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THE MISSED REFORM: MARITAL RAPE EXCEPTION AND CONSTITUTIONAL RIGHTS

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ABSTRACT

Even in the twenty-first century, India's criminal law still exempts non-consensual sex within marriage from the offence of rape. Marital rape exception is retained in Section 63 of the Bharatiya Nyaya Sanhita (BNS) after replacing Section 375 IPC, it creates a constitutional blind spot where a wife's bodily integrity and sexual autonomy are least protected when she is most vulnerable. Empirically, national surveys show that sexual violence is overwhelmingly intimate-partnered, with a significant share perpetrated by husbands, yet the criminal law's categorical immunity erases these harms from the rape framework and disincentivizes reporting. This paper asks whether the exception can survive contemporary constitutional tests under Articles 14 and 21 and, if not, how Parliament should legislate a rights-compatible reform. Methodologically, the paper proceeds in three steps. First, it undertakes a doctrinal analysis of equality, applying the tests of reasonable classification and manifest arbitrariness and of dignity, privacy and decisional autonomy as developed in Puttaswamy, within a proportionality framework. Second, it offers close readings of key decisions, including Independent Thought case (which read down the marital exception for minor wives), X v. Principal Secretary, Health & Family Welfare, GNCTD (which treated marital rape as "rape" when determining access to termination under the MTP Act) and the Delhi High Court's split verdict in RIT Foundation, together with the pending Supreme Court appeals led by petitioners including Khushboo Saifi. Third, it conducts a comparative survey of the United Kingdom, South Africa and Nepal to derive legislative design lessons relevant to India. The problem is twofold. The exception discriminates between married and unmarried survivors without a legitimate objective and it produces rights regressive effects such as under enforcement, evidentiary distortions and remedial deficits. The solution is a calibrated legislative pathway. Repeal Exception 2 to section 63 of the BNS and adopt a consent centric, status neutral definition of rape. Provide procedural safeguards, including a rule that a prompt complaint is not determinative, clear investigation guidelines for spousal sexual violence, and robust victim and witness protection. Align the criminal process with the civil remedies in the Domestic Violence Act. Introduce sentencing that targets coercive control while avoiding

overcriminalization. The conclusion is that criminalization, coupled with due-process guardrails and survivor-centric support, is constitutionally compelled and penologically sound; it harmonizes India's rape law with its commitments to equality, autonomy and dignity.

Keywords: marital rape exception, equality, sexual autonomy, bodily integrity, Bharatiya Nyaya Sanhita

1. INTRODUCTION

Sexual autonomy is a core aspect of individual liberty. In modern constitutional democracies it is increasingly recognised that married women, like unmarried women, possess inviolable bodily integrity and freedom of choice. Yet Indian criminal law continues to deny married women full protection against rape. Section 375 of the Indian Penal Code (IPC) contained "Exception 2" which stated that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. The Bharatiya Nyaya Sanhita 2023 (BNS), enacted to replace the IPC, retained this rule under Exception 2 to section 63: sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. This exception creates a constitutional blind spot in which a wife's bodily integrity and sexual autonomy are least protected when she is most vulnerable. According to NFHS-5 (2019–21), one in three ever-married Indian women (approximately 32 %) aged 18–49 has endured some form of spousal abuse, and about 6 % report experiencing sexual violence—5 % through forced intercourse and 4 % through unwanted sexual acts.¹ A May 2025 Springer analysis of the same data confirms that 6.1 % of ever-married women have experienced sexual violence.² Globally, the World Health Organization reports that approximately 30 % of women have faced physical and/or sexual intimate partner violence during their lifetime, including 27 % of women aged 15–49.³ The present paper argues that the marital rape exception violates the guarantees of equality and personal liberty under Articles 14 and 21 of the Indian Constitution and contradicts India's international obligations. It examines the historical origins of the exception, its colonial and patriarchal underpinnings, and how other jurisdictions have reformed similar laws. The paper reviews key judicial interventions from *Independent Thought* (2017)⁴ to the

¹ National Family Health Survey (NFHS-5), 2019–21, *India Fact Sheet*, Ministry of Health and Family Welfare, Government of India, <https://www.nfhsindia.org> (accessed 5 September 2025).

² Shukla, A., & Verma, P., "Sexual Violence Among Ever-Married Women in India: Evidence from NFHS-5", Springer, May 2025, <https://link.springer.com> (accessed 5 September 2025).

³ World Health Organization, *Violence Against Women Prevalence Estimates*, 2018, WHO Press, Geneva, 2021, 5, <https://www.who.int/publications/i/item/9789240022256> (accessed 5 September 2025).

⁴ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

Delhi High Court's split verdict in *RIT Foundation v. Union of India* (2022) (along with other connected petitions)⁵ and the Supreme Court's decision in *X v. Principal Secretary, Health* (2022)⁶, to show why a consent-centric, status-neutral definition of rape is constitutionally compelled. It also compares reforms in the United Kingdom, South Africa and Nepal, and proposes a legislative pathway for India that balances criminalisation with procedural safeguards and support services.

2. HISTORICAL AND LEGAL FOUNDATIONS OF THE MARITAL RAPE EXCEPTION

2.1 Colonial Origins and Patriarchal Assumptions

The marital rape exception has deep roots in patriarchal notions of marriage. English common law, transmitted to India through colonial statutes, treated wives as subordinate to husbands. In the seventeenth century Sir Matthew Hale articulated the "irrevocable consent" doctrine: he wrote that a husband cannot be guilty of raping his lawful wife because the marriage contract implies that the wife has given herself in consent to her husband.⁷ This doctrine assumed that a wife's consent is irrevocably implied by marriage and cannot be withdrawn, reflecting the then-prevailing belief that wives were their husbands' property. Sir William Blackstone reinforced this view when he described marriage as giving the husband "power of correction" over his wife.⁸

The IPC of 1860 incorporated similar patriarchal assumptions. Section 375 defined the offence of rape but created two exceptions: one for sexual intercourse by a husband with his wife if she was above the age of fifteen, and another for "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age." These provisions effectively legalised non-consensual sex within marriage. Colonial administrators justified them by citing the sanctity of marriage and the need to respect local customs. With independence, India retained the IPC almost unaltered. Although the age of consent was raised to fifteen and later to sixteen by amendments, the marital rape exception remained untouched.

⁵ *RIT Foundation v. Union of India, Khusboo Saifi v. Union of India & Anr., All India Democratic Women's Association v. Union of India, Farhan v. State & Anr.*, Delhi High Court, MANU/DE/1638/2022, judgment dated 11 May 2021.

⁶ *X v. Principal Secretary, Health*, Supreme Court of India, 2022 SCC OnLine SC 1321

⁷ Sir Matthew Hale, *History of the Pleas of the Crown* (1736).

⁸ Sir William Blackstone, *Commentaries on the Laws of England* (1765–69).

2.2 Constitutional Developments and Domestic Violence Law

The Indian Constitution, adopted in 1950, enshrines equality before the law (Article 14), prohibits discrimination on the basis of sex (Article 15), and guarantees the right to life and personal liberty (Article 21). These provisions implicitly recognise individual autonomy and bodily integrity. However, criminal law continued to treat wives as exceptions to rape. In 2005 Parliament enacted the Protection of Women from Domestic Violence Act (PWDVA), which provides civil remedies such as protection orders and residence orders against domestic violence, including sexual abuse.⁹ Yet the PWDVA does not create a criminal offence of marital rape; it treats sexual abuse within marriage as a civil wrong to be remedied through protective measures. Consequently, a wife can seek civil protection but cannot prosecute her husband for rape.

The BNS, enacted in 2023, modernised several penal provisions and adopted gender-neutral language for sexual offences. Section 63 defines rape to include penetration of any bodily orifice by any object when it occurs without consent. However, Exception 2 replicates the IPC's marital exemption, albeit raising the wife's age from fifteen to eighteen years: sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. Retaining the exception while ostensibly embracing a consent-centric definition undermines the BNS's stated objective of protecting sexual autonomy and bodily integrity.

2.3 International Law and Human Rights Obligations

India is a party to international treaties that recognise women's right to be free from violence and sexual coercion. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women as any distinction or restriction that impairs women's human rights. Article 2(b) obliges states to condemn all forms of discrimination against women and pursue policies to eliminate it; Article 2(f) requires states to take all appropriate measures to modify or abolish existing laws and customs that constitute discrimination. General Recommendation 19 of the CEDAW Committee clarifies that gender-based violence is a form of discrimination because it seriously inhibits women's ability to enjoy rights on an equal basis.¹⁰ It notes that family violence, including rape and sexual

⁹ Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005.

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, United Nations, Treaty Series, vol. 1249, p. 13; Arts 2(b), 2(f); CEDAW Committee, General Recommendation No. 19 (1992) and General Recommendation No. 35 (2017).

assault within marriage, is one of the most insidious forms of violence against women. The Committee emphasises that states may be responsible for private acts if they fail to act with due diligence to prevent, investigate and punish such acts. These provisions collectively impose a positive obligation on states to criminalise marital rape or provide equivalent protection. General Recommendation 35, adopted in 2017, further clarifies states' duties. It calls upon states to ensure that the definition of sexual crimes, including marital and acquaintance rape, is based on the notion of freely given consent and that there is no exculpatory marital exemption. It emphasises that criminal laws should sanction all forms of gender-based violence against women regardless of marital status and that traditional or religious notions of marital sanctity cannot justify impunity. Although not legally binding, these recommendations interpret the Convention and are authoritative for state parties. The Indian government has submitted periodic reports to the CEDAW Committee but has not addressed the marital rape exception, thereby drawing criticism from domestic and international human rights organisations. India is also bound by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantee the right to privacy, security of person, and the highest attainable standard of physical and mental health. The United Nations Declaration on the Elimination of Violence against Women (1993) recognises that violence against women is a manifestation of historically unequal power relations and calls for criminal penalties for marital rape. India voted in favour of this declaration, signifying its commitment to combat domestic violence.

3. JUDICIAL INTERVENTIONS IN INDIA

3.1 *Independent Thought v. Union of India* (2017)

The first significant challenge to the marital rape exception arose in *Independent Thought v. Union of India*¹¹, decided by a two-judge bench of the Supreme Court. The case concerned the validity of Exception 2 to Section 375 IPC insofar as it exempted a husband from prosecution for having sexual intercourse with his wife aged fifteen to eighteen years. Justice Madan B. Lokur (with whom Justice Deepak Gupta concurred) held that this exception created an artificial and arbitrary distinction between married and unmarried girls and violated Article 14. The Court noted that a girl under eighteen cannot consent to sexual intercourse under the law and that the marital exception thus places married girl children in a more vulnerable position than unmarried girls. This classification had no rational nexus with the

¹¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

objective of the law and was inconsistent with the best interests of the child. The judgment emphasised that bodily integrity and autonomy are integral to a woman's dignity under Article 21, and that marriage does not diminish these rights. The Court observed that compelling a 15-18-year-old married girl to engage in sexual intercourse violates her fundamental rights and contravenes the PWDVA and the Prohibition of Child Marriage Act, 2006. While the Court invalidated the exception for wives under eighteen, it expressly refrained from commenting on marital rape of adult women, leaving the broader question open for future deliberation. Nonetheless, the decision signalled a judicial willingness to scrutinise the marital rape exception and to align the law with constitutional values.

3.2 X v. Principal Secretary, Health & Family Welfare, GNCTD (2022)

In September 2022 the Supreme Court delivered a landmark judgment on reproductive autonomy in *X v. Principal Secretary, Health & Family Welfare*¹² while interpreting the Medical Termination of Pregnancy (MTP) Act. The Court held that unmarried women are entitled to safe and legal abortion up to twenty-four weeks, and that the term "rape" under the MTP Rules includes marital rape. Justice D.Y. Chandrachud wrote that it is not inconceivable that married women become pregnant due to their husbands having "raped" them; excluding such women from accessing abortions would force them to carry unwanted pregnancies. The Court emphasised that reproductive autonomy is central to the right to dignity, privacy and bodily integrity under Articles 14 and 21. Although the case did not directly criminalise marital rape, the Court's recognition that non-consensual sex within marriage can amount to rape for purposes of abortion underscores the evolving judicial view that marital status cannot bar a woman from asserting her sexual autonomy.

3.3 Khusboo Saifi v. Union of India (Delhi High Court, 2022)

The Delhi High Court considered a set of connected petitions, *RIT Foundation v. Union of India*, *Khusboo Saifi v. Union of India & Anr.*, *All India Democratic Women's Association v. Union of India*, and *Farhan v. State & Anr*¹³, addressing the criminalisation of marital rape. The petitions included both public interest litigations and individual complaints, notably *Khusboo Saifi's* allegations of sexual abuse by her husband.

A bench of the Delhi High Court (Justices Rajiv Shakdher and C. Hari Shankar) heard these

¹² *X v. Principal Secretary, Health*, Supreme Court of India, 2022 SCC OnLine SC 1321

¹³ *RIT Foundation v. Union of India, Khusboo Saifi v. Union of India & Anr., All India Democratic Women's Association v. Union of India, Farhan v. State & Anr.*, Delhi High Court, MANU/DE/1638/2022, judgment dated 11 May 2021.

challenging the constitutionality of Exception 2 to Section 375 IPC and related provisions. The petitioners argued that the marital rape exemption violated Articles 14, 15, 19(1)(a) and 21 and undermined sexual autonomy. In May 2022 the bench delivered a split verdict. Justice Rajiv Shakdher held that the marital rape exception is unconstitutional. He observed that deifying women without empowering them is meaningless; a married woman's right to bring the offending husband to justice must be recognised. He noted that men need not fear if the law changes; those defending the exception might reconsider if the victim were a family member. Justice Shakdher emphasised that the exception is based on archaic patriarchal assumptions and undermines women's bodily autonomy.

Justice C. Hari Shankar dissented. He argued that the marital rape exception is rooted in the unique nature of marriage and the need to preserve the institution; he reasoned that marriage implies a legitimate expectation of sexual relations, and that classification based on marital status is valid. He further suggested that the exception prevents judicial incursions into marital privacy and protects the institution of marriage. Because of the split, the petitions were not decided, and the issue is now pending before the Supreme Court. In January 2023 the Supreme Court sought the Union government's response to the petitions and requested states' views. Solicitor General Tushar Mehta told the bench that the Court's ruling would have legal and social ramifications. The Court directed the Centre to file a counter-affidavit and set the matter for final disposal.

Ongoing Appeals and Legislative Inertia

Following the split verdict, appeals were filed by petitioners including Khushboo Saifi. The Supreme Court has yet to issue a final judgment, and the Union government continues to oppose criminalisation. In October 2024 the government filed an affidavit stating that removing the marital rape exception would create possible misuse and that using the term "rape" for marital sex is "excessively harsh". Critics argue that this stance prioritises patriarchal notions of marital sanctity over women's bodily integrity.

4. COMPARATIVE PERSPECTIVES

4.1 United Kingdom: R v. R (1991)

The United Kingdom abolished the marital rape exemption through judicial interpretation in *R v. R* (1991)¹⁴. The House of Lords held unanimously that a husband could be guilty of raping

¹⁴ *R v. R* [1991] 2 WLR 289 (House of Lords).

his wife. Lord Keith of Kinkel rejected the notion of irrevocable consent as a “fiction” and observed that the common law evolves to meet changing social attitudes; the idea that marriage implies perpetual consent is unacceptable. The court declared that a rapist remains a rapist regardless of his relationship to the victim. After the decision, Parliament enacted the Criminal Justice and Public Order Act 1994 to codify the abolition of the marital rape exemption. English law now defines rape based on consent and applies equally regardless of marital status.

4.2 South Africa: Prevention of Family Violence Act 1993 and Sexual Offences Act 2007

South Africa recognised marital rape as a crime with the passage of the Prevention of Family Violence Act 1993¹⁵. The Act removed the marital rape exemption and allowed husbands to be prosecuted for raping their wives. A Human Rights Watch report noted that while the law made marital rape a crime, practical enforcement was hindered by evidentiary challenges, cautionary rules and gender-biased attitudes; by 1994 there were few prosecutions and at least one magistrate acquitted a husband because his wife did not fight back. Sentencing in rape cases was also erratic, influenced by race and class, and often resulted in lenient punishments.

In 2007 the Criminal Law (Sexual Offences and Related Matters) Amendment Act replaced the 1993 Act and introduced a gender-neutral, consent-based definition of rape. It criminalises all forms of non-consensual penetration, including within marriage, and provides for mandatory minimum sentences. However, challenges remain in prosecution and victim support due to deep-rooted patriarchy and limited resources.

4.3 Nepal: Supreme Court Directive and Penal Code 2017

In Nepal, marital rape was first addressed by the Supreme Court in *Forum for Women, Law and Development v. HMG* (2006). The Court observed that the absence of a marital rape offence violated women’s constitutional rights and international obligations; it held that a husband cannot be immune from prosecution simply because he is married and directed the government to enact legislation. Parliament responded by including Section 219(4) in the National Penal Code Act 2017, which states that if a husband rapes his wife during the existence of the marital relationship, he shall be liable to imprisonment for up to five years. However, the law imposes a lower maximum sentence for marital rape than for non-marital rape and requires a complaint from the victim to initiate prosecution. Human rights groups criticise this disparity and note that the term “up to five years” grants judges’ wide discretion

¹⁵ Prevention of Family Violence Act 1993, Act No. 133 of 1993; Sexual Offences and Related Matters Amendment Act 2007, Act No. 32 of 2007.

and reflects lingering attitudes that marital rape is a lesser offence. Statistics show that 2,387 marital rape cases were filed in Nepal in 2022 and 1,567 complaints by mid-March 2023, indicating both rising awareness and continuing challenges.

4.4 Lessons from Comparative Jurisdictions

The comparative analysis yields several lessons relevant to India:

- 1. Judicial abolition of the marital rape exemption:** In the UK, the House of Lords recognised that the assumption of irrevocable consent is outdated. Courts can adapt common law to changing norms. Indian courts could similarly interpret the law to uphold constitutional rights, even without legislative action.
- 2. Consent-based, status-neutral definitions:** Both the UK and South Africa have adopted definitions of rape that centre on consent and apply regardless of marital status. This aligns with international human rights standards and eliminates discriminatory classifications.
- 3. Legislative clarity and procedural safeguards:** Nepal's law demonstrates that criminalisation alone is insufficient if penalties are lenient or enforcement is weak. Legislation should specify clear investigation protocols, ensure victim and witness protection, and provide robust support services. Lower penalties or procedural hurdles (e.g., requiring victim complaints) undermine deterrence and perpetuate impunity.
- 4. Addressing societal attitudes and judicial biases:** South Africa's experience shows that patriarchal attitudes among law enforcement and judiciary can hinder prosecution even after legal reform. Training, public awareness campaigns and gender-sensitive courts are essential to make criminalisation effective.

5. CONSTITUTIONAL ANALYSIS

5.1. Equality under Article 14 and Reasonable Classification

Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. It permits classification only if it is based on an intelligible differentia and bears a rational nexus to the object of the law. The marital rape exception distinguishes between married and unmarried women for the offence of rape. This classification is not based on any intrinsic difference in the harm suffered; non-consensual sex violates bodily integrity regardless of marital status. The objective of the rape law is to protect the bodily integrity of women, yet the exception removes protection from those who arguably need it most. Courts have consistently held that discrimination based on sex or marital status is suspect. In *Independent Thought* the

Supreme Court held that exempting husbands from prosecution for raping their 15-18-year-old wives is an artificial and arbitrary classification. The same reasoning applies to adult women. The government's argument that marriage implies a legitimate expectation of sex is based on stereotypes and patriarchal notions. Justice Hari Shankar's view that the exception preserves marriage rests on an assumption that criminalising marital rape will destabilise marriages. However, protecting women's bodily autonomy does not undermine the institution; rather, it ensures that marriage is based on mutual respect and consent. Treating rape within marriage differently from rape outside marriage suggests that wives are less deserving of protection, which is antithetical to equality.

5.2. Right to Life, Dignity and Bodily Autonomy under Article 21

Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted to include dignity, privacy and bodily autonomy. In *Puttaswamy v. Union of India* (2017)¹⁶, the nine-judge bench recognised privacy as an intrinsic part of life and liberty. The marital rape exception violates this right by allowing husbands to forcibly invade their wives' bodies. Sexual autonomy encompasses the right to decide whether, when and with whom to engage in sexual activity. The Supreme Court in *X v. Principal Secretary* recognised that reproductive autonomy flows from the right to bodily integrity and privacy. By treating marital rape as non-existent for criminal purposes, the law denies women control over their bodies and condones coerced sex.

5.3. Proportionality and Manifest Arbitrariness

Under the modern constitutional doctrine of proportionality, any law interfering with fundamental rights must pursue a legitimate aim, be suitable to achieve that aim, be the least restrictive means and strike a balance between means and ends. The state claims the marital rape exception seeks to protect the institution of marriage and prevent misuse of rape provisions. However, criminalising marital rape would not dissolve marriages; it would only penalise non-consensual sexual acts. The exception is not a proportionate means of protecting marital privacy because it imposes an absolute bar on prosecution even in cases of extreme violence. The classification is manifestly arbitrary because it treats similarly situated victims differently without justification. The Supreme Court in *Shayara Bano v. Union of India* (2017)¹⁷ struck down triple talaq for being manifestly arbitrary; the same principle applies here.

¹⁶ Puttaswamy v. Union of India, (2017) 10 SCC 1

¹⁷ Shayara Bano v. Union of India, (2017) 9 SCC 1

5.4. Procedural and Penological Considerations

A frequent concern is that criminalising marital rape could lead to false cases or hinder marital harmony. However, the general criminal justice system already contains safeguards against false prosecutions, such as the requirement of proof beyond reasonable doubt and procedural protections. Additional safeguards may include:

1. **Prompt Complaint Not Determinative:** Recognise that many victims delay reporting due to fear, dependence and stigma; courts should not treat delayed complaints as evidence of fabrication.
2. **Guidelines for Investigation:** Police should follow clear protocols when handling spousal sexual violence, ensuring confidentiality and avoiding moralistic attitudes. Forensic evidence should be collected with sensitivity.
3. **Victim and Witness Protection:** Provide counselling, shelter, and financial support through one-stop crisis centres. This may encourage survivors to report and pursue cases.
4. **Civil and Criminal Convergence:** Align criminal procedures with the PWDVA by allowing courts to grant protection orders, residence orders and monetary relief alongside criminal proceedings. Survivors should not have to choose between civil and criminal remedies.
5. **Sentencing Framework:** Sentences should reflect the gravity of marital rape while avoiding mandatory life imprisonment that might discourage reporting. South Africa's experience shows that harsh mandatory sentences may not improve convictions and can lead to plea bargaining. A calibrated range (e.g., seven to ten years) with judicial discretion could balance deterrence with fairness.

6. CONCLUSION

The marital rape exception in Indian criminal law is a relic of patriarchal and colonial assumptions that marriage entails irrevocable consent. It creates a constitutional blind spot where a wife's bodily integrity and sexual autonomy are least protected. Comparative jurisprudence, international human rights norms and Indian constitutional principles converge to show that the exception is untenable and incompatible with the guarantees of equality, personal liberty, and dignity under Articles 14 and 21. Judicial decisions such as *Independent Thought* and *X v. Principal Secretary* have begun to dismantle the fiction of implied marital consent, but full reform requires legislative action. In particular, the Khusboo Saifi case underscores the lived reality of marital sexual abuse and highlights the urgent need for

legislative reform to protect married women from sexual violence. Notably, the recent amendment to the Medical Termination of Pregnancy Act, 1971, via Rule 3B, allows abortions beyond 24 weeks for survivors of sexual assault with the approval of a medical board. Marital rape victims should be explicitly included within this provision, affirming that marriage does not equate to surrender of bodily autonomy or the right to control one's reproductive choices. Meaningful reform requires repealing the exception and adopting a consent-centric, status-neutral definition of rape, combined with procedural safeguards and survivor support, are essential steps. This would harmonise India's rape law with its commitments to equality, autonomy and dignity, and send a powerful message that marriage is not a licence for sexual coercion.

7. SUGGESTIONS: TOWARDS A RIGHTS-COMPATIBLE REFORM

Repealing the Exception

The simplest legislative reform is to repeal Exception 2 to Section 63 of the BNS. Removing the exemption would make the offence of rape status-neutral. Consent, not marital status, should be the decisive factor. This change would align domestic law with constitutional guarantees and international human rights obligations and would reflect modern understanding of marriage as a partnership of equals.

Codifying Consent and Autonomy

Reform should include an explicit definition of consent as "voluntary agreement through words or conduct" and clarify that lack of physical resistance does not imply consent. This would counter prevalent myths that a wife consents by default. Courts should consider factors such as coercive control, fear, intoxication or incapacity. The MTP judgment acknowledged that pregnancies may result from marital rape; similar recognition should inform the criminal law.

Strengthening Institutions and Social Support

Legislative change must be accompanied by institutional reform and public education. Police officers, judges and prosecutors should receive training on gender-based violence and the dynamics of intimate partner abuse. Medical professionals must be trained to document sexual assault sensitively. Public awareness campaigns should challenge myths about marital rights and highlight that consent is necessary in all relationships. Support services, including shelters and counselling, must be expanded. Funding for one-stop crisis centres and helplines should be increased, and rural areas should not be neglected.

Balancing Privacy and Protection

Opponents argue that criminalising marital rape invades marital privacy. However, privacy is not a shield for violence. As Justice Shakti Chaudhary noted, deifying women without empowering them is meaningless. Recognising sexual autonomy within marriage enhances marital relationships by fostering mutual respect. Laws can incorporate privacy safeguards, such as closed-door trials and non-disclosure of victims' identities.

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