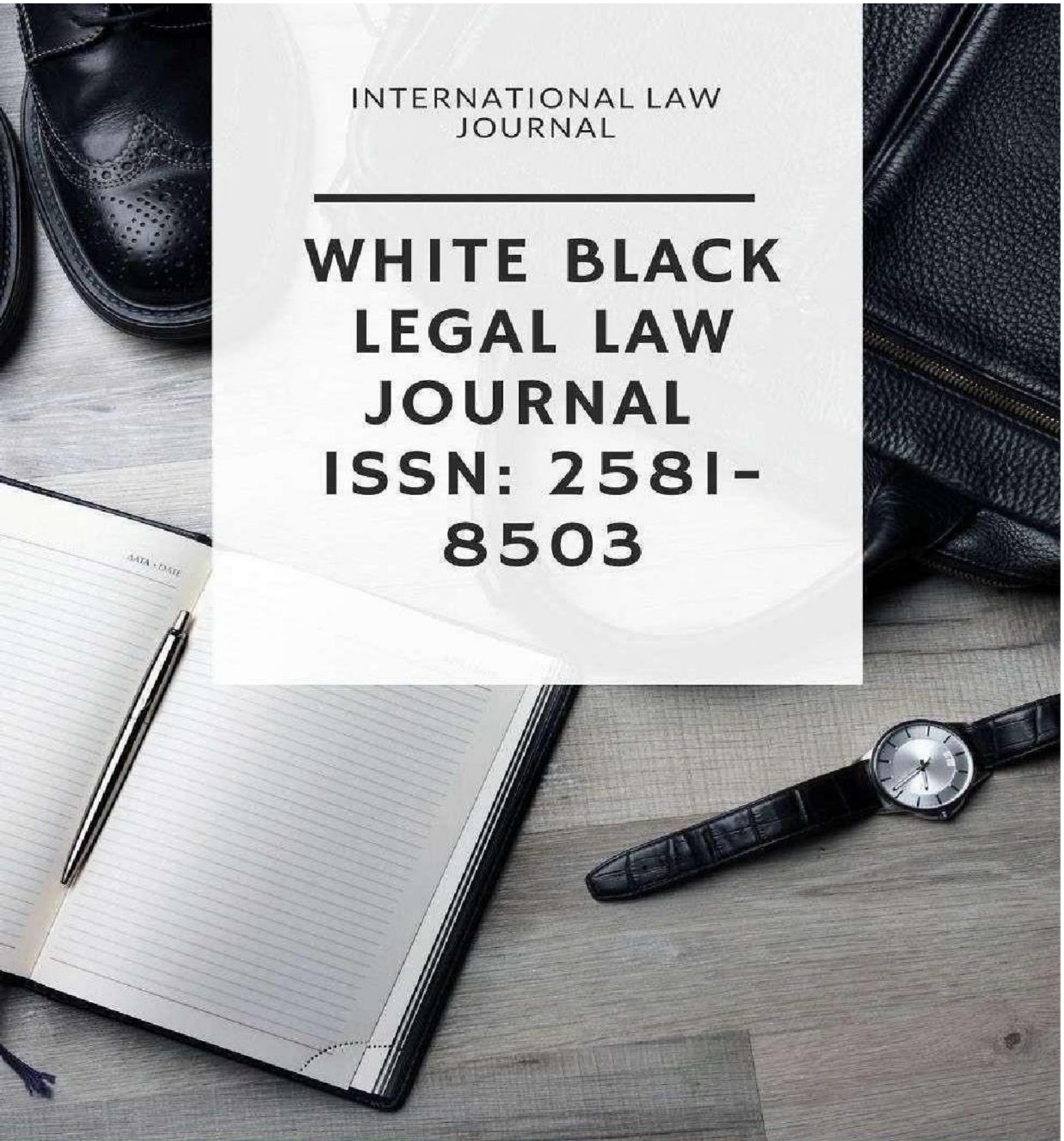




INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

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LEGAL ANALYSIS OF MARITAL RAPE IN INDIA: FROM MARITAL AUTHORITY TO INDIVIDUAL AUTONOMY

AUTHORED BY - C.NEETHU

ABSTRACT

Marital Rape is a sexual intercourse committed by a husband against the will of his wife. While many countries across the world have criminalised marital rape by treating it as a form of sexual violence equivalent to rape outside marriage, India continues to treat marital rape as an exception to Rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023. Although this exception is limited to wife who is not a minor, it still discriminates a married woman by not granting them the same legal remedy available to an unmarried woman.

Therefore, this article examines the constitutional, legal and social aspects of marital rape in India by questioning whether marital rape exception violate the fundamental rights of married women, and evaluating the reports of sexual violence within the course of marriage and examining the limited legal protection such as laws relating to domestic violence and cruelty. This paper also examines the consistent position of the Central Government, which argues against the criminalization of marital rape, citing concerns that it may undermine the institution of marriage and result in potential misuse of the law.

A comparative study of marital rape laws of other countries with India, shows that India could criminalize marital rape while setting a legal framework with gender sensitive investigation, judicial guidelines and fair trial standards to prevent potential misuse of law. Finally, the study critically observes the opinions made by the Supreme Court of India in cases such as Independent Thought Vs Union of India, which emphasising bodily autonomy over marital ownership. At last, the aim of this article is to protect the rights of women in India, without discriminating on the basis of marital status.

KEYWORDS Marital Rape, Sexual violence, Indian Constitution, Bodily autonomy, Criminalization, Legal and Social aspects.

INTRODUCTION

Marriage in India is viewed as a revered and socially important institution that provides the foundation for family life and societal structure. Traditionally, marriage is viewed not merely as a contractual relationship but as a spiritual and cultural union between two individuals and their families. Various personal laws, including Hindu, Muslim, Christian, and other customary laws, recognise marriage as an essential institution that governs rights and duties between spouses¹.

For a marriage to stay happy and long, both husband and wife must have mutual respect and consensual relation throughout their marriage life. If either of the party were forced to do any act, it will result in the failure of marriage. Likewise, a non-consensual sexual act committed by a husband against the will of his wife (Marital Rape) could make the women suffer both physically and mentally which would lead to the deterioration of a happy married life.

Therefore, many countries have criminalized marital rape as a measure to protect the rights of married women and to uphold the Institution of marriage. Currently, there are still 30 to 40 countries, including India, that have not yet criminalized marital rape. That's because, traditionally marriage is viewed as implied consent for sexual relations, thereby undermining a woman's autonomy after marriage. While some oppose criminalisation on the ground that it may affect the sanctity of marriage or lead to misuse of law, others believe that legal reform is necessary to ensure justice and protection for married women.

HISTORICAL BACKGROUND OF MARITAL RAPE AS AN IMMUNITY

Historically, the notion of marital rape exemption has its roots in English common law. Sir Matthew Hale's doctrine from the seventeenth century asserted that a husband could not be charged with raping his wife, as marriage was seen to imply an irrevocable consent to sexual intercourse. This doctrine strongly influenced colonial legal systems, including the Indian Penal Code of 1860, where Exception 2 to Section 375 excluded forced sexual intercourse by a husband with his wife from the definition of rape².

The exception to rape within marriage in the IPC originated from Victorian legal and social norms characterized by patriarchal assumptions. These norms failed to recognize gender

¹ Ishrat Chahal, India Supreme Court hears petitions on marital rape exception from criminal sanction, Jurist news, Oct 19, 2024.

² Tanishka Agarwal, Redefining Consent – Why India Must Criminalize Marital Rape, Vol. 8 No. 2, National Journal of Criminal Law, 2025.

equality, denied married women independent legal and property rights, and were based on the Doctrine of Coverture, which treated the husband and wife as a single legal entity represented by the husband³.

A similar concept prevail in India were according to Manusmriti, a woman is viewed as property whose custody rest with her father before marriage, husband after marriage and son when became a widow. This showcases the deep patriarchal notions of neglecting a women's individual status.

Traditionally, women were expected to fulfil marital obligations without questioning consent. Marriage was viewed as a private and sacred institution, limiting legal scrutiny of sexual abuse between spouses⁴. The marital rape exemption in India is a colonial legacy that remained unchanged despite constitutional guarantees of equality and dignity. Researchers point out that while many countries gradually abolished marital rape immunity during the late twentieth century, India retained the exception under the justification of preserving the sanctity of marriage⁵.

Academic literature highlights a gradual shift in judicial attitudes toward marital rape. In the past, courts frequently focused on maintaining the sanctity of marriage; however, recent rulings have shifted towards emphasizing fundamental constitutional principles, including privacy, dignity, and bodily autonomy. Scholars argue that evolving constitutional jurisprudence has strengthened challenges to the marital rape exception and promoted the understanding of consent as a continuous and revocable choice⁶.

Recent scholars highlight a shift from marital immunity to legal accountability, focusing on constitutional rights and gender justice. Despite the enactment of the Bharatiya Nyaya Sanhita, 2024, the continued marital rape exception has drawn criticism, reflecting the tension between traditional notions of marriage and modern constitutional values⁵.

A LEGAL DISCLOSURE OF MARITAL RAPE IN INDIA

The legal discourse on marital rape in India has developed around the conflict between the institution of marriage and the individual right of bodily autonomy. Indian law continues to provide a distinct treatment to sexual violence within marriage, creating a gap between

³ Makkar, Sarthak. "Marital rape: A non-criminalized crime in India." *Harvard Human Rights Journal* 1 (2019).

⁴ Ananya Verma, Reframing Consent, Law, and Harm: A Multidimensional Analysis of Marital Rape Across Legal, Psychological, and Socio-Cultural Contexts, 6 *International Journal of Social Sciences*, 2, (2026)

⁵ Ghosh, Shuchismita. "A scoping review on exploring the urgency of criminalising marital rape in India." *Social Sciences & Humanities Open* 12 (2025): 101694.

⁶ Jeyamurugan, S., & Priyavardhini, A, From Immunity to Accountability: The Evolution of Judicial Attitudes Towards Marital Rape in India. *Journal of Law and Legal Research Development*, (2025) 05-11.

constitutional principles and criminal law⁷.

Treating marital rape as an exception to rape can be traced back to colonial legal thinking, where marriage was considered a relationship that created permanent sexual consent. The earlier Indian Penal Code, 1860 under Section 375 defined rape but excluded sexual intercourse between a husband and wife from the offence of rape. This exception reflected traditional patriarchal assumptions that a wife had a marital obligation to provide sexual access to her husband. Feminist legal scholars have criticized this approach because it treats marriage as a limitation on a woman's individual identity and ignores the possibility of sexual coercion within intimate relationships⁷.

Reports of sexual violence within marriage

The National Family Health Survey (NFHS-4), conducted during 2015–16, reported that a significant proportion of married women aged 15–49 years experienced sexual violence within marriage. The survey indicated that nearly 83% of women who faced sexual violence identified their husband as the perpetrator, while only about 7% explicitly described their former husband as the offender. These findings highlight the prevalence of intimate partner sexual violence and the social and legal barriers (absence of criminal provision) often prevent women from recognizing or reporting such acts as criminal behaviour⁸.

Legal Position under the Bharatiya Nyaya Sanhita, 2023

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023 replaced the Indian Penal Code as a sign to decolonize the Indian criminal law framework. However, the position relating to marital rape remained substantially unchanged. Section 63 of the BNS outlines the definition of rape and includes an exception that states sexual intercourse or sexual acts performed by a man with his wife, provided she is over 18 years old, shall not be considered rape. Thus, while the BNS modernize several criminal provisions, it continued the marital exception that prevents prosecution of a husband for forced sexual intercourse with his adult wife under the rape provision⁹.

Apart from decolonization, the BNS initiative towards Victim centric justice fails as it doesn't include victims who are wives of perpetrators.

⁷ Syed Raiyyan, Marital Rape: Legal Position in India under the New Criminal Laws, LegalOnus Law Journal, 2023.

⁸ Bhagyashikha Saptarshi, Marital Rape and Law, Manupatra, 2024.

⁹ Shobha Tiwari, Marital Rape: Legal Position in India under the New Criminal Laws, 2025.

On constitutional grounds, the continuance of this exemption has been challenged. Researchers and legal commentators argue that excluding marital rape from the definition of rape creates unequal protection under law because the same act is treated differently depending on whether the accused is a stranger or a spouse. The debate has increasingly focused on Articles 14, 15, and 21 of the Indian Constitution, particularly the rights to equality, non-discrimination, dignity, and personal liberty¹.

Laws Addressing Sexual Violence within Marriage

Although marital rape is not separately recognized as rape under the BNS, certain other laws provide protection against sexual and physical abuse within marriage.

The Protection of Women from Domestic Violence Act of 2005 acknowledge sexual abuse as domestic violence. A woman subjected to forced sexual acts, humiliation, or sexual coercion within marriage may seek civil remedies such as protection orders, residence orders, and monetary relief. However, scholars note that the Act primarily provides protective and remedial measures rather than criminal punishment equivalent to rape.

Section 85 of the BNS - Penalizes cruelty committed by a husband or relatives of the husband. However, cruelty provisions do not specifically punish forced sexual intercourse as rape¹⁰.

Other criminal provisions relating to assault, criminal intimidation, and causing hurt may apply depending on the facts of a case. Nevertheless, researchers argue that these provisions do not fully address the specific harm caused by sexual violence because they do not recognize violation of sexual autonomy as the central injury.

Why Marital Rape is not criminalized in India?

The one major reason for India's reluctance to criminalize marital rape is to protect the stability of marriage and avoid excessive interference in private relationships. Some policymakers have expressed concerns that criminalising marital rape may lead to misuse of law and may negatively affect marital harmony¹⁰.

Another reason discussed by scholars is the difficulty of applying ordinary rape principles within marriage. Unlike stranger sexual assault cases, marriage involves an ongoing personal relationship, and questions regarding evidence, consent, and intention become more complex. However, critics argue that these concerns should not justify denying legal protection to

¹⁰ Bharti Jain, No proposal to criminalise 'marital rape' as BNS & law against domestic violence protect married women: Government in Rajya Sabha, The Times of India, Dec 11, 2024.

married women because consent remains essential in every sexual relationship.

Legislative Challenges and Government Stance on Marital Rape in India

The legislative debate on marital rape in India reflects a conflict between constitutional principles of individual autonomy and the traditional understanding of marriage as a protected institution. Recent legal scholarship (2018–2026) highlights that the continuation of the marital rape exception has created a gap between the criminal law's recognition of sexual violence and the protection available to married women¹.

A major legislative challenge is the difficulty in balancing the protection of women's bodily integrity with concerns regarding misuse of criminal law, evidentiary complications, and the impact on marital relationships. The opponents of criminalisation have raised concerns that ordinary matrimonial disputes may be converted into criminal cases and that proving lack of consent within a private relationship may create practical difficulties⁹.

The Government's recent stance demonstrates a careful and controlled approach to reform. In proceedings before the Supreme Court, the Central Government acknowledged that a husband does not possess an unconditional right over his wife's body but argued that treating marital sexual violence exactly like rape outside marriage may be disproportionate and could affect the institution of marriage¹¹.

However, critics contend that existing civil remedies do not provide the same level of protection or accountability as criminal law. Recent discussions following the enactment of the BNS have emphasised that retaining the exception reflects an incomplete shift from older patriarchal ideas towards a consent-based legal framework. Therefore, the literature suggests that India's challenge lies not only in amending statutory provisions but also in redefining marriage within the law as a relationship based on equality, mutual consent, and individual rights.

COUNTRIES THAT RECOGNIZE NON-CONSENSUAL SEXUAL INTERCOURSE WITHIN MARRIAGE AS CRIMINAL OFFENCE

The criminalization of marital rape represents a significant transformation in the understanding of marriage, consent, and individual autonomy. Historically, many legal systems followed the common law doctrine that a wife was presumed to have given permanent sexual consent to her husband through marriage. However, contemporary human rights discourse has increasingly

¹¹ Marital rape: Centre argues against terming it as 'rape' in Supreme Court, Business Standard, Oct 4, 2024.

rejected this assumption and recognized that marriage does not eliminate the requirement of free and voluntary consent. Recent comparative studies indicate that a growing number of countries have removed marital exemptions from rape laws and have treated non-consensual sexual acts within marriage as criminal offences¹².

Countries such as the United Kingdom, Canada, Australia, New Zealand, Sweden, Norway, Germany, South Africa, and several other European and Latin American nations have criminalized marital rape either through legislative reform or judicial interpretation. In the United Kingdom, the traditional marital rape exemption was abolished through the landmark decision of *R v R* (1991), where the court recognized that a wife is an autonomous individual whose consent cannot be presumed merely because of marriage. Similarly, Canada and Australia removed marital exemptions and adopted gender-neutral approaches to sexual offences. Comparative research shows that between 1979 and 2013, many countries moved toward full criminalization, with international women's rights movements and human rights treaties influencing legal reforms¹².

Effectiveness of criminalization Laws

Literature examining the impact of criminalizing marital rape suggests that these laws have been effective in changing the legal perception of marriage and sexual autonomy, although enforcement remains dependent on social and institutional factors. Davis and Johnstonbaugh (2024) found that criminalization reforms expanded private-sphere rights by recognizing that violence within the home requires state intervention. Their comparative study of 131 countries identified numerous instances where countries adopted laws specifically removing legal immunity for husbands and enabling prosecution for sexual violence within marriage¹².

However, effectiveness cannot be measured only through the existence of legislation. Researchers argue that legal reform must be accompanied by victim-support systems, police training, judicial awareness, and social acceptance. In some countries, despite criminalization, survivors continue to face barriers because of stigma, economic dependency, fear of family breakdown, and reluctance of authorities to intervene in domestic matters. Studies on countries including Singapore and Indonesia show that while legal frameworks have improved protection against sexual violence in marriage, implementation challenges remain due to social attitudes

¹² Andrew P Davis & Morgan Johnstonbaugh, *Safe at home? Examining the extension of criminal penalties for marital rape in cross-national context, 1979–2013*, 58, Cambridge University Press, 126-148, (2024)

and difficulties in reporting¹³.

Addressing Evidentiary Concerns

One major concern raised against criminalizing marital rape is the difficulty of proving the absence of consent between spouses. Unlike stranger rape cases, marital rape generally occurs within a private relationship where there may be no eyewitnesses or immediate physical evidence. Comparative legal systems have attempted to address this concern by applying general principles of sexual offence law rather than creating special evidentiary burdens.

Countries that criminalized marital rape generally rely on evidence such as medical records, communication between spouses, witness testimony regarding surrounding circumstances, patterns of abusive behaviour, psychological evidence, and the conduct of parties before and after the incident. Courts have also recognized that lack of physical injury does not necessarily disprove sexual violence because coercion may occur through threats, intimidation, or emotional pressure.

The literature suggests that evidentiary challenges exist in all sexual offence cases and should not be a reason to deny legal protection to married women. Instead, legal systems focus on improving investigation methods and ensuring that consent remains the central question. The removal of marital exemptions allows courts to examine the circumstances of each case rather than assuming consent from the marital relationship¹⁴.

Effects on Stability of Marriage

A frequent argument against criminalizing marital rape is that it may weaken the institution of marriage by encouraging false complaints or increasing conflict between spouses. Some governments, including India, have expressed concerns that criminalization may affect marital relationships and family stability. However, comparative experiences from countries that have adopted such laws do not show that recognition of marital rape has resulted in the collapse of marriage as an institution.

Legal scholars argue that marriage stability cannot be based on forced sexual relations or denial of individual autonomy. Instead, healthy marriages depend on mutual respect, equality, and voluntary consent. Criminalization does not prohibit consensual sexual relations within

¹³ Azzhara Nikita Wahdah & Beniharmoni Harefa, Enforcement of laws on sexual violence in marriage (marital rape): a comparative study of criminal laws in Indonesia and Singapore, 8, *Awang Long Law Review*, 8 – 22, (2025).

¹⁴ Arushi Sharma, Evolving Jurisprudence on Marital Rape: A Comparative Legal Study, 5, *Journal of Informatics Education and Research*, (2025).

marriage; it only establishes legal consequences where sexual acts occur without consent. Studies on legal reforms indicate that countries have largely adapted to these changes by redefining marriage as a partnership between equals rather than a relationship involving implied sexual entitlement¹².

What India should learn?

The international experience provides several lessons for India's debate on marital rape. First, India may reconsider the assumption that marriage creates an automatic presumption of sexual consent. The continuation of a marital rape exception has been criticized as inconsistent with principles of dignity, equality, and bodily autonomy. Recent discussions regarding India's criminal law reforms highlight that the issue remains unresolved despite replacement of colonial-era criminal statutes¹⁵.

Second, India can adopt a balanced approach by criminalizing non-consensual sexual acts within marriage while introducing safeguards against misuse. This may include clear definitions of consent, gender-sensitive investigation procedures, judicial guidelines, and protection for both genuine survivors and accused persons through fair trial standards.

Third, India can learn from countries where law reform was accompanied by awareness programmes, victim assistance mechanisms, and institutional reforms. Criminal law alone cannot eliminate marital violence unless supported by social transformation. The international trend demonstrates that recognizing marital rape as an offence does not weaken marriage; rather, it strengthens the idea that marriage must be founded on equality, dignity, and mutual consent¹².

THE EVOLVING JUDICIAL NARRATIVE ON MARITAL RAPE

The judicial discourse on marital rape in India has developed through constitutional interpretation, gender justice principles, and the evolving understanding of individual autonomy within marriage. Although Indian criminal law continues to retain the marital rape exception, courts have increasingly examined marital rape through the lens of equality, dignity, privacy, and bodily integrity. Recent legal scholars highlights that the judiciary has gradually moved from viewing marriage as an institution granting implied sexual consent towards

¹⁵ Rishi Bhargava, International Safeguards, Legislative Failures: Analyzing Right of Women's Sexual Autonomy and the Gap Between Legal Protections and the Non-Criminalization of Marital Rape in India, 43, BPAS Journals, (2023).

recognizing consent as an essential element of personal liberty¹⁶.

Independent Thought v. Union of India (2017) - Foundation for Judicial Reconsideration of Marital Rape

The judgment in *Independent Thought v. Union of India* became an important turning point in Indian marital rape jurisprudence. The case challenged Exception 2 to Section 375 of the Indian Penal Code, 1860, which earlier protected husbands from rape charges when the wife was between 15 and 18 years of age. The Supreme Court held that sexual intercourse with a wife below 18 years of age would amount to rape because a child cannot be deprived of protection merely due to marital status¹⁶.

The Court harmonised the IPC with constitutional principles under Articles 14 and 21 and with child protection laws such as the Protection of Children from Sexual Offences Act, 2012. The decision rejected the idea that marriage could create an automatic exception to bodily autonomy for a minor girl. This judgment as an important step because it weakened the historical assumption that marriage itself implies permanent sexual consent¹⁷.

However, the judgment was limited because it did not remove the marital rape exception for adult women. Therefore, while it protected minor wives, it left unresolved the larger constitutional question of whether an adult married woman can refuse sexual relations with her husband and seek criminal protection.

K.S. Puttaswamy v. Union of India (2017): Recognizing Privacy, Dignity and Sexual Autonomy

The decision in *K.S. Puttaswamy v. Union of India* significantly influenced later arguments on marital rape by recognizing privacy as a fundamental right under Article 21 of the Constitution. Although the case was not directly related to marital rape, its principles have been repeatedly relied upon in discussions concerning bodily autonomy and individual choice.

The judgment emphasized that privacy includes decisional autonomy, dignity, and control over intimate aspects of life. Legal scholars argue that this reasoning challenges the traditional understanding that marriage can restrict a woman's sexual independence. The concept of privacy developed in *Puttaswamy* supports the argument that consent within marriage must remain continuous and voluntary.

¹⁶ *Independent Thought v. Union of India and Anr* (2017) 10 SCC 800

¹⁷ Eysha Marysha, *Independent Thought v. Union of India* [2017] 10 SCC 800, 10, *Jindal Global Law Review*, 337–343 (2019).

The relevance of Puttaswamy in marital rape debates lies in shifting the focus from the preservation of marital relations to protection of individual liberty. A spouse's right to bodily integrity cannot disappear after marriage because constitutional rights continue to exist within private relationships¹⁸.

Joseph Shine v. Union of India (2019): Constitutional Morality and Equality within Marriage

In Joseph Shine v. Union of India, Section 497 of IPC was struck down by the Apex court as it criminalised adultery. Though the case was not about sexual violence, it had significant implications for marital autonomy.

The Court held that the law treated women as subordinate to husbands and that he can take criminal action against any person who had sexual intercourse with his wife without his consent. This violated right to equality and dignity guaranteed by the Indian Constitution. The judgment rejected the idea that marriage provides control by one spouse over another spouse's sexuality.

The reasoning in Joseph Shine has been used by scholars to support the argument that the marital relationship cannot be based on ownership like assumptions. If marriage does not allow a husband to control his wife's sexual choices in matters of adultery, critics argue that it should similarly not permit forced sexual intercourse without consent.

Thus, Joseph Shine contributed to a constitutional understanding of marriage based on equality rather than authority¹⁹.

X v. NCT of Delhi: Expansion of Reproductive Autonomy and Consent

The Supreme Court's decision in X v. NCT of Delhi further developed the idea of reproductive autonomy and equal protection in intimate relationships. The Court examined issues relating to pregnancy termination and the rights of women, emphasizing that reproductive choices are connected with dignity, privacy, and personal liberty and marital status of a woman has nothing to do with it. Although the case was not directly about marital rape, its interpretation of women's autonomy has relevance to marital rape discussions. It reinforces the principle that decisions concerning a woman's body cannot be controlled merely because she is married.

Legal writers have argued that the judgment strengthens the constitutional argument that sexual

¹⁸ Justice K.S. Puttaswamy (Retd.) & Anr. Vs. Union of India & Ors, 10 SCC 1 (2017).

¹⁹ Joseph Shine vs. Union of India, 3 SCC 39 (2019).

relations within marriage require meaningful consent. The recognition of reproductive autonomy challenges older assumptions that a wife has a legal obligation to provide sexual access to her husband²⁰.

RIT Foundation v. Union of India: Direct Objection to the Marital Rape Exception

The case of RIT Foundation v. Union of India represents one of the most direct constitutional challenges to the marital rape exception. The petition questioned the validity of Exception 2 to Section 375 IPC on grounds that it violates Articles 14, 15, and 21 by denying married women equal protection from sexual violence.

The Delhi High Court examined competing arguments regarding constitutional rights, social consequences, and the institution of marriage. Petitioners argued that the exception discriminates between married and unmarried women by denying criminal protection to married women who experience non-consensual sexual acts.

The case raised important concerns about evidentiary difficulties, misuse of criminal law, and the possible impact of criminalisation on marriage. However, the broader constitutional question remains significant: whether the preservation of marital stability can justify denying protection from sexual violence.

The debate around RIT Foundation is the split verdict that reflects the conflict between two approaches. One approach prioritizes the traditional protection of marriage as a social institution, while the other emphasizes constitutional morality, dignity, and individual rights²¹.

Hrishikesh Sahoo v. State of Karnataka: Pending Judicial Examination

Hrishikesh Sahoo v. State of Karnataka is among the recent cases concerning the criminal law response to marital rape. The matter gained attention because allegations of forced sexual intercourse within marriage raised the question of whether existing criminal provisions can protect adult married women. The Supreme Court's consideration of the matter has kept the constitutional debate surrounding the marital rape exception active.

The case highlights the ongoing conflict between legislative policy and constitutional interpretation. The central issues include whether courts can remove the exception through interpretation, whether legislative reform is necessary, and how allegations of marital rape should be investigated and proved.

²⁰ X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, SCC 905 (2022).

²¹ RIT Foundation and Ors. Vs. The Union of India and Ors, DHC:1825 (2022)

The pending nature of the case shows that Indian marital rape jurisprudence is still developing. The judiciary is required to balance concerns of false allegations and misuse of law with the fundamental need to protect women from sexual violence within marriage²².

SUGGESTIONS FOR ADDRESSING THE ISSUE OF MARITAL RAPE **IN INDIA**

Criminalization of marital rape is a distant dream considering the legal battles in India. The Indian judiciary's understanding of consent in marriage is still a developing concept. Therefore, reforms relating to marital rape must address legal gaps, evidentiary concerns, social attitudes, and institutional challenges.

- ❖ Removal of marital rape exception from BNS would be an effective way, as it criminalizes every kind of non-consensual sexual intercourse. It can also extend the legal remedy without discriminating women based on their marital status. The law should acknowledge that consent is a fundamental part of every sexual relationship and cannot be assumed just because two people are married.
- ❖ Specific legal processes and protections need to be evolved for ensuring fair investigation and trial. Special inquiry rules may be put in place to ensure complaints are treated appropriately. The police officers, medical personnel and judicial authorities should be trained in gender sensitization so as to avoid addressing the survivors through the lens of prejudices or preconceptions surrounding marital relationships.
- ❖ Strengthening of support service system for survivors such legal aid, counselling, interim shelter, medical help and confidential reporting methods must be done. Many victims of marital rape do not come forward owing to societal shame, financial reliance and fear of family breakup.
- ❖ Criminalization of marital rape may lead to the possibility of false allegations, hence protection against abuse of legislation is important. Courts can guarantee fairness by carefully scrutinizing evidence, penalising malicious false allegations and upholding the principles of natural justice.
- ❖ The legal experiences of several countries that criminalized marital rape demonstrate that criminalization can coexist with family law when supported by proper implementation mechanisms. India might think of worldwide ideas, while customizing changes to its own

²² Hrishikesh Sahoo v State of Karnataka & Ors. SLP(CRL) NO. 4063-4064 (2022).

socioeconomic situations. The aim should not just be punishment but also prevention, awareness and protection of individuals in intimate relationships.

- ❖ Incorporating the constitutional values into family law is important to recognize individual choice and bodily integrity within marital life. The Supreme Court in *K.S. Puttaswamy v. Union of India* interpreted the right to privacy and underlined that personal choices and bodily autonomy are an element of individual liberty. Therefore, family relationships must also be interpreted in accordance with fundamental rights like right to equality, personal liberty, and privacy.
- ❖ Gender sensitization of societal attitudes is an important step in addressing marital rape in India. Educational programs, public awareness campaigns and gender-sensitization activities may promote knowledge of equality and mutual respect in marriage. Sexual assault is less likely to occur in a culture that views consent as an essential part of relationships.

CONCLUSION

The issue of marital rape in India is a reflection of the ongoing tension between the traditional concept of marriage and the increasing constitutional notion of individual rights. Historically, the marital rape exception was based on patriarchal attitudes that treated marriage as an implied and permanent consent to sexual relations. However, modern legal advancements have progressively acknowledged that the institution of marriage cannot eliminate a woman's right to dignity, physical integrity, privacy and personal autonomy. Therefore, the argument has moved from the protection of marital authority to the promotion of equality and fairness in marital relations.

The preservation of the marital rape exemption under Section 63 of the Bharatiya Nyaya Sanhita, 2023, is a clear indication that India's criminal code still differentiates between sexual assault perpetrated by a stranger and the same conduct committed by a husband. Laws such as the Protection of Women from Domestic Violence Act, 2005 give remedies to sexual abuse in marriage, but do not provide the same criminal culpability as laws on rape. In recent works, from 2018 to 2026, legal scholars have argued that this difference undermines the protection given to married women and creates conflict with constitutional principles of equality and dignity.

Judicial developments were deemed influential in shaping the concept of marital consent. Instances like *Independent Thought v. Union of India*, *K.S. Puttaswamy v. Union of India* and

Joseph Shine v. Union of India have slowly chipped away the assumption that marriage gives control over a woman's body. These rulings reinforce the idea that consent must be voluntary, ongoing, and revocable. The RIT Foundation v. Union of India and Hrishikesh Sahoo v. State of Karnataka continue to be a thorn in the side, indicating that the constitutional legality of marital rape exemption is still an unsettled issue. Comparative experience from countries that have criminalized marital rape is that legal recognition does not undermine marriage but reconceptualizes it as a relationship of equality and mutual respect. Concerns regarding false complaints, evidential challenges and abuse of legislation may be handled by effective investigation methods, judicial protections and clear standards of consent rather than denying protection completely. Hence, India's future response to marital rape must strike a balance between protecting family bonds and upholding the fundamental rights of people. A marriage of dignity and equality cannot depend on forced sexual relations. Recognizing marital rape as an offense would be a significant step in bringing Indian criminal law into alignment with constitutional morality, gender fairness and the concept that consent is vital to every human relationship.

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