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With this thought, we hereby present to you

MARITAL RAPE IN INDIA: A LEGAL PERSPECTIVE **ON CRIMINALIZATION**

AUTHORED BY - SNEHA SINGH & DR. RASHMI SINGH RANA

Abstract

Trust is the cornerstone of any relationship, including marriage. Marriage is a sacred and enduring bond, built on mutual vulnerability and dependence. However, the reality of marital rape challenges this ideal, raising critical questions about whether forced sexual intimacy can ever be justified within such a union. In contrast, sexual cohabitation is a part of marriage, but not its sole foundation. This paper examines the legal framework and significant Indian court judgments on marital rape, drawing on the report of the 172nd Law Commission & the report of Justice Verma Committee. It aims to highlight gaps in the law and propose a more equitable approach to addressing this issue.

Keywords: *Marital Rape, Criminalizing Marital Rape, Rights of women, Marriage, Spousal Consent*

1. Introduction

Marriage is considered a bond that is built upon the foundation of trust. In India, marriage is given a special status of a sacred and pious relationship. Marital rape destroys the trust inherent in a marital relationship and diminishes the dignity of a married woman. Nevertheless, it is still not addressed by India's rape laws. This raises important questions: Is a married woman viewed as her husband's property or object? Does she not have the right to defend her body against unwelcome advances from her husband? While marriage grants the legal right to conjugal relations, the notion that a wife must comply with her husband's wishes regardless of her will, consent, or well-being is incompatible with the ideals of a civilized society. The reason given for not criminalizing marital rape is said to “destabilize the institution of marriage and break its sanctity.”

The NFHS reported that 10.4% of cases of sexual violence on women by their husbands. It should not come as a surprise that marital rape causes an extreme level of mental as well as physical agony to the women. In India, marital rape exists de facto and not de jure. In her

article, Prasad, U. (2018) stated that many Indian married women must deal with is illuminated by the NFHS-4. According to the report, over one in three women has experienced emotional, sexual, or physical abuse at the hands of their partner, with physical violence being the most prevalent type. Overall, marital violence has decreased from 37% in 2005–06 to 29% in 2015–16, indicating modest progress. However, for those who have experienced violence in the past year, the rate has only marginally decreased from 24% to 22%. A startling one in four abused women reported severe injuries, such as sprains, fractures, and burns, highlighting the urgent need for reform. India has a high rate of marital rape, according to data from the National Family Health Survey (NFHS), with 54% of women saying that their husbands' violence is acceptable and that they have the right to force their wives to have sex. Currently, the only recourse a woman must protect herself from suffering from sexual assault is to file a case under 498A of IPC, i.e., for the offense of subjecting a married woman to cruelty. Therefore, it remains a big question that, 'What kind of sanctity is the law protecting?' Therefore, through this research, the exception of marital rape laws will be delineated from five different parameters firstly the historical and societal aspects of marital rape law, the theoretical and legal framework under contention, the substantive law discussion, the evidentiary rule, and procedure aspect and lastly the way forward

1.1.Objective of research

- ✓ To understand concepts of marital rape within the Indian context.
- ✓ To examine the judicial perspective on marital rape
- ✓ To comprehend the rationale for the non-criminalization of marital rape in India.
- ✓ To provide remedies and suggestions from the study.

1.2.Research questions

- ✓ Is consent relevant in the context of marital rape?
- ✓ In what manner exception 2 of Section 63 Bharitya Nayaya Sanhita, violates fundamental rights provided in the Indian Constitution?
- ✓ How far the criminal justice system and agencies in has India succeeded in responding to marital rape offenses?

1.3.Research Method

Using primary and secondary data sources, the researcher adopted doctrinal approaches to analyze the current situation. Legislation and case law served as primary sources, while

journal articles, digests, and legal commentaries were secondary sources. Additional resources were also utilized to support and complete this investigation.

1.4. Existing Knowledge

The literature review for the research has been done based on themes and the major themes are:

- *Historical Context and Legal Framework*
- *Judicial Perspectives and Interventions*
- *The Impact of the Judicial-Legislative Divide*
- *Impact of No-criminalization on women's right*

Marital rape has been in debate for quite some time and therefore has been always an interest of writers. There are numerous articles available on the internet and in different journals reflecting all the issues relating to marital rape. The issue of marital rape is profoundly tangled with societal norms & legal frameworks, and the lived experiences of countless women. Despite growing awareness and advocacy, the immunity granted to marital rape continues to reflect a troubling disregard for a woman's autonomy and dignity. This immunity finds its roots in colonial-era laws, particularly Macaulay's Indian Penal Code (IPC) of 1860, which assumed that marriage inherently granted irrevocable consent to sexual relations. Sen (2010) brought attention to the 172nd Law Commission Report of 2000, which questioned this archaic assumption and called for the removal of "Exception 2 under Section 375 of the IPC." The report emphasized that forced sexual cohabitation within marriage is not just an incongruity of consent but a violation of the fundamental right to bodily autonomy of women.

Menon, (2001), Women find it challenging to believe that they are worthy of justice and safety in marriage because these narratives not only excuse abuse but also silence them. Gupta & Gupta, (2013). Judicial activism has played a significant role in challenging traditional views on marital rape. The important Supreme Court decisions that have gradually upheld women's rights and physical autonomy. Non-consensual sexual cohabitation with a minor wife that is minor is deemed statutory rape, the seminal decision "Independent Thought vs. Union of India, 2017" fundamentally rejected the broad legal immunity accorded to marital status and signaled a sea change in Indian law. This decision is regarded as an important first step in creating a thorough legal system that deals with rape in marriages. Judicial voices have long advocated for change, yet legislative action remains stalled. The J.S Verma Committee (2013), formed in the repercussion of the Nirbhaya case, passionately argued for recognizing the right of women to refuse sexual intercourse, even within marriage. The committee asserted that the marital rape

exception undermines constitutional guarantees of equality, dignity, and liberty. Singh (2019) highlighted the persistent legislative hesitancy to address this issue, pointing to the Pam Rajput Committee Report (2015), which criticized the “Criminal Law Amendment Act of 2013” for neglecting to criminalize marital rape, despite its devastating impact on women’s lives.

Globally, many countries have made strides in abolishing marital rape immunity, providing hope and examples of progress. For instance, the United Kingdom (R v. R, 1991), Canada (1983 amendment to the Criminal Code), and South Africa have affirmed the principle that marriage does not nullify the need for consent. Dhonchak, (2019) lamented India’s failure to follow suit, arguing that this reluctance not only perpetuates injustice but also violates international obligations under the Convention on the “Elimination of All Forms of Discrimination Against Women (CEDAW).” Numerous nations have successfully enacted legislation against marital rape, according to comparative studies like those done by Dsouza, (2023), indicating a wider acceptance of women's rights as essential human rights. Yllo & Torres, (2019). These global models can serve as a template for legal reforms in India and raise the prospect of a cultural change that would increase acceptance of women's autonomy in marriage. A complicated interaction between legal frameworks, judicial actions, and societal attitudes is highlighted in the research on marital rape in India. Even though judicial activism has significantly advanced women's rights, real transformation is hampered by persistent legislative hesitancy. It is crucial to comprehend the historical, cultural, and social aspects of this issue to effectively argue for a legislative framework that acknowledges and defends women's rights inside marriage. Further investigation into the effects of the judicial-legislative split is necessary to guide policy changes that consider modern viewpoints on human rights and gender equality.

Cultural and religious norms further complicate the path to reform. Rao & Soni, (2018), noted that in India’s deeply conservative society, marriage is often viewed as sacred, and any attempt to criminalize marital rape is seen as a threat to this institution. He observed that religious laws governing personal matters often conflict with progressive legal principles, creating significant barriers to recognizing marital rape as a crime. Beyond the legal and cultural debates, the human cost of this issue is undeniable. Patel, (2018) argued that the marital rape exception strips women of their constitutional rights to equality, non-discrimination, and personal liberty. Kadyan & Unnithan, (2023) emphasized that India’s failure to criminalize marital rape leaves women vulnerable and contradicts its commitments to international human rights frameworks.

The toll on women's physical and emotional well-being is immense. Upadhyay, (2024) described how the lack of legal protection normalizes coercion and perpetuates cycles of violence, silencing countless women who suffer in their own homes. The Justice Verma Committee (2013) poignantly likened non-consensual marital intercourse to torture, underscoring its severe psychological and physical impact. Legislative attempts to make marital rape a crime have faced strong opposition, despite this increasing judicial acceptance. According to academics, this hesitancy is a result of deeply ingrained cultural norms that place a higher value on family honor and traditional gender roles than on women's rights. He goes on to say that political dynamics have impeded legislative reform efforts because of patriarchal norms and conservative fractions' fear of retaliation. Furthermore, Chowksey & Srivastava, (2010) points out that political parties frequently put their electoral objectives ahead of women's rights, which causes a halt on this important subject. Gender rights in India are greatly impacted by the disparity between legislative inertia and judicial advocacy. According to academics like Kumari, (2023), this disparity makes women more vulnerable and deprives them of legal safeguards against domestic abuse. According to his research, the absence of clear legislation making marital rape a crime not only prevents victims from receiving justice but also perpetuates cultural beliefs that undervalue women's rights in marriage. Discussions about marital rape around the world provide important context for understanding India's legal issues.

The urgency to address marital rape is not just about changing laws but about transforming attitudes and ensuring justice for all women. The literature paints a compelling picture of the need to criminalize marital rape in India—not merely as a legal obligation but as a moral imperative to uphold dignity, equality, and human rights. To truly humanize this issue, we must listen to the voices of survivors and advocate for a society where no woman is denied her right to say no, even within the confines of marriage. Change is long overdue, and it is time to bridge the gap between judicial insights and legislative action to restore the humanity that laws should protect.

1.5.Statement of problem

The paper identifies the fact that marital rape as practice is in derogation of “Articles 14 & Article 21 of the Constitution of India.” Under Section 63, Exception (2) of the Indian Penal Code, marital rape is treated as an exception to the definition of rape because it is not a crime based only on the existence of a marital relationship. There is a lack of any legislative framework or

laws which criminalize marital rape, therefore, giving no recourse to women assaulted and raped by their husbands.

2. Indian judicial response to marital rape

Indian Judicial Response to Marital Rape

The concept of rape traces back to the Latin word *rapio*, meaning "to seize," reflecting its historical association with force and control. "Black's Law Dictionary defines rape as the unlawful carnal knowledge of a woman by a man forcibly and against her will. It refers to "A husband's sexual intercourse with his wife by force or without her consent." In India, Section 63 of the *Bharatiya Nyaya Sanhita, 2023*, defines rape in legal terms. The law attempts to address consent with a clear explanation: "Consent means an unequivocal voluntary agreement when the woman, by words, gestures, or any form of verbal or non-verbal communication, expresses a willingness to participate in the specific sexual act." The explanation emphasizes that the lack of physical resistance of women cannot be presumed as consent of the women. It further clarifies that:

- ✓ Consent is invalid if obtained through force, coercion, or a coercive environment.
- ✓ It cannot be implied from a woman's words or actions when she cannot provide genuine or valid consent.
- ✓ Silence or lack of opposition should never be interpreted as agreement to sexual activity.

Despite these provisions, the distinction between submission and voluntary consent remains blurred. In many Indian cases, the absence of physical injuries on the victim leads to a presumption of consent. This perspective ignores the psychological and emotional dimensions of coercion. There have been instances where courts acquitted accused individuals because the victim showed no physical injuries, conflating submission under duress with consent. Such cases highlight a gap in understanding the dynamics of consent and submission, underscoring the need for a deeper alignment between legal principles and societal realities. As we analyze this issue, it becomes essential to explore landmark judgments that attempt to balance constitutional morality with societal morality, providing critical insights into how the legal system addresses this sensitive and complex issue.

a. "Independent Thought v. Union of India, 2017"

The main issue in the case was: Whether exception 2 to section 375 of the Indian Penal Code requires modification.

The decision of the court is as follows: Because it violated the basic rights of minor girls under Articles 14 and 21 of the Indian Constitution, the exception to marital rape was declared invalid. The Court questioned the rationale behind treating "married" and "unmarried" minor females differently, pointing out that this distinction lacked a defined goal. Even if a reason could be found, it was illogically connected to a young girl's married status. Consequently, the Court determined that the classification was unjust and arbitrary, in violation of Article 14's equality principle. It further emphasized that no woman, married or single, should be deprived of her freedom to decline consent for sexual activity. The Court upheld that marriage does not imply that a woman consents to these kinds of relationships. The Supreme Court echoed this sentiment, stating that *"It must be remembered that those days are long gone when a married woman or a married girl child [not just a married girl child] could be treated as subordinate to her husband or at his beck and call or as his property. Constitutionally a female [not just a minor female] has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be demolished."*

Three main points form the basis of the ruling. First, the Court determined that the rule went against safeguards for children under laws such as POCSO, which makes it illegal to have sex with anyone younger than 18 to protect them. The exception, however, sent a concerning message by ignoring this protection for married children who are 15 years of age or older. It also conflicted with the ban on child weddings because it essentially shielded husbands who coerced teenage brides into having sex from being prosecuted for rape.

The Court concluded that Exception 2 should be interpreted as though it excluded the challenged group to safeguard children and maintain a purposeful and harmonious interpretation. This argument was expanded upon in the concurring opinion, which maintained that 18 is commonly recognized by Indian law as the age of maturity for contracts, property, voting, and sex. This universal approach to infancy, meanwhile, might not be sensitive enough to the situation. Parliament might generate constitutional issues if it were to decrease the age of sexual consent while keeping the ban on marriage for people under the age of 18. This is a more urgent issue. The current sexual consent age is excessively high, according to critics, and there is proof that young women under the age of 18 are frequently accused of statutory rape by their families as a kind of retaliation for their autonomy in sexual preference. Given these problems, reducing the legal age of sexual consent would be a more sensible course of action. Additionally, the Court determined that the marital status classification was discriminatory and

arbitrary because it was unrelated to the negative effects of child marriage. It made clear that under other laws, such as POCSO, a husband's non-consensual sexual activities against his minor wife carry the same penalties as rape under the IPC. Since child brides who had been sexually abused could report all relevant offenses except rape after they were 15, the Court held that this established an "artificial distinction." As a result, it was decided that the classification violated the rights to equality and non-discrimination.

The Court highlighted the detrimental impacts of early marriage on young girls' dignity and well-being when it decided that the classification infringed against the right to life for those between the ages of 15 and 18. This decision, which makes having sex with a wife younger than 18 illegal, is a big step towards protecting females. However, because it was not a factor in the case, the Court did not address "marital rape" for people over 18. However, the allegation that Exception 2 violates fundamental rights is supported by the Court's reasoning, which also applies to women over the age of 18, whose dignity is equally destroyed by forced sexual encounters.

b. "Nimeshbhai Bharatbhai Desai v. State of Gujarat, 2017"

In a landmark ruling on marital rape, the Gujarat High Court emphasized that dehumanizing women must not be accepted and demanded the total repeal of the IPC's Section 375 marital rape exemption. The court made it clear that marital rape is a violent conduct that ought to be illegal and is not a husband's right. In this case, the man was found accountable under Section 354 for outraging his wife's modesty, even though he was not proven guilty of sexual abuse. In his ruling, Justice J.D. Pardiwala said that regardless of their relationship, a husband may violate Section 354 by outraging his wife's modesty. He also emphasized that sex is not a husband's prerogative in marriage and pushed for the criminalization of marital rape. "A law that does not give married and unmarried women equal protection creates conditions that lead to marital rape. It allows men and women to believe that wife rape is acceptable. Making wife rape illegal or an offense will remove the destructive attitudes that promote marital rape. Such an action raises a moral boundary that informs society that a punishment results if the boundary is transgressed. Husbands may then begin to recognize that marital rape is wrong. Recognition, coupled with criminal punishment, should deter husbands from raping their wives. Women should not have to tolerate rape and violence in marriage. The total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanizing

treatment of women will not be tolerated, and that marital rape is not a husband's privilege, but rather a violent act and an injustice that must be criminalized."

c. Matrimonial Appeal, Kerala High Court, 2014

In July 2021, the Kerala High Court noted in a matrimonial appeal that Indian legal jurisprudence does not recognize marital rape. Nonetheless, the court may still consider marital rape to be cruel for awarding divorce even when it is not recognized by criminal law. Therefore, the court granted a divorce because the rape throughout the marriage was harsh. Additionally, the Court noted the following:

"Treating a wife's body as something owing to her husband and committing a sexual act against her will is nothing but marital rape. Right to respect for his or her physical and mental integrity encompasses bodily integrity, any disrespect or violation of bodily integrity is a violation of individual autonomy. Autonomy essentially refers to a state of feeling or condition one believes to possess having control over it."

d. Hrishikesh Sahoo v. State of Karnataka, 2022

The Karnataka High Court, in a landmark decision, ruled that a husband can be punished under Section 376 of the IPC for raping his wife. The case involved allegations of physical and mental abuse against the wife and child after the marriage deteriorated. The husband faced charges under Sections 498A, 354, 376, and 506 of the IPC, along with Sections 5(m) and 5(l) read with Section 6 of the POCSO Act, 2012, which were taken cognizance of by the Sessions Judge. He subsequently filed a petition to quash the charge under Section 376 of the IPC. Based on the grave accusations in the complaint and other correspondence, the Sessions Judge's decision to take cognizance and file charges against the petitioner-husband under Section 376 of the IPC was maintained by the Court after taking into account arguments from both sides. The request to withdraw the charge was properly denied. In light of this, the husband's Section 376 accusation was upheld despite the exception clause. The Court stated that such matters are within the jurisdiction of the legislature, which must consider the circumstances and implications before making a decision. As a result, the Court did not decide on the more general issue of recognizing marital rape as an offense or suggesting the removal of the exception. However, the Court made important remarks regarding the criminalization of rape in marriage. The Court expressed its observations in the following terms: *"The submission of the learned senior counsel that the husband is protected by the institution of marriage for any of his acts being performed, as is performed by a common man, again sans countenance, because the*

institution of marriage does not confer, cannot confer and in my considered view, should not be construed to confer, any special male privilege or a license for unleashing of a brutal beast. If it is punishable to a man, it should be punishable to a man albeit, the man being a husband. A brutal act of sexual assault on the wife, against her consent, albeit by the husband, cannot but be termed to be a rape. Such sexual assault by a husband on his wife will have grave consequences on the mental sheet of the wife, it has both psychological and physiological impact on her. Such acts of husbands scar the soul of their wives. It is, therefore, imperative for the lawmakers to now hear the voices of silence.”

e. “RIT Foundation v. Union Of India and other connected matters, 2022”

The Delhi High Court issued a divided decision on petitions contesting the Indian Penal Code's Section 375 marital rape exception, which prohibits coerced sexual relations between a husband and wife from being considered rape, on May 11, 2022. The case, which has been pending since 2018, has garnered a lot of attention since, had the judges' opinions not been split, it might have resulted in a historic decision. A bench made up of Justice C. Hari Shankar, who opposed criminalization, and Justice Rajiv Shakti, who supported it, handed down the decision. The Supreme Court of India is now considering the case to make a final decision. The following points of contention were addressed by the court:

✓ ***Whether the distinction created by the marital rape exception between married and unmarried women is constitutionally valid?***

Justice Rajiv Shakti held that the marital rape exception fails the nexus test as it grants immunity to an offender solely based on the marital relationship with the victim. Acts that would otherwise constitute rape under Section 375 are exempted merely because they occur within a marriage. To illustrate this arbitrariness, Justice Shakti cited two examples. *“The classification, in my opinion, is unreasonable and manifestly arbitrary as it seems to convey that forced sex outside marriage is ‘real rape’ and that the same act within marriage is anything else but rape. A ‘chaste woman’¹⁴ or a young girl – is more likely to be considered a ‘victim’; but not a married woman.”* *“In a gang rape involving the husband of the victim, the co-accused will face the brunt of the rape law; but not the offending husband only because of his relationship with the victim. A married woman's ability to say “no” to sexual communion with her husband when he is infected with a communicable disease or she is herself unwell finds no space in the present framework of rape law.”* Justice C. Hari Shankar, however, had a different viewpoint. He dismissed the petitioner's argument that the marital rape exception violates Article 14 of the Constitution and maintained its constitutionality. He reasoned that

the exception's goal is to differentiate between sexual activities involving couples and those involving strangers under Section 375. He claims that the purpose of this differentiation is to uphold the institution of marriage. He added: *“Preservation of the marital institution is in eminent public and societal interest, and it is preposterous to contend that such an object is not legal.”*

✓ ***Whether the legislative provisions offering various avenues for a victim to seek redress for spousal violence are adequate?***

In support of the Amicus Curiae's position, Justice Rajiv Shakti said that current laws such as the Domestic Violence Act, Sections 498A and 304B of the IPC, and others are insufficient to address rape under Section 375 in cases of marital rape. Despite certain similarities, these statutes do not directly relate to Section 375, which states that a husband is not criminally responsible for raping his wife under the existing legal system.

✓ ***Does a husband have a "conjugal expectation," which includes the right to have sex with his wife?***

Regarding this point, Justice Rajiv Shakti believed that a husband has a "conjugal expectation" of sexual relations with his wife, but this expectation must not be construed as an unrestricted right to sex without her consent. He emphasized that the law cannot mandate consummation. In contrast, Justice C Hari Shankar agreed with the petitioners' counsel that conjugal rights end where bodily autonomy begins. However, he did not find sufficient grounds to invalidate the exception. He argued that the exception does not imply that a husband has a right to force sex on his wife. Rather, it states that, in cases where a husband engages in such an act, he should not be treated as a rapist, unlike a stranger committing the same act. *“The impugned Exception does not seek, directly or indirectly, to enforce a non-enforceable conjugal right or even a conjugal expectation. The existence of such a conjugal expectation, to normal sexual relations, read with the unique relationship of marriage, however, provides an intelligible differentia, having a rational nexus to the object of the impugned Exception, as well as to the object of Section 375 itself.”*

✓ ***Does the State have a legitimate interest in protecting the institution of marriage?***

According to Justice Rajiv Shakti, the State's job is to acknowledge the marriage's existence and offer procedures for its dissolution or resolution as needed, not to specify the structure of the family. The State's role in recognizing marriages, assisting in their dissolution, and offering remedies, such as maintenance and custody, is exemplified by laws like the Hindu Marriage Act, Special Marriage Act, and the Domestic Violence Act. These statutory functions are the extent of the State's intervention. To shield women from sexual abuse, the state has also taken

action through both criminal and civil legislation. This involvement is reflected in provisions like the Domestic Violence Act and Sections 375, 376, and 376B of the IPC. The exclusion of marital rape from the definition of rape, particularly when the offense is committed by a husband against his wife, is not justified by the fact that some features of offenses under Section 375 are covered by other IPC provisions (such as Sections on hurt, serious hurt, and cruelty). Because the Marital Rape Exception (MRE) is statistically uncommon, worries about false cases resulting from its repeal were rejected. Furthermore, making marital rape a crime offers women vital protection against possible abuse by their husbands or families, and the legal system has shown that it is capable of handling these situations effectively.

✓ **Whether striking out the MRE will create a new offense?**

To invalidate the Marital Rape Exception (MRE) without establishing a new crime, Justice Rajiv Shakti offered five arguments. First, eliminating the MRE would only broaden the definition of rape to include violating husbands, as it is already established in “Section 375 IPC.” Second, since the ingredients of the offense would not change—only its application would—no new offense would be formed. Third, it is acceptable to use judicial powers such as removing unconstitutional aspects from a statute to preserve its legal portions. Fourth, whereas Section 375 is neutral regarding the relationship between the victim and the criminal, the MRE makes distinctions depending on marital status. Last but not least, criminal law is act-centric and penalizes the offense independent of the relationship. Justice C. Hari Shankar, on the other hand, disagreed, contending that judges cannot invent new crimes based on the arguments of counsel and that invalidating a provision shouldn't result in the creation of a new offense.

On every major point of contention, the Court was split. Judge Rajiv Shakti declared that “Exception 2 of Section 375 and Section 376B of the IPC violate Article 14” and that the exemption for spouses from the crime of marital rape is unconstitutional. Justice C. Hari Shankar, on the other hand, maintained that Exception 2 is constitutional because it is founded on the doctrine of intelligible differentia. Because there are significant legal issues at stake, both judges granted certificates to appeal to the Supreme Court.

3. Suggestions and conclusion

One of the most horrible crimes committed against women is rape. In *Rafiq v. State of Uttar Pradesh, 1980*”, justice Krishna Aiyar said, "A rapist kills the soul, but a murderer kills the

body." Whether the victim is married or not makes no difference; rape is rape whether it is perpetrated by a stranger or a spouse.

After analyzing both substantive and procedural aspects of marital rape in India, the marital rape exception should be removed from the Section 63. Together with this the stereotypes and notions attached to marital rape should be paralyzed to give justice to the woman without any personal prejudice and bias of judges, lawyers, and police. Bharitya Nayaya Sanhita, 2023, Bharitya Nagrika Suraksha Sanhita, 2023, Bharitya Saksha Sanhita, 2023 should be accordingly amended. So, of these amendments can be: In the Bharatiya Nyaya Sanhita (BNS), 2023, the legislature ought to eliminate Section 63, Exception (2), and implement procedural modifications. Regardless of the husband's standing, the Bharatiya Shakti Sanhita (BSS) should make sure that there is never a presumption of consent in cases of marital rape. The husband's prior bad behaviour must be taken into consideration by the law when establishing the offense. Marital status shouldn't be a legitimate defence once the exemption has been removed, nor should it affect the husband's guilt or the finding of consent.

Challenges before criminalizing Marital Rape: Today when gender justice has been one of the most profound agenda still the backing given to marital rape exception is unacceptable. Therefore, before moving forward to remove the marital rape exception from the IPC, some important considerations must be analyzed which are discussed below.

- ✓ 'Marital Rape' or 'Marital Rape Exception'
- ✓ Marital Rape as Legal Fiction
- ✓ Conjugal Right v. Marital Rape
- ✓ Consideration while determining the guilt of the Accused
- ✓ How is 'Harm' visualized in Marital Rape?
- ✓ Importance of Consent in Sexual Relationships
- ✓ Quantum of Punishment- Lenient or Usual?
- ✓ Demand for gender-neutral laws.

Reasons for Non-Criminalization of Marital Rape: Some people contend that when a woman marries a man, she implicitly agrees to engage in sexual activity whenever her husband wants to. Laws against marital rape are opposed because they could undermine the sanctity of marriage by removing any possibility of reconciliation. They also think it's very hard to prove non-consent in a marriage because consent is usually taken for granted. In addition, there is fear that, like the growing number of cases of fake cruelty and dowry, resentful or unhappy

wives would fraudulently accuse their husbands of marital rape. Despite this, the Indian Parliament has discussed the matter and has argued against criminalizing marital rape, citing concerns that doing so may undermine the institution of marriage. The government and the courts have been hesitant to make marital rape a crime, frequently shielding perpetrators under the pretense of preserving marriage. The moment has come for India to recognize the pervasiveness of marital rape and the pressing necessity to make it a crime. "NO means NO," whether in or out of marriage, after all. The exception for marital rape should be eliminated since it is based on antiquated, stereotyped ideas.

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