The absence and limited

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

scope of legal remedies significantly contribute to the erasure of refusal and reflect and promote societal attitudes.

Emotional and Physical Consequences (The Cost of Ignored Consent)

When consent is ignored within marriage, the harm extends far beyond a single act—it becomes a continuous violation of both body and mind. The absence of recognition for marital rape does not eliminate the violence; it merely silences it and forces women to endure the pain and trauma within the very space that is expected to offer safety and trust. Within such circumstances, the fear is not only of the act itself, but of the silence that surrounds it. Many women are unable to speak about their experiences, and even when they gather the courage to do so, they are frequently met with disbelief or dismissal. Families and communities tend to prioritise notions of honour and reputation over the lived reality of the woman, urging her to remain silent rather than acknowledging the harm. In this environment, her suffering is not recognised as a crime but is instead normalised as a private marital matter, leaving her isolated, unheard, and unprotected.

This has a severe, long-lasting psychological and emotional impact, which often results in more severe trauma than sexual assault by a stranger due to the violation of trust and the ongoing nature of the abuse. On a physical level, non-consensual sexual relations can lead to injuries, chronic pain, reproductive health issues, and complications that often go untreated due to fear, stigma, or lack of legal support. The body becomes a site of repeated harm, where resistance is neither acknowledged nor protected. Even when a wife explicitly refuses physical intimacy, the husband may respond with coercion or aggression, sometimes provoking a stronger, more forceful assertion of control instead of understanding.

The emotional and psychological consequences are even more profound. Women subjected to such experiences often suffer from anxiety, depression, loss of self-worth, and a deep sense of helplessness. Several mental health outcomes such as **PTSD** (Post Traumatic Stress Disorder), depression and suicidal feelings. This inability to talk about the abuse and seek help also negatively impacts women's mental health, exacerbating the stress, anxiety and depressive symptoms experienced by victims. The betrayal is not just personal but structural when the law fails to recognise their pain; it reinforces the idea that their suffering is invisible or insignificant. That leads to emotional detachment, trauma bonding, and in severe cases, symptoms similar to post-traumatic stress.

What makes this harm particularly devastating is its normalisation in society. Because society often views marriage as a space of unquestioned sexual access, many women are conditioned to believe that their discomfort or refusal does not matter. There exists a prevailing notion that a husband has a right to sexual intimacy with his wife, regardless of her consent. **The tragedy lies in the transformation** where an act that may once have been consensual can, over time, become a source of abuse when her voice is ignored—slowly diminishing not only her autonomy but also her sense of self.

Ultimately, the cost of ignored consent is not limited to individual suffering—it reflects a broader failure to uphold dignity and autonomy within intimate relationships. A marriage that disregards consent does not merely strain a relationship, but it erodes the very foundation of human rights within the private sphere.

Between Exception and Equality- Exception 2 to Section 63 of BNS, 2023

While the Constitution of India ensures equality before law & equal protection of law under Article 14 in connection with the right to life & personal liberty under Article 21, which also includes dignity and bodily autonomy under its ambit. Exception 2 to Sec. 63 of BNS creates a separate class of married women who are denied this protection.

The provision states that **“sexual intercourse by a man with his wife, provided that she is not under eighteen years of age, does not constitute rape”** This exception creates a legal paradox by denying the same legal protection to married women that unmarried women enjoy against sexual violence. The new criminal laws mark a significant and reformative step in India’s criminal justice system. This exception seems to be a supporter of the outdated and conservative presumption that marriage implies perpetual, irrevocable consent and gives license to sexual intercourse, treating wives as assets of their husbands.

The Supreme Court has fundamentally prioritised dignity, equality and personal liberty. The ruling in the case of **Justice K.S. Puttaswamy vs Union of India**² established bodily autonomy as a fundamental right under the Right to Privacy and affirmed the freedom to make personal decisions. Denying married women legal protection against rape undermines their autonomy and dignity. This exemption potentially violates Article 14’s³ guarantee against unreasonable

² Justice K.S. Puttaswamy v Union of India, (2017) 10 SCC 1(India)

³ INDIA CONST. art 14

classification and Article 21's⁴ protection of life and personal freedom.

While legislative reforms aspire to align with the constitutional principles and international commitments of equality and justice, Exception 2 stands as a remnant of an earlier legal philosophy and does not even align with the very principle of **CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)** to which India is a signatory, of that emphasize on the protection against gender-based violence, including marital rape. It is expected that the law should protect individuals not as members of an institution, but as autonomous persons, and consent must be central in all relationships to ensure true equality.

Pathways and suggestions to reform and reclaim “no” within marriage.

Recognising the issue of Marital Rape requires not only legal reforms but also a shift in societal attitude that normalises the concept of consent within marriage. The “CONSENT LAW” approach should be adopted towards recognising women’s autonomy and aligning with the laws and with the principle of dignity and equality.

❖ C- Criminalisation through Legislation

There should be the immediate deletion of the marital rape exception and treat Rape within marriage as per rape outside marriage.

❖ O- Overcoming Patriarchal Mindset

Marriage is a partnership, not an ownership. The socio-cultural norms treat marriage as an implied consent. The awareness campaigns to reinforce that consent is revocable. The legislature must reflect constitutional morality or not the patriarchal assumption.

❖ N- Narrowing Evidentiary Barriers

There should be fair access to evidence in cases that usually occur in private without witnesses or physical traces, and must be treated with the same legal credibility as in other rape prosecutions.

The Court should rely less on the weight given to the absence of physical harm, rather than

⁴ Ibid. art 21

treating it as decisive.

❖ **S- Support systems for survivors**

Strengthening the implementation of shelter and financial assistance aids.

Establishing the confidential complaint mechanism and fast-track courts that encourage married women to report spousal sexual abuse.

❖ **E- Ensuring judicial sensitivity**

The legal reform should be effectively done in the gender sensitisation training for judges and police.

Under that, the highlighting areas should be handling the evidence sensitively and understanding consent while avoiding victim-blaming.

❖ **N- Normative alignment with constitutional values**

The Courts and Legislatures must prioritise the individual dignity, bodily autonomy and equality.

The Laws must evolve to eliminate patriarchal norms embedded in marriage and immunities for husbands that amount to gender based discrimination.

❖ **T- Training of Enforcement agencies**

The training awareness programme for police on handling the intimate partner sexual violence cases sensitively

The standard operating procedure for investigation should be established by the authorities to prevent secondary victimisation and ensure privacy.

❖ **L- Learning from Global Practises**

Many countries' jurisdictions now view marital rape as a serious offence and criminalise it.

Using this comparative jurisprudence for marital rape should be recognised as a human right

violation for reforms

❖ **Access to Justice**

The legal invisibility should be extinguished by removing the fundamental gap in recognising the notion of non-consensual intimacy.

The confidentiality should be centric in bridging the gap between the legal reforms and systematic changes that prioritise sensitivity, support in intimate relationships.

❖ **W- Women's Autonomy and Bodily Integrity**

Marriage itself should not diminish the concept of sexual autonomy; it becomes even more essential as intimacy should be grounded in mutual respect and consent.

Bodily Integrity should be understood as the extension of personal liberty by institutions and strengthen the constitutional jurisprudence.

CONCLUSION

Marital rape is not merely a question of legal reform, but also needs to emphasise how it is deeply rooted in society's understanding of the concept of marriage, consent, and individual dignity in contradiction with constitutional principles. The society needs to understand that consent does not merge with matrimony; it survives. To preserve an expectation that shields non-consensual sex within marriage is to prioritise a contractual fiction over human freedom. Throughout history, doctrines like coverture blurred the idea of consent and reduced women to extensions of their husbands. While society has progressed, these archaic beliefs continue to shape both legal and societal attitudes.

Law must evolve from the shadows of colonial patriarchy to the light of constitutional morality, which is a step towards strengthening it by ensuring that it is rooted in equality rather than control. The recognition of her autonomy within marriage is not just a legal necessity but a moral imperative. Marriage must remain a union of equals, not a license for entitlement.