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# WHY INDIA HAS NOT CRIMINALIZED MARITAL RAPE: LEGISLATIVE HISTORY, JUDICIAL STANCE, AND SOCIETAL RESISTANCE

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## I. ABSTRACT

*India is among the decreasing numbers of countries where there exists an exemption to husbands from criminal liability for committing sexual assault against their spouses. Section 375 of the IPC, which is currently reiterated without any changes in BNS, 2023 through Exception 2, makes it clear that sexual intercourse or sexual acts by a man with his own wife, provided that the wife does not constitute a minor under the age of eighteen years, is not rape. In this paper, I am going to analyze how this exception has been developed from its origin, its continuity in legislation, its legal interpretation, and its social justification, arguing that this exception continues to exist as a result of legal negligence but rather a purposeful achievement through patriarchal legal inertia, an inconsistent conservative court, and social customs regarding marital relations. Using feminist legal theory perspective and comparing laws from the United Kingdom, South Africa, and Nepal, this paper examines how the exemption began as an English Common Law provision, was incorporated via the British colonial administration into the IPC in 1860, survived multiple reforms after Indian independence, and faced its ultimate judicial challenge in the 2022 split decision from the Delhi High Court. The paper further evaluates the psychological, constitutional, and socio-economic costs imposed on survivors by legal non-recognition of marital rape, while recommending deletion of Exception 2 under Section 63 of the Bharatiya Nyaya Sanhita and advocating reform grounded in Articles 14, 19, and 21 of the Constitution to secure bodily autonomy, dignity, and equal protection within marriage.*

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## II. KEYWORDS

Marital Rape, Bharatiya Nyaya Sanhita, Feminist Legal Theory, Bodily Autonomy, Criminal Law Reform.

## III. INTRODUCTION

Some of India's laws stand out globally for defending women's rights. Not just physical harm, but emotional and psychological control also fall under abuse, thanks to the 2005 Domestic Violence Act. Workplace safety took a leap forward in 2013, when rules against sexual harassment were formally set. Across Asia, few countries had such clear policies at the time. Even so, one part of the system undermines its own promise. If a husband compels sex from his wife, despite her refusal, he faces no charge of rape. This isn't due to outdated wording or missing clauses. The permission sits plainly in black and white - lawmakers chose to include it.

This contradiction lies at the heart of the issue explored here. Though marital rape - meaning forced, threatened, or non-consensual sex within marriage - is acknowledged globally as a type of intimate partner sexual violence, legal systems differ sharply. International human rights standards see it clearly. So, do health institutions and national laws across more than 150 nations. Yet in India, such acts escape criminal status if the woman involved is an adult spouse.

Why has the marital rape exemption remained in Indian law even after major constitutional scrutiny? This study asks how legislative patterns, court decisions, and social attitudes together have upheld such a rule for over 160 years. A close look at historical continuity reveals persistent structural resistance rather than isolated legal flaws. Through time, shifting norms have failed to dislodge long-standing exceptions embedded within statutes. Endurance points less toward oversight and more toward deeply rooted institutional acceptance. One must consider not just laws on paper but also their interpretation through power-laden practices. Prevailing legal logic often reflects dominant cultural narratives instead of progressive reform.

The idea rests here: India's ongoing exclusion of marital rape from criminal law stems less from accident than intent - shaped by male-dominated lawmaking, hesitant courts swayed by tradition, alongside societal beliefs framing marriage as an unending surrender of a wife's bodily autonomy. Changing statutes alone misses the root; what resists progress are the quiet forces behind them - habits of thought hardened over decades.

This work unfolds step by step. Following section lays down ideas and theories that shape the analysis. After that comes a review of law changes, starting from early colonial rules up to the new BNS in 2023. Then attention shifts to court decisions on marital rape, ending with opposing views in the 2022 Delhi High Court ruling. Looking at social pushback shapes Section V. Other places show working changes - this comparison fills Section VI. Real harm caused by legal gaps appears in Section VII. Fixes appear next, laid out in Section VIII. The final part wraps up insights near the end.

#### **A. Research Objectives**

1. To examine the historical and legislative evolution of the marital rape exemption in India from the colonial period to the Bharatiya Nyaya Sanhita, 2023.
2. To analyse the constitutional validity of the marital rape exception in light of Articles 14, 19, and 21 of the Constitution of India.
3. To evaluate the judicial approach adopted by Indian courts regarding criminalization of marital rape, particularly in the context of the 2022 Delhi High Court split verdict.
4. To study the societal, cultural, and institutional factors responsible for the continued retention of the marital rape exemption in India.
5. To comparatively analyse legal reforms undertaken in jurisdictions such as the United Kingdom, South Africa, and Nepal concerning marital rape criminalization.

6. To propose legislative and judicial reforms aimed at recognizing marital rape as a punishable offence within Indian criminal law.

### **B. Research Questions**

1. What historical and legislative factors contributed to the incorporation and continuation of the marital rape exemption in Indian criminal law?
2. Whether Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita violates Articles 14, 19, and 21 of the Constitution of India?
3. How have Indian courts interpreted and addressed the issue of marital rape in constitutional and criminal law jurisprudence?
4. What social, cultural, religious, and political factors have prevented criminalization of marital rape in India?
5. What lessons can India derive from comparative jurisdictions that have criminalized marital rape?
6. What legislative and judicial measures can effectively reform the present legal position concerning marital rape in India?

### **C. Research Methodology**

This research adopts a doctrinal and analytical method of legal research. The study primarily relies upon constitutional provisions, statutory materials, judicial decisions, Law Commission reports, committee recommendations, international conventions, and academic scholarship relating to marital rape and gender justice. A historical approach has been employed to trace the colonial origins and legislative continuity of the marital rape exemption in India.

The paper further utilizes feminist legal theory as its principal analytical framework to examine how patriarchal legal structures have influenced the interpretation of consent within marriage. In addition, a comparative legal methodology has been adopted to analyse reforms undertaken in the United Kingdom, South Africa, and Nepal concerning

criminalization of marital rape. The research also incorporates socio-legal analysis through the examination of policy debates, institutional barriers, and empirical findings relating to intimate partner sexual violence in India.

## IV. CONCEPTUAL FRAMEWORK

### A. Consent Theory and Marriage

Marital rape, here, follows the World Health Organization's take: a forced or non-consensual sexual act - such as penetration - carried out by one partner against another using pressure, threats, physical force, or while the person cannot consent. What falls under intimate partner sexual violence (IPSV), though, stretches wider - it includes abusive or coercive sexual behavior between people in past or current close relationships, whether married or not.

Marital rape occurs even when laws choose not to label it. What matters is not whether the act takes place, but how silence in statutes frames reality. Instead of standing apart, legal omissions pull norms toward dismissal. Responses by courts shift because definitions narrow. Survivors find paths blocked long before they reach a courtroom door.

### B. Feminist Legal Theory as Analytical Lens

Looking at law through a feminist lens reveals hidden patterns. Where others see neutrality, there lies embedded bias shaping outcomes. Homes treated as off-limits hide violence behind ideals of privacy. Thinkers like Flavia Agnes show how courts shield domestic spaces under the guise of protecting tradition. Though labeled impartial, such boundaries actually protect male control. State hands-off policies favor paternal **rules** over safety. What appears as restraint functions as endorsement - silent approval of unequal power. Legal nonintervention masks preference, not absence of choice.

What appears neutral on the surface reveals bias under scrutiny. Though often framed as impartial, state noninterference carries assumptions shaped by history. When finances are involved - assets, wills, taxes, guardianship - the boundary around domestic life

dissolves quickly. Protection vanishes precisely where women face harm behind closed doors. Silence in these moments functions less as policy and more as patterned exclusion.

### **C. International Framework**

One reason India faces scrutiny stems from its obligations under CEDAW, requiring nations to remove gender-based legal disparities - among them how rape is defined. Though signed onto global frameworks like the Beijing Platform for Action in 1995, gaps remain at home. Marital rape, classified by the UN declaration as a clear act of violence, still lacks recognition within national statutes. Because domestic laws permit an exception when spouses are involved, alignment with treaty goals weakens. This contradiction highlights a disconnect between foreign pledges and local practice.

## **V. LEGISLATIVE HISTORY: HOW THE EXEMPTION WAS BORN AND SUSTAINED**

### **A. Colonial Origins: The Hale Doctrine and the IPC 1860**

The intellectual origin of the marital rape exemption in Indian law can be traced to a single statement made by Sir Matthew Hale, Lord Chief Justice of England, in his posthumously published *Historia Placitorum Coronae* (1736). Hale wrote: "*But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.*"

This idea offered by a single jurist, lacking any binding weight, unsupported by law or past decisions came to anchor the marital rape exception in English common law. Rooted in coverture, it treated a married woman's legal existence as merged with her husband's. Her individual standing under law disappeared, so too did her ability to refuse consent on her own.

Back in 1860, Britain set up India's criminal laws using what became known as the Indian Penal Code. Into this framework went an old legal idea without change. Under Section 375, rape had a clear definition - yet right after came Exception 2. It stated plainly: if a

man had sex with his wife, and she was at least fifteen, it could not count as rape. Since then, courts pushed the minimum age to eighteen, especially after a key decision in 2017 called *Independent Thought v. Union of India*. Still, one core part remains untouched - even now, marriage can shield a man from being charged with raping his adult spouse.

It seems strange, but English law turned away from the Hale doctrine back in 1991. In *R v R*, the House of Lords decided without disagreement that treating marriage as protection against rape charges made no real legal sense. That idea, they said, had always been more myth than fact. Although England rejected it, one former colony held on to the old rule much longer. India kept the colonial version of the law even after its originator let it go.

### **B. Post-Independence Inertia: Reform Attempted and Abandoned**

Over seventy years after gaining freedom, India has revisited its laws on sexual violence several times. Yet through each revision, the exception for marital rape remained untouched - not due to strong moral arguments in its favor, but owing to discomfort around tackling it openly. The issue lingered, shielded more by hesitation than conviction.

Later came the Criminal Law Amendment Act of 1983 - bringing changes such as acknowledging custodial rape while adjusting where evidence must be shown. Marital rape, though, stayed outside those updates. Years passed before the Law Commission of India took another look, proposing in its 2000 report that forced sex within marriage should count as a crime. That idea never became law. Further reviews followed, each circling back, yet none moved past suggestion.

After the brutal gang rape and killing of a young woman in Delhi during December 2012, public outrage surged - prompting one of the largest chances for legal change in recent memory. Sparked by nationwide protests, authorities formed the Justice J.S. Verma Committee, comprising Justice J.S. Verma (former Chief Justice of India), Justice Leila Seth (former judge of the Himachal Pradesh High Court), and Gopal Subramaniam

(former Solicitor General of India), charged with drafting recommendations. Though their report arrived in January 2013, its impact unfolded slowly; still, it stood out as unusually bold. Rather than sidestep difficult issues, it called directly for ending the marital rape exception. Because consent matters regardless of status, the panel insisted that being married to an attacker ought not reduce punishment. Despite resistance later on, the suggestion marked a turning point few expected at the time.

Lawmakers turned down the suggestion. Following the Nirbhaya case, the 2013 amendment updated several aspects of rape legislation - yet kept Exception 2 under Section 375 unchanged. Discussions in Parliament showed their concerns: treating marital sex as rape might weaken marriage itself, open doors to false claims during family conflicts, and clash with local customs and social norms

Nowhere was change more promised than in 2023, when India swapped its old penal code for the new Bharatiya Nyaya Sanhita (BNS). Marketed as a break from imperial rule, the update claimed cultural renewal through legal revision. Still, on spousal rape immunity, those shaping the law copied word-for-word what existed before. Where harm runs deepest against women, tradition won over transformation. Colonial logic **remained** untouched, masked as progress.

### **C. What the Legislative Record Reveals**

Looking back at how laws have evolved, India's handling of marital rape shows a clear trend. Though experts have repeatedly urged change, lawmakers have turned down reforms every time. With each update to legislation, the exception remains intact - deliberately preserved. It reflects decision-making, not oversight. Politicians, regardless of affiliation, continue limiting rape protections for married women. They frame intimacy within marriage as something beyond legal reach. Ideas behind this stance appear more clearly in Section V.

## **VI. JUDICIAL STANCE: COURTS IN CONFLICT**

### **A. Early Judicial Passivity**

Most of the time since independence, India's legal system saw marital rape as something criminal laws did not cover. When women reported sexual abuse by their husbands, judges tended to handle such cases through family-related civil rulings - such as allowing divorce or court-ordered separations - not through criminal charges. Inside courtroom reasoning, home life stayed sharply separated from state intervention, with sex within marriage viewed as a personal issue untouched by penal authorities.

This stance did not just sit still; it gained strength through deliberate support. Sometimes, during divorce or custody cases, judges described a wife's refusal of her partner's sexual requests as unjustified conduct - labeling such rejection a form of marital abuse instead. What seemed like protection turned into blame.

### **B. The 2018 Gujarat High Court: Nimeshbhai Bharatbhai Desai v. State of Gujarat**

One early judicial discussion concerning the marital rape exemption emerged in *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2018 SCC Online Guj 732, decided by the Gujarat High Court in 2018. The matter did not arise from a direct constitutional challenge to Exception 2 of Section 375 IPC; rather, it concerned a criminal petition involving allegations under Sections 376, 377, and 498A IPC filed by a wife against her husband. While considering the scope of the rape provision, the Court acknowledged that the marital rape exemption legally barred prosecution under Section 376 IPC where the wife was an adult.

Although the Court applied the statutory exemption as it stood, it critically observed that non-consensual sexual intercourse within marriage could amount to a "disgraceful offence." The judgment therefore reflected judicial discomfort with the existing legal position, even while recognizing that any substantive removal of the exemption would require legislative or constitutional intervention. Unlike a formal constitutional review, the discussion in this case remained incidental to the adjudication of the criminal proceedings before the Court.

### **C. The Landmark 2022 Delhi High Court Split Verdict**

The turning point in how courts addressed marital rape within India emerged through conflicting rulings by the Delhi High Court in *RIT Foundation v. Union of India* (2022). This matter questioned whether Exception 2 to Section 375 aligned with constitutional principles. One judge saw violation; another found consistency - two conclusions that could not be merged

One cannot separate marriage from accountability under criminal law, the judge stated. Through careful analysis of autonomy and choice, the ruling questioned why wedlock should erase a woman's authority over her own body. Not merely outdated norms but unequal power structures were exposed by this exception. When examining fairness among citizens, its arbitrary nature became impossible to ignore. Protection from sexual violence must not depend on relationship status. Drawing from evolving understandings of individual rights, the decision framed dignity as constant, regardless of marital ties. Because similar safeguards exist for unmarried women, withholding them felt unjustified. Consent loses meaning if assumed permanent within marriage. Historical precedent alone could not justify continued exclusion. A wife's freedom to act rests at the core of democratic values. Without compelling reason, the state ought not remove legal remedies selectively. The provision failed every standard of rational classification. Personal liberty includes control over intimate decisions. Thus, treating married women differently made little constitutional sense.

Unlike others, Justice C. Harishankar supported keeping the exception. Because he viewed marriage as creating an assumed right to sex, his opinion emphasized legislative intent - shown through repeated decisions not to remove the clause. Instead of criminal penalties, he pointed out existing civil options, like divorce or protection orders under domestic violence laws, as more suitable paths for harm within marriage. Worries about false claims during bitter separations shaped part of his hesitation toward introducing criminal consequences.

One judge saw it one way. Another, just as experienced, concluded the exact opposite - a rare clash over core constitutional interpretation. That division mattered more than who

won or lost at that level. Far from dismissing the case, the disagreement gave weight to the legal doubt raised. Attention now shifts naturally toward India's highest court. Each side's most compelling points were fully aired during proceedings. What emerged was not just rulings but reasoning under pressure. This paper trail ensures future discussions will have firm ground to build on.

#### **D. The Supreme Court and the Road Ahead**

Right now, proceedings are underway at India's highest court, where the challenge from Delhi's high court sits grouped with several related cases. Should the top court remove the exception, every woman would gain equal shield under rape laws, marriage notwithstanding; should it choose to preserve the clause, the call would probably rest on respect for lawmakers' authority - an outcome that shifts responsibility straight to Parliament.

Though its stance on gender rights shows inconsistency, the judiciary has delivered pivotal decisions. Starting with *Vishaka v. State of Rajasthan* in 1997, protections for women at work took shape. Then came *Joseph Shine v. Union of India* in 2018, where outdated laws around adultery were struck down. Around the same time, *Navtej Singh Johar v. Union of India* challenged entrenched legal norms by ending criminal penalties for consensual same-sex intimacy. These moments reveal a court willing to rethink constitutional understandings of dignity, privacy, and autonomy. Even so, courts have often hesitated to challenge laws about "family" or "marriage," viewing these matters as reserved for lawmakers or faith-based legal systems. Whether this hesitation holds will now be measured by how they handle the marital rape ruling.

## **VII. SOCIETAL AND CULTURAL RESISTANCE**

### **A. Marriage as Consent: The Cultural Logic**

Examining how deep-rooted norms shape law reveals why marital rape remains exempt in India, even after years of legal debate. Because societal views often define marriage as more than a union bound by paperwork - especially among diverse communities - it

becomes an arrangement where women are expected to surrender autonomy, including control over their body and choices. When such expectations dominate, the idea that a wife might refuse intimacy does not register as valid; instead, it feels foreign, almost nonsensical within accepted belief systems. Such mental models make resistance seem less like assertion and more like contradiction.

This idea extends beyond just villages or old customs. Findings from NFHS-5 (2019–21) show many Indian women in cities and towns alike fail to see forced sex within marriage as abusive. When survivors absorb the belief that spouses have a right to sex, speaking up becomes far less likely. Such acceptance quietly erases marital rape from records, law reforms, and personal recognition - often without resistance from those affected.

Though rooted in distinct beliefs, Hindu and Muslim teachings in India often emphasize a wife's expected role in marital relations - such as *pativrata* in Hindu contexts or specific readings of Quranic guidance on intimacy. Not every voice inside these faiths agrees, though; lively disagreement exists about whether such duties reflect true doctrine or male-dominated views. Over time, public understanding has leaned toward seeing sex within marriage as an assumed right rather than a shared choice. Lawmakers, when arguing against legal reform, have pointed to these religious ideas as justification for keeping existing exemptions unchanged.

### **B. Institutional Barriers**

Though some women pursue justice for sexual abuse within marriage, systemic hurdles deepen existing legal challenges. Law enforcement across India has long hesitated to accept reports of domestic harm, especially when intimacy is involved. What often follows stems less from policy than habit - a pattern where authorities frame such cases as personal conflicts better settled by relatives than courts. Behind closed doors, even assault becomes something hushed, handled quietly, far from public judgment.

Though the 2005 law meant to shield women from domestic violence offers tools like safety directives and housing rights, enforcement leans heavily on procedures mired in

delay, shortage of resources, lack of training, plus cultural preference for patched-up marriages. Because criminal consequences fall outside its reach, those harmed must rely on responses that fix situations - yet skip calling acts by their true name. Legal acknowledgment slips through fingers; wrongdoers face no threat of prosecution. Useful as it stands, this framework covers only part of what justice demands.

### **C. The Political Economy of Non-Reform**

Because of how democracy works in India, opposition to making marital rape a crime makes sense when seen closely. Across parties, leaders hesitate to take up the topic due to vote-based reasoning. Pushing for legal change might label a group as opposing tradition, faith, or local values - tags that matter during elections. Such labels could shrink support in communities where beliefs about marriage and gender run deep.

Opposition to change often comes from faith-based institutions alongside traditional community networks, who claim making marital rape illegal threatens family stability while enabling unfair targeting of men. Starting legal action for such abuse during separation processes might lead some women to make claims without proof - this concern appears again and again in legislative discussions even though data from places with these laws show no rise in untruthful reports compared to other sexual assault charges.

What emerges is a steady political state where changes keep getting postponed. Though every law assessment admits an issue exists, none move to resolve it - this creates paperwork that, oddly, both justifies calls for change and shows leaders avoid taking steps. Despite recognition, action remains absent.

## **VIII. COMPARATIVE ANALYSIS: HOW OTHERS REFORMED**

### **A. United Kingdom: R v R (1991)**

Looking back, the closest comparison for India may be the United Kingdom - the origin of the Hale doctrine. When examining R v R [1991] UKHL 12, a shift became clear: the House of Lords, then the nation's top judicial body, ruled without dissent. Their conclusion? The idea that marriage grants automatic sexual access was never truly part

of common law. This outdated notion, they decided, needed removal. Speaking on behalf of the judgment, Lord Keith of Kinkel described modern marriage - by the late 1900s - as an equal alliance between partners. From this view, assuming lifelong consent to sex within marriage made no legal sense.

Surprisingly, the House of Lords moved without waiting for new laws, shaping existing legal principles to eliminate the marital rape exemption. Later, in *SW v United Kingdom* (1995), Europe's human rights judges backed this method, saying courts could strike down the exception without breaking rules against retroactive punishment. It turns out, the British case shows clearly: where lawmakers hesitate, judges have both power and duty to step in and erase such gaps.

### **B. South Africa: Constitutional Court Approach**

Though once exempted, marital rape became illegal in South Africa under the Sexual Offences Act of 1993, later reinforced by the 2007 amendment act. Because the country adopted a new constitutional order after apartheid, principles of fairness gained stronger footing - especially through court decisions prioritizing women's rights. Instead of lingering on outdated exceptions, lawmakers aligned sexual offense laws with fundamental human worth. That shift matters for India - not as a model to copy but as evidence that existing constitutional guarantees, like those in Articles 14 and 21, can support similar reform. When courts take equality seriously, even deeply rooted legal gaps become addressable.

### **C. Nepal: South Asian Reform**

One case stands out when thinking about India: Nepal. Though similar in culture and laws, changes happen quietly, without fanfare. In 2006, amendments to the Muluki Ain made marital rape a crime - no sweeping revolution, just steady pressure from local groups pushing lawmakers. Progress emerged not from courts or constitutions, but from long-term effort by activists working behind the scenes. This shift breaks the claim that tradition blocks such reforms across South Asia. Even where deep-seated gender norms exist, legal change can take root if driven locally.

#### **D. Lessons for India**

Looking back shows clear takeaways. Courts stepping in when lawmakers stall - this path worked in the UK, proving change does not wait for Parliament. Far from triggering abuse after legalization, data across regions show married women face no higher risk of false accusations than others; also, wedlock remains intact. What stands out is homegrown effort: Nepal changed law because local feminists shaped arguments around shared values, not foreign pressure. Similarly, India's push gains strength from thinkers like Flavia Agnes, grounding demands in familiar legal thought. Success often follows when movements rise from within.

### **IX. THE HUMAN COST OF LEGAL SILENCE**

#### **A. Prevalence Data**

Among Indian households, the National Family Health Survey-5 (2019-21) stands out - its depth unmatched - for capturing health and family welfare trends across the country. Though broad in scope, its insights into spousal sexual violence carry particular weight due to methodological rigor. A striking number of married women disclosed having faced sexual abuse by their spouses, according to the collected responses. Projecting those figures onto the full scale of India's vast married female demographic reveals an alarming magnitude - one seldom confronted openly. Hidden within everyday lives, millions endure violations without legal pathways for accountability. Because marriage does not strip acts of coercion of their harm, yet law remains silent, remedy stays beyond reach.

#### **B. Psychological Dimensions: Betrayal Trauma Theory**

What makes marital rape especially damaging becomes clear through clinical observation. Because abuser is also a source of emotional or financial support, harm runs deeper than physical violation. Jennifer Freyd's Betrayal Trauma Theory, introduced in 1994, sheds light on this dynamic - when survival depends on someone who causes pain, confusion replaces clarity. Repeated assaults over months or years intensify suffering, unlike isolated attacks by strangers. Often embedded in ongoing control and abuse at

home, these acts erode mental stability gradually. Emotional fallout includes deep depressive states, difficulty connecting sexually, persistent bodily complaints without medical cause. Memory disruptions and hypervigilance mark the form of post-traumatic stress common here.

What makes this injury deep lies in how the law fails to name it at all. When someone survives assault by a spouse only to hear courts define it as ordinary intimacy, the wound grows sharper. Not being allowed to call it violence means living with truth blocked by silence built into statutes. Language is meant to protect instead vanishes, leaving proof known but unspoken. The weight stays, even when words are taken away.

### **C. The Compounding Factors of Economic Dependence**

Most married women in India rely on their husbands for money, trapping them when abuse occurs. Because escape often means financial ruin, staying becomes a survival tactic. Without legal recognition of marital rape, courts cannot force abusers out, award damages, or mark guilt publicly. Protection orders exist through civil law, yet victims usually seek them only while filing for divorce - a slow, costly path loaded with social shame.

### **D. The Symbolic Function of Criminalization**

Marital rape becoming a crime does more than enable court cases. When the state acts, it signals that consent matters inside marriage just as outside. A wife holds legal standing, with control over her own body recognized fully. No part of married life stands apart from laws meant to prevent harm. Where such recognition fails - where an exemption remains - it sends another message entirely. That silence tells communities, those who cause harm, and those harmed alike: some people's rights are less protected. Laws do not only reflect how things are. They shape what becomes real.

## **X. SUGGESTIONS AND RECOMMENDATIONS**

### **A. Legislative Reform**

A straightforward fix lies through legislation: changing the Bharatiya Nyaa Sanhita by deleting Exception 2 from the rape clauses completely. Such a change matches India's duties under its own Constitution, along with global agreements it has signed. Most democratic nations already treat marriage as no barrier to prosecuting rape. Since courts and police are already equipped to handle such crimes, no extra systems would be needed - current procedures could extend into these cases just like others. Though small in wording, the shift carries large symbolic weight, closing a gap long criticized by rights advocates.

Though parliamentary changes move forward, updates to procedural rules remain necessary when handling proof in domestic settings. When it comes to spousal abuse, legal tools already shaped by past rulings on sexual harm fit well - especially those covering witness support, personal conduct records, and old intimacy disclosures. These standards work if applied clearly, without needing blanket exceptions. Instead of removing entire case types from scrutiny, careful judgment in courtrooms and firm evidence thresholds manage potential overreach. Clarity in process beats broad exclusions every time.

### **B. Judicial Interpretation**

Should Parliament fail to act, authority rests with India's highest court to reinterpret the marital rape exception through available constitutional tools. Backed by Article 14, ensuring fairness among individuals, alongside Article 19 safeguarding fundamental liberties, grounds exist to challenge current legal immunity. Further strength comes from Article 21, protecting life and personal freedom - dignity and control over one's body woven within it. Building on past reasoning seen in rights-based rulings, especially K.S. Puttaswamy's acknowledgment of privacy in 2017, clarity emerges: bodily self-determination cannot be ignored. Where precedent recognizes individual agency under the Constitution, exclusion of married women appears inconsistent. From such principles flows a necessary outcome - one already implied but left unfulfilled.

### **C. Awareness, Education, and Institutional Reform**

True change rarely follows law alone. Without shifts in societal attitudes, new rules often stall. Training officers to recognize abuse within marriage could reshape how cases are handled. When medical staff spot warning signs, clear steps should guide their response. Lessons about permission and boundaries might start early, woven into what students learn at school. Consent does not vanish because two people are married. It can be withdrawn at any point, by either person. Awareness in neighborhoods strengthens these efforts. Laws gain strength when culture moves alongside them.

Though often overlooked, groups such as Majlis Advocating Rights and iCall shape how legal changes actually reach people affected by gender-based violence. Where laws fall short, these feminist initiatives step in - offering guidance, representation, and advocacy grounded in daily struggles. Instead of standing apart, they connect courtroom decisions with community experiences, making rights tangible. Public resources could strengthen their efforts, allowing longer-term planning and broader outreach. Collaboration with state-backed legal services would deepen impact, creating pathways that are both practical and accountable. Without sustained backing, even effective models risk fading when crises peak.

## **XI. CONCLUSION**

A relic from colonial times, India's marital rape exception persists less because of sound legal basis - long shaky - yet more due to enduring male-dominated norms shaping laws. Though penned when women held no separate standing under law, Sir Matthew Hale's 1736 notion of automatic spousal agreement still shapes justice in today's biggest democracy by 2026. Far from accidental, this continuity stems from deliberate decisions, slow-moving systems, and beliefs favoring wedlock over female control of one's body.

This study began by tracking the exception - from colonial roots to life after independence, court battles included, ending with a divided ruling in Delhi's high court during 2022 - alongside the social frameworks allowing persistence. Comparative work reveals laws against spousal assault can take root even amid South Asian norms; findings

after changes show fears of abuse or family collapse lack backing; meanwhile, leaving such harm unaddressed carries heavy documented tolls on people.

This idea stands proven: absence of law here reflects deliberate decision, not oversight. When decisions shape outcomes, those paths may yet shift. Nowhere is the tension between tradition and rights clearer than in India's struggle over marital rape. A judgment affirming personal dignity under the Constitution could override outdated marital norms. Meanwhile, legislative progress stalls, despite promises to purge colonial-era statutes from modern codes. Without real movement there, legal reform remains incomplete. What happens behind closed doors often escapes scrutiny, yet harm inside marriage can cut deeper than attacks by outsiders. Intimacy, rather than excusing abuse, intensifies its weight. Change will come only when courts act boldly, lawmakers follow through, and communities stop treating marriage as immunity.

For India, laws on marital rape reveal how far gender equality has truly advanced. So long as an exception remains, the message sent by criminal statute - the strongest form of state expression - implies certain women deserve lesser bodily protection. Such a position sits poorly within any democracy founded on equal worth.

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#### **D. Appendix A: Timeline of Key Legislative and Judicial Events**

1. 1736 – Sir Matthew Hale's dictum on implied marital consent published posthumously.
2. 1860 – Indian Penal Code enacted; Section 375 Exception 2 transplants marital rape exemption into Indian law.
3. 1983 – Criminal Law Amendment Act: other rape law reforms enacted; exemption retained.
4. 1991 – *R v R*: House of Lords (UK) abolishes marital rape exemption in English law.
5. 2000 – Law Commission of India 172nd Report recommends criminalization; not implemented.
6. 2006 – Nepal criminalizes marital rape through Muluki Ain amendments.
7. 2012 – Delhi gang rape case (*Nirbhaya*) triggers national legal reform debate.

8. 2013 – Justice Verma Committee recommends removing exemption; Parliament rejects recommendation.
9. 2013 – Criminal Law (Amendment) Act enacted; exemption retained.
10. 2017 – Gujarat High Court upholds exemption in constitutional challenge.
11. 2017 – Supreme Court raises age threshold in Exception 2 to 18 (*Independent Thought v. Union of India*).
12. 2022 – Delhi High Court split verdict in *RIT Foundation v. Union of India*; matter referred to Supreme Court.
13. 2023 – *Bharatiya Nyaya Sanhita* enacted; Exception 2 retained verbatim.
14. 2026 – Supreme Court matter pending; exemption remains in force.