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“UNSPOKEN BOUNDARIES: CONSENT, CONSTITUTIONAL MORALITY, AND THE MARITAL RAPE EXCEPTION IN INDIA”

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Abstract:

The continued existence of India's marital rape exception demonstrates a significant conflict between deeply ingrained patriarchal standards and constitutional morality. This study, titled "Unspoken Boundaries: consent, Constitutional Morality, and the Marital Rape Exception in India," questions the long-standing legal fiction that marriage represents eternal and irreversible agreement to sexual encounters. Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 continues to immunise non-consensual sexual actions within marriage, suspending a married woman's right to bodily autonomy, notwithstanding significant developments in constitutional doctrine.

In the context of the safeguards of equality, dignity, and individual liberty found in Articles 14 and 21 of the Indian Constitution, this study carefully examines the constitutionality of this exception. It makes the case that sexual autonomy is fundamental to the right to privacy and cannot be legitimately given up through marriage, drawing on the revolutionary viewpoint presented in *K.S. Puttaswamy v. Union of India*. Therefore, by hiding pressure behind the sanctity of marriage, the exception not only promotes an arbitrary division between married and single women, but it also defends it.

The study emphasises the lived realities of silence, pressure, and internalised subjugation that impact consent in intimate relationships, going beyond doctrinal criticism. By analysing requirements under CEDAW, which unambiguously identifies marital rape as a type of gender-based violence, it places India into the internationally recognised human rights framework. To restore dignity and justice within marriage, the paper discovers that the continuation of the marital rape exemption is incompatible with constitutional ethical principles and that consent must be acknowledged as ongoing, voluntary, and retroactive.

Keywords

Consensual Act, Marital Rape, Marriage, Bodily Autonomy, Fundamental Rights, Constitution, Privacy.

Introduction:

Marriage is considered a sacramental tie between two persons. Marriage is an emotional bond between both spouses rather than just a physical one. It is also known as the act of commencing a new family. Regardless of whether a marriage is contractual or voluntary, it is a condition of staying together that gives a person the status of husband and wife. Through the act of marriage, the partners are granted all of their obligations and rights under the law. Sexual activity is also considered a spouse's right, and because of this right, it occasionally leads to the husband controlling the relationship over the woman, who is coerced into having sex under the cloak of marriage and is very detrimental to a woman's interests. However, due to their legal validity, they have varying status in other nations, which is why they are outlined here.

The Preamble's protection of the "dignity of the individual" is the bedrock of India's constitutional structure, which seeks to protect citizens from persecution by the state and private parties. Nonetheless, there is still an extensive set of systemic gendered silence prevailing at the intersection of criminal and domestic law. Previously found in Exception 2 to Section 375 of the Indian Penal Code (IPC), the marital rape exception is now primarily maintained under the Bhartiya Nyaya Sanhita 2023, the greatest and most prominent expression of this unspoken silence. By excluding non-consensual sexual conduct within marriage from the definition of rape, the law purposefully creates a contradiction where a married woman's physical autonomy is subservient to institutional and societal factors.

Married women's fundamental rights are effectively suspended by this exception, which is an active, gendered legal consequence that cannot be dismissed as merely legislative passivity. It perpetuates injustice by elevating the alleged sanctity of marriage above individual worth. As a result, a "zone of exclusion" is established inside the home, reducing a woman's ability to deny permission and undercutting constitutional safeguards.

“Marital Rape: Core Concept”

Marital rape takes place when one spouse, the husband, has non-consensual sexual relations with the other, the wife. Instead of marital intimacy, it is the absence of consent that sets them apart. In essence, it means that everyone has the right to decline sexual relations, even if they are married, and that any action that violates this right will be considered sexual violence. The concept of "implied consent," which held that a wife gave her husband permanent consent when they were married, was the foundation of many legal systems in the past. This idea came from patriarchal traditions that believed a husband would have sexual authority over his wife after

marriage. One way this notion is still articulated in India is through Exception 2 to Section 375 of the Indian Penal Code, which excludes a husband's non-consensual sexual relations from the legal definition of rape. However, this exclusion has been fiercely disputed because it goes against contemporary ideas of individual liberty. Modern legal and human rights viewpoints predominantly oppose irrevocable consent in marriage. Consent is now acknowledged as continuous, mutual, and always reversible. The Indian Constitution protects fundamental rights, including bodily autonomy, personal liberty, and dignity; a marriage also ensures these rights.

Therefore, getting married does not lessen a person's control over their own body. Marital rape is increasingly recognised as a grave violation of human rights since it transgresses the principles of equality, autonomy, and respect in personal relationships. It highlights how important it is to see marriage as a relationship centred on consent and respect rather than as a sense of entitlement. Marital rape thus calls for a reinterpretation of marriage in line with contemporary views of justice and individual liberty, challenging established customs.

Marital Rape: To put it directly, having a relationship against the wife's will is marital rape, but it hasn't been classified as a crime. In contrast, a United Nations research states that more than 75% of married rape cases happen in India every year. "Such conduct cannot be punished, but it corresponds to physical and mental cruelty," the court concluded. Excesses with a woman are apparent in this situation. However, some people think that wives can torment their husbands with it as a convenient weapon. Then, the question of what differentiates "rape" from "marital rape" and how the structure of marriage relates to it arises.

Oxford Dictionaries defines rape as "the crime, typically committed by a man, of forcing another individual to have sexual intercourse with an intruder against their will." Cambridge Dictionaries defines rape as "to force someone to have sex when they are unwilling, using violence or threatening behaviour."¹

“Legal Definition of Rape in India”

Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) declares rape a crime. The concept of "rape" is broad, encompassing both sexual activity and other kinds of sexual penetration, such as oral sex. However, this clause does not apply to sexual activities or sexual relations between a husband and wife under Exception 2. Therefore, if a husband rapes a wife, she has no legal

¹ <https://www.teachmint.com/tfile/studymaterial/tgtpgtltgradelecturer/english/a-glossary-of-literary-terms-7th-edm-h-abrams-1999pdf/777c0b78-d17f-48de-90b2-e2128dd42885>

remedy under Indian law.² Section 63 of the Bharatiya Nyaya Sanhita, 2023, provides that a man is regarded as having committed the act of "rape" if he:

- (a) inserts his penis, to any extent, into a woman's vagina, mouth, urethra, or anus, or forces her to do so with him or any other person; or
- (b) penetrates any object or part of the body, other than the penis, into a woman's vagina, urethra, or anus, or forces her to do so with him or another person; or
- (c) manipulates a woman's body to penetrate her vagina, urethra, anus, or any other part of her body, or induces her to do so with him or another individual; or
- (d) puts his mouth to a woman's vagina, anus, or urethra, or compels her to do so with him or another individual, under any of the following seven descriptions: —
 - (i) against her will.
 - (ii) without her consent.³
 - (iii) with her consent, when that consent was obtained by inciting fear of harm or death in her or any person in whom she has an interest.
 - (iv) with her consent, although the man is well aware that she is not married to him and that she gave her consent because she thought she was legally wed to someone else.
 - (v) with her consent when she is unable to comprehend the nature and implications of what she is agreeing to due to mental instability, intoxication, or the administration of any unwholesome or stupefying substance by him either directly or via another.
 - (vi) whereas she is less than eighteen, either with or without⁴ her consent.
 - (vii) in the instance that she is unable to provide consent.

Explanation 1. The term "vagina" shall also refer to the labia majora for this section.

Explanation 2: Consent is a clear voluntary agreement made by the female by her words, gestures, and/or any form of communication, whether spoken or unspoken, that expresses a desire to take part in a certain sexual act

As long as a woman does not physically challenge the act of penetration, she will not be considered to have given consent to the sexual activity.

Exception 1: A medical intervention or procedure cannot be considered rape.

² <https://www.ijllr.com/post/determination-of-marriage-as-a-license-to-rape-a-comparative-analysis-of-the-status-of-marital-rape>

³ <https://www.ijfmr.com/papers/2025/4/51765.pdf>

⁴ <https://ijrti.org/papers/IJRTI2509066.pdf>

Exception 2: When a man engages in sexual activity with his own spouse and the spouse is not younger than eighteen, it is not considered rape.

There is no rationale for excluding sexual activity or acts between a man and his wife from the definition of rape under *Exception 2* of Section 63 of the BNS (also known as the "exception clause"). Since consent is the main topic of this section, there may be an undeniable presumption of authorisation when the victim and the offender are married. However, considering the sacredness of this institution, it's also plausible that there was a legislative decision to exclude married relationships from the functioning of this clause, which has become a part of our culture. This is likely because spouses are immune to the IPC's application under certain sections. Although marital rape is not illegal under the law, non-consensual sexual behaviour between a husband and wife while they are living apart due to judicial separation or other factors is.⁵

“Historicizing Marital Consent”

“Consent loses its meaning when silence is treated as agreement and marriage as permission.” Women have been indoctrinated to feel that having sex is something they owe to their partners, their marriages, and society in many societies. Although religious doctrine has been directly linked to this expectation by purity culture, secular sexist norms have long promoted the same message. Instead of being the assets of the women themselves, women's bodies are frequently objectified, commodified, and treated as resources. The media, legal systems, and cultural standards all reinforce the notion that women should be open, flexible, and sexually accessible whether they choose to or not. This deeply ingrained expectation encourages the concept of "duty sex," which maintains that women have an obligated duty to provide sex irrespective of their own desire. In many ancient communities, marriage was an economic and political arrangement rather than one predicated on love, intimacy, or mutual satisfaction.⁶

- The idea of manus, which translates to "hand," awarded the husband legal control over his wife's body, finances, and legal standing in ancient Rome.
- Marriage contracts in medieval Europe unambiguously gave the groom the bride's sexual rights, oftentimes without the bride's agreement.

⁵ <https://www.juscorpus.com/the-sex-consent-matrix-a-framework-for-analysing-marital-autonomy-under-indian-law/>

⁶ <https://www.voxmentalhealth.com/blogs/reclaiming-consent-how-patriarchy-shaped-duty-sex-and-eroded-womens-sexual-autonomy>

- The idea of coverture, which implies that a woman's legal identity is absorbed into her husband's upon marriage and she has no separate legal standing, was upheld by English common law.
- Women weren't permitted to refuse sex during marriage for centuries. The so-called "marital rape exemption," which presumed that marriage itself signified lifelong consent, enshrined this in Western legal systems. "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself,"⁷ According to 17th-century English lawyer Sir Matthew Hale. Up until the last decades of the twentieth century, several Western legal systems maintained this exemption. Marital rape was only made illegal in Canada in 1983, and it wasn't made illegal in some US states until the 1990s.
- Modern purity culture convictions, which portray a woman's sexual availability as an essential obligation within marriage rather than a choice based on mutual consent, were founded on this historical priority.⁸

Autonomy, mutuality, and the capacity to say "yes" and "no" without fear of coercion or repercussions are vital for true consent. The Marital Obligation to have Sex, rather than being a shared experience based on consensual desire, many women are taught that having sex is something they owe their spouses. "A good wife satisfies her husband's desires" is one illustration. "He won't be able to resist temptation if you don't have sex." "Males experience love through sex; women sense love by intimacy." These messages put all of the obligation for sexual intimacy on women rather than supporting a dynamic where the needs, comfort, and preferences of both partners are taken into consideration. Women are frequently apprised that refusing to have sex results in sexual misconduct, divorce, or misery in the marriage. This fosters a coercive atmosphere where women are compelled to comply instead of providing their full consent. Women who have sex out of obligation rather than pleasure could ultimately suffer from. During intimacy, people mentally detach themselves from their bodies as a psychological coping strategy called dissociation. Conditions that cause sexual pain, which include vaginismus, in which the body physically opposes penetration because of unconscious suffering, loss of sexual autonomy due to their lack of stimulation to pursue their own desires and desires.⁹

The fact that a woman perceives her husband as her "protector" after marriage rather than her

⁷ <https://doi.org/10.1017/jbr.2022.118>

⁸ <https://www.bbc.com/news/articles/cgqkl2kqkxzo>

⁹ <https://doi.org/10.2307/j.ctv16rdchd>

parents is more of a social and cultural construct than a common reality. In many traditional societies, such as India, marriage has traditionally been seen as a transition in which the partner of a woman takes over responsibility for her well-being instead of her parents. This view, which has its roots in patriarchal standards, has impacted legislative structures as well as social attitudes. But in the context of the present constitution, this notion is being called into question more and more.

The Indian Constitution recognizes women as independent individuals with equal rights rather than as needing guardianship or "protection" from male power. Sociologically speaking, this does not imply ownership or unfettered control over their autonomy, even though some women may emotionally view a partner as a source of stability, support, or care. Ideally, partners should replace the feeling of "protection" with mutual respect, friendship, and shared responsibility. It is especially crucial to examine this historical concept in light of scenarios like marital rape.

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¹⁰<https://frontline.thehindu.com/social-issues/gender/marital-rape-legal-reform-social-challenges-gender-justice-india/article69356999.ece>

common among survivors.¹¹

“The Consent Paradox”

Legally speaking, consent is the voluntary willingness to accept a specific course of conduct. It establishes whether an action is regarded as legitimate or unlawful, making it an essential notion in both criminal and civil law. In civil law, consent is an essential component of contracts and tort proceedings, but in criminal law, it is frequently utilised as a defence against specific charges. According to the legal definition, consent must be freely and voluntarily provided, free from any kind of force or obligation. Additionally, it must be delivered by someone who is capable of comprehending the implications of their consent. Consent reflects the autonomy and liberty that people use to make their own decisions. In business contexts, the law correctly recognises its worth because a contract without prior authorisation is null and void. However, the law characterises free consent in a negative way rather than providing a definition. Free consent is defined as something that isn't tainted by fraud, compulsion, or undue influence. However, the marriage law disagrees with the relevance of the parties' consent to a contract.

In India, the union of a husband and wife, as well as their families, is considered a holy and spiritual matter. The Hindu Marriage Act of 1955, the Koranic Law, the Special Marriage Act of 1954, and other religious regulations govern marriage, which is the cornerstone of society. Hindu law recognises marriage as a "samskaram," or sacrament, with lifelong religious links. Other than Islamic law, no other legal system seeks the parties' consent before marriage. Rather, as marriage is regarded as a union founded on mutual understanding and strong interpersonal ties, both the husband's and the wife's consent are more important than the commercial setting. It is believed that a married woman's body is her husband's property, to be used as he desires, and this belief is reinforced by this ignorance of free consent. It transforms a woman into a commodity and diminishes her position to that of an inanimate object, devoid of liberty, dignity, and the ability to express her opinions through consent. Marriage is frequently erroneously correlated with the idea of implied consent.

When marriage serves as a stand-in for authorisation, a woman's autonomy is ignored, and she is reduced to a submissive subject in the marriage. This false belief continues to justify coerced sexual intercourse under the pretence of matrimonial rights and constitutes the basis for marital rape. The law unambiguously protects an individual who rejects consent in the vast majority

¹¹ <https://doi.org/10.1016/j.jss.2025.10.037>

of sexual offences; any conduct executed against that person's will is illegal. However, the situation is quite distinct within the institution of marriage. Indian law consistently does not recognise a wife's loss of consent when she declines sexual relations.¹²

Even in 2026, marital rape is still not illegal in India, despite criminal jurisprudence's rising acknowledgement of consent and sexual autonomy. Similar to other nations, Pakistan, Bangladesh, Sri Lanka, Myanmar, Afghanistan, China, and Nigeria do not consider marital rape to be a distinct crime. On the other hand, several jurisdictions have made headway in this area. In 1932, Poland was one of the first countries to make marital rape illegal. Other countries that have made non-consensual intimate relationships within marriage illegal include the United States, Canada, Australia, and the United Kingdom.¹³

Indian criminal law still upholds Exception 2 to Section 375 of the Indian Penal Code, which eliminates a husband's sexual relations with his wife from the concept of rape, despite recent worldwide developments. Due to this exclusion, married women are not covered by the same legal safeguards as victims of other sexual offences, creating an enormous legal gap. Empirical evidence also shows that marital rape continues to occur. The National Family Health Survey (NFHS-4, 2015–16) found that over 83% of married women between the ages of 15 and 49 who reported experiencing sexual assault condemned their spouses. According to the survey, approximately 4% of women reported being coerced into having sex, 2.1% indicated being compelled to do sexual acts, and 3% reported being threatened for refusing to have sex. The Protection of Women from Domestic Violence Act of 2005 doesn't make marital rape a crime, but it does offer legal remedies against economic, mental, and physical violence. Consequently, the exclusion stipulated in Section 375 of the IPC is reinforced because a woman who is subjected to compelled sexual relations by her husband has no legitimate criminal remedy¹⁴.

“Silent Coercion”

Silence frequently confuses the distinction between force and agreement in the private arena of marriage. In a social setting where women are conditioned to value harmony above self-expression, it is all too easy to read silence as agreement. In these circumstances, fear, duty, emotional reliance, or internalising patriarchal standards are more likely to dictate quiet than willingness. Therefore, the lack of a clear "no" obscures the reality of non-consensual contact and transforms it into a morally and legally unsustainable deceit.

¹² <https://recordoflaw.in/consent-marriage-and-the-law-examining-marital-rape/>

¹³ <https://www.thefactsfirst.in/news/marital-rape-in-india-2026>

¹⁴ DOI: 10.1177/26318318221131745

In most cases, coercion in a marriage isn't believed to be the root cause of obvious violence. It operates surreptitiously through emotional pressure, economic dependence, societal stigma, and the normalisation of a husband's entitlement to control his wife's body. Consent is no longer a free and unplanned decision under such a society, but rather is shaped by unequal power relations. By claiming consent within marriage, it ignores the everyday reality of women whose voices are ignored—not because they agree, but simply because they are unable to safely speak out.

The Indian Constitution's contemporary constitutional values place a high priority on personal liberty, privacy, and dignity—values that are incompatible with forced or presumed permission. It takes a fundamental change to see consent as an active, ongoing, and reversible expression of will rather than as passive acquiescence to acknowledge the truth of silence and coercion inside marriage. Then and only then will the law start to represent the actual constraints of autonomy in intimate relationships.

“Constitutional Limits of Marriage”

In India, the marital rape exception has grown to be a significant subject of constitutional discussion. This exemption, according to numerous academics and legal experts, is incompatible with the fundamental rights protected by the Constitution.

The right to equality is one of the major issues. Married and unmarried women are clearly differentiated by the law.¹⁵ If an unmarried woman is the perpetrator of non-consensual sexual behaviour, she may seek protection under rape legislation. However, if a married woman's spouse places her in a similar circumstance, she does not have similar legal protection. This discrepancy raises significant questions about whether the legislation's ludicrous designation violates the concept of equality before the law.

Another major problem is connected to the right to life and individual freedom. Over time, courts have expanded the concept of this right to include dignity, privacy, and bodily autonomy. In this particular instance, the idea that marriage invariably entails constant concern becomes absurd.

Women's autonomy over their bodies is directly impacted by the marital rape exceptions, which presume that permission cannot be revoked after marriage. One could contend that this contradicts the notion of physical autonomy. The subject matter also raises concerns about

¹⁵ <https://ijrlm.com/wp-content/uploads/jms/ms/69e69fee69c1f.pdf>

discrimination. Many critics contend that these exemptions deliberately disadvantage women and reflect basic gender inequities in the justice system.

Married women are more vulnerable than single women when it comes to legal protection against sexual violence. These issues have become even more crucial in recent years as courts have stressed the importance of individual liberty, privacy, and dignity as crucial elements of fundamental rights. As a result, in light of changing constitutional norms, the exceptions for marital rape are still being argued.

“Consent Across Jurisdictions”

International research offers a wealth of perspectives for amending India's laws against marital rape. Comparative research emphasises consent as the basic component of sexual offences, with an emphasis on nations that have eliminated spousal exemptions:

- **United Kingdom:** The Sexual Offences Act 2003 abolished the spousal exception and instituted a consent-based paradigm with an emphasis on victim support mechanisms, evidentiary procedures, and procedural safeguards. This strategy establishes a balance between protecting marital privacy and preventing sexual violence, according to scholarly evaluations by Smith (2010).
- **Canada:** The Canadian Criminal Code explicitly forbids sexual assault irrespective of marital status. According to researchers such as Sandra Walklate, Canada's model suggests that gender-neutral laws might coexist with victim-sensitive standards such as rehabilitation and confidential reporting.
- **South Africa:** Criminal Law (Related Matters and Sexual Offences). According to research, victim assistance initiatives, police training, and judicial instructions to strengthen reporting and compliance followed the Amendment Act of 2007, which repealed the marital rape exemption.
- **Australia:** In Australia, both federal and state laws define sexual offences according to consent; certain states explicitly criminalise marital rape and have gender-neutral definitions. To ensure efficient enforcement, comparative studies emphasise the importance of victim protection, public awareness initiatives, and precise descriptions.

“CEDAW and Women’s Dignity”

- An analysis of CEDAW's (Convention on the Elimination of All Forms of Discrimination against Women) regulations reveals that India violates international

human rights norms that prohibit rape and discrimination against women. Article 1 of the CEDAW defines "Discrimination Against Women" as "any distinction...made on the foundation of sex which has the effect of impairing the exercise by women, irrespective of their marital status...of human rights and fundamental freedoms in the...social, cultural, civil or any other field."

- The deliberate exclusion of marital rape from the IPC collapses under the CEDAW definition of being discriminatory in nature because the victim's spouse's rape of her body has been justified exclusively based on her marital status, depriving her of the protection granted to single women.¹⁶ Therefore, rape of a married woman should be penalised in the same way as rape of an unmarried woman.
- CEDAW's overall recommendation 19 (GR-19) defines discrimination against women as activities that cause bodily, psychological, or sexual violence against women. Additionally, "human rights and fundamental freedoms" are defined by GR-19 as "the right to the highest quality desirable of physical and mental health."¹⁷
- The GR-19 further states that women are deprived of the equitable use of human rights and basic freedoms owing to the consequences of violence on their bodily and mental integrity. Rape breaches a woman's human rights and fundamental freedoms since it is detrimental to her physical and mental health, regardless of whether the attacker is her spouse. This is made clear by the apparent connection between violence and freedom.
- Acts that cause bodily, psychological, or sexual injury to women are viewed as discrimination against women under CEDAW (GR-19). "The right to the highest standard feasible of physical and mental health" is included in GR-19's definition of "human rights and fundamental freedoms." The GR-19 further states that women are denied the right to the equal exercise of fundamental freedoms and human rights due to the impact of violence on their bodily and mental integrity. Rape violates a woman's human rights and fundamental freedoms since it is detrimental to her bodily and mental health, irrespective of whether the attacker is her spouse. This is made clear by the direct relationship between violence and liberty.
- (GR-35) of CEDAW, which altered GR-19, clarified, among other provisions, that marital rape is defined as rape that utilises coercive methods and a lack of freely

¹⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

¹⁷ <https://www.berkeleyjournalofinternationalallaw.com/post/marital-rape-in-india-an-international-human-rights-law-violation>

provided consent. The fact that GR-35 acknowledges the components of marital rape emphasises how its non-recognition infringes women's fundamental liberties.

- The CEDAW Optional Protocol, which creates a committee tasked with casting an eye on State Parties' compliance with the Convention, has not been approved by India. India has prevented the committee from taking any action against India, even if CEDAW violations take place within its boundaries, by refusing to acknowledge the body as a legal entity. India nonetheless has a duty to uphold and protect women's human rights, irrespective of their marital status, even though people are prohibited from bringing concerns before the committee.

India is required by Article 2(f) of CEDAW to take every necessary action, including legislation, and to rectify or eliminate current laws, customs, and practices that discriminate against women. GR-19 recognises that women of all ages experience violence, including rape, in family relationships, which is supported by traditions and societal attitudes. The prevalence of marital rape is sustained by the enduring, primarily male, custom of not believing approval is required after marriage. To change conventional ideas of consent, new laws or modifications in the current IPC are both necessary and adequate.¹⁸

“The Current Legal Architecture of India”

The legal status of Marital Rape in India has not undergone any major change despite long debates, Judicial discussions and attention. The marital exception is still included in the definition of rape within the current legislative framework, and no meaningful legislative measures have been taken to eliminate this exception.

Consequently, there are few legal avenues available to women who experience sexual assault within marriage. They frequently have to apply for remedies under laws of domestic abuse or cruelty, which might not provide the same degree of protection or justice because they do not expressly acknowledge the act as rape.

It is still a major worry that there is no proper legislation. It calls into question whether India's current legal system is really equipped to protect married women's rights, dignity, and bodily autonomy.¹⁹

¹⁸ https://ijirt.org/publishedpaper/IJIRT175774_PAPER.pdf

¹⁹ <https://www.legalserviceindia.com/Legal-Articles/no-means-no-even-in-marriage-the-legal-void-of-marital-rape-in-india/>

“Socio-Legal Concerns”

The following are common arguments made by those who oppose criminalisation:

- Misuse of the Law; Fear that bogus cases could cause marriages to fall apart.
- Privacy of Marriage: Courts shouldn't meddle in personal matters.
- Difficulty in Proof: In a marriage, consent may be hard to prove. However, when juxtaposed with women's fundamental rights, these arguments fall short.
- In *Vishaka v. State of Rajasthan* (1997), the Supreme Court ruled that basic rights can be protected by incorporating international pacts into domestic legislation.²⁰

“Forward Path”

When dealing with the issues of marital rape, an equitable strategy should be utilised. Recognising and protecting women from sexual violence within marriage is vital, but it's also critical to take into consideration the practical difficulties in putting such legislation into practice. The potential for abuse and the challenge of improving non-consensual activities are among the main worries, particularly when complaints are filed after a prolonged period of time.²¹

In this context, it can be argued that although delayed reports shouldn't be entirely overlooked, the court should carefully consider such cases in light of the relevant circumstances and the facts at hand. Promoting prompt reporting can help ensure the preservation and appropriate assessment of evidence.

Additionally, a medical examination can be valuable in determining whether coercion or force was used, but it shouldn't be the sole basis for proving the crime; other evidence, such as the victim's testimony, should also be given the weight it deserves.²²

Therefore, any legislative shift in this area ought to strive to achieve a balance between protecting women's rights and dignity and ensuring that the law is applied fairly, leaving no space for abuse.

Conclusion

Marital rape is an expression of a deep conflict between law, culture, and human rights in India and throughout the world that has long been suppressed by ideas of implied consent in

²⁰ <https://ijrlm.com/wp-content/uploads/jms/ms/69e69fee69c1f.pdf>

²¹ <https://lawarticle.in/marital-rape-legal-position-in-india-under-the-new-criminal-laws/>

²² <https://www.insightsonindia.com/2025/02/17/marital-rape-2/>

marriage. In several regions of the world, the notion that a person's right to bodily autonomy is unaffected by marriage has grown in popularity. Due to international institutions like the United Nations and CEDAW, which maintain that consent must be free, continuous, and unambiguous regardless of marital status, several nations have made marital rape illegal.

India's regular consumption of the criminal code exception for marital rape, however, stands in sharp contrast to predetermined international norms. The law sees marriage as a situation where consent is presumed rather than actively provided, despite the fact that judicial discourse is becoming increasingly shaped by constitutional ideals of equality, dignity, and human liberty. This disparity not only undermines women's rights but also supports social norms that normalise coercion and inhibit resistance.

The way forward is to integrate India's legislative framework with changing international human rights norms. Legal reform must be accompanied by a shift in social attitudes that acknowledge that "unspoken boundaries" are often shaped by power, fear, and social conditioning. In order to achieve true justice, silence must no longer be interpreted as permission and marriage must be reframed as a relationship established on equality, autonomy, and respect for each other.

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