
WEDLOCK OR DEADLOCK? A CRITICAL STUDY ON MARITAL RAPE IN INDIA

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ABSTRACT

Marital rape – the act of non-consensual sexual intercourse within a marriage – remains a contested and legally exempt crime in India, unlike in most democratic countries. It remains one of the most contentious and under-addressed issues in the Indian legal system. Despite widespread advocacy, international obligations, and judicial scrutiny, Indian law continues to shield husbands from prosecution for rape if the wife is over 18. This article explores the legal definition, historical evolution, ongoing court battles, and arguments both supporting and opposing criminalization. It also highlights the societal impact on victims and outlines reforms needed to bring Indian law in line with constitutional values and global human-rights standards.

This article critically examines the legal, social, and constitutional dimensions of marital rape in India. It delves into the historical context and legislative intent behind the marital rape exception, juxtaposing it with the evolving jurisprudence on sexual violence and consent. The article also evaluates the inconsistency between India's domestic laws and its international obligations under treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Furthermore, the article analyzes recent judicial observations, public interest litigations, and the ongoing debate around criminalization of marital rape. It discusses the challenges faced by lawmakers, including cultural sensitivities, fear of misuse, and the need to balance personal liberty with privacy and the sanctity of marriage. Drawing from comparative legal frameworks of other jurisdictions that have criminalized marital rape, the article presents a case for comprehensive legal reform in India.

The article argues that the continued legal immunity for marital rape is incompatible with constitutional guarantees of equality, dignity, and personal liberty. It calls for an urgent re-examination of existing laws and a rights-based approach to sexual violence within marriage, in order to uphold justice for all women, regardless of their marital status.

Keywords: Marital Rape, Consent, Gender Equality, Domestic Violence, Human Right, Women's Rights.

Introduction:

It is 2025, and in India, it is perfectly fine and legal for a man to Rape a woman-as long as they are married. In 1900 BCE, In Babylon, a man could be sentenced to death for forcing sex upon someone's wife or daughter, on the grounds of vandalising someone else's property. In most other parts of the world, the earliest laws defined rape as a Property Crime against husband/father rather than the woman herself. And Rape was not possible within a marriage because a man could do whatever he wanted with his "property" AKA "his wife". This exemption is not accidental—it's a colonial hangover, rooted in a 17th-century British belief that once a woman marries, she gives lifelong consent to sex. This out-dated doctrine, embedded into Indian law, continues to shield perpetrators under the guise of sanctity of marriage. Even today, Section 63 of The Bharatiya Nyaya Sanhita, 2023 includes an exception that protects men from prosecution for non-consensual sex with their wives (if she is above 18). The law, in effect, treats the wife not as an autonomous individual but as marital property.

While India has taken strides in criminalizing various forms of sexual violence, the silence of the law inside the home speaks volumes. In a society where almost 30% of married women report spousal violence (NFHS-5), the refusal to recognize marital rape as a crime denies countless women the dignity, protection, and justice they deserve.

The Indian legal system, while progressive in many areas, still clings to patriarchal assumptions about marriage, sex, and a woman's bodily autonomy.

Definition and Legal Position in India:

Marital rape, also known as spousal rape, occurs when one partner engages in sexual intercourse with their spouse without clear, voluntary consent. The absence of consent is key—it means this abuse can occur even without explicit physical violence. Such non-consensual acts are widely recognised as a form of domestic violence and sexual abuse. While traditional views often treated marital sex as a spouse's right, modern understanding has shifted: marriage does not grant automatic consent. Today, many societies, international conventions, and laws explicitly classify sex without consent within marriage as rape—rejecting out-dated customs

and making the criminalization of marital rape increasingly common.¹

Under Indian law, marital rape still remains largely unrecognized as a criminal offence, despite growing discourse around bodily autonomy, dignity, and the right to sexual consent within marriage. While the Indian Penal Code (IPC) and subsequent legal frameworks have evolved in some aspects, a clear gap still persists in protecting married women from non-consensual sex by their husbands.

Section 375 of the Indian Penal Code (IPC)

Section 375 defines the offence of rape and also lists exceptions to it. As per Exception 2 to Section 375, "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."²

This legal exception provides blanket immunity to husbands, effectively legalizing marital rape as long as the wife is above the age of 15. This exception has been widely criticized for being out-dated, patriarchal, and in direct conflict with the principle of consent.

Bharatiya Nyaya Sanhita (BNS), 2023

The BNS, which replaces the IPC, retains this marital rape immunity but makes one crucial change—it raises the age of consent from 15 to 18 years. This change brings the law in alignment with the landmark Supreme Court judgment in *Independent Thought v. Union of India* (AIR 2017 4904)³. In this case, the Court held that the exception to marital rape for minor wives (below 18 years) was unconstitutional, as it violated the rights of the girl child under the Protection of Children from Sexual Offences Act (POCSO), 2012, and the Right to Life under Article 21 of the Constitution.

While this judgment marked a progressive shift in recognising the bodily integrity of minor girls within marriage, it left untouched the broader question of criminalising marital rape for adult women. As it stands, the law continues to ignore the possibility of rape within a legally valid marriage, despite mounting evidence, activism, and international obligations that

¹ Based on the definition and legal context provided in *Marital Rape and Law*, Manupatra.

² Based on the definition of Rape under section 375 IPC exception number 2

³ <https://indiankanoon.org/doc/87705010/>

emphasize consent as a core principle of human dignity.

Traditional Justifications for Marital Rape Exemption:

Despite growing recognition of bodily autonomy and consent, the legal immunity granted to husbands in cases of marital rape continues to be justified by three deeply outdated traditional arguments.

The first, and perhaps most historically cited, justification stems from Sir Matthew Hale (1609–1676), former Chief Justice of England. Hale asserted in his *Historia Placitorum Coronæ* that a husband cannot be guilty of raping his wife, because “by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract.”⁴ This became known as the “contractual theory”, in which the marital contract is treated as irrevocable consent to sex, permanently binding upon the wife. It implies that in return for the husband’s “protection,” the wife surrenders her sexual autonomy.

Closely tied to this is the second justification—the “property theory.” Under this framework, a woman was regarded as the property of her father before marriage, and as the property of her husband after⁵. Since property cannot be wronged by its owner, the idea of a husband raping his wife was considered legally incoherent. This rationale stems from a patriarchal notion of ownership, reducing women to objects of possession rather than individuals with rights.

The third justification is the “unification theory”, which draws from the historical legal doctrine of coverture, under which a woman’s legal identity merged into that of her husband’s upon marriage⁶. This theory held that since the wife ceased to exist as a separate legal entity, no legal wrong, including rape, could be committed by the husband against the wife.

However, these archaic justifications fail to stand in today’s legal and moral context. Modern interpretations of consent are grounded in the idea that it must be explicit, voluntary, and revocable⁷. The concept of “irrevocable consent” originated in an era where divorce was

⁴ Hale, Sir Matthew. *The History of the Pleas of the Crown*, Vol. I, 1736 (Posthumous). See also Susan Estrich, “Rape,” *Yale Law Journal*, Vol. 95, No. 6 (1986): 1087–1125

⁵Reva B. Siegel, “‘The Rule of Love’: Wife Beating as Prerogative and Privacy,” *Yale Law Journal*, Vol. 105, No. 8 (1996): 2117–2217

⁶ Blackstone, William. *Commentaries on the Laws of England*, Book I (1765), wherein he wrote: “By marriage, the husband and wife are one person in law

⁷ See Justice Verma Committee Report (2013), which clearly stated that marriage should not be a license for sexual violence and that non-consensual intercourse within marriage must be criminalised.

inaccessible, making it logically inconsistent in a time where marriage itself is dissolvable.

Further, the notion of a woman being her husband's property, or lacking an independent legal identity, has been decisively rejected by modern constitutional values and international human rights standards⁸. Indian constitutional jurisprudence affirms a woman's right to dignity, autonomy, and equality, and recognises her as an individual legal person regardless of her marital status.⁹

Thus, these historical justifications, though once embedded in legal systems, no longer carry moral, legal, or constitutional validity. Their continued existence only serves to undermine women's rights, and obstruct the criminalisation of marital rape in jurisdictions like India.

Legislative Silence and Judicial Ambiguity:

The protective umbrella of Section 85 of BNS (analogous to IPC's 498A) was introduced to safeguard married women from cruelty inflicted by their husbands or in-laws. It includes acts that amount to mental or physical harm, including "perverse sexual conduct by the husband." However, this provision raises more questions than it answers when applied to non-consensual sexual acts within marriage.

One of the most glaring ambiguities lies in the absence of any judicially articulated standard of "perversion" in the context of sexual relations between spouses. Does excessive demand for sex qualify as perverse? Is coerced intimacy, even without overt violence, punishable under this provision? And most importantly, where does consent fit into the legal understanding of sexual relations within marriage?

These critical questions remain unresolved, primarily because both the judiciary and legislature have largely avoided confronting the core issue of consent in spousal sexual relations. The notion that marriage is not a license to rape—a position upheld in various international jurisdictions—still lacks legal backing in India, where the criminal law remains silent on marital rape.

⁸ CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), General Recommendation No. 19 (1992) recognizes marital rape as a form of gender-based violence.

⁹ *Independent Thought v. Union of India*, (2017) 10 SCC 800: The Supreme Court held that Exception 2 to Section 375 IPC (which allowed marital rape of a girl below 18) was unconstitutional and violative of Articles 14, 15, and 21.

The Protection of Women from Domestic Violence Act, 2005 was seen as a progressive development. However, it has fallen short of expectations in addressing marital rape. While Section 3 of the Act defines domestic violence to include physical, emotional, verbal, sexual, and economic abuse, the remedies provided under the Act are civil in nature—limited to protection orders, residence rights, custody orders, and monetary relief.

Moreover, sexual abuse under the DV Act is not defined with the clarity or seriousness required to address marital rape. Unless the abuse results in serious injury or is life-threatening, it is unlikely to attract effective legal recourse. The result is a system where women may obtain a civil remedy, but the underlying criminal conduct goes unpunished.

Another barrier to justice is Section 128 of the BSA (formerly Section 122 IEA), which prohibits disclosure of communication between spouses during marriage. Since marital rape is not a recognised offence under Indian criminal law, evidence of non-consensual sexual acts between husband and wife is typically inadmissible, unless the prosecution is for physical assault or cruelty under existing provisions. This creates a nearly insurmountable hurdle for survivors trying to prove marital rape in court. The combination of legal silence, evidentiary restrictions, and cultural taboos renders the offence almost impossible to prosecute.

Thus, even when provisions under the IPC and the Domestic Violence Act are read together, they fail to provide a clear legal pathway to hold perpetrators of marital rape accountable. The failure to criminalise marital rape, combined with procedural obstacles and interpretative ambiguities, has left a gaping void in India's legal framework—one that continues to compromise the dignity, autonomy, and bodily integrity of countless women.

The Government's Stance and the Legal Vacuum:

In October 2024, the Union Government submitted an affidavit before the Supreme Court opposing the blanket criminalization of marital rape. The affidavit asserted that such criminalization “would have a seriously adverse effect on the conjugal relationship” and would be “excessively harsh.”¹⁰ This line of argument reflects a longstanding reluctance to interfere with the institution of marriage, which is culturally construed in India as a sacred and enduring

¹⁰ CBS News, *India's Government Opposes Criminalizing Marital Rape*, October 2024, <https://www.cbsnews.com>.

bond.

Further, the government emphasized that marriage is not merely a contract but a “*sacrament*”—a spiritual and moral union premised on mutual obligations and trust.¹¹ This cultural framing contributes to the view that sexual relations within marriage fall outside the purview of criminal law, even when they are non-consensual. The assumption that marriage implies irrevocable consent undermines the bodily autonomy of women and denies the reality of abuse within supposedly private spaces.

As it stands, Indian law does not criminalize all forms of non-consensual sexual acts within marriage. Section 63(2) of the Bharatiya Nyaya Sanhita, 2023 (formerly Exception 2 to Section 375 of the Indian Penal Code) explicitly exempts a husband from being charged with rape for engaging in forced sexual intercourse with his wife, provided she is not under 18 years of age.¹² This legal exception has drawn widespread criticism for legitimizing coercion and denying equal protection of the law to married women.

Although survivors of marital sexual violence may seek remedies under the Protection of Women from Domestic Violence Act, 2005, such remedies are civil in nature and limited to protection orders, residence rights, or monetary relief.¹³ They do not extend to the criminal prosecution of the act of rape within marriage—a glaring gap in the pursuit of justice.

This legal vacuum effectively means that a woman’s access to criminal justice depends on her marital status, creating a two-tiered system that denies married women the full protection of their fundamental rights. Many legal scholars argue that the marital rape exception violates Article 14 (right to equality) and Article 21 (right to life and dignity) of the Indian Constitution.¹⁴ Until the exception is removed, the law continues to endorse a framework that shields perpetrators and silences survivors.

Judicial Discourse on Marital Rape in India:

The Indian judiciary has delivered contrasting observations over the years when it comes to

¹¹ *Economic Times*, *Government Affidavit in Supreme Court on Marital Rape*, October 2024, <https://economictimes.indiatimes.com>.

¹² Bharatiya Nyaya Sanhita, 2023, § 63(2); previously IPC § 375 Exception 2.

¹³ *Protection of Women from Domestic Violence Act, 2005*, Chapter IV – Reliefs Granted by the Magistrate.

¹⁴ *The India Forum*, “Criminalising Marital Rape in India: Between Law and Society”, <https://www.theindiaforum.in>.

marital rape, often reflecting the tension between individual rights and the institution of marriage.

In *Harvinder Kaur v. Harmander Singh*¹⁵, the Delhi High Court held that the Constitution of India cannot interfere in household matters, stating that “in the privacy of the home and married life neither Article 21 nor Article 14 of the Constitution have any role to play.” The court feared that such intervention could destroy the institution of marriage itself.

Conversely, in *State of Maharashtra v. Madhukar Narayan Mardikar*,¹⁶ the Supreme Court held that every woman has a right to privacy, which must not be violated under any circumstance. This judgment marked a departure from the domestic-privacy shield and placed individual rights at the forefront.

In *Shri Bodhisattwa Gautam v. Subhra Chakraborty*,¹⁷ the apex court went further to declare that rape violates Article 21 of the Constitution, as it infringes upon the victim’s right to life, dignity, and personal liberty.

Following the 2012 Nirbhaya case, the Justice J.S. Verma Committee recommended that marital rape be criminalised, arguing that marriage does not imply irrevocable consent to sexual activity.¹⁸ However, the Government of India rejected the recommendation, reflecting reluctance to legislate over the perceived private sphere of marriage.

In *State v. Vikash* (2014), a Special Fast Track Court in Delhi held that, since the parties were legally married, even forcible sexual intercourse could not be considered rape, stating that “no conviction can be fixed upon the accused.”

In 2015, the RIT Foundation filed a Public Interest Litigation (PIL) before the Delhi High Court, challenging the marital rape exception under Section 375 of the IPC. The petition contended that the exception violated Articles 14, 15, 19, and 21 of the Constitution.

In 2016, then Union Minister for Women and Child Development, Maneka Gandhi, publicly stated that due to poverty, illiteracy, and cultural factors, the concept of marital rape could not

¹⁵ *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66.

¹⁶ *State of Maharashtra & Anr. v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57.

¹⁷ *Shri Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

¹⁸ Justice Verma Committee Report (2013), available at: <https://www.prsindia.org>

be applied in India, even though it may be acceptable globally.¹⁹

However, in *Independent Thought v. Union of India*,²⁰ the Supreme Court struck down Exception 2 to Section 375 of the IPC, to the extent it allowed sexual intercourse with a wife aged 15 to 18 years, ruling that it was unconstitutional. The Court harmonized the POCSO Act, 2012, Prohibition of Child Marriage Act, 2006, and Protection of Women from Domestic Violence Act, 2005, to protect the bodily integrity of child brides. The revised judicial interpretation now reads:

“Sexual intercourse or sexual acts by a man with his wife, the wife not being under eighteen years of age, is not rape.”

Notably, the Court also held that if the marriage is void (e.g., second marriage while the first is subsisting), and the husband knowingly engages in sexual intercourse, it would amount to rape.

In *Nimeshbhai Bharat Bhai Desai v. State of Gujarat*,²¹ the Gujarat High Court critically observed that marital rape is not a mere theoretical concept, and the notion of implied consent in marriage must be revisited. The Court called for the legal system to recognise and uphold a woman’s corporal autonomy, married or not.

In *Anuja Kapur v. Union of India* (2019),²² a PIL was filed seeking directions to the Government to formulate laws and guidelines on marital rape. The Supreme Court, however, dismissed the petition, clarifying that law-making falls under the domain of the legislature, and not the judiciary.

Impact on Victims and the Crisis of Underreporting

Marital rape, though largely invisible in India’s legal framework, leaves deep psychological scars and enduring social trauma on survivors. It is not merely an act of physical violence—it is a betrayal of intimate trust, a desecration of bodily autonomy, and a brutal assertion of dominance within what is often assumed to be a safe, consensual space. Survivors frequently

¹⁹ “India can’t criminalise marital rape: Maneka Gandhi,” *The Hindu*, March 15, 2016.

²⁰ *Independent Thought vs UOI*, (2017) 10 SCC 800: AIR 2017 SC 4904

²¹ *Nimeshbhai Bharat Bhai Desai v. State of Gujarat*, R/Criminal Misc. Application No. 26957 of 2015, decided on 02/03/2018

²² *Anuja Kapur v. Union of India Through Secretary*, PIL (2019), dismissed by SC Bench of Justice SA Bobde & Justice BR Gavai

experience a complex range of emotional and psychological responses, including humiliation, fear, guilt, and an intense sense of worthlessness. As one commentator poignantly remarked, it “violates the body, defiles the soul, betrays trust,” and leads to “severe depression, low self-esteem, anxiety.”²³

Clinical studies in India have drawn a disturbing correlation between spousal sexual violence and serious mental health conditions. According to research archived in the National Library of Medicine, marital rape is strongly associated with elevated risks of depression, anxiety disorders, and Post-Traumatic Stress Disorder (PTSD) among women.²⁴ These psychological wounds often go untreated due to the broader social silence around the issue.

Empirical data further reveal the alarming scope of this under-acknowledged crisis. The National Family Health Survey-5 (NFHS-5) indicates that 5.6% of married women reported being *physically forced* by their husbands to engage in sexual intercourse. An additional 2.7% were coerced into other forms of unwanted sexual acts.²⁵ While these percentages may seem modest at first glance, they represent millions of women across India. Equally alarming is the analysis by international human rights organization Equality Now, which states that 82% of all intimate partner sexual violence in India is perpetrated by husbands, and 90–99% of such incidents go unreported.²⁶

This epidemic of underreporting is symptomatic of deeper socio-cultural and structural barriers. Experts argue that fear of social ostracization, economic dependence on the abuser, concern for the well-being of children, and the internalized belief that what happens within a marriage is a “private matter” all contribute to women’s silence.²⁷ The stigma attached to sexual violence—especially within marriage—renders many survivors unable to speak up or seek legal recourse. As reported by the Times of India, and echoed in Equality Now’s findings, only a minuscule proportion of victims ever approach law enforcement authorities, leaving the vast majority of cases unacknowledged, undocumented, and unredressed.²⁸

²³ *Times of India*, “Marital Rape Leaves Deep Mental Scars: Experts,” *The Times of India*.

²⁴ *National Library of Medicine*, “Mental Health Consequences of Spousal Sexual Violence in India,” available at: <https://pmc.ncbi.nlm.nih.gov>

²⁵ *National Family Health Survey – 5 (NFHS-5)*, Ministry of Health and Family Welfare, Government of India

²⁶ *Equality Now*, “Sexual Violence and the Law in India: Intimate Partner Violence Report,” available at: <https://www.equalitynow.org>

²⁷ *Hindustan Times* and *Equality Now*, reports on underreporting, societal stigma, and survivor barriers.

²⁸ *Times of India*, “Why Most Victims of Marital Rape Stay Silent,” and *Equality Now*, “Access to Justice in India: Marital Rape.”

This silence does not reflect consent—it reflects coercion. The absence of reporting does not indicate absence of harm; rather, it highlights a systemic failure to provide women with safe avenues for redress and recognition. The psychological cost of marital rape, therefore, is not limited to personal trauma but extends into a collective societal failure to affirm women's bodily integrity and dignity within the institution of marriage.

International Status:

Out of 185 countries in the world, 77 have laws that clearly criminalise marital rape while there are 34 countries that explicitly decriminalise marital rape, or in essence, offer immunity to men who perpetrate rape against their wives.

India, is one of the 34 countries that have decriminalised marital rape.²⁹

Europe and North America

Most Western countries now fully criminalize marital rape. The United Kingdom abolished the marital rape exemption in 1991 through the landmark case *R v R*.³⁰ Germany followed suit in 1997, while France recognized it under criminal law in 1994. In the United States, all 50 states had criminalized spousal rape by 1993, though some retained procedural hurdles such as requiring proof of physical violence.³¹ Canada recognized spousal rape as a crime in 1983.

Asia and the Middle East

Progress in Asia has been uneven. Nepal criminalized marital rape in 2006 following a Supreme Court directive, and Bhutan has similar legislation.³² However, India, Bangladesh, and Pakistan continue to retain marital rape exemptions in their criminal codes. India's Section 63(2) of the Bharatiya Nyaya Sanhita (2023) explicitly exempts husbands from rape charges involving their wives, unless the wife is under 18.³³ In the Middle East, most countries,

²⁹ Drishti IAS Marital rape in India, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/marital-rape-in-india-1>

³⁰ *R v R* [1991] 1 AC 599 (House of Lords).

³¹ U.S. Department of Justice, Office on Violence Against Women, 2005 Report

³² Nepal Supreme Court, *Forum for Women Law and Development v. Government of Nepal*, 2005.

³³ Bharatiya Nyaya Sanhita, 2023, § 63(2).

including Saudi Arabia and UAE, do not recognize marital rape, reflecting deep-rooted cultural and religious conceptions of marriage.

Africa

South Africa is one of the most progressive nations on this front, criminalizing marital rape through the Prevention of Family Violence Act in 1993.³⁴ Other countries like Zimbabwe, Rwanda, and Namibia have also criminalized it, though enforcement remains a challenge due to prevailing patriarchal norms. In a landmark judgment, Zimbabwe's Constitutional Court allowed women raped by their husbands to seek abortions, signaling a significant legal and moral shift.³⁵

United Nations on Marital Rape:

On 25th June 2019, the United Nations called upon member states to criminalise marital rape and address the persistent legal gaps that allow impunity within intimate relationships. In a powerful statement, the UN emphasised that “the home remains one of the most dangerous places for women”, highlighting the pervasiveness of intimate partner violence and sexual abuse within marriage.³⁶

According to the UN Women's flagship report, *Progress of the World's Women 2019–2020*, only 4 in 10 countries across the globe have criminalised conjugal (marital) rape, leaving a vast majority of women without adequate legal protection.³⁷ The report further identified 12 countries where perpetrators of rape may escape prosecution simply by marrying their victims—an archaic legal escape that continues to undermine female autonomy and bodily integrity.

In her preface to the report, Phumzile Mlambo-Ngcuka, Executive Director of UN Women, wrote:

“We have seen incredible progress in eliminating discrimination against women through legal reform. However, it is not coincidental that family laws remain the most resistant to change.

³⁴ Prevention of Family Violence Act, South Africa, 1993.

³⁵ AP News, “Zimbabwe court rules on abortion in marital rape cases,” 2024.

³⁶ UN Women, *Progress of the World's Women 2019–2020: Families in a Changing World*, 25 June 2019, <https://www.unwomen.org>.

³⁷ Ibid

The shocking prevalence of intimate partner violence means that, statistically, the home is one of the most dangerous places for a woman.”³⁸

Arguments For Criminalising Marital Rape

1. Violation of Bodily Autonomy and Consent

- Marriage does not extinguish a woman’s right to bodily autonomy and sexual consent. Forced sexual intercourse without consent, even within marriage, is rape in spirit and effect.
- The right to say no is fundamental to the dignity and agency of every individual, as recognised under Article 21 of the Indian Constitution (Right to life and personal liberty).

2. Equality Before Law (Article 14)

- Granting immunity to husbands under marital rape exception violates Article 14 of the Constitution by creating an arbitrary legal distinction between married and unmarried women.
- This distinction fails the reasonable classification test and is discriminatory on the basis of marital status.

3. Violation of International Human Rights Standards

- India is a signatory to CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), which recognises marital rape as a form of violence and discrimination.
- The UN, as well as several human rights organisations, consider marital rape a serious human rights violation.

4. Judicial Recognition of Sexual Violence as a Crime Irrespective of Relationship

³⁸ Preface by Phumzile Mlambo-Ngcuka, Executive Director of UN Women, in *Progress of the World’s Women 2019–2020*

- In several judgments (e.g., *Bodhisattwa Gautam v. Subhra Chakraborty*, *Independent Thought v. UOI*), the Supreme Court has held that rape violates human dignity and Article 21, regardless of the relationship between the parties.

5. Social and Psychological Impact

- Marital rape causes deep emotional trauma, mental health disorders, and physical injuries, often compounded by the victim's lack of legal recourse.
- Recognising it as a crime would validate survivors' experiences and provide access to justice.

6. Legal Reform in Other Democracies

- Countries like the UK, USA, Canada, South Africa, and many in Europe have criminalised marital rape. India remains among a small minority that still permits it by law.

Arguments *Against* Criminalising Marital Rape

1. Potential for Misuse

- Critics argue that marital rape laws could be misused, particularly in ongoing divorce or domestic disputes, leading to false accusations and harassment of husbands.
- However, all laws carry a risk of misuse, and proper legal safeguards, not blanket immunity, are the answer.

2. Challenges in Proof and Privacy

- It is argued that proving lack of consent within a marital setting is complex, especially without eyewitnesses, and may intrude upon marital privacy.
- However, rape is already difficult to prove in many cases, and investigation techniques, forensic evidence, and survivor testimony are available tools.

3. Impact on the Institution of Marriage

- Some claim that recognising marital rape would undermine the sanctity of marriage by encouraging criminal trials between spouses.
- But a marriage that is maintained through coercion is not sanctified. Criminal law must intervene where fundamental rights are violated.

4. Alternative Civil Remedies Exist

- Opponents often point to Section 85 of BNS (cruelty), or the Protection of Women from Domestic Violence Act, as offering adequate remedies.
- However, these laws are limited, primarily civil in nature, and do not acknowledge non-consensual sex within marriage as a punishable offence.

5. Cultural and Social Realities

- Arguments are made that due to poverty, illiteracy, and cultural beliefs, many women may not understand or wish to use such a law, and that marital dynamics are different in India.
- However, legal recognition often precedes social acceptance—laws also play a transformative role in changing mindsets and empowering women.

Conclusion:

Marital rape is not merely an act of physical violence—it is a profound betrayal of trust, an assault on bodily autonomy, and a violation of the most intimate form of consent. In a society that upholds marriage as sacred, this violence hides behind walls of silence, protected by archaic legal exceptions and deep-rooted patriarchy. But sanctity cannot be an excuse for suffering, and tradition cannot trump human dignity.

Legally, the continued exemption of marital rape under Section 63(2) of the Bharatiya Nyaya Sanhita exposes a grave constitutional fault line. It violates Article 14 (equality before law), Article 15 (protection against discrimination), and most fundamentally, Article 21—the right to life and personal liberty, which includes the right to live with dignity and bodily integrity. A

law that punishes rape in every setting except marriage is not just discriminatory—it is dangerously blind to the trauma that thousands of women silently endure.

Internationally, the tide has turned. Countries once reluctant to interfere in “marital affairs” now recognize that rape is rape—whether committed by a stranger or a spouse. The United Nations, CEDAW, and courts around the world have affirmed that consent does not dissolve at the altar, and that every individual—regardless of marital status—deserves legal protection from sexual violence. India, as a constitutional democracy and a signatory to international human rights conventions, cannot afford to lag behind.

Socially, the fear of stigma, dependence, and the belief that “a wife cannot be raped” continue to suppress voices that need to be heard. But every law begins with a truth, and the truth is this: no relationship, no ritual, no ring grants immunity to harm. A woman's body does not become public property upon marriage. Her right to say no remains inviolable.

It is time we let go of the myth that marriage equals perpetual consent. It is time we align our laws with our Constitution, our silence with justice, and our traditions with humanity. To criminalize marital rape is not to criminalize marriage—it is to protect the dignity within it. India must choose to stand not with archaic immunity, but with equality, justice, and the survivors who deserve both.