



ISSN: 2583-7753

# LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.64>

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# CRIMINALIZATION OF MARITAL RAPE IN INDIA: A CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE

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## I. ABSTRACT

*Still stuck from British times, India lets married men escape rape charges if their wife is above eighteen. Section 63, Exception 2 in the new Bharatiya Nyaya Sanhita 2023 keeps this rule alive. Marriage doesn't mean surrendering control over one's body. That idea clashes with what the Constitution promises - fair treatment under Article 14 and personal freedom under Article 21. Privacy matters. So does self-respect. Bodily rights stand firm even after wedding vows. Back in 2017, the Supreme Court made it clear through the Puttaswamy verdict - consent isn't erased just because two people are married. When the 2012 Nirbhaya case shocked people, the Justice Verma Committee said in 2013 that marital rape should be clearly made illegal. Yet lawmakers ignored it, worried about clashing with what some call family traditions. So, today's laws still skip punishing husbands who force sex on wives. This also undermines India's commitments under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India ratified in 1993. CEDAW General Recommendation No. 35 on Gender-Based Violence against Women (2017), updating General Recommendation No. 19, recognises such abuse as a form of gender-based violence requiring state action without exception. Look elsewhere: Britain abolished the marital rape immunity in R v R [1992] 1 AC 599 (HL), affirming that marriage does not negate the requirement of consent. In Canada, their Criminal Code treats consent the same for everyone, respecting culture but rejecting pressure. Start here: laws, past rulings, and international promises are weighed to argue one clear point - scrapping the current rule now. A fresh version should treat everyone equally, hinge on real consent, allow courts to strike it down when freedoms clash. Training officers helps, so do quicker trials, public talks that shift views slowly. What grows between people works best when*

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*picked freely, never forced. When the law bans coercion, fairness follows; silence breaks inside houses just like outside them.*

## II. KEYWORDS

Marital Rape, Bharatiya Nyaya Sanhita, Article 21, Consent, CEDAW.

## III. INTRODUCTION

A marriage in old Indian belief stands as a deep promise, shaped by faith, habit, and rules made long ago. Still, behind that respect lies something dark - the quiet allowance of forced sex inside marriage, where saying yes gets replaced by expectation. Historically, Exception 2 to Section 375 of the Indian Penal Code (1860) stated that sexual intercourse by a husband with his wife would not amount to rape if the wife was above fifteen years of age. However, the Supreme Court in *Independent Thought v Union of India* (2017) 10 SCC 800 read down this exception and held that sexual intercourse with a wife below eighteen years of age constitutes rape, thereby aligning the provision with child protection standards. Despite this judicial development, the broader marital rape exception for adult wives continues to remain in Indian criminal law.<sup>4</sup> That rule began under British control, yet remains today, protecting men who force their wives while blocking women from owning their own bodies - which should be basic.

This legal position raises a fundamental constitutional and human rights concern. The central research problem examined in this paper is whether the continued existence of the marital rape exception in Indian criminal law now reflected in Section 63 of the Bharatiya Nyaya Sanhita, 2023 can be justified in light of constitutional guarantees of equality, dignity, privacy, and bodily autonomy under Articles 14 and 21 of the Constitution. The study therefore investigates whether the exception survives constitutional scrutiny and whether comparative international developments and India's treaty obligations support its removal.<sup>5</sup> Take *Justice KS Puttaswamy (Retd) v Union of India* - there, judges made clear that being free includes having private choices

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<sup>4</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2

<sup>5</sup> Constitution of India, art 21.

about yourself.<sup>6</sup> Still, even after such rulings, marriage doesn't lose its legal shield when a husband forces sex. Women in those marriages are left without criminal protection found everywhere else. Unequal treatment based on gender clashes with Article 14, meant to block unjust distinctions tied to sex.<sup>7</sup> When laws allow this hole to stay open, they weaken what the Constitution tried to change. India also falls short on global promises made around protecting human rights.

When India signed the CEDAW agreement in 1993, it promised to fight bias everywhere - especially within marriage - while shielding women from harm tied to their gender. Marital rape falls under such abuse, according to Guidance Note No 35 issued under that treaty.<sup>8</sup> The nation also lent its support to wider human rights frameworks, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Both documents champion personal safety and dignity. These international commitments, in turn, provide a safeguard against cruel or degrading treatment.

Still, local laws haven't caught up; after the tragic 2012 Delhi case, experts pushed for legal change through the Verma panel's advice - yet lawmakers ignored those proposals.

One way to begin is by questioning why marriage still shields rape legally. Looking back, old laws shaped today's exceptions, often backed by court rulings long ago. Instead of fairness, such rules deepen inequality between spouses. A closer look shows how personal liberty gets undermined when consent loses meaning after wedding vows. Rights meant to protect dignity face erosion where law looks away. Across borders, places like Britain and Canada shifted toward justice differently. Their paths reveal what change can resemble. International promises on human rights sit uneasily with India's unchanged stance. At stake lies more than legality - it concerns basic respect within relationships. Part IV wraps up by suggesting new laws, one

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<sup>6</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.

<sup>7</sup> Constitution of India, art 14.

<sup>8</sup> Committee on the Elimination of Discrimination against Women 'General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19' (2017) UN Doc CEDAW/C/GC/35 para 31.

being a rule without gender labels that fits better with fairness under the constitution. Instead of just picking apart old ideas, it adds fresh thinking, aiming for a system where marriage lifts people up instead of locking them in.

### **A. Research Objectives**

The present study seeks to examine the constitutional and human rights implications of the marital rape exception in Indian criminal law. In particular, the research is guided by the following objectives:

1. To analyse the constitutional validity of the marital rape exception under Indian criminal law in light of Articles 14 and 21 of the Constitution of India, particularly with respect to equality, dignity, privacy, and bodily autonomy.
2. To examine the impact of landmark judicial decisions, including privacy jurisprudence and other constitutional rulings, on the legal understanding of consent within marriage.
3. To evaluate the legislative response to the Justice Verma Committee (2013) and assess the implications of retaining the marital rape exception in the *Bharatiya Nyaya Sanhita, 2023*.
4. To assess India's international legal obligations, particularly under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in addressing gender-based violence within marriage.
5. To undertake a comparative analysis of legal reforms in jurisdictions such as the United Kingdom and Canada that have abolished marital rape immunity.
6. To propose legal and policy reforms that align Indian criminal law with constitutional guarantees and international human rights standards by emphasising consent within marital relationships.

### **B. Research Questions**

The present study seeks to address the following research questions:

1. Does the marital rape exception in Indian criminal law conflict with the constitutional guarantees of equality, dignity, privacy, and personal liberty under Articles 14 and 21 of the Constitution of India?
2. How do recent constitutional developments particularly judicial recognition of privacy and bodily autonomy affect the legal validity of the marital rape exception?
3. To what extent do India's international obligations, especially under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), require the criminalisation of marital rape?
4. What lessons can be drawn from comparative jurisdictions such as the United Kingdom and Canada that have abolished marital rape immunity?
5. What legal or policy reforms may be necessary to align Indian criminal law with constitutional principles and international human rights standards regarding consent within marriage?

### C. Research Hypotheses

This work leans on a trio of testable propositions, each sharpened by doctrinal scrutiny to challenge the marital rape exception's foothold under the new criminal regime. At its core, hypothesis one asserts that Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 carrying forward the old Section 375 IPC carve-out stands in bald violation of Articles 14 and 21, forging an arbitrary gender line that shreds equality by stripping married women of rape's criminal shield, while courts' bold strokes in privacy jurisprudence quietly mandate consent as king, even in conjugal beds, lest bodily autonomy crumble under marital presumption.<sup>9</sup>

Hypothesis two digs into legislative paralysis: the Justice Verma Committee's post-Nirbhaya blueprint to criminalise spousal rape gathered dust, and the BNS's retention of the exemption isn't just inertia it's a dodge of India's handshake with CEDAW, leaving the nation adrift from global tides while peers like Britain and Canada felled

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<sup>9</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2; Constitution of India, arts 14, 21.

similar relics without family implosion, hinting that reform bolsters rather than breaks sacred unions.<sup>10</sup>

Finally, hypothesis three charts a forward path: a gender-neutral, consent-centric amendment to the BNS mirroring global bests like Canada's Criminal Code would harmonise it with constitutional morality and human rights covenants, supplanting colonial ghosts with a framework where marriage cradles dignity, not coercion, and courts could strike down non-consent as the true aggressor, paving judicial room for equality's full bloom.<sup>11</sup>

#### **D. Research Methodology**

Rooted in a traditional approach to legal analysis, this work follows the path many law students take when exploring laws, court decisions, and guiding ideas - not through surveys or data, but by reading deeply into written sources alone.<sup>12</sup> Section 63 of the Bharatiya Nyaya Sanhita keeps alive an old idea from colonial times - the exemption of marital rape - a holdover now clashing with constitutional guarantees such as equal treatment under Article 14, personal freedom in Article 21, and human dignity that persists regardless of marriage vows.<sup>13</sup> Beginning with the exact wording of current legislation, it builds slowly using insights gathered across years of rulings at the highest court level, tracking key opinions along with passing remarks that hint at change - for instance, the growing strength given to privacy rights, which reframes non-consensual acts within marriage not as entitlements, but as possible crimes.<sup>14</sup>

Now comes a closer look at laws only - skip surveys, skip visits. Instead, follow paper trails left behind: Verma Committee words after Nirbhaya shook Delhi, debates inside Parliament during 2023 code fights, each pause studied for what got blocked or

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<sup>10</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9, 408-09; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180, entered into force 3 September 1981) 1249 UNTS 13, arts 2, 5; R v R 1 AC 599 (HL).

<sup>11</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, 170 (Chandrachud J); Criminal Code RSC 1985, c C-46 (Canada), s 273.1; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)), art 5.

<sup>12</sup> PR Sinha and R Tripathi, *Legal Research Methodology* (Allahabad Law Agency 2020) 45-52.

<sup>13</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2; Constitution of India, arts 14, 21.

<sup>14</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, 170.

slowed.<sup>15</sup> Global promises to enter next; UN women's treaty pressure on weak spots, basic human rights rules about physical safety weighed beside them, revealing when India agreed then stayed still.<sup>16</sup> Glances sideways happen quietly - to Britain, to Canada - not to copy numbers but sense shifts: how one court case, *R v R*, broke marital rape shield there without tearing kinship apart, hinting similar steps might grow here from native soil, not foreign scripts.<sup>17</sup> Thinking devices come into play naturally - reading law by purpose so consent wins over old habits, blending legal parts smoothly so freedoms fit together - all checks really, asking whether current exceptions protect peace or just mask pain.<sup>18</sup>

Still grounded in solid sources - the SCC rulings, state bulletins, treaties pulled straight from UN archives - not opinions or websites, only material strong enough to hold weight in legal debates such as those in LawFoyer.<sup>19</sup> Are there gaps? Of course. Real human pain gets left out, yet that belongs elsewhere, in studies blending society and statute; this path sticks to legal logic speaking its own language, moving piece by piece toward a possible change - a rule based solely on consent, blind to gender, one courts might shape even if legislation drags.<sup>20</sup> What stands clear? A need for direction: drawing the tangle so clearly that judges and legislators can find their way out, leading not to old colonial ideals but fairness shaped for India decades ahead, not echoes of 1860 Britain.<sup>21</sup>

### E. Literature Review

That tangle in India's legal fabric has drawn attention for ages. From courtrooms to lecture halls, people keep saying the loophole on marital rape needs serious reworking.<sup>22</sup> Way back, a study in the NUJS Law Review by Rao Kallakuru and Soni

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<sup>15</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9; Bharatiya Nyaya Sanhita 2023.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180, entered into force 3 September 1981) 1249 UNTS 13, arts 2, 5.

<sup>17</sup> *R v R* 1 AC 599 (HL); Criminal Code RSC 1985, c C-46 (Canada), s 273.1.

<sup>18</sup> *State of West Bengal v Committee for Protection of Democratic Rights* (2010) 3 SCC 571, 597.

<sup>19</sup> Supreme Court Cases (SCC); Gazette of India.

<sup>20</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

<sup>21</sup> Constitution of India, Preamble.

<sup>22</sup> Raveena Rao Kallakuru and Pradyumna Soni, 'Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact' (2018) 11 NUJS L Rev 1.

made clear: Exception 2 under section 375 IPC - today's section 63 BNS - clashes straight-on with Article 14's promise of fairness.<sup>23</sup> Wives get treated as lesser when their bodies aren't truly protected. Laws meant for domestic abuse cannot hide that flaw.<sup>24</sup> What they argue isn't some bold overhaul, just aligning rules with what the Constitution already demands. After all, walking away through divorce does little when force is used at home.

Years passed. After Nirbhaya, anger shaped sharper demands. Then came the 2013 report by Justice Verma - clear, firm - urging removal of marital rape immunity without delay.<sup>25</sup> Legal voices backed it up. One paper in IJIRL questioned slow moves in Parliament, especially since fresh laws such as BNS still allowed the gap to remain open. Payal Thaorey looked deeper. In the Pimpri Law Review, she noted resistance rooted in old views about marriage being sacred. Still, agreement cannot be taken for granted just because two people are married.<sup>26</sup> Courts have already moved partway toward that idea, using privacy rights recognized in the Puttaswamy verdict.<sup>27</sup>

Now here comes comparison - India drags behind as UK law shifted through *R v R*, proving change did not wreck homes yet revealed actual agency.<sup>28</sup> Meanwhile Harvard's HRJ shouts about the Article 14 flaw - who gains by protecting spouses if outsiders get punished?<sup>29</sup> Lately, an SSRN analysis of BNS moans that 2023 updates fell short, calling for balanced edits that match CEDAW without tearing old norms apart. Still holes remain - talk stays stuck on legal claims, skips daily struggles,

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<sup>23</sup> Indian Penal Code 1860, s 375, Exception 2; Bharatiya Nyaya Sanhita 2023, s 63, Exception 2; Constitution of India, art 14.

<sup>24</sup> Protection of Women from Domestic Violence Act 2005, s 3.

<sup>25</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9, 408-09.

<sup>26</sup> Payal Thaorey, 'Criminalization of Marital Rape - A Legal Analysis' (2023) 2(2) Pimpri Law Rev 10, 15.

<sup>27</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, 170.

<sup>28</sup> *R v R* 1 AC 599 (HL).

<sup>29</sup> Chaitanya Kalbag, 'Marital Rape: A Non-criminalized Crime in India' (2019) Harvard Human Rights Journal <https://journals.law.harvard.edu/hrj/2019/01/marital-rape-a-non-criminalized-crime-in-india/> accessed 10 March 2026.

opening space for this work to weave national rules with world standards into sharper demand.<sup>30</sup>

#### IV. RESEARCH & ANALYSIS

This paper looks at why India still allows marital rape, a leftover from British rule that bumps up against basic human rights. Through old laws, judges' rulings, and international agreements, it reveals how silence on consent inside marriage can no longer be ignored.<sup>31</sup> A shift waits not in grand gestures but quiet necessity - one where trust in law must finally include those closest to us.<sup>32</sup>

##### A. Constitutional Discord

Still, India's fresh criminal rules drag along an outdated flaw - Section 63 of the Bharatiya Nyaya Sanhita excuses a man who forces himself on his wife if she is above eighteen, copied word for word from Exception 2 in IPC Section 375.<sup>33</sup> Because of this gap, one person gets away while another lands behind bars doing the very same thing, shredding Article 14's idea of equal standing under law.<sup>34</sup> Married women? They're left hanging, treated like their bodies matter fewer once vows are spoken.<sup>35</sup> Dignity slips through the cracks here, not bartered but bent by habit.<sup>36</sup> Judges haven't said it straight, yet hints spill out - fairness crumbles when marriage becomes a license to override consent.<sup>37</sup>

##### B. Privacy and Control Over One's Body

Survival isn't the whole story under Article 21 - privacy and command over one's body matter just as much, the Supreme Court made clear in Puttaswamy.<sup>38</sup> Freedom lives deep within personal choices about sex, judges insisted; government has no right to spy or interfere, which wrecks the idea that saying "I do" equals giving up

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<sup>30</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180, entered into force 3 September 1981) 1249 UNTS 13, art 2.

<sup>31</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2.

<sup>32</sup> Constitution of India, art 21.

<sup>33</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2; Indian Penal Code 1860, s 375, Exception 2.

<sup>34</sup> Constitution of India, art 14.

<sup>35</sup> Shayara Bano v Union of India (2017) 9 SCC 1, 102.

<sup>36</sup> *ibid.*

<sup>37</sup> Indra Sawhney v Union of India (1992) Supp (3) SCC 217, 689.

<sup>38</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, 47.

autonomy forever.<sup>39</sup> Courts wrestling with exceptions - Delhi's divided verdict in 2022 is proof - suggest there's growing will to erase them, treating forced intimacy inside marriage like what it is: a breach of dignity.<sup>40</sup> When privacy stands for real power over yourself, acts done without agreement behind closed doors stop being dismissed as normal - they become something the legal system must answer to.<sup>41</sup>

### C. Legislative Inertia Post-Nirbhaya

Fire spread after Delhi's 2012 tragedy, sparking the Verma Committee's plea: scrap marital rape immunity completely - no exceptions, no delays, just law.<sup>42</sup> Parliament hesitated, tiptoed through 2013 reforms, then let BNS 2023 carry the old gap forward, untouched till 2026.<sup>43</sup> Not by chance - the talks stank of panic over 'tradition,' though proof from changed nations says unions stay strong when boundaries are clear.<sup>44</sup> Holding back now? Not care. It's failure under oath.<sup>45</sup> Women get scraps of safety while progress walks ahead.

### D. Global Gaps in Human Rights Protection

Still, marital rape lingers like a sore thumb despite promises made when India embraced CEDAW in 1993, pledging to close gender gaps even behind closed doors.<sup>46</sup> Not long after, UN specialists labeled it outright violence, stressing through General Recommendation 35 that such abuse hides under marriage licenses but remains state-backed discrimination needing eradication - wedding bands offer no shield.<sup>47</sup> Backed by UDHR and ICCPR principles banning cruelty in every corner, India's commitment stands clear: signing those pacts turns the BNS loophole into

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<sup>39</sup> *ibid* 170 (Chandrachud J).

<sup>40</sup> *Hrishikesh Sahoo v State of Karnataka* (Karnataka High Court, Criminal Petition No 3747 of 2020, 2022).

<sup>41</sup> Justice KS Puttaswamy (n 8) 170.

<sup>42</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9, 408-09.

<sup>43</sup> Criminal Law (Amendment) Act 2013, s 3; *Bharatiya Nyaya Sanhita* 2023.

<sup>44</sup> *R v R* 1 AC 599 (HL).

<sup>45</sup> Constitution of India, Preamble.

<sup>46</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180, entered into force 3 September 1981) 1249 UNTS 13 (ratified by India 1993).

<sup>47</sup> Committee on the Elimination of Discrimination against Women, 'General Recommendation No 35 on Gender-Based Violence against Women' (2017) UN Doc CEDAW/C/GC/35, para 14.

more than an old law - it becomes a violation waiting correction if courts choose to act.

### E. Comparative Pathways Forward

Westward glance - the UK's House of Lords, in *R v R* back in 1991, ended marital immunity, making clear that saying 'I do' does not erase consent - households stayed intact, fairness gained an edge.<sup>48</sup> Canada pushed ahead, embedding consent plainly in its Criminal Code, sidestepping gender bias, showing balanced laws can honor heritage while leaving control behind.<sup>49</sup> India might take notes: adjust BNS section 63 to center free agreement, move past marriage-based exceptions - judges entering when public concern demands it, similar to shifts seen under Section 377.<sup>50</sup> Customs shift without shattering; true regard rises where freedom speaks, not force.<sup>51</sup>

## V. SUGGESTIONS AND RECOMMENDATIONS

Bold change waits no longer - Parliament must scrap Exception 2 under section 63 of the Bharatiya Nyaya Sanhita 2023, swapping it for a clear crime when sex happens without consent inside marriage.<sup>52</sup> Not younger, not older, no exceptions based on wedding vows, only one rule: if there's no yes, it counts as assault, full stop.<sup>53</sup> Behind this? A fix proposed back in 2013 by the Verma Committee, urged loud after Nirbhaya, yet left gathering dust while laws pretend violence softens behind closed doors.<sup>54</sup>

Not every judge agrees. Judicial disagreement became evident in *RIT Foundation v Union of India*, 2022 SCC OnLine Del 1404, where the Delhi High Court delivered a split verdict on the constitutionality of the marital rape exception. Justice Rajiv Shakdher held that the exception violated constitutional guarantees of equality and dignity, whereas Justice C. Hari Shankar upheld its validity, citing legislative prerogative and concerns regarding the institution of marriage. Such judicial

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<sup>48</sup> *R v R* 1 AC 599 (HL).

<sup>49</sup> Criminal Code RSC 1985, c C-46, s 273.1.

<sup>50</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

<sup>51</sup> Constitution of India, art 21.

<sup>52</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2

<sup>53</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9, 408-09.

<sup>54</sup> *ibid*.

divergence highlights the continuing uncertainty surrounding the issue and underscores the need for authoritative clarification.<sup>55</sup>

Start by building fairness into the rules right away - shape the definition of rape through clear, willing agreement, make marriage irrelevant as an excuse - Canada's Criminal Code proves this runs smoothly, shields everyone, skips accusations of targeting men, aligns with equality under Article 15.<sup>56</sup> Then add a fresh clause in the BNS requiring evidence of continuous consent, never taking it for granted, pushing judges to examine control dynamics in lasting relationships instead of accepting surface peace.<sup>57</sup>

Beyond old rules, real change needs working systems. Police must learn about marriage-based consent through BPRD programs - not later, but now.<sup>58</sup> Schools, guided by national education policy, should teach 'no means no' as part of civic lessons, starting early.<sup>59</sup> Special courts can speed things up, wrapping up cases within twelve months, following the model set by POCSO setups.<sup>60</sup> Tie all this closely to the 2005 Domestic Violence Act. When protection orders show risk, allow immediate shift toward criminal charges. Where civil help stops short, prosecution steps in.<sup>61</sup>

Now comes the chance to meet CEDAW deadlines by showing clear steps toward repealing outdated laws, sharing real numbers on how often abuse is reported after changes took effect - shifting outside attention from blame to motivation.<sup>62</sup> Support nonprofit hotlines and safe houses built for those harmed in marriage, paid for using what remains of the Nirbhaya Fund, making it less like jumping blindfolded when someone speaks up.<sup>63</sup>

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<sup>55</sup> Hrishikesh Sahoo v State of Karnataka (Karnataka High Court, Criminal Petition No 3747 of 2020, 2022).

<sup>56</sup> Criminal Code RSC 1985, c C-46 (Canada), s 273.1; Constitution of India, art 15.

<sup>57</sup> Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, 170.

<sup>58</sup> Bureau of Police Research & Development, Model Police Manuals.

<sup>59</sup> National Education Policy 2020, para 4.29.

<sup>60</sup> Protection of Children from Sexual Offences Act 2012, s 35.

<sup>61</sup> Protection of Women from Domestic Violence Act 2005, s 26.

<sup>62</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979 UNGA Res 34/180, entered into force 3 September 1981) 1249 UNTS 13, art 18.

<sup>63</sup> Nirbhaya Fund Guidelines (Ministry of Women and Child Development, 2015).

Two years down the line, expect new polls tracking how exceptions play out - Law Commission returns armed with data. A draft law takes shape, harder for Parliament to ignore this time. What began in academic debate firms up into real rules. Marriage shifts, less duty, more decision.<sup>64</sup>

## VI. CONCLUSION

Tied the knot does not mean surrendering one's will. Even after wedding bells fade, choice stays rooted in self - not handed over. A law ignoring this? It drags old imperial dust into modern bedrooms. Section 63, Exception 2 under the new code keeps that stain alive.<sup>65</sup> Equal protection under Article 14 finds no home where force wears a spouse's mask.<sup>66</sup> Bodily freedom, sworn by Article 21, means no entry without welcome - full stop. Judgment in Puttaswamy cracked open the truth: privacy guards' intimacy like armor. Forced closeness isn't love. It is violation dressed down by habit. Dignity crumbles each time consent gets treated as disposable. The Constitution stands firm here - silence must not shield harm behind tradition.<sup>67</sup>

Still trailing after Nirbhaya, lawmakers missed Verma's push to make marital rape a crime.<sup>68</sup> While nations such as the UK and Canada moved ahead, India stayed behind, failing its duty under CEDAW. Reform does not wreck families - proof lies in those countries' calm homes. This argument holds firm: remove the loophole, shape laws around clear consent regardless of gender, trust judges when Parliament hesitates. True progress needs better-trained officers, faster trials, voices reminding everyone that refusal inside marriage must be heard just as loudly.<sup>69</sup>

A nation shaped by love, not locked by it. When fairness moves without asking permission, laws finally follow behind.<sup>70</sup>

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<sup>64</sup> Law Commission of India, 172nd Report on Review of Rape Laws (2000).

<sup>65</sup> Bharatiya Nyaya Sanhita 2023, s 63, Exception 2.

<sup>66</sup> Constitution of India, arts 14, 21.

<sup>67</sup> Shayara Bano v Union of India (2017) 9 SCC 1, 102.

<sup>68</sup> Report of the Committee on Amendments to Criminal Law (Justice JS Verma Committee, 23 January 2013) ch 9.

<sup>69</sup> Protection of Women from Domestic Violence Act 2005, s 26.

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2. CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence against Women (2017), updating General Recommendation No. 19.
3. Universal Declaration of Human Rights, 1948.
4. International Covenant on Civil and Political Rights, 1966.

### D. Reports and Secondary Sources

1. Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013).

2. Rao Kallakuru & Soni, "Marital Rape Exception and Constitutional Equality," *NUJS Law Review*.
3. Payal Thaorey, "Marital Rape and Legal Reform in India," *Pimpri Law Review*.