

# Criminalisation of Marital Rape: An In-Depth Indian Legal Analysis

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## Abstract:

This study examines the contested issue of marital rape in India, with particular focus on the Bharatiya Nyaya Sanhita, 2023, which, like the Indian Penal Code, 1860, continues to exempt sexual assault within marriage from criminal sanction. Despite India's constitutional guarantees of equality and dignity, and its international commitments under conventions such as CEDAW, the law continues to deny recognition and remedies to victims of sexual violence by their spouses.

Through a critical analysis of statutes, judicial pronouncements, Law Commission reports, and socio-legal perspectives, this paper traces the historical and cultural underpinnings of the marital rape exception. It highlights how the exemption sustains patriarchal notions of women's subservience, undermines bodily autonomy, and contradicts evolving constitutional jurisprudence on gender justice and individual dignity. Comparative perspectives from global jurisdictions further demonstrate India's exceptionalism in retaining this immunity<sup>1</sup>.

The paper argues that the marital rape exception under Section 63 of the BNS is unconstitutional and incompatible with principles of consent and autonomy. It recommends comprehensive reforms including deletion of the exception clause, amendments to the Evidence Act, judicial and police sensitisation, robust victim support mechanisms, and awareness campaigns to transform societal attitudes. Criminalising marital rape is not merely a women's rights demand but a constitutional imperative to secure a just, safe, and equitable society.

**Keywords:** marital rape, sexual assault, Bharatiya Nyaya Sanhita, criminalization, gender violence, human rights.

## Introduction:

In India, the concept of marital rape remains a complex and controversial subject. Despite advancements in women's rights, the Bharatiya Nyaya Sanhita, 2023 still includes a provision that effectively exempts marital rape from criminalization<sup>2</sup> as it was in earlier Indian Penal Code, 1860. This article provides a detailed analysis of the legal context, including relevant BNS sections, challenges, and potential reforms. Marital rape refers to rape committed when the perpetrator is the victim's spouse. The definition of rape remains the same, i.e. sexual intercourse or sexual penetration when there is lack of consent.

Therefore, an essential ingredient to prove the crime of rape is to prove the lack of consent. This burden to prove the lack of consent often rests on the victim. In some instances, as in the case of minors, it is presumed that consent does not exist as they are presumed by law to be incapable of consenting to such sexual acts. On the other hand, there are also instances when consent is presumed to exist. Often, this presumption exists when the victim and the perpetrator are married. In such instances, the idea of marital rape becomes antithetical<sup>3</sup>.

<sup>1</sup> Goodwin, M. (2015). Marital rape: The long arch of sexual violence against women and girls. Cambridge University Press

<sup>2</sup> Vibhute, K. I. (2000). Rape within marriage in India: Revised. Indian Bar Review, 27, 167–182

<sup>3</sup> Law Commission of India. (1971). Indian Penal Code (Report No. 42). Government of India.

At present, only fifty-two countries have laws recognising that marital rape is a crime. In many jurisdictions across the world, including India, marital rape is not recognised as a crime by law and society. Even when countries recognise rape as a crime and prescribe penalties for the same, they exempt the application of that law when a marital relationship exists between victim and perpetrator. This is often called the 'marital rape exception clause'. Across these jurisdictions, there are four major justifications advanced for not criminalising marital rape.

The initial two justifications are not used in present day context due to advancements made with respect to gender equality. The first justification stemmed from the understanding of the wife as subservient to her husband. Women were chattel to their husbands, and this meant that women did not have any rights in the marriage. In such a scenario, it would not be possible to fathom a husband raping his wife since the husband was the master to the wife and enjoyed privileges over her body.

### **Historical Background:**

If we analyse the judicial aspects of India, it is clearly stated that "the sexual relations of a man with his wife, his wife who is not less than 15-18 years old, are not rapes", according to section 375 of the Indian penal code 1867 and section 376 establishes the penalty for violation.<sup>4</sup> According to this section, the rapist must be punished with the imprisonment of any of the descriptions for a period that will not be less than 7 years, but which may extend to life or for a period of up to 10 years and may also be fined or both of them. In the case of *Saretha V. T. Venkata Subbaih*, it was considered that the rights and duties of a marriage are like a creation and a dissolution and not the duration of the private contract between two people.

The right to privacy is not lost by the Spousal Association. therefore, there is no punishment for marital rape, and the remedy lies with it. Role of the judiciary in India, need for a new law on sexual aggression was felt. The previous law that prevailed neither defined nor reflected the various types of sexual violence. In *Sakshi v. Union of India*, the Supreme Court had recognized the shortcomings with respect to the law relating to the violation and had suggested that the legislator should cause changes in the law.

In the high court of Kerala, *Sree Kumar vs. Pearly Karun* (1999 (2) ALT Cri 77, II (1999) DMC. 174),<sup>5</sup> it has been observed that the wife does not live separately with her husband in judicial separation and that she is subject to sexual relations without her will, the act does not equate to a rape. Therefore, it was said that it was not discovered that her husband was guilty of raping his wife, although he was actually guilty of committing or committing the act.

The history of almost all societies in the world shows the unequal relationship that existed between a husband and wife in a marriage. Women have been portrayed as their husband's property since time immemorial. The coherence of the representation of women as chattel has been the common point of all the most important religions of the world. This representation was found in Victorian style.

Polygamy and other regressive practices in almost all religions reiterate the fact that women have never been seen as equals within marriage. The entire second wave of feminist movements has focused on equal rights for women in different aspects of their lives, including family, sexuality and work. The superior position granted to the husband in a marriage led to the granting of immunity to the husband in the case of marital rape.<sup>6</sup>

The explicit mention of the issue in the law was made for the first time by the president of the Supreme Court of Justice, Sir Matthew Hale, in the history of the crown motives, published in 1736, in which he

<sup>4</sup> Law Commission of India. (2000). Review of rape laws (Report No. 172). Government of India.

<sup>5</sup> *Sree Kumar v. Pearly Karun*, 1999 (2) ALT Cri 77; II (1999) DMC 174.

<sup>6</sup> Vibhute, K. I. (2000). Rape within marriage in India: Revised. *Indian Bar Review*, 27, 167–182.

stated that "the husband cannot be guilty of rape committed alone for his legal wife ". because, thanks to mutual consent and the marriage contract, his wife gave herself in this way to her husband, who cannot withdraw ". This opinion remains the reason for the non-criminalization of marital rape in many countries of customary law, including 'India'.

### **Marital Rape: Definition and Indian Legal Context:**

**Marital Rape:** Simply put, having a relationship against the will of the wife is marital rape, but it has not been kept in the category of crime. Whereas according to a report of the United Nations itself, about 75 percent of cases of married rape occur in India every year.<sup>7</sup>

The court said that "such conduct cannot be punished but it will amount to physical and mental cruelty. This case shows excesses with a woman." At the same time, some people believe that wives can use it as a handy tool to harass husbands. The question then arises as to what is the difference between 'rape' and 'marital rape' and what does the institution of marriage have to do with it?

**Rape:** According to Oxford Dictionaries, Rape means "the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will"

According to Cambridge Dictionaries, Rape means "to force someone to have sex when they are unwilling, using violence or threatening behaviour".

**According to Hindu Marriage Act 1955:** Under the Hindu Marriage Act, there are certain responsibilities of husband and wife towards each other. These include the right to have physical relations. There are many such court decisions in which it has been said that refusing to have physical relationship is cruelty and on the basis of this, wife and wife can get divorced.

The Bharatiya Nyaya Sanhita, 2023 ('BNS') in **section 63**<sup>8</sup> criminalises the offence of rape. It is an expansive definition which includes both sexual intercourse and other sexual penetration such as oral sex within the definition of 'rape'. However, in Exception 2, it excludes the application of this section on sexual intercourse or sexual acts between a husband and wife. Thus, a wife under Indian law does not have recourse under criminal law if a husband rapes her. The wording of section 63 of Bharatiya Nyaya Sanhita,2023 are:

A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: —
  - (i) against her will.
  - (ii) without her consent.<sup>9</sup>

<sup>7</sup> Gazette of India. (2012, December 24). Extraordinary, Part II, Section 3, Sub-section (ii). Government of India.

<sup>8</sup> Bharatiya Nyaya Sanhita, 2023

<sup>9</sup> Garg, S. (2012). Marital rape. SSRN Electronic Journal

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(vi) with or without her consent, when she is under eighteen years of age.

(vii) when she is unable to communicate consent.

*Explanation 1.* —For the purposes of this section, “vagina” shall also include *labia majora*.

*Explanation 2.* —Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness<sup>10</sup> to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

*Exception 1.* —A medical procedure or intervention shall not constitute rape.

*Exception 2.* —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Exception 2 of section 63 of BNS (‘exception clause’) does not state any reason for the exclusion of sexual intercourse or sexual acts between a man and his wife from the purview of rape. Since the crux of the focus of the section is on consent, it is possible that an irrefutable presumption of consent operates when the relationship between the victim and the perpetrator is that of marriage. However, at the same time, it is also possible that this was a legislative decision to exclude the operation of this section from married relationships given the sanctity that this institution has assumed in our society. This is probable since there are sections in the IPC where spouses are exempt from its application.

While the law does not criminalise marital rape, a specific form of marital rape is criminalised, i.e. non-consensual sexual intercourse when the wife and husband are living separately on account of judicial separation or otherwise.<sup>11</sup>

### **Section 67 of the BNS, 2023 states:**

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years, but which may extend to seven years, and shall also be liable to fine.

*Explanation.* —In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

<sup>10</sup> Basu, M. (2013, April 30). Marital rape is an ugly reality. Mumbai Mirror.

<sup>11</sup> Ichowk. (n.d.). What is marital rape? Kerala High Court says this is strong basis of talaq.

This is open for conjecture and an analysis of legislative debates and reports of the Law Commission of India ('Law Commission') surrounding marital rape aids us in understanding the reasons behind the exception clause in India.

The first report to deal with this issue was the 42<sup>nd</sup> Law Commission Report.<sup>12</sup> This report made two important suggestions. First, it noted that in instances where the husband and wife were judicially separated, the exception clause must not apply. Although this was a laudable suggestion, the reasoning given for this was unclear. It stated that "in such a case, the marriage technically subsists, and if the husband has sexual intercourse with her against her will or her consent, he cannot be charged with the offence of rape. This does not appear to be right".

The second suggestion made in this report was regarding non-consensual sexual intercourse between women aged between twelve and fifteen. It stated that the punishment for such offences must be put into a separate section and preferably not be termed rape. This was because prior to the recent amendments in the IPC, there was a different punishment for rape committed by the husband when the wife was between twelve and fifteen. It did not however comment on the exception clause itself, i.e. whether the exception clause must be retained or deleted.

The Law Commission was directly faced with the validity of the exception clause in the 172<sup>nd</sup> Law Commission Report. Here, during the consultation rounds, arguments were advanced regarding the validity of the exception clause itself. It was argued that when other instances of violence by a husband toward wife was criminalised, there was no reason for rape alone to be shielded from the operation of law. The Law Commission rejected this argument since it feared that criminalisation of marital rape would lead to "excessive interference with the institution of marriage". This report sheds light on the interplay between marital rape and the sanctity of the institution of marriage.

In 2012, a committee was constituted under Justice J.S. Verma (Retd.) advocated for the criminalisation of marital rape. This committee was formed in light of the nation-wide agitation seeking to make criminal law more efficient to deal with cases of heinous sexual assault against women. The committee published the 'Report of the Committee on Amendments to Criminal Law' ('J.S. Verma Report') in 2012. One of the suggestions given in this report was that marital rape ought to be criminalised.<sup>13</sup>

A two-fold recommendation to this effect was made. The preliminary recommendation was simply that the exception clause must be deleted. The second suggestion was that the law must specifically state that a marital relationship or any other similar relationship is not a valid defence for the accused, or relevant while determining whether consent existed or not and that it was not considered a mitigating factor for the purpose of sentencing.

Recently, in 2015, this argument was reiterated by the Ministry of Home Affairs in reply to a bill proposed by a Member of Parliament which aimed to criminalise marital rape. The press release stated that it "was considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context". One of the reasons given for this was the "mind-set of the society to treat the marriage as sacrament". Further, notably, a private bill was introduced on this topic in December 2015.

### Legal Developments and Judgments:

**Independent Thought v. Union of India, (2017) 10 SCC 800** and in **Rit Foundation v. Union Of India , (2022) 3 HCC (Del) 572 : 2022 SCC On Line Del 1404**, the Hon'ble Supreme Court held that the part of Exception 2 to Section 375 IPC which excused marital rape of minors between the ages of 15-18, was unconstitutional, which means that the term 15 years in the exception now needs to be read as 18 years.<sup>14</sup>

<sup>12</sup> Law Commission of India. (1971). Indian Penal Code (Report No. 42). Government of India.

<sup>13</sup> Nigam, S. (2015). The social and legal paradox relating to marital rape in India: Addressing structural inequalities.

<sup>14</sup> Rit Foundation v. Union of India, (2022) 3 HCC (Del) 572: 2022 SCC On Line Del 1404

**Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice (2018)** is a landmark decision of the Supreme Court of India that decriminalised all consensual sex among adults, including homosexual sex. The court was asked to determine the constitutionality of Section 377 of the Indian Penal Code, a colonial-era law which, among other things, criminalised homosexual acts as an "unnatural offence".

**Nimeshbhai Bharatbhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732**, The Court examined the question; Would a husband forcing his wife to have oral sex be rape punishable under Section 376 of the IPC? In this case, the Hon'ble Court discussed three types of marital rapes that are common in the society:

i) **Battering Rape:** This is a type of marital rape where women experience both physical and sexual violence in the relationship in many ways. Some occasions are those where the wife is battered during the sexual barbarity, or the rape may follow a physically brutal episode where the husband wants to make up and pressurizes his wife to have sex against her will. In most cases, the victims fall under this stated category.<sup>15</sup>

ii) **Force only Rape:** In this type of marital rape, husbands use only that amount of force, as it is required to pressurize their wives. In such cases, battering may not be an attribute, but women who deny sexual intercourse usually have to face such assaults.

iii) **Obsessive Rape:** In obsessive rape, assaults involve vicious torture and/or perverse sexual acts and are most commonly fierce in form. This type has also been categorized as sadistic rape.<sup>16</sup>

The need for a new law on sexual assault was felt. The earlier law which prevailed did not define and reflect the various kinds of sexual assault. In **Sakshi v. Union of India writ petition (crl.) 33 of 1997**, the Supreme Court had recognized the inadequacies regarding the law relating to rape and had suggested that the legislature should bring about changes in the law. After passing the criminal law amendment bill, 2013 rape was redefined as the most horrific events where the parliament by an amendment tried to enlarge the ambit of rape and the perception by making oral and anal acts as amounting to rape.<sup>17</sup>

### Marital Rape Statistics in India:

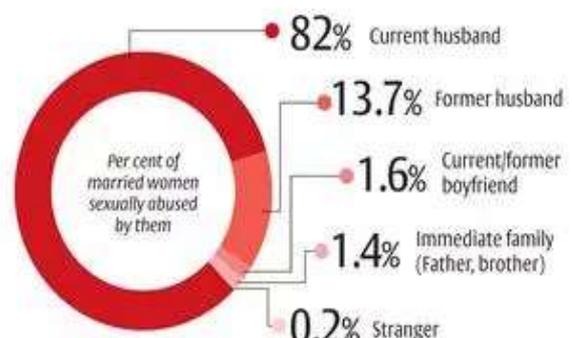
The latest National Crime Records Bureau (NCRB) annual report has revealed a distressing surge of 4% in crimes against women in India throughout 2022. This includes cases of cruelty by husbands and relatives, abductions, assaults, and rapes.

The NCRB report detailed a substantial escalation in reported crimes against women, soaring from 3,71,503 cases in 2020 to 4,45,256 cases in 2022. Compared to 2021's 4,28,278 cases, the 2022 statistics marked a troubling increase.

The report highlighted that a significant proportion of crimes against women under the Indian Penal Code (IPC) involved 'Cruelty by Husband or His Relatives' (31.4%), 'Kidnapping and Abduction of Women' (19.2%), 'Assault on Women with Intent to Outrage her Modesty'

### Here's what the latest NFHS says about marital rape in India

For most sexually abused married women, husband was the perpetrator



<sup>15</sup> Nimeshbhai Bharatbhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732

<sup>16</sup> Kumar, R. (1993). The history of doing: An illustrated account of movements for women's rights and feminism in India, 1800–1990.

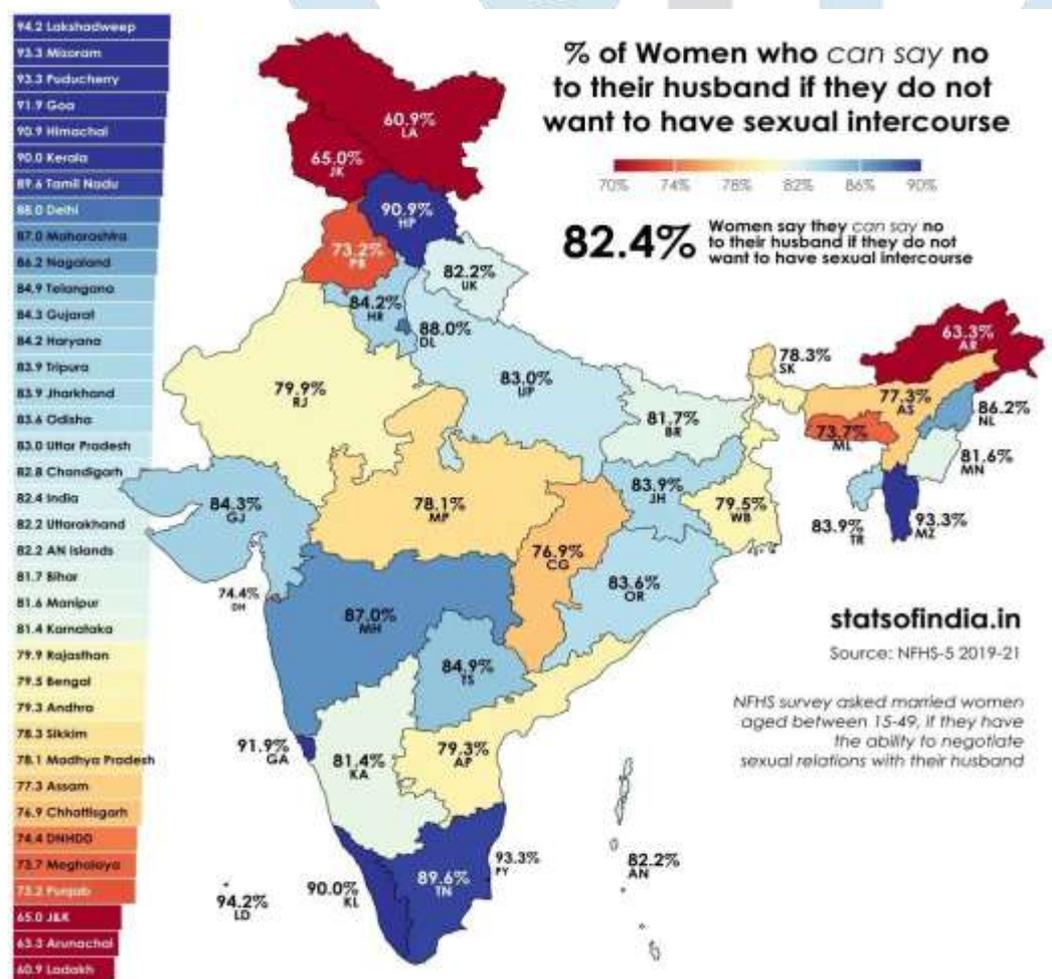
<sup>17</sup> Nigam, S. (2015). The social and legal paradox relating to marital rape in India: Addressing structural inequalities

(18.7%), and 'Rape' (7.1%). The crime rate per lakh women population rose to 66.4 in 2022 from 64.5 in 2021.<sup>18</sup>

NFHS-5 (2019-21) data depicts that over 95% of married women in India who endured sexual violence identified their husbands/former husbands as the perpetrator. Worryingly, over 90% of those who endured sexual violence did not seek help from anyone. Even among those who did, none approached a lawyer to seek legal recourse. More than 70% took help from their own family or husband’s family.<sup>19</sup>

About 18% of married women said they cannot say ‘no’ to their husbands even if they did not want to have sexual intercourse. About 20% of husbands said they would get angry and reprimand their wives for refusing to have sex, while about 13% said they would refuse financial support. Given that only 27% of married women are employed compared to 92% of married men, such threats force women to endure violence.

According to the NFHS-5 report, sexual violence is most often committed by individuals with whom women have intimate relationships. About 6% of women aged 18-49 have ever experienced sexual violence in India in their lifetime. The picture given below shows the state wise percentage of women who can say no to their husband if they do not want to have sexual intercourse.<sup>20</sup>



<sup>18</sup> National Family Health Survey (NFHS-5), 2019–21. (2021). International Institute for Population Sciences (IIPS).

<sup>19</sup> Dube, D. (2006). License to rape: The Indian viewpoint.

<sup>20</sup> National Family Health Survey (NFHS-5), 2019–21. (2021). International Institute for Population Sciences (IIPS)

## Current Legal Framework and Challenges:

1. **Social Stigma and Cultural Norms:** The deeply ingrained cultural perception that marriage equates to automatic consent contributes to a reluctance among victims to report marital rape. Women often face societal pressure to maintain familial harmony, leading to underreporting of incidents.
2. **Ambiguities in Legal Definitions:** The definitions of consent and coercion within the IPC lack clarity. This ambiguity makes it challenging to prosecute cases effectively, as victims may struggle to provide evidence of coercion or violence.<sup>21</sup>
3. **Enforcement Issues:** Law enforcement agencies often lack the training and sensitivity necessary to handle cases of marital rape. Victims may encounter hostile environments when seeking to file complaints, further deterring them from pursuing justice.<sup>22</sup>
4. **Gender Bias in Judicial Attitudes:** There is often a prevailing gender bias within the judicial system that affects how cases of marital rape are perceived and adjudicated. Judges may unconsciously uphold patriarchal norms, leading to a lack of empathy and understanding for victims.
5. **Emotional manipulation:** Abusers may use guilt, shame, or gaslighting to control victims.
6. **Power dynamics:** Imbalances in relationships can make it difficult for victims to negotiate or refuse sexual interactions.<sup>23</sup>
7. **Lack of support:** Victims may face isolation, blame, or disbelief from family, friends, or authorities.
8. **Trauma and health impacts:** Marital rape can lead to severe physical and emotional trauma, affecting mental health and well-being.
9. **Reporting barriers:** Victims may face hesitation due to fear of retaliation, shame, or fear of not being believed.
10. **Cultural and religious beliefs:** Misinterpreted cultural or religious teachings may perpetuate harmful attitudes toward women and marriage.
11. **Limited resources:** Access to support services, counselling, and legal aid may be restricted.
12. **Awareness and education:** Marital rape often remains unaddressed due to lack of awareness and discussion.

## International and Constitutional Considerations:

1. **International Law:** India is a signatory to various international treaties that emphasize women's rights and the importance of consent. The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**\* calls for states to eliminate discrimination against women in all forms, including within marriage.<sup>24</sup>
2. **Constitutional Rights:** The Indian Constitution guarantees fundamental rights that include the right to equality (Article 14), the right to life and personal liberty (Article 21), and the right to live with dignity.

<sup>21</sup> Dalal, M., & Kumar, R. (2021). Marital rape: The Indian and global perspective. Shandilya Publications

<sup>22</sup> Basu, S. (2015). The trouble with marriage: Feminists confront violence in India. University of California Press

<sup>23</sup> Kumar, R. (1993). The history of doing: An illustrated account of movements for women's rights and feminism in India, 1800–1990. Kali for Women.

<sup>24</sup> Basu, S. (2015). The trouble with marriage: Feminists confront violence in India. University of California Press.

These provisions can be interpreted to argue against the marital rape exemption, as they advocate for individual autonomy and protection from violence.

## The Case for Reform:

1. **Amendment of the BNS:** There is a strong call for amending the BNS to remove the marital rape exemption. Advocacy groups argue for an explicit inclusion of marital rape as a criminal offense, with clear definitions of consent and coercion. This would align Indian law with international standards and recognize the autonomy of women within marriage.
2. **Enhanced Training for Law Enforcement:** Police and judicial officers must undergo specialized training on gender sensitivity and the nuances of sexual violence within marriage. This training can help create a more supportive environment for victims seeking justice.
3. **Public Awareness Campaigns:** Initiatives aimed at educating the public about the legal definition of consent, rights within marriage, and available support services are essential. Changing societal attitudes toward marital rape is critical to fostering an environment where victims feel empowered to come forward.<sup>25</sup>
4. **Support Systems for Victims:** Establishing robust support systems, including counselling, legal aid, and safe shelters, can provide essential resources for victims. These systems should be accessible and sensitive to the unique challenges faced by survivors of marital violence.

Marital rape reforms advocate for changes in laws and societal attitudes to better protect survivors and hold perpetrators accountable.<sup>26</sup> Key reform goals include:

### 5. Legal Reforms:

- a) Criminalize marital rape globally, removing exemptions.
- b) Define marital rape clearly in laws.
- c) Ensure equal protections for all spouses, regardless of gender.
- d) Remove requirements for physical force or violence.
- e) Establish consent as an essential element.

### 6. Societal and Cultural Reforms:

- a) Raise awareness about marital rape.
- b) Challenge harmful gender stereotypes and power dynamics.
- c) Promote healthy relationships and communication.
- d) Support survivor-centered approaches.
- e) Encourage reporting and seeking help.

### 7. Support and Resources:

- a) Increase access to counselling, legal aid, and shelters.
- b) Train law enforcement, judiciary, and healthcare providers.
- c) Implement evidence-based policies and protocols.
- d) Provide anonymous reporting options.
- e) Foster community support networks.

<sup>25</sup> Randall, M., Koshan, J., & Nyaundi, P. (Eds.). (2017). *The right to say no: Marital rape and law reform in Canada, Ghana, Kenya and Malawi*. Hart Publishing.

<sup>26</sup> Ahmed, S., & Shukla, S. (2022). *Marital rape: A socio-legal perspective*.

## 8. International Cooperation:

- a) UN and regional organizations promoting reforms.
- b) Sharing best practices and research.
- c) Collaborative efforts to address cultural and religious misconceptions.<sup>27</sup>
- d) Strengthening international human rights standards.
- e) Monitoring progress and accountability.

## Conclusion:

Marital rape remains one of the most pervasive yet unacknowledged forms of sexual violence in India. Despite the Constitution's guarantees of equality under Article 14 and dignity under Article 21, the Bharatiya Nyaya Sanhita, 2023 retains the marital rape exception, thereby denying women the right to bodily autonomy within marriage. This legal immunity, rooted in patriarchal notions of implied consent, perpetuates gender subordination and contravenes both constitutional morality and India's obligations under international human rights law.<sup>28</sup>

Judicial pronouncements in cases such as *Independent Thought* and *Navtej Johar* underscore that marriage cannot be a defence for inequality or violation of fundamental rights. The persistence of the exception clause is, therefore, both legally and morally indefensible. While critics argue that criminalising marital rape may destabilise the institution of marriage, constitutional jurisprudence makes clear that the sanctity of marriage cannot override the fundamental rights of individuals.<sup>29</sup>

Reform must begin with legislative action: deleting the exception clause in Section 63, explicitly affirming that a spousal relationship is not a defence to rape, and ensuring equal sentencing policies. Simultaneously, judicial and police training, accessible support services, and public awareness initiatives are essential to break the silence surrounding marital rape and provide survivors with dignity and justice.<sup>30</sup>

Ultimately, criminalisation of marital rape is not simply a legislative reform but a constitutional necessity. It is vital for ensuring that marriage does not become a shield for violence, and that the principles of consent, autonomy, and equality extend fully to all individuals, irrespective of marital status.

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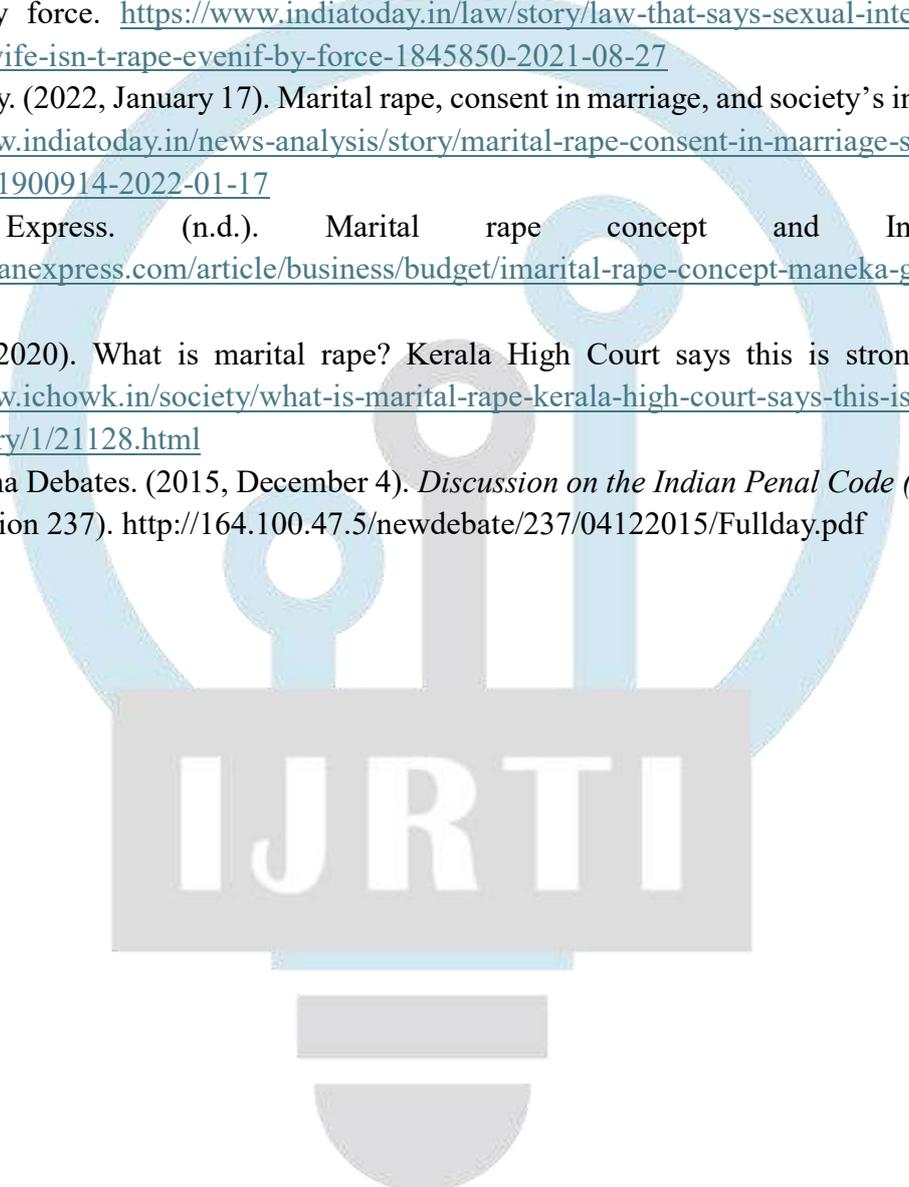
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A large, light blue watermark of a lightbulb is centered on the page. Inside the bulb, the letters 'IJRTI' are written in a bold, white, sans-serif font. The bulb has a grey base and a semi-circular bottom.