

From Immunity to Accountability: The Evolution of Judicial Attitudes Towards Marital Rape in India

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Abstract

Marital rape remains a profound gap in Indian criminal jurisprudence, sustained by outdated notions that presume perpetual consent within marriage. This legal presumption denies women their fundamental rights to bodily autonomy and dignity, while reinforcing patriarchal structures. Despite constitutional guarantees of equality, non-discrimination, and the right to live with dignity, Indian law continues to offer implicit immunity to husbands who commit sexual violence against their wives. This paper traces the slow evolution of judicial attitudes toward marital rape in India from institutional silence to a more engaged, though fragmented, discourse. While courts have begun to acknowledge the harm and human rights violations embedded in non-consensual conjugal relations, a consistent and robust legal framework remains absent. Judicial hesitation to criminalize marital rape outright is often justified on grounds of legislative supremacy, cultural sensitivities, and the sanctity attached to marriage. Through a critical analysis of judicial reasoning and evolving constitutional interpretations, this study explores how Indian courts are gradually aligning domestic jurisprudence with international human rights norms and constitutional morality. It underscores the urgent need for the judiciary to overcome procedural barriers and actively challenge legal exceptions that shield marital sexual assault. The paper concludes that judicial intervention is not only necessary but constitutionally mandated to uphold the rights of women within marriage. It advocates for recognizing consent as revocable and dynamic, irrespective of marital status, and calls for binding guidelines to protect victims until comprehensive legislative reform is enacted. Ultimately, the paper argues that legitimizing marital rape stands in direct violation of India's democratic and constitutional ideals and must be abolished.

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1. INTRODUCTION

A legal presumption of implied and irrevocable agreement to sexual contact has long surrounded marriage, which is frequently seen as a sacred union in Indian society. Due to this deeply ingrained belief, marital rape has been shielded from the scope of criminal law by the now-famous Exception 2 to Section 375 of the Indian Penal Code, 1860, and its contemporary replacement by Section 63 of the Bharatiya Nyaya Sanhita, 2023. Despite the harsh penalties for sexual violence committed outside of marriage, the institution of marriage nonetheless protects the offender if he is the husband,

establishing a disturbing exception that goes against the fundamental principles of consent and bodily autonomy. Indian courts have been addressing the issue of marital rape more urgently over the years. By interpreting down the marital rape exception for underage wives, judicial rulings like *Independent Thought v. Union of India* (2017) represented a substantial constitutional change. Adult women are still not protected, nevertheless, and the judiciary has occasionally demonstrated a hesitancy to declare the exemption illegal, frequently citing legislative authority or social sensitivities as justifications. Through a critical analysis of significant rulings from the High Court and Supreme Court, as well as ongoing Public Interest

Litigations, this study investigates the evolving legal discourse on marital rape in India from impunity to accountability. Using comparative legal viewpoints from places where marital rape is illegal, it further explores the conflict between patriarchal marriage constructions and individual rights (Articles 14, 15, 19, and 21) as outlined in the constitution. The report also assesses how the Indian judiciary has responded to international human rights treaties like the UDHR, CEDAW, and the UN Committee on the Elimination of Discrimination Against Women's General Recommendations. This study aims to reinforce the fundamental legal premise that marriage cannot be a license to violate by tracing the development of judicial attitudes and highlighting the necessity for victim protection, constitutional coherence, and legislative change.

2. MARITAL RAPE

The main difference between marital rape and other types of rape is that the victim's spouse is the one who commits the crime. Regardless of the victim-offender relationship, the definition of rape under Section 63 of the Bharatiya Nyaya Sanhita, 2023, which currently regulates the legislation on rape in India, is the same with regard to the sexual activities involved. But the legal exception still stands according to Exception 2 to Section 63, a husband cannot be prosecuted for raping his wife if she is not younger than eighteen. Because of this unsettling legal immunity based on antiquated patriarchal ideas, a husband can practically dominate his wife's body without facing any repercussions. Therefore, even though both types of rape involve the lack of consent, the law nevertheless maintains a distinction between marital and non-marital rape. Unless she is legally regarded as a minor and so unable to give valid consent, the wife nonetheless has the burden of proving lack of consent in cases of marital rape. Theoretically, consent is the primary element that separates rape from legal sexual relations. Exception 2 to Section 63, however, subverts this by suggesting perpetual and implicit consent inside a marriage, provided the wife is older than the legal age. This dual legal strategy is discriminatory by nature. It implies that, despite being similarly violent and of the same nature, a sexual act performed in a marital relationship is handled differently and more leniently than one performed outside of it. It is concerning that such a grave infringement on bodily autonomy be ignored based only on the couples' marital status. Since this discrepancy directly breaches Articles 14, 15, and 21 of the Constitution which guarantee equality, nondiscrimination, and the right to life and dignity judicial and legislative reform is urgently needed to remedy it. Every person must have the unalienable right to bodily integrity and personal autonomy, regardless of whether they are married or not. The safety and wellbeing of many women are undermined by the unwillingness to punish marital rape, which not only maintains gender inequity but also normalizes domestic violence. The legislative must change Section 63 of the BNS to reflect the constitutional promise of equality and justice, and the judiciary must step forward and declare marital rape a grave human rights violation.

3. JUDICIAL INTERVENTIONS ON MARITAL RAPE: AN EVOLVING DISCOURSE

3.1 Privy Council Observation

A child who was repeatedly sexually assaulted by her husband and suffered enough injuries to end her life was the subject of the *Emperor v. Shah Mehrab*¹ case. He was only charged with culpable homicide and received a light sentence after she passed away. This indicates that because there are no legal consequences, the spouses have no deterring effect on them. They continue to inflict mild or severe pain and suffering on their wives without realizing the harm they are causing. All that matters to them is themselves and their personal fulfillment. It's not entirely their fault; they were raised in a patriarchal environment, seen several things that never disturbed them, and are obligated to accept their husbands' opinions. In this instance, the husband sexually assaulted the woman repeatedly, causing severe injuries that ultimately resulted in her death, despite the wife's long term suffering, denials, and refusal. Because they are unable to determine whether or not consent was truly provided, the judiciary has remained mute regarding the matter. This mindset is hollowing out the judicial system as a whole, and eventually, even when they are married, women in our nation won't feel safe, which will make them fearful. There have been cases of outer rape in the past, but what you would call an insider aggressive conduct is undoubtedly marital rape, which is still not given the proper attention and respect.

3.2 Matrimonial Remedies

The courts have given various judgment for marital rape case and women right to anatomy on different era in different cases. The relief with respect to matrimonial relief has been evolved in the subject of marital rape in various cases.

In *Queen empress v. Haree Mohan Mythree*², the wife, who was over 15, accused her husband of raping her on a regular basis. She complained, but her plea was denied and she had no other options. The court determined that because the exception provision exclusively provides remedies to wives under the age of 15, the situation is unfavorable in the event that the wife is over 15 and that legality will not accrue. The wife's sole option when the petition was denied was to file for divorce based on cruelty. Since there are no standards by which to determine the truth, such a scenario demands an urgent solution.

In the case of *Sareetha v. T Venkata Subbaiah*³, the court determined that a man and woman's relationship following marriage is one of mutual trust, and it is up to the wife to decide whether to continue their marriage or not. They enjoy the benefits of the marriage contract and, in the event that a formal arrangement is made between the marriage relationship and the sanctity of the identical thing will be eliminated. Since we are unable to prove such facts, the creation of legislation against marital rape will be useless and there will be no penalty for such a conduct.

The case of *Sree Kumar v Pearly Karun*⁴ highlighted that a wife under judicial separation cannot file a complaint against her husband's coerced sexual conduct because, legally speaking, he remains her spouse and the act cannot be considered rape. That was the sole ideology. It is a serious enough matter to bring up, but it is unlikely to lead to marital rape. The court ruled that although he may have committed other crimes because he had done similar acts, he could not be found guilty of rape or marital rape. The reason a serious crime such as marital rape goes unreported and undiscovered is due to flawed laws. The reason why marital rape hasn't been

¹ *Emperor v. Shah Mehrab* 1894 ILR 19 Bom 36

² *Queen empress v. Haree Mohan Mythree* 1980 (18 Cal 49)

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³ *Sareetha v. T Venkata Subbaiah* AIR 1983, AP 356.

⁴ *Sree Kumar v Pearly Karun* 1999 (2) ALR cri. 77, II

diminished in the past is because courts and framers have remained silent on the subject.

The same issues surfaced in *Boddhisatwa Gautam v. Shubhra Chakravarty*⁵, where the court determined that it would be illegal to make a personal matter of the a marriage legally binding. As a result, the husband would constantly be afraid to act, which would eventually cause the marriage to fall apart and cause the unity to break down. The partner will not delight in the assumed right to live with the wife upon marriage. It was noted in *Railway Board v. Chandrima das*⁶ that rape is a crime that violates both the laws of nature as well as society at large, in addition to being an act and offense against the victim. The state is now obligated to defend the defenseless against the accused. Marital rape is likewise considered to be against human dignity, yet there are no changes whatsoever talks about this subject. Although there hasn't been any particular mention of it, it is sometimes misunderstood as cruelty against women. The wife may file a case under the Hindu Marriage Act of 1955 or the Domestic Violence Act of 2005. But it is believed that the court should not be held accountable for failing to interpret the law; rather, the legislative should be the one to determine if the legislation needs to be changed.

In the well-known *Naveen Kohli v. Neelu Kohli*⁷ case, the court emphasized that cruelty is not defined in any way and that it can be either physical or mental. Any act that harms a person's mental state must be immediately stopped, and the law must be enforced. The court ruled that the person must receive restitution at any costs. It is evident that the judiciary can actively define what constitutes a physical or mental conduct, and that it can also discuss and attempt to legitimize marital rape. Even though it is widely accepted that judges carry out the law, the court has the authority to establish precedents that will alter society. The third pillar, the judiciary, possesses the same authority as the other pillars and is capable of taking independent action to establish laws and make a difference. The aforementioned statements could set a precedent if the judiciary takes any action, giving innocent victims some optimism that their complaints would be addressed. The appellant in *Bhuvneshwari*, also known as *Sharmila v. M Prabhakaran*⁸ filed a plea under section 19 of the Family Court Act, 1984, alleging simple cruelty. Since cruelty is not specifically defined by law, this case explained what will constitute cruelty under the law. In this instance, the definitions of cruelty were made explicit, giving distinct meanings to acts of physical and mental abuse. Since nothing else is provided by legislation and these are the only options available to women in our society, it offered relief by granting divorced and dissolution of marriage. In numerous cases, the judiciary has assumed control and demonstrated that justice is always upheld in court. By creating ground rules and ensuring that they cannot be abused by other women, similar efforts can be made to safeguard women against unexpected and unwelcome behavior. In order to rebuild public confidence in the judiciary, it is expected that the judiciary will play a significant role in drafting legislation pertaining to marital rape. This can be seen by examining the wellknown cases decided by the Supreme Court that deal with cruelty or marital disintegration. This is one approach to demonstrate how the judiciary can step up and assist in the development of certain ground rules where, even in the absence of laws, initially updated versions can be given and actually prove helpful if there are flaws in the law and the

framers remain silent about it. There is a belief that the judiciary, particularly in India, has been essential in rendering decisions and enacting legislation with honor. The judiciary must act in this manner given the current catastrophic situation and the expectations placed on it.

3.3 Consent

The Supreme Court took up a very significant and useful case involving a prostitute in *State of Maharashtra v. Madhukar Narayan*⁹. The court stressed that a woman's refusal to consent would be considered a complete denial, regardless of whether she is a prostitute or has given prior consent. Any action conducted in furtherance of her disapproval or refusal would be considered against her will, fall under section 375, and be subject to the associated penalties. In this instance, the prostitute's rights were established, and it was decided that while she engages in sexual activity, it is not the same as the fact that she is not engaging in sexual activity with someone. She does not necessarily lack the ability to appreciate herself just because she is affable. Her past behavior would not stand in the way of delivering her justice if she disagrees with any of the acts and they are against her will. She will never be subjected to discrimination because of her sexual orientation or character, and all relevant evidence will be allowed to be shown in a court of law. She also has the same rights as any other woman. Additionally, it was decided that all women, regardless of age, type of employment, or past behavior, have rights. This includes prostitutes, girl children, adults above the age of 15, women in their 20s, and all other women.

In *Mahmood Faruqui v. State of NCT, Delhi*¹⁰, the parties engaged in physical activity. The woman argued that she did not object while her husband was doing the act because she was afraid of the pain and harm she would cause if she did. She agreed to the exercise without objecting, but she later turned on her spouse. The court decided that despite the fact the woman was weaker and less powerful, there had to be some kind of wife denial in order to establish a specific disagreement. If she did not object to the act out of fear, it cannot be interpreted as coercive, and her spouse might assume that she is consenting to it. It becomes more difficult to determine which physical act was agreed upon by the woman and which one amounted to force if the parties are acquainted and have engaged in frequent physical contact. Because the wife did not deny the allegations in this case, the court ruled in favor of the husband.

The Kerala High Court observed in *XXX v. XXX*¹¹ the wife claimed that her husband had mistreated her even while she was pregnant. Even when she was ill and immobile, he made her engage in sexual activity. She had experienced abnormal sex and sexual depravity. They made her engage in sexual activity in the presence of their child against her will. Even though the notion of spousal rape is alien to our criminal jurisprudence, it did not preclude the court from regarding it as a form of cruelty to grant divorce Justices A. Muhamed Mustaque and Kausar Edappagath concluded. The Kerala High Court ultimately decided that marital rape might be a valid reason for filing for divorce.

3.4 Right to Bodily Autonomy

When a woman's right to her body is violated repeatedly and without her consent by her own husband, it is referred to as

⁵ *Boddhisatwa Gautam v. Shubhra Chakravarty* AIR 1996, SCC 490(1)

⁶ *Railway Board v. Chandrima das* (2000) 2 SCC 465

⁷ *Naveen Kohli v Neelu Kohli*, Writ petition 812 of 2004

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⁸ *Sharmila v. M Prabhakaran* Crl Ms.A 3993 of 2011

⁹ *State of Maharashtra v. Madhukar Narayan* AIR 1991 SC 207 (67)

¹⁰ *Mahmood Faruqui v. State of NCT, Delhi* 243 (2017) DLT 310

¹¹ *XXX v. XXX* Crl.MC.No.5765 OF 2020(A)

marital rape. Regarding a woman's right to her body, the Supreme Court of India made it quite evident that every woman is entitled to the protection of her own body. *Madhukar Narayan Mardikar v. State of Maharashtra*¹². The Supreme Court noted that no one, not even an unchaste lady, has the right to violate the person of another. No one has the right to invade the private of a lady, even if she is a woman of easy virtue. No one has the right to violate another individual whenever they so choose. If someone tries to violate her person against her will, she has the right to defend herself. She has an equal right to legal protection. In contrast, the matter of age in relation to the Indian Penal Code's section 375 marital rape exception was addressed in the *Independent Thought v. Union of India* case.

3.5 Charge On Unnatural Offense

The Karnataka High Court made a significant decision in *Hrishikesh Sahoo v. State of Karnataka*¹³, a highly progressive and historic ruling, by permitting a husband to be penalized under section 375 of the Indian Penal Code. The court stated that the Marital Rape exemption cannot be viewed as the absolute rule with no exceptions. The court condemned the clause but noted that violent acts of sexual misconduct against the wife that occur without her permission are only ever rape. *A man is a man; an act is an act; rape is a rape, be it performed by a man the husband on the woman wife.* This ruling, according to Ms. Indira Jaising, is a transformational decision that attempts to fulfill the equality promise of the constitution. She also commended the High Court for its audacious stance on the subject rather than referring it to the Parliament. The court has attempted to inform the Parliament of the distinction between the Victorian period of law making and constructive judicial constitutional law making the speaker stated in her statement. On March 23, 2022, Justice M. Nagaprasanna delivered the verdict. The case's facts stated that the woman had made a formal complaint under many IPC and POCSO Act sections following multiple instances of physical and psychological abuse against her and her kid. The Special Court used this as justification to file charges under several IPC sections, including section 376, which deals with rape. The motion to quash the case was submitted by the accused party. Of the six main issues raised, the following two were most pertinent to our research:

- Whether the offense against the petitioner's husband that is criminal U/S 376 of the IPC since it is lawful?
- Whether the charge sheet against the petitioner be amended to include new offenses that fall U/S 377 IPC prosecution?

The court answered the first question in the positive and determined that the judge in the lower court had not erred in charging the spouse under Section 376 of the IPC after evaluating the arguments put out by the government and both sides. This was a groundbreaking move since it made it possible to ignore section 375's exemption number two, which shields the husband from prosecution for raping his wife if she is older than a certain age. The wife would suffer irreversible injustice and the petitioner's sexual desires would be unchecked if the accusation of rape were dropped from the list of alleged offenses, the court stated. The ruling states that total immunity should not be granted, with the husband's exception.

In any case, there is no absolute legal exception that grants someone the freedom to conduct crimes against society. The court did not, however, rule that the Marital Rape Exemption was constitutional. It is crucial to remember that the court did not automatically consider the statute to be unjust because it permitted the prosecution of rape against the husband. This court likewise placed the issues in the hands of Parliament, continuing the pattern set by earlier rulings. The court holds that lawmakers should have the authority to decide whether to remove or modify the exception. The Marital Rape Exception has been thoroughly examined by the court. This exception's history was tracked down. The Justice J.S. Verma committee report's recommendations were also reviewed by the judiciary. During the delivery of the ruling, your lordship also considered the positions taken by other nations around the world. The judiciary conducted a thorough analysis of the problems in light of the constitutional provisions. The court focused on the provisions of the constitution that safeguard women's rights and equality. The court also addressed significant IPC clauses pertaining to women. The court cited a number of laws that were only put into effect to protect women and young girls. The court made the historic ruling in light of each of these articles, sections, and enactments. The institution of marriage does not, cannot, and ought not to provide any unique male privilege or license for unleashing of a brutal beast the court stressed in its ratio decidendi. If a particular behavior is against the law for men, then it should apply to all men, regardless of whether they are husbands or not. In conclusion, it is critical to recognize that this ruling will serve as a guide for all future cases of conjugal rape and may encourage the Parliament to consider this matter more broadly. A wife filed a complaint against her husband in *Dilip Pandey v. State of Chhattisgarh*¹⁴ citing section 375 (rape), section 377 (unnatural sexual offenses), and section 498A (cruelty). Since their marriage, she claimed, her husband has tormented her for dowry. He used to thrash her and poke her vagina with a finger and radish. According to Judge NK Chandravanshi, a husband cannot be prosecuted for rape under section 375 of the IPC since exception 2 expressly exempts the spouse if his wife is over 18 years old. The ruling stated that an act cannot be classified as rape regardless of how forceful it was. Nonetheless, the husband can face charges for offenses against nature. Section 377 deals with the act rather than the connection the offender can face punishment regardless of the victim's relationship to him. There are also elements of cruelty present in the case. This case serves as another illustration of how the law's limitations have been brought to light. As long as he is the victim's spouse, force, violence, and brutality are all acceptable in sexual situations.

A single-judge bench led by G.S. Ahluwalia, J, in the case *Manish Sahu v. State of Madhya Pradesh*¹⁵ held that consensual acts between adults, regardless of sex, are not crimes under the provisions of 377 of the Indian Penal Code, The application sought to have the FIR under Section 482 of the CrPC quashed, arguing that consensual acts between spouses does not constitute an offence under Section 377 of the Penal Code, 1860. According to the court, conjugal rape has not yet been acknowledged. Prosecutrix, the applicant's wife, filed a formal complaint against him in this case, claiming that he had engaged in inappropriate sexual relations and had made threats to get a divorce. She also said that her spouse had often forced her to have unnatural sex and that she had been harassed by her

¹² *Madhukar Narayan Mardikar v. State of Maharashtra* AIR 1991 SC 207.

¹³ *Hrishikesh Sahoo v. State of Karnataka* 2022 LiveLaw (Kar) 89
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¹⁴ *Dilip Pandey v. State of Chhattisgarh* CR. R. No. 171 of 2021

¹⁵ *Manish Sahu v. State of M.P* M.Cr.C. No. 8388/2023

in-laws as a result of dowry demands. In the provisions of 482 of the CrPC, the applicant filed a request to have the FIR quashed. The applicant argued that consensual activities between spouses are not crimes. The Court held that such activities do not constitute rape if the woman is not under the age of fifteen and the marriage is still going strong. The Court declared that any sexual act or sexual contact between a husband and wife who is not younger than fifteen years old is not considered a rape, and that the meaning of rape according to Section 375 of the IPC has been amended to include the insertion of a woman's penis in her anus. In these circumstances, the wife's lack of consent for an unnatural act becomes less significant. The Court further pointed out that consensual sexual relations between adults of the same sex is no longer illegal under Section 377, as decided by the Apex Court in *Navtej Singh Johar v. Union of India*¹⁶. Therefore, in the framework of married relationships, the lack of consent for abnormal activities becomes less significant. The Court also rejected the argument about the reporting delay, arguing that the time of the notification was no longer important because the claimed act was not illegal in and of itself. The Court decided that having unnatural sex with your spouse consenting to it is not illegal. Section 377 of the IPC does not make it illegal for a husband to have unnatural intercourse with his legally wed wife living with him; therefore, it is not necessary to consider whether or not a false complaint was filed based on unfounded accusations. The Court ruled that marital rape is not recognized by contemporary law and stressed the significance of consent in establishing the illicit nature of sexual conduct. The Court decided that having unnatural sex with your spouse consenting to it is not illegal. As a result, the Court dismissed the applicant's criminal prosecution and quashed the FIR.

3.6 Notable Split Verdict

In the protracted case of *RIT Foundation v. Union of India*¹⁷, the entire nation was expecting a precedent-setting ruling from the Delhi High Court; regrettably, the High Court issued a divided decision. The court issued a certificate of appeal to send the matter to the Supreme Court since the two-judge bench was unable to reach a decision. The case is pending at the moment. Judge C Hari Shankar ruled that section 375 is legitimate and lawful, despite Justice Rajiv Shakdher's declaration that exemption 2 is unconstitutional. He added that the legislature, not the courts, is in charge of making crimes. This has received varying degrees of criticism. The goal is to protect the wife from the shame that comes with being called a rapist. The court is making an effort to preserve marriage, even coerced, nonconsensual sexual relations. Justice Hari Shankar's main concern was defending the institution of marriage. The judge also stated in the obiter that in cases when a statute has two possible readings, the judiciary is required to uphold the interpretation that supports the institution of the family. He said that a partner's provision of sexual interactions is required by law. The judiciary's statements reveal a fairly cursory analysis of the issue.

Judge Shankar feels that although coerced sexual contact is undesirable, it is not improper in this case because the wife willingly entered a partnership in which a sexual relationship is essential. Therefore, a man is merely using his legal right to request sexual relations. If the spouse continues to have sexual relations with his spouse notwithstanding the

wife's denials, it cannot be considered a sexual assault. Justice Hari disputes the idea that women's problems are not the same. Giving a husband the right to avoid being labeled a rapist is the exception, not the right to rape his spouse. According to Justice Rajiv Shakdher, exemption 2 section 375 violates a woman's right to equality. The exception, according to him, is the colonial heritage, which ought to be read down because it infringes on the rights of women to life and dignity and against discrimination. Justice Shakdher further expressed the opinion that India has a duty to prohibit marital rape on a global scale. Due to the court's division, no meaningful resolution could be reached.

3.7 Recommendations for New Era

The judges in *Sakshi v. Union of India*¹⁸ were leaning toward creating new laws. Numerous incidents of marital abuse were coming in, and after observing the state of affairs, they concluded that new law was unquestionably needed to paint an accurate depiction of marital rape and violence. The High Court discovered it as insufficient since there are no appropriate legal regulations governing forced sexual acts. There was none as serious as a marital rape specified in the Penal Code, and the cases were redirected toward cruelty. They felt that a new legislation was necessary and that a new section addressing the unique circumstances of marital rape had to be added. Judicial magistrates also made a position, believing that the legislature needed to be changed and that a new provision needed to be included. The legislators gave careful thought to the requests made by the several law enforcement agencies and the numerous examples of domestic abuse before drafting the act in 2005. The Domestic Violence Act of 2005 gave women legal recourse for abuse that occurred during marriage and other types of domestic abuse. Any violence committed by the spouse or the family was prohibited and subject to penalties. The legislators only framed a provision that could assist a woman in leaving a poisonous and stale marriage with the assistance of domestic violence, oblivious to the fact that marital rape has never been mentioned. However, the issue emerged when the violence required proof and evidence, and since the woman in question had no evidence, the violence was not proven. Because of this, the issue of mental cruelty was taken into account, and a divorce was subsequently granted. In a recent ruling, the court determined that because the victim could demonstrate mental cruelty, the wife in question could get a divorce judgment without the need for more inquiry. The court has often stated that cruelty cannot be limited to physical acts, and in cases where the victim experiences mental cruelty, the evidence must be disposed of immediately and no more litigation can occur as this will simply erode it.

3.8 Recent Supreme Court Observations

*Independent Thought v. Union of India*¹⁹ In this instance, the honorable Supreme Court said that *no observation shall be made on the first matter which deals with spousal rapes with wives who are eighteen years of age or older*. This occurred as a result of the matter not having been presented to the court. After a thorough discussion of the second issue, it was determined that treating a married girl unfairly because she is between the ages of fifteen and eighteen is unjust and illogical, and it should never happen. Even after this clause's validity was examined, it was determined that it violates the essential liberties protected by Articles 14 and 15(3) as well as Article

¹⁶ *Navtej Singh Johar v. Union of India*, (2018) 1 SCC 791

¹⁷ *RIT Foundation v. Union of India* (2022) SCC Online Del 1404

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¹⁸ *Sakshi v. Union of India* AIR 2004 SC 3566,

¹⁹ *Independent Thought v. Union of India* (2017) 10 SCC 800

21 of the Indian Constitution. Additionally, it was noted in this case that section 375's sixth clause had previously been changed, with the age of consent being raised from 16 to 18 years old as a result of the Nirbaya Rape case. Even that revision excluded the fifteen-year age specified in section 2 exemption 2 from its scope. It was decided that this kind of artificial division in a single offense was unnecessary, and as a result, the age specified in the exemption was removed and replaced with eighteen years of age. It was also noted that other statutes, such as the Protection of Children from Sexual Offenses Act 17 and the Hindu Marriage Act 1955, stipulate that a person must be eighteen years old to give valid permission. In the present case, this distinction is unnecessary and unwarranted. *Sexual intercourse or sexual acts by a man with his own wife, the wife not below eighteen years old, shall not amount to rape* is the new exemption under section 375, it was decided.

The Supreme Court has made a small but significant move toward making marital rape a crime in the case of *X v. The Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi*²⁰. This might be considered a step toward criminalization, albeit not exactly and unquestionably to a significant amount. According to the court, rape is defined as any forced sexual encounter; it makes no difference if it occurs inside or outside of a marriage. Unwanted pregnancies can occur in any kind of marital relationship. Rape and other forms of intimate relationship violence are tragic realities that cannot be disregarded. Just because the lady is married does not mean that the idea of consent takes a complete 180-degree turn. Marital rape is excluded from the definition of rape by section 375 due to a legal fiction. The court thus acknowledged that a spouse might commit rape, and that the woman should be permitted to end her pregnancy for the purpose of sexual assault or rape. Regarding the MTP Act and the regulations and rules created thereunder; the term rape should be interpreted to include marital rape. However, the court made it clear time and again that while the case is still ongoing before a different Supreme Court bench, it is not discussing the constitutionality of exception 2 to section 375.

4. RECOMMENDATIONS

4.1 *Declare Exception 2 to Section 63 of the BNS as Unconstitutional*

Since Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023, breaches Articles 14 (Right to Equality), 15 (Non-discrimination), and 21 (Right to Life and Dignity), the judiciary must take suo motu or PIL-based cognizance to overturn it. In a number of historic rulings, such as *Joseph Shine v. Union of India* (2019), the Supreme Court has invalidated clauses that support gendered marriage stereotypes. To preserve the bodily autonomy and dignity of married women, a comparable constitutional lens must be used.

4.2 *Recognize Consent Within Marriage as Legally Revocable*

The judiciary ought to make it clear that marriage does not signify unchangeable permission to sexual activity. According to the ruling in *Suchita Srivastava v. Chandigarh Administration* (2009), Article 21 guarantees the freedom to choose one's sexual and reproductive preferences. Regardless

of marital status, courts must uphold the requirements that consent be continuous, informed, and revocable.

4.3 *Develop Binding Guidelines Pending Legislative Reform*

The judiciary must create legally enforceable rules for trial courts and law enforcement, similar to the Vishaka rules (1997), until Parliament makes marital rape a crime. These could consist of Under current domestic violence and cruelty laws, marital rape is recognized as aggravated sexual violence (Protection of Women from Domestic Violence Act, Section 498A IPC) and allowing criminal proceedings and FIRs under relevant sections such as cruelty, assault, and grave harm.

4.4 *Promote Harmonious Interpretation with International Human Rights Law*

India is a party to several international human rights treaties, including the UDHR, ICCPR, and CEDAW. Courts should interpret domestic constitutional provisions in a way that is consistent with these accords. The Supreme Court affirmed the application of international standards in the absence of particular laws in the 1997 case of *Vishaka v. State of Rajasthan*. A similar strategy would justify the use of the legal system to acknowledge marital rape as a breach of international human rights norms.

4.5 *Frame Marital Rape as a Violation of Constitutional Morality*

According to the ruling in *Navtej Singh Johar v. Union of India* (2018), the judge must respect constitutional morality over social morality. Patriarchal power cannot be protected by marriage. Courts must explain that state-sanctioned protection from marital rape violates the spirit of transformational constitutionalism by reinforcing gender inequality.

5. CONCLUSION

One of the most glaring inconsistencies in India's dedication to gender justice and constitutional morality is the way in which marital rape is treated by the law. The ongoing exemption for marital rape under Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023, despite the progress made in recognizing women's rights through progressive rulings and legislative reforms, exposes a persistent patriarchal bias that limits marriage to an area of unbridled male privilege. As the defender of constitutional principles, the court is essential in establishing a connection between justice and the law. Even though Indian courts have made great strides in overturning outdated legislation, as seen in the *Joseph Shine* and *Navtej Singh Johar* cases, the very foundation of Article 14's promise of equality before the law and Article 21's guarantee of life and personal liberty is undermined by the refusal to make marital rape a criminal offense. The courts must now take a firm stance to acknowledge non-consensual sex within marriage as rape rather than a private wrong or a domestic grievance due to constitutional interpretation, international commitments, and judicial activism. The judiciary upholds human dignity and constitutional morality in addition to interpreting the law. The time has come for Indian courts to abandon antiquated colonial beliefs that view females as inferior partners in marriage and to support equal protection, substantive justice, and physical

²⁰ *X v. The Principal Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi* 2022 LiveLaw (SC) 809

autonomy instead. The legal system is involved in systematic gender abuse if it disregards marital rape. The judiciary must thereby rule that the marital rape exception is unconstitutional and make sure that no connection, no matter how holy, can serve as an excuse for refusing permission.

Author Contribution

The author conceptualized the research, conducted the literature review and doctrinal analysis, drafted the manuscript, and finalised the article for submission.

Conflict of Interest

Conflict of interest declared none.

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