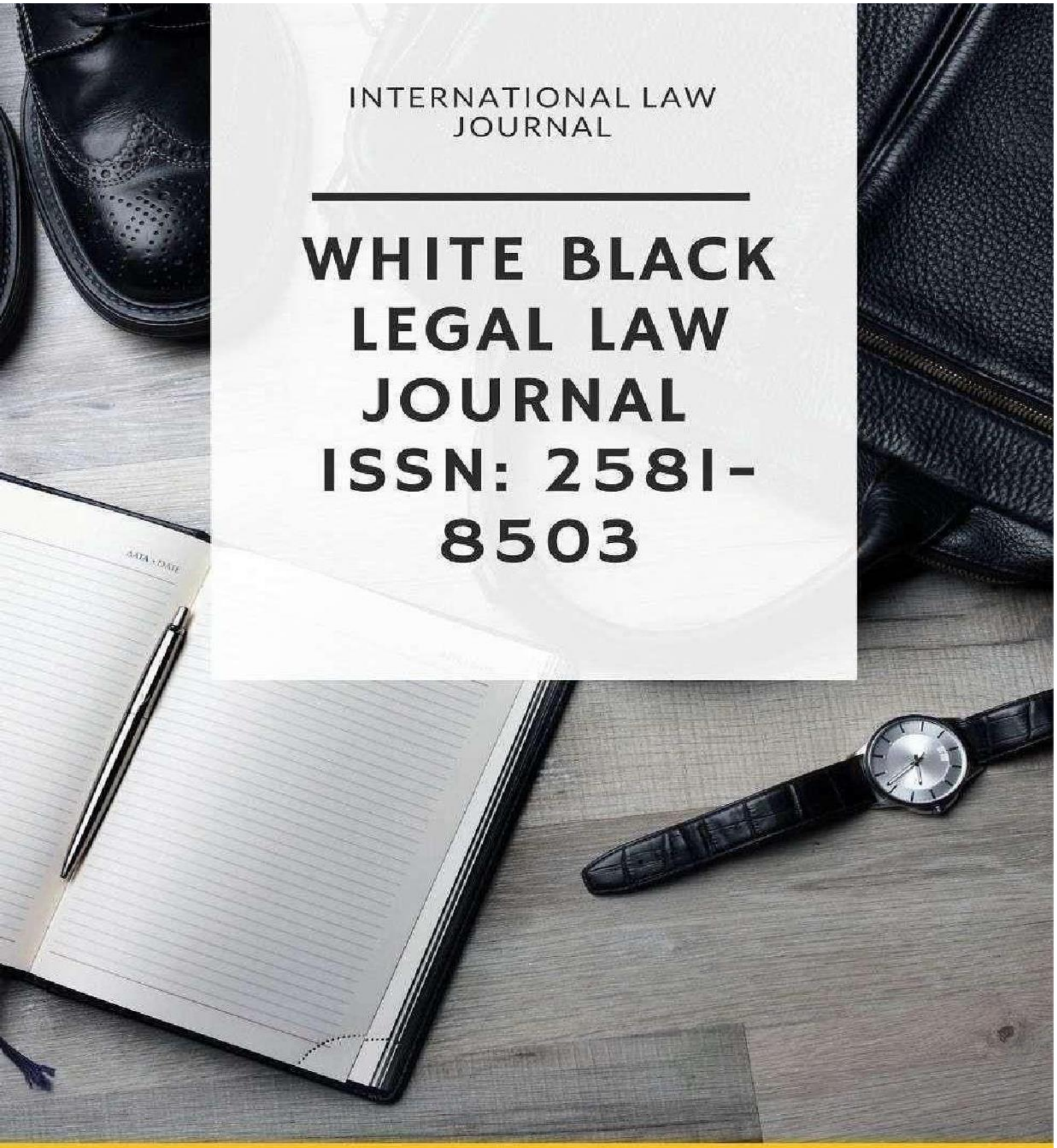


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MARITAL RAPE IN INDIA: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK, CONSTITUTIONAL CHALLENGES AND JUDICIAL APPROACH

AUTHORED BY - SHUBHAM CHAUDHARY[1] & DR. CHEENA ABROL[2]

ABSTRACT

Marital rape is one of the most contested questions in contemporary criminal law, constitutional jurisprudence and gender justice. It refers to non-consensual sexual intercourse or sexual acts committed by a spouse against the other. In India, the principal controversy arises from the marital rape exception, which excludes certain sexual acts by a husband with his wife from the definition of rape where the wife is not below eighteen years of age. Although Indian law recognises several forms of domestic violence and cruelty within marriage, the general offence of rape does not currently apply to non-consensual sexual intercourse between an adult husband and wife in the same way as it applies outside marriage. The Bharatiya Nyaya Sanhita, 2023 (BNS), in force from 1 July 2024, retained this exception in Section 63, Exception 2. Its continuation raises questions concerning equality before law, bodily autonomy, dignity, privacy and the constitutional protection of women. Decisions such as Independent Thought v. Union of India, RIT Foundation v. Union of India and Hrishikesh Sahoo v. State of Karnataka have shaped the debate, although they do not amount to a final Supreme Court ruling invalidating the exception for adult wives. This paper examines the meaning and historical development of marital rape, the applicable statutory provisions, constitutional arguments, leading judicial decisions, comparative approaches and possible reforms. It adopts a doctrinal methodology and argues that any reform should place consent and bodily autonomy at its centre while preserving due process, fair investigation and the presumption of innocence.

Keywords: Marital rape; consent; bodily autonomy; Bharatiya Nyaya Sanhita; constitutional rights; domestic violence; gender justice.

[1] Student of LLM, the School of Law at CT University, Ludhiana
[2] Professor, the School of Law at CT University, Ludhiana

1. INTRODUCTION

1.1 Meaning and Concept of Marital Rape

Marital rape refers to sexual intercourse or other sexual acts imposed by one spouse upon the other without free and voluntary consent. In its most commonly discussed legal context, it concerns a husband compelling his wife to engage in sexual activity against her will. The concept challenges the historical assumption that marriage itself creates continuing or irrevocable consent to sexual relations. Consent is specific to the activity in question and must be voluntary. Consent to marriage is not, by itself, consent to every subsequent sexual act. Nor does the existence of an intimate relationship eliminate the possibility of coercion, intimidation, threats or exploitation of a person's inability to communicate a choice. Sexual violence within marriage may occur alongside physical abuse, emotional control, financial dependence or other forms of domestic violence.

1.2 Background of the Problem in India

The Indian legal debate reflects a tension between modern constitutional commitments to equality and individual liberty and a statutory distinction based on marital status. The law recognises that violence and cruelty can occur within marriage, and the Protection of Women from Domestic Violence Act, 2005 provides civil remedies for sexual abuse and other forms of domestic violence. Yet the general criminal-law definition of rape continues to exclude specified sexual acts by a husband with his adult wife. The practical consequence is that the legal characterisation of conduct may depend in part on whether the parties are married and whether they are living together or separately. A person may have access to protection orders, residence orders, monetary relief or other remedies without necessarily having access to a prosecution for rape under the general provision. This distinction lies at the centre of the constitutional controversy.

1.3 Statement of the Problem

The central problem is whether excluding non-consensual sexual intercourse by a husband from the definition of rape is compatible with constitutional guarantees of equality, life, dignity and personal liberty. The issue also raises questions about the respective roles of Parliament and the judiciary in reforming criminal law, and about how survivor protection can be reconciled with fair-trial guarantees.

1.4 Research Questions

1. What is the meaning and historical development of the marital rape exception in India?
2. What is the effect of Section 63, Exception 2 of the Bharatiya Nyaya Sanhita, 2023?

3. Does the exception raise concerns under Articles 14, 15 and 21 of the Constitution?
4. What principles emerge from important judicial decisions concerning sexual autonomy within marriage?
5. What legislative and institutional reforms could improve protection while preserving due process?

1.5 Objectives of the Study

- To examine the statutory framework governing marital rape in India.
- To analyse the constitutional issues raised by the marital rape exception.
- To study significant Supreme Court and High Court judgments and their legal effect.
- To evaluate arguments for and against criminalisation and identify appropriate safeguards.
- To consider comparative developments and recommend legal and institutional reforms.

1.6 Research Methodology and Scope

This paper follows a doctrinal method, relying on legislation, judicial decisions and selected secondary sources. The primary materials include the Constitution of India, the Bharatiya Nyaya Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, and relevant criminal-law decisions. The analysis is descriptive and critical; it does not claim to be based on an independent empirical survey. The paper focuses on Indian law and uses selected foreign jurisdictions for comparison.

2. HISTORICAL DEVELOPMENT OF THE MARITAL RAPE EXCEPTION

2.1 Historical Origins

The marital rape exception has roots in historical common-law traditions that treated marriage as creating implied or irrevocable consent to sexual relations. These assumptions reflected a patriarchal understanding of marriage and diminished the wife's independent legal personality. Over time, the approach attracted criticism because it failed to recognise that sexual violence can occur within marriage and denied married women the same legal protection afforded to others.

2.2 Position under the Indian Penal Code, 1860

Section 375 of the Indian Penal Code, 1860 defined rape and included an exception for sexual intercourse by a man with his own wife, subject to an age threshold that changed through legal developments. The Criminal Law (Amendment) Act, 2013 substantially revised the definition

of rape but did not abolish the exception for adult wives. The exception therefore survived despite the expansion of the statutory definition of sexual offences.

2.3 Independent Thought and the Age Threshold

In Independent Thought v. Union of India (2017), the Supreme Court read down the marital rape exception in the IPC so that sexual intercourse with a wife below eighteen years of age could constitute rape. The judgment addressed the inconsistency between the former age threshold in the exception and the wider statutory protection of children. It was a significant intervention, but it did not abolish the exception for adult wives.

2.4 Position under the Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 replaced the IPC with effect from 1 July 2024, subject to applicable savings and transitional rules. Section 63 defines rape. Exception 2 states that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years of age, do not constitute rape. The BNS thus retained the central distinction that had existed under the IPC.

The retention of the exception means that the change in criminal codes did not, by itself, criminalise marital rape involving an adult wife. The constitutional challenge remains important to determining whether this distinction can continue to operate.

3. STATUTORY FRAMEWORK GOVERNING MARITAL RAPE IN INDIA

3.1 Section 63, Bharatiya Nyaya Sanhita, 2023: Definition of Rape

Section 63 sets out the circumstances in which specified sexual acts constitute rape, including acts against a woman's will or without her consent, and acts involving certain forms of coercion or circumstances in which she cannot legally or physically communicate consent. The provision places consent at the centre of the general offence, but Exception 2 creates a distinct rule for a husband and his wife where she is not under eighteen years of age.

Where the exception applies, non-consensual sexual intercourse within an existing marriage is not treated as rape under Section 63 in the same manner as comparable conduct outside marriage. The provision does not, however, confer blanket immunity for all acts of violence committed within marriage. Other offences may apply if their statutory ingredients are made out.

3.2 Section 64, BNS: Punishment for Rape

Section 64 prescribes punishment for rape as defined in Section 63. Since the exception forms

part of the definition, it affects whether Section 64 can ordinarily be invoked solely on the basis of non-consensual sexual intercourse by a husband with his adult wife during ordinary cohabitation. The precise legal position remains subject to binding judicial rulings and any subsequent legislative amendment.

3.3 Section 67, BNS: Sexual Intercourse by Husband During Separation

Section 67 deals with sexual intercourse by a husband with his wife during separation, without her consent. It provides a specific criminal-law response where the spouses are living separately, whether under a decree of separation or otherwise. The provision is significant because it demonstrates that the marital relationship does not exclude every form of criminal liability for non-consensual sexual intercourse. It does not, however, create a general offence of marital rape during ordinary marital cohabitation.

3.4 Section 85, BNS: Cruelty by Husband or Relatives

Section 85 addresses cruelty by a husband or a relative of the husband against a woman. Where its statutory ingredients are established, physical or mental cruelty within marriage may attract criminal liability. A pattern of sexual coercion may be relevant to the factual assessment of a cruelty allegation, depending on the circumstances. Cruelty and rape remain distinct offences; a prosecution under Section 85 requires proof of the ingredients specified by law and is not automatically a substitute for a rape prosecution.

3.5 Protection of Women from Domestic Violence Act, 2005

Section 3 of the Protection of Women from Domestic Violence Act, 2005 recognises physical, sexual, verbal, emotional and economic abuse within the statutory definition of domestic violence. Sexual abuse may therefore fall within this framework even where the marital rape exception prevents prosecution for rape under the general penal provision.

- Section 18: protection orders.
- Section 19: residence orders.
- Section 20: monetary relief.
- Section 21: temporary custody orders.
- Section 22: compensation orders.
- Section 23: interim and ex parte orders.

These remedies can be important for safety and support, but proceedings under the Domestic Violence Act are not equivalent to criminalising marital rape as a distinct offence.

3.6 Constitutional Provisions

Article 14 guarantees equality before the law and equal protection of the laws. Article 15

prohibits discrimination on specified grounds, including sex, while Article 15(3) permits special provisions for women and children. Article 21 protects life and personal liberty and has been interpreted to include dignity, privacy and bodily integrity. These provisions form the principal constitutional basis for arguments challenging the marital rape exception.

Article 19 may inform broader discussion of autonomy and individual freedom, but the direct constitutional challenges to the exception have principally relied upon Articles 14 and 21. The precise application of each provision depends on the legal arguments and judicial findings in the case before the court.

3.7 Procedural and Evidentiary Framework

The Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023 govern criminal procedure and evidence within their respective fields, subject to applicable transitional provisions. Depending on the offence alleged and the facts, relevant evidence may include testimony, medical records, contemporaneous communications, witness statements and other admissible material.

The absence of visible physical injury does not, by itself, establish consent. Nor does delayed reporting automatically disprove an allegation. The circumstances must be evaluated fairly and in accordance with the applicable law. Survivor-sensitive procedures must operate alongside the accused person's right to a fair investigation and trial.

4. CONSTITUTIONAL ANALYSIS OF THE EXCEPTION

4.1 Equality and Reasonable Classification

Article 14 permits reasonable classification, subject to the established tests of intelligible differentia and rational nexus with the object of the law. Critics argue that marital status is not a meaningful basis for denying equal protection against non-consensual sexual intercourse. A person's decision to marry does not remove the need for consent to individual sexual acts.

Those supporting retention argue that marriage is a distinct legal and social relationship and that the legislature may regulate it differently. The constitutional question is whether that distinction remains reasonable when it produces a substantially different criminal-law response to non-consensual sexual conduct.

4.2 Bodily Autonomy and Consent

Bodily autonomy recognises an individual's authority to make decisions concerning their own body. Neither spouse has an unrestricted entitlement to the other's body. Consent to marriage is not permanent consent to sexual activity, and consent may be absent or withdrawn in relation

to a particular act. The central criticism of the exception is that marital status is given decisive legal significance even where consent is absent.

4.3 Dignity and Personal Liberty

Article 21 protects life and personal liberty in a manner that extends beyond physical survival. Dignity, bodily integrity and personal autonomy are important elements of this guarantee. Sexual violence within marriage can undermine physical integrity and personal independence. Critics contend that excluding such conduct from the offence of rape fails to recognise married women as equally entitled to the law's protection.

4.4 Privacy and Intimate Relationships

The right to privacy protects personal life and decisional autonomy, but privacy is not an absolute shield for violence in the home. A distinction must be drawn between protecting consensual intimate relationships from unjustified State interference and preventing the State from responding to sexual violence. Reform advocates argue that criminalisation can focus on non-consensual conduct without regulating consensual relations between spouses.

4.5 Separation of Powers

The controversy also concerns the proper roles of courts and Parliament. Courts interpret legislation and review constitutionality; Parliament can enact comprehensive criminal legislation, define offences and establish procedural safeguards. The issue is whether the exception should be invalidated or read down through judicial review, or replaced through legislative reform. Legislative responsibility does not remove the judiciary's duty to adjudicate constitutional challenges.

5. IMPORTANT JUDICIAL PRONOUNCEMENTS

5.1 Independent Thought v. Union of India (2017)

Citation: (2017) 10 SCC 800. Court: Supreme Court of India.

The case concerned the inconsistency between the age of consent and the marital rape exception insofar as the exception applied to girls between fifteen and eighteen years of age. The Supreme Court read down Exception 2 to Section 375 IPC so that sexual intercourse with a wife below eighteen years of age could constitute rape.

The judgment rejected the proposition that marriage could protect sexual intercourse with a child from the criminal law. It is a significant authority on the protection of minors, but it did not abolish the exception for adult wives.

5.2 RIT Foundation v. Union of India (2022)

Court: Delhi High Court; decision dated 11 May 2022.

This case directly challenged the constitutional validity of Exception 2 to Section 375 IPC. The two-judge Bench delivered a split verdict. Justice Rajiv Shakdher considered the exception unconstitutional, emphasising equality, bodily autonomy and the rights of married women. Justice C. Hari Shankar disagreed and upheld the exception, emphasising the distinct legal character of marriage, legislative authority and judicial restraint.

The split verdict illustrates the competing constitutional approaches. It did not produce a single binding resolution of the issue by the Delhi High Court and is not a final Supreme Court ruling invalidating the exception.

5.3 Hrishikesh Sahoo v. State of Karnataka (2022)

Court: Karnataka High Court.

The case arose from allegations of sexual violence by a husband against his wife. The Karnataka High Court declined to quash the rape charge merely on the basis of the marital relationship and reasoned that marriage should not automatically immunise a person from allegations of sexual violence. The husband challenged the decision before the Supreme Court, which stayed the High Court judgment in July 2022.

The decision is important for its rights-based reasoning, but it must be read with its subsequent procedural history. It should not be described as a final nationwide rule invalidating the exception.

5.4 Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018)

Court: Gujarat High Court.

This decision is often discussed in commentary concerning sexual abuse within marriage and the limits of the marital rape exception. The Court addressed the seriousness of marital sexual violence and the limitations of the statutory framework, while considering the availability of other offences where their ingredients are established. It did not strike down the exception. Researchers should verify the reported judgment and exact citation before using any direct quotation.

5.5 Joseph Shine v. Union of India (2019)

Citation: (2019) 3 SCC 39. Court: Supreme Court of India.

The Supreme Court struck down the adultery offence under Section 497 IPC as unconstitutional. Although the case did not concern marital rape, its reasoning is relevant to equality within marriage and rejection of legal assumptions that treat a wife as subordinate to her husband. It supports broader arguments about women's independent legal personality, but

does not itself invalidate the marital rape exception.

5.6 K.S. Puttaswamy v. Union of India (2017)

Citation: (2017) 10 SCC 1. Court: Supreme Court of India.

A nine-judge Bench unanimously recognised privacy as a fundamental right. The judgment developed important principles concerning dignity, autonomy and personal decision-making. These principles are relevant to arguments that a married woman retains control over decisions concerning her body. The case did not directly decide the constitutionality of the marital rape exception.

5.7 Navtej Singh Johar v. Union of India (2018)

Citation: (2018) 1 SCC 791. Court: Supreme Court of India.

The Court decriminalised consensual same-sex sexual conduct between adults to the extent specified in its judgment. Its reasoning recognised dignity, autonomy, equality and freedom in intimate life. Although not a marital rape case, it contributes to the broader constitutional understanding of individual agency in intimate relationships.

5.8 R v. R (1991)

Citation: [1991] UKHL 12. Court: House of Lords, United Kingdom.

The House of Lords rejected the historical common-law rule that a husband could not be guilty of raping his wife. It held that a husband could be prosecuted for rape. The case is a landmark comparative authority showing that marriage need not create irrevocable consent to sexual relations.

5.9 Supreme Court Proceedings in 2026

In September 2026, a Supreme Court Bench headed by Chief Justice Surya Kant, with Justices Joymalya Bagchi and V. Mohana, considered the challenges to Exception 2 to Section 375 IPC and the corresponding Exception 2 to Section 63 BNS. Reports of the proceedings dated 9 September 2026 indicate that the Court questioned whether prosecution for rape could proceed while the statutory exception remained in force and stated that it would consider both the validity of the exception and the possibility of prosecution if the exception survived.

The matters were reported as posted for final hearing on 18 November 2026. As of 26 October 2026, the exception had not been finally invalidated by a judgment verified for this paper. The current legal position should be checked again immediately before submission, particularly if the paper is submitted after the scheduled hearing.

5.10 Note on Authorities and Citation Accuracy

Judicial citations and procedural histories should be checked against the official judgment or a reliable legal database before submission. This paper does not rely on unverified case names

such as Kuldeep Singh v. State of Punjab or Anuja Kapoor v. Union of India as leading authorities on the merits. Where a case is mentioned in secondary commentary, the exact citation and holding should be confirmed before it is cited in academic work.

6. ARGUMENTS IN FAVOUR OF CRIMINALISING MARITAL RAPE

6.1 Protection of Bodily Autonomy

The principal argument for criminalisation is that every individual has the right to decide whether to engage in sexual activity. Marriage cannot reasonably be treated as permanent consent. Recognising marital rape as an offence would affirm that consent remains necessary within marriage and that neither spouse has an unrestricted entitlement to the other's body.

6.2 Equality Before Law

The exception creates a distinction between married and unmarried women in the protection available under rape law. Criminalisation would reduce this disparity by making the absence of consent, rather than marital status, central to the determination of criminal liability.

6.3 Recognition of Sexual Violence Within the Home

Sexual violence may occur in private settings where external witnesses are unavailable. The existence of a marriage does not make such conduct less serious. A clear legal response would recognise that sexual violence can occur within intimate relationships and that survivors may face significant barriers to reporting it.

6.4 Accountability and Deterrence

Criminalisation could establish clearer boundaries against coercive sexual conduct within marriage and provide a legal basis for investigation and prosecution where the offence is proved. Any deterrent effect would depend upon effective enforcement, public awareness, survivor support and reliable investigations.

6.5 Constitutional Values

Removing the exception would align criminal law more closely with the principles of dignity, equality, personal liberty and bodily autonomy. Supporters argue that the State's duty to protect individuals from sexual violence should not depend on whether the victim is married to the accused.

7. CONCERNS AND SAFEGUARDS IN CRIMINALISATION

7.1 Protection of Marriage and Family Relationships

One argument against immediate criminalisation is that a separate offence could increase

criminal litigation arising from marital breakdown and affect family relationships. This concern must be evaluated against the need to protect individuals from serious sexual violence. The preservation of marriage cannot, by itself, justify withholding legal protection against non-consensual conduct.

7.2 False or Malicious Complaints

Critics express concern that allegations could be made maliciously during matrimonial disputes. The possibility of false allegations is relevant to procedural safeguards, but it does not justify a blanket exclusion of a category of alleged sexual violence from criminal law. The appropriate response is impartial investigation, evidentiary standards, judicial scrutiny and the presumption of innocence.

7.3 Evidentiary Difficulties

Allegations may concern events occurring in private without independent witnesses. Survivors may also delay reporting because of fear, financial dependence, family pressure or concern for children. These difficulties require sensitive and reliable investigative procedures; they do not, on their own, establish that the conduct should remain outside criminal law.

7.4 Misuse of Criminal Proceedings

Any reform should contain clear definitions, fair investigative procedures and safeguards against deliberate fabrication. At the same time, procedural protections should not become unnecessary barriers that prevent genuine survivors from seeking justice.

7.5 Legislative Competence and Institutional Choice

Some argue that reform should be undertaken by Parliament through comprehensive legislation, rather than by judicial invalidation of the exception. Parliament can define the offence, set sentencing ranges and establish procedural protections. However, legislative competence does not remove the judiciary's responsibility to determine whether a law violates fundamental rights.

8. COMPARATIVE LEGAL POSITION

8.1 United Kingdom

In R v. R [1991] UKHL 12, the House of Lords rejected the common-law marital rape exemption and held that a husband could be prosecuted for raping his wife. The decision marked a departure from the assumption that marriage created irrevocable consent and recognised that the criminal law must respond to non-consensual intercourse irrespective of marital status.

8.2 United States

Marital rape was historically treated differently from rape outside marriage in many US states. Over time, states progressively removed or restricted marital exemptions. The exact position remains dependent on state legislation, including definitions, sentencing provisions and any remaining statutory distinctions. The overall development demonstrates a movement away from automatic consent based on marriage.

8.3 Canada

Canadian criminal law does not generally exempt husbands from liability for sexual assault against their wives. The framework recognises sexual assault irrespective of marital status, subject to the applicable statutory requirements. This approach reflects the principle that consent must be assessed in relation to the particular sexual activity, rather than presumed from marriage.

8.4 South Africa

South Africa recognises rape within marriage as a criminal offence. Its legal framework rejects the proposition that the marital relationship creates immunity from prosecution for non-consensual sexual intercourse. This approach is relevant to discussions of equality, bodily integrity and protection within family relationships.

8.5 Lessons for India

Comparative experience suggests that marital status need not prevent criminal-law recognition of non-consensual sexual activity. Foreign models should not be transplanted without considering India's constitutional principles, social conditions and institutional capacity. Useful lessons include clear statutory drafting, survivor-centred procedures, specialised training and safeguards against abuse of criminal proceedings.

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9. CHALLENGES IN IMPLEMENTATION AND ACCESS TO JUSTICE

9.1 Social Stigma and Underreporting

Victims may hesitate to report sexual violence within marriage because of social expectations, fear of family breakdown, financial dependence or pressure from relatives. These barriers may delay access to medical assistance, legal advice and protection. Public education and confidential support mechanisms are therefore important.

9.2 Economic Dependence

A spouse who depends financially on the alleged offender may struggle to leave the shared household or pursue legal proceedings. Protection orders, residence orders, monetary relief and

access to legal aid can help reduce these barriers.

9.3 Institutional Sensitivity

Police officers, medical professionals, lawyers and judicial officers require training to understand consent within intimate relationships. Investigations should avoid stereotypes that a wife must always agree to sexual activity or that a survivor's conduct after an incident necessarily determines whether an offence occurred.

9.4 Evidence Collection

Investigations should be timely, lawful and sensitive to dignity and privacy. Relevant material may include medical records, messages, contemporaneous disclosures, witness statements and other admissible evidence. Authorities must neither presume guilt from an allegation nor presume consent merely from marriage.

9.5 Access to Legal Aid and Support

Effective protection requires more than statutory amendments. Survivors may need legal assistance, medical care, psychological support, safe accommodation and financial relief. Public legal services and specialised support organisations can help make available remedies accessible to those who lack the resources to pursue proceedings.

10. SUGGESTIONS AND RECOMMENDATIONS

10.1 Reconsideration of the Exception

The first and most significant reform is to reconsider Exception 2 to Section 63 BNS. The law should recognise that consent to marriage does not automatically amount to consent to every sexual act. Any change should be made through a constitutionally sound approach, whether by a final judicial determination or appropriate legislation.

10.2 Clear Definition of Consent

Legislation should clearly explain that consent means free and voluntary agreement to the particular sexual activity. It should clarify that consent may be withdrawn and that marriage does not independently establish consent. The definition should be consistent with the broader statutory framework governing sexual offences.

10.3 Appropriate Criminal-Law Safeguards

Any reform should specify the elements of the offence, applicable punishment, evidentiary principles and procedural protections. The law should protect complainants from intimidation while preserving the accused person's right to a fair investigation and trial.

10.4 Survivor-Centred Investigation

Police and medical personnel should receive specialised training concerning sexual violence within marriage. Procedures should protect confidentiality, avoid unnecessary repetition of traumatic accounts and ensure that relevant evidence is preserved.

10.5 Effective Domestic Violence Remedies

Protection, residence, monetary relief and compensation should remain accessible irrespective of whether a separate prosecution for rape is legally available. Authorities should implement remedies promptly and inform survivors of their legal options.

10.6 Legal Awareness and Education

Public awareness programmes should explain consent, domestic violence remedies and bodily autonomy within marriage. Legal literacy initiatives should address stereotypes that discourage survivors from reporting abuse.

10.7 Research and Institutional Review

Further empirical research is needed to understand reporting patterns, access to justice, the effectiveness of existing remedies and the practical implications of legislative reform. Relevant institutions should evaluate present safeguards and identify areas requiring improvement.

11. FINDINGS AND DISCUSSION

The research identifies a continuing tension between the statutory definition of rape and constitutional principles of equality, dignity and autonomy. The legal framework recognises certain forms of sexual violence within marriage through domestic violence remedies, cruelty provisions and the specific offence concerning sexual intercourse during separation. These remedies do not create a general offence of marital rape involving an adult wife during ordinary cohabitation.

Second, Independent Thought established an important age-related protection but left the position of adult wives unresolved. Third, the split verdict in RIT Foundation illustrates competing constitutional approaches: one emphasises equality and bodily autonomy, while the other stresses the distinct nature of marriage and legislative responsibility.

Fourth, decisions concerning privacy, dignity and equality provide relevant constitutional context but should not be misrepresented as direct rulings on the marital rape exception. Fifth, comparative developments show that criminal liability for sexual violence can operate irrespective of marital status. Finally, any reform should be accompanied by effective safeguards so that survivors receive meaningful protection and accused persons retain fair-trial

rights.

12. CONCLUSION

Marital rape raises a fundamental question about the relationship between marriage, consent and constitutional rights. Marriage cannot be understood as automatically transferring control over one person's body to another. Consent to marriage and consent to a particular sexual act are conceptually distinct. Indian law has made important progress in recognising the rights of married women, particularly through protection of children from sexual abuse, domestic violence remedies and constitutional jurisprudence concerning dignity and autonomy. Nevertheless, Exception 2 to Section 63 BNS continues to distinguish non-consensual sexual intercourse within marriage from comparable conduct outside marriage where the wife is an adult. Independent Thought, RIT Foundation and Hrishikesh Sahoo demonstrate the continuing judicial significance of the issue. Independent Thought established an important protection for minors, while the latter cases illustrate disagreement over the validity and interpretation of the exception. The Supreme Court proceedings reported in September 2026 remained pending as of 26 October 2026, with final hearing reported for 18 November 2026. The position should be rechecked before the paper is submitted after that date. A comprehensive approach must balance constitutional rights, legislative responsibility, survivor protection and procedural fairness. The legal system should provide meaningful access to protection against sexual violence, impartial investigation and adjudication based on law and admissible evidence. Ultimately, the question is not whether marriage deserves legal protection, but whether that protection can constitutionally justify withholding a particular form of criminal-law recognition from non-consensual sexual conduct. A rights-based framework should treat consent, dignity and bodily autonomy as central principles while preserving due process and the rule of law.

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5. Relevant scholarly literature on sexual autonomy, gender justice, constitutional equality and criminal-law reform.

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