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RETHINKING THE MARITAL RAPE EXCEPTION IN INDIA: A PSYCHO-LEGAL ANALYSIS

AUTHORED BY - SIDDHARTH SUNDAR & BHAVITHRAJ THENNAVAN

1) II Year B.BA., LL.B. (Hons.), Sastra Deemed to Be University

2) II Year B.BA., LL.B. (Hons.), Sastra Deemed to Be University

ABSTRACT

Marital rape persists as one of the most grievous yet legally disregarded forms of sexual violence in India. Despite the enactment of the Bharatiya Nyaya Sanhita, 2023, Exception 2 to Section 63 continues to immunize husbands from criminal prosecution for non-consensual sexual intercourse with their wives above the age of eighteen years, thereby perpetuating a colonial-era doctrine that fundamentally denies married women their constitutional right to bodily autonomy and dignity.¹ This paper examines marital rape through an interdisciplinary lens, weaving together legal analysis, psychological research, and human rights discourse to argue that the non-criminalization of marital rape is not merely a legislative lacuna but a direct cause of severe, measurable, and lasting psychological harm. Drawing on judicial precedents, and comparative jurisprudence, the paper analyses the occurrence of Post-Traumatic Stress Disorder (PTSD), trauma bonding, depression, and intergenerational trauma in survivors, and demonstrates why legal recognition is psychologically indispensable, not merely symbolically important. It further contends that the present civil framework under the Protection of Women from Domestic Violence Act, 2005 (hereinafter “PWDVA”) is constitutionally and therapeutically inadequate to address this harm. The paper concludes by proposing a targeted amendment to the PWDVA and the BNS to criminalize marital rape, grounded in constitutional morality and psychological necessity.

Keywords: Marital Rape, Post-Traumatic Stress Disorder; Trauma Bonding, Domestic Violence, Bodily Autonomy, Criminalization.

¹Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63, Exception 2 (India); see also Exception 2 to § 375, Indian Penal Code, No. 45 of 1860 (India).

1) INTRODUCTION

Marriage, across the sweep of human civilization, has been constructed as a sacred covenant, a site of trust, companionship, and mutual regard. Yet for countless women in India, the matrimonial home is also the locus of their most intimate violation. Marital rape, which means forced sexual intercourse by a spouse without consent, exists within a painful contradiction. It happens inside marriage, an institution society strongly protects, yet the suffering it causes is often ignored or unrecognized by the law.

India, in 2024, replaced the Indian Penal Code, 1860 with the BNS, a landmark legislative exercise ostensibly aimed at modernizing criminal law. Yet in one crucial respect, the legislature chose continuity over reform. Exception 2 to Section 63 of the BNS almost completely retains the marital rape exception that has existed since the colonial period.² The only change effected was an increment in the wife's minimum age from fifteen to eighteen years, a reform compelled by the Supreme Court's ruling in *Independent Thought v. Union of India*, (2017), rather than any fresh legislative conviction.

The doctrinal and psychological deficits of this position are profound. The present paper proceeds from the premise that the question of marital rape is not merely one of criminal law reform, it is, at its core, a question about what the law recognizes as a cognizable harm. When the State declines to name an act as a crime, it simultaneously declines to acknowledge the suffering it causes. For survivors of marital rape, this legal silence is itself a form of secondary trauma, a social and legal denial that deepens the original psychological trauma.

This paper examines the issue through the perspectives of law, psychology, and human rights together. It begins with a historical contextualisation of the marital rape exemption, examines the contemporary legal landscape in India, analyses the psychological consequences of marital rape with particular attention to PTSD and trauma bonding, considers the impact on children and family structures, and ultimately argues for criminalization through a targeted amendment to the PWDVA as a first legislative step.

2) HISTORICAL BACKGROUND

The origin of the marital rape exemption is conventionally traced to the writings of Sir Matthew Hale, Chief Justice of England, who articulated in his *History of the Pleas of the Crown* (1736) that a husband cannot be guilty of rape upon his lawful wife, for by their mutual matrimonial

²The BNS came into force on July 1, 2024. The only change from its predecessor provision was the increase of the wife's minimum age from fifteen to eighteen years. See *Bharatiya Nyaya Sanhita*, No. 45 of 2023, S 63.

consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract. This pronouncement was codified by the British colonial administration into the Indian Penal Code, 1860, as Exception 2 to Section 375, transplanting a patriarchal English legal fiction onto Indian soil without any independent scrutiny of its moral or constitutional justifiability.³

The exemption rested on two interconnected premises, both of which have since been thoroughly discredited: first, the 'implied consent' theory, which holds that marriage constitutes permanent, irrevocable consent to sexual intercourse and second, the doctrine of 'coverture', under which a woman's legal identity merged into that of her husband upon marriage, rendering her incapable of asserting an independent right against him. While English law gradually dismantled this exemption over the twentieth century, culminating in the landmark House of Lords decision in *R v. R* [1991] 4 All ER 481, India retained the colonial relic intact.

The Justice J.S. Verma Committee, constituted in the aftermath of the 2012 Nirbhaya case, made an explicit and unambiguous recommendation, the marital rape exemption should be removed. The Committee articulated that marriage is not a license to violate a woman's bodily integrity and that the exemption was fundamentally incompatible with constitutional guarantees of equality and dignity.⁴ The legislature, however, declined to act on this recommendation in the Criminal Law (Amendment) Act, 2013.

It is important to note that the continued existence of this exception is not just a neutral legal provision. It sends a strong social and legal message, from the State to both offenders and survivors, that sexual violence within marriage is treated as less serious than sexual violence outside marriage. This message can have a deeply damaging psychological impact.

3) CURRENT SCENARIO

The fifth round of the National Family Health Survey (NFHS-5, 2019–2021) reveals that approximately 6% of ever-married Indian women between the ages of 18 and 49 reported having experienced sexual violence by their husbands.⁵ When one considers that only an estimated 10% of survivors of spousal sexual abuse ever report it, the true prevalence is staggeringly higher, a demographic iceberg of which only the smallest fraction is visible to

³Matthew Hale, 1 *The History of the Pleas of the Crown* 629 (1736); see Jill Elaine Hasday, *Consent and Coercion: A Legal History of Marital Rape*, 88 *Cal. L. Rev.* 1373, 1382 (2000).

⁴Justice J.S. Verma, Justice Leila Seth & Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law* 109–117 (2013).

⁵International Institute for Population Sciences (IIPS) and ICF, *National Family Health Survey (NFHS-5), 2019–21: India Report* vol. I, at 561 (2022).

official data systems.

The BNS, 2023, which came into force on July 1, 2024, represents the most recent legislative opportunity that India squandered on this issue. Section 63 of the BNS, like its predecessor, defines rape but carves out an exception for sexual intercourse by a husband with his wife, the wife not being under eighteen years of age. The Union Government, in its affidavit filed before the Supreme Court in October 2024, formally opposed the removal of this exception, citing the need to protect the institution of marriage from potential misuse of law.

The matter presently stands before the Supreme Court of India in *Hrishikesh Sahoo v. State of Karnataka*, along with appeals from the split verdict of the Delhi High Court in *Aparnaa Bhattacharya v. Union of India*. The split verdict delivered by the Delhi High Court itself reflects the judicial deadlock on the issue. Justice Rajiv Shakdher held Exception 2 to be unconstitutional for violating Articles 14, 19(1)(a), and 21 of the Constitution, while Justice C. Hari Shankar upheld the provision, viewing it as a matter to be decided by the legislature. As of May 2026, the Supreme Court has not delivered a final judgment on the issue, and the matter continues to remain pending before the Court.

Contemporaneously, the United Nations Human Rights Committee, in its Concluding Observations on India's fourth periodic report (September 2024), expressed explicit concern that the BNS definition of rape does not include marital rape, and urged India to bring its law into conformity with international human rights standards. This external pressure, while persuasive, has not yet translated into domestic legislative action.

4) LITERATURE REVIEW

PLOS Global Public Health (2022): Agarwal, N., Abdalla, S. M., & Cohen, G. H., Marital Rape and its Impact on the Mental Health of Women in India: A Systematic Review. This systematic review, based on eleven empirical studies conducted in India, is among the most comprehensive studies on the subject to date. The authors examined studies published until November 2020 through databases such as PubMed, Embase, Web of Science, and APA PsycInfo. The review found that sexual coercion by intimate partners was highly prevalent, ranging from 9% to 80%, while reported rates of marital rape ranged between 2% and 56%. Importantly, several studies identified a significant association between marital rape and adverse mental health outcomes, particularly clinical depression and PTSD symptoms. The review also highlighted underreporting, social stigma, lack of awareness, and the absence of criminalization as major barriers to accurate reporting and effective clinical intervention. The authors concluded that marital rape must be treated as a serious public health and human rights

concern requiring greater legal, medical, and scholarly attention.⁶

Reassessing Marital Rape Laws in India: A Study of Judicial Interpretations, Legal Challenges and Medical Implications under BNS, 2023 (2025) by Sheetal and Dr. Pratima Devi, published in the *Journal of Neonatal Surgery*, Vol. 14(27S), examines the legal, constitutional, and medical dimensions of marital rape in India. The authors argue that the continued marital rape exception under the *Bharatiya Nyaya Sanhita, 2023* raises serious concerns relating to bodily autonomy, gender justice, and public health. The article highlights the physical and psychological consequences of marital rape, including PTSD, depression, reproductive health issues, and emotional trauma, while also examining the judicial and legislative challenges surrounding its criminalization. Through comparative legal analysis and discussion of judicial interpretations, the paper advocates progressive legal reform, stronger institutional responses, and greater recognition of marital rape as a violation of fundamental rights and human dignity.⁷

5) OBJECTIVE OF THE STUDY

The present paper seeks to establish, through an interdisciplinary analysis integrating law, clinical psychology, and human rights frameworks, that the non-criminalization of marital rape in India directly causes and perpetuates measurable psychological harm in survivors, that the existing civil framework under the PWDVA is structurally insufficient to address this harm, and that criminalization through a specific amendment to the PWDVA and BNS is not merely a moral imperative but a psychological and constitutional necessity.

6) RESEARCH PROBLEM

The continued existence of the marital rape exception under Exception 2 to Section 63 of the *Bharatiya Nyaya Sanhita, 2023* denies legal recognition to non-consensual sexual acts within marriage. By doing so, it deprives survivors of the legal acknowledgement that is often important for psychological recovery. As a result, this legal silence not only deepens the trauma experienced by survivors but also contributes to wider emotional and social harm affecting children, family relationships, and future generations.

7) RESEARCH QUESTIONS

⁶Marital Rape and its Impact on the Mental Health of Women in India: A Systematic Review, 2(6) *PLOS Global Pub. Health* e0000601 (2022), <https://doi.org/10.1371/journal.pgph.0000601>.

⁷Sheetal & Pratima Devi, *Reassessing Marital Rape Laws in India: A Study of Judicial Interpretations, Legal Challenges and Medical Implications Under BNS, 2023*, 14(27s) *J. Neonatal Surgery* 701 (2025).

- a) In what specific ways does the legal non-recognition of marital rape as a criminal offence in India aggravate the psychological trauma including PTSD and trauma bonding experienced by survivors?
- b) To what extent does the current framework of the PWDVA, 2005, which treats marital rape as a civil wrong rather than a criminal offence, address or fail to address the mental health needs of survivors?
- c) What legislative amendments to the PWDVA and the BNS, 2023, would be constitutionally sound, psychologically informed, and practically effective in criminalizing marital rape while providing trauma-sensitive justice?

8) RESEARCH GAP

Existing scholarship on marital rape in India tends to bifurcate along disciplinary lines: legal commentaries examine the constitutionality of Exception 2 without sufficient engagement with clinical psychological evidence, while psychological studies document the mental health consequences of marital rape without rigorously analysing the role of legal non-recognition as an independent variable in producing and sustaining that harm. No existing study has systematically examined the psycho-legal feedback loop the manner in which the State's refusal to criminalize marital rape produces secondary trauma, invalidates survivors' psychological experience, enables trauma bonding, and obstructs help-seeking behaviour. Additionally, the specific question of how amending the PWDVA to incorporate criminal provisions for marital rape could serve a therapeutic jurisprudential function both punishing the offender and offering the survivor a framework for psychological validation has not been adequately theorized. This paper fills that gap by constructing an interdisciplinary framework that places psychological harm at the centre of the legal reform argument.

9) KEY ISSUES AND CHALLENGES

9.1 Post-Traumatic Stress Disorder (PTSD) in Survivors of Marital Rape

Clinical research consistently demonstrates that survivors of marital rape exhibit rates of PTSD that are comparable to, and in certain respects exceed, those seen in survivors of stranger rape. This counter-intuitive finding is explained by what psychologists term 'betrayal trauma theory', the proposition that traumatic harm is particularly severe when it is inflicted by a person on whom the victim depends for safety and intimacy.⁸ The marital relationship generates precisely

⁸Jennifer Freyd, *Betrayal Trauma: The Logic of Forgetting Childhood Abuse* 14 (1996); see also Jennifer J. Freyd

the conditions of dependence and trust whose violation produces the deepest psychological disorientation.

Survivors of marital rape report hypervigilance, recurrent nightmares, emotional numbing, and dissociative episodes. The absence of a legal category to describe their experience, the law's insistence that what happened to them was not a crime produces a form of cognitive dissonance that is itself traumatogenic. Psychologists refer to this as 'institutional betrayal': the additional harm caused when the systems, legal, social, familial, that should validate a survivor's experience instead deny or minimize it.

9.2 Trauma Bonding and Barriers to Help-Seeking

Perhaps the most clinically significant barrier to survivors seeking help is the phenomenon of trauma bonding, sometimes colloquially referred to as 'Stockholm syndrome' in the domestic violence context. Trauma bonding describes the strong emotional attachment that develops between an abuser and their victim as a result of a cyclical pattern of abuse followed by intermittent positive reinforcement, affection, apology, and restored normalcy.⁹ In the marital context, this cycle is deeply entrenched because it intersects with cultural constructions of conjugal loyalty, economic dependency, and the social pressure to maintain the appearance of marital harmony.

Studies conducted with Indian women who had experienced intimate partner violence documented responses such as 'at least he did not beat me' as self-minimizing rationalizations offered by victims of sexual abuse. This minimization is not a character weakness, it is a neuropsychological survival mechanism. The law's silence about marital rape reinforces this minimization by denying survivors an external framework within which to name their experience as abuse. When the law says it is not a crime, victims are all the more likely to conclude that it is not a harm.

9.3 Impact on Children and Family Structure

The psychological harm of marital rape does not terminate with the immediate victim. Children who grow up in households where a parent, most commonly the mother is subjected to sexual violence are themselves exposed to adverse childhood experiences (ACEs) that have well-

et al., *The Science of Betrayal Trauma: A Clinical and Empirical Analysis*, in *Psychological Trauma: Theory, Research, Practice and Policy* (2005).

⁹Lenore Walker, *The Battered Woman* (1979); see also Dutton, D.G. & Goodman, L.A., *Coercion in Intimate Partner Violence: Toward a New Conceptualization*, 11 *Sex Roles* 509 (2005).

documented consequences for cognitive, behavioural, and emotional development.¹⁰ Approximately two-thirds of children with childhood experiences of intimate partner violence develop cognitive, behavioural, or developmental problems. The intergenerational transmission of trauma means that the unaddressed psychological harm of one generation becomes the baseline vulnerability of the next.

The family structure itself is profoundly distorted by the dynamics of marital rape. A mother suffering from untreated PTSD may exhibit diminished parenting capacity, reduced emotional availability, hypervigilant protectiveness, or withdrawal, each of which has measurable adverse effects on a child's attachment development and emotional regulation. The children of survivors are simultaneously exposed to a traumatized primary caregiver and a normalization of sexual coercion as a relational dynamic, producing what researchers call a 'cycle of violence' that, absent intervention, tends toward perpetuation across generations.

9.4 Marital Rape as Domestic Violence Rather Than Sexual Violence

The current legal position in India classifies marital rape not as a sexual offence but, at best, as a form of domestic violence cognizable under the PWDVA, 2005. Section 3 of the PWDVA defines domestic violence to include 'sexual abuse', which encompasses any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman.¹¹ This classification, while providing some remedy, is psychologically and legally inadequate for several reasons.

First, treating marital rape as a form of domestic violence rather than recognizing it as rape reduces the seriousness of the offence in both legal and social terms. This mirrors the psychological minimization many survivors already experience themselves. When the law places sexual violence within marriage under the broader category of domestic misconduct, it indirectly reinforces the belief that such violence is less severe or more acceptable than rape outside marriage.

Second, the remedies available under the PWDVA are mainly civil in nature, such as protection orders, residence orders, and compensation. These remedies do not provide criminal punishment for the act of rape itself. As a result, survivors are often denied the sense of justice

¹⁰Kitzmann, K.M. et al., Child Witnesses to Domestic Violence: A Meta-Analytic Review, 71(2) J. Consulting & Clinical Psychology 339 (2003); see also Frederica Meyer et al., The Intergenerational Impact of Trauma and Family Violence on Parents and Their Children, 56(5) Child Abuse & Neglect (2019).

¹¹Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3 (India). Section 3(a)(ii) includes 'any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the aggrieved person' within the definition of domestic violence.

and validation that comes from seeing the offender held criminally accountable for the specific harm they suffered.

9.5 Consent Within Marriage: Constitutional and Psychological Concerns

The implied consent doctrine, the proposition that marriage constitutes advance and irrevocable consent to all future sexual intercourse is both legally archaic and psychologically incoherent. Legally, it contradicts the foundational principle that consent must be free, specific, informed, and ongoing. Psychologically, it denies the empirical reality that marital relationships contain the full spectrum of power dynamics, coercive control, and situational incapacity to consent.¹²

The Supreme Court of India has, in adjacent jurisprudence, recognized that consent in sexual matters must be dynamic and context-specific. In *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, the Court recognized the right to privacy as a fundamental right under Article 21, encompassing bodily integrity and the right to make choices about intimate relations. In *Joseph Shine v. Union of India*, (2018) 2 SCC 189, the Court decriminalized adultery while affirming that a wife does not surrender her constitutional identity or individual rights upon marriage. These judgments, read together, render the marital rape exemption constitutionally anomalous, they affirm the married woman's legal personality and constitutional rights in every domain but one, the very domain where their violation is most intimate and most devastating.

10) FACTORS INFLUENCING THE SITUATION

The continued existence of the marital rape exception in India cannot be explained by legislative delay alone. It is shaped by a complex mix of social, cultural, economic, and political factors, all of which must be understood if meaningful reform is to take place.

Socially, the institution of marriage in India remains inscribed with patriarchal norms that locate a wife's sexual availability as a conjugal duty. Studies have documented that a significant proportion of Indian women including educated women internalize the belief that their husbands are entitled to sexual access as a function of the marital relationship.¹³ This normative landscape produces underreporting that renders the true prevalence of marital rape invisible to

¹²Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, ¶ 297 (Chandrachud, J., concurring) (India); see also *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75 (India).

¹³Neha Khanna et al.; *International Journal of Indian Psychology, A Study on Traumatic Bonding and Intimate Partner Violence*, IJIP, ISSN 2348-5396(e) (2023).

policymakers.

Economically, the profound financial dependence of many Indian women on their husbands creates a structural barrier to reporting marital rape. A survivor who reports her husband risks not only social ostracism but the withdrawal of economic support for herself and her children. The lack of strong State-funded support systems such as shelters, legal aid, and psychological counselling for survivors of domestic sexual violence makes reporting the abuse extremely difficult and personally costly.

Politically, the government's October 2024 affidavit before the Supreme Court opposing the removal of the marital rape exception shows that the executive still considers the exemption politically justifiable. This reflects a concern about the social and electoral consequences of challenging deeply rooted cultural norms. Unlike the 2012 Delhi gang rape case, which led to widespread public outrage and legal reform, there has been no strong mass political movement demanding the criminalization of marital rape. As a result, meaningful legislative reform may require either judicial intervention or significant political will.

From a public health perspective, the lack of proper recognition of marital rape within India's health surveillance systems leads to a serious underestimation of its mental health impact. Without reliable data on the extent of the problem, mental health resources and support services for survivors continue to remain inadequate.

11) GOVERNMENT AND POLICY RESPONSE: EXISTING FRAMEWORKS AND CASE LAWS

The principal legislative framework within which marital rape survivors currently seek redress is the PWDVA, 2005. Section 3 of the Act defines 'domestic violence' to include sexual abuse, providing survivors access to civil remedies including protection orders, residence orders, and monetary compensation. While this framework represents a meaningful acknowledgment of sexual violence within marriage as a form of domestic abuse, it is structurally incapable of providing the criminal accountability that the severity of marital rape demands.¹⁴

Section 67 of BNS provides for punishment of sexual intercourse by a husband with his wife during separation, acknowledging implicitly that marital separation modifies the implied consent doctrine. While this provision acknowledges that a wife's consent may not continue during separation, the legislature has stopped short of extending the same principle to marriage itself by completely removing the marital rape exception.

¹⁴Protection of Women from Domestic Violence Act, No. 43 of 2005, S 3.

The significant judicial landmarks in this evolving landscape include the following:

- (i) *Independent Thought v. Union of India*, (2017) 10 SCC 800: The Supreme Court read down Exception 2 to Section 375 IPC to criminalize sexual intercourse with a wife below eighteen years of age, harmonizing the age of consent across the IPC and the Protection of Children from Sexual Offences Act, 2012. The Court affirmed that the bodily integrity of a girl child is not subordinated by the fact of her marriage.¹⁵
- (ii) *Aparnaa Bhattacharya v. Union of India* (Delhi High Court, 2022, reaffirmed January 2025): A split verdict in which Justice Rajiv Shakti held Exception 2 to be unconstitutional for violating Articles 14, 19(1)(a), and 21, while Justice C. Hari Shankar upheld the exception as a matter of legislative judgment. The case is pending before the Supreme Court.¹⁶
- (iii) *Joseph Shine v. Union of India*, (2018) 2 SCC 189: The Supreme Court's decriminalization of adultery recognized the wife as an individual with full constitutional personhood, holding that marriage does not obliterate her fundamental rights. The Court's reasoning is directly applicable to the marital rape exemption.¹⁷
- (iv) *Vivek Singh Bhadoriya v. State of Madhya Pradesh* (2024): The Madhya Pradesh High Court reaffirmed that, under the existing legal framework, sexual intercourse by a husband with his wife is not treated as rape, highlighting the urgent need for legislative reform. Courts can interpret and apply the law, but without changes made by the legislature, they cannot rewrite it.¹⁸

12) INTERNATIONAL COMPARISON

India's retention of the marital rape exemption places it in an increasingly isolated legal position globally. As of 2019, approximately 150 countries had criminalized marital rape, either through explicit legislation or through the extension of general rape laws to marital relationships without exception.¹⁹

Australia was the first common law country to criminalize marital rape, effecting

¹⁵*Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹⁶*Aparnaa Bhattacharya v. Union of India*, supra note 6; Supreme Court Observer, Challenge to the Marital Rape Exception, <https://www.scobserver.in> (last visited May 9, 2026).

¹⁷*Joseph Shine v. Union of India*, (2018) 2 SCC 189.

¹⁸*Vivek Singh Bhadoriya v. State of Madhya Pradesh*, (2024) M.P. H.C. (India); see Legal Service India, Marital Rape in India: Constitutional Validity, Legal Framework & Supreme Court Debate (May 2, 2026), <https://www.legalserviceindia.com>.

¹⁹Wikipedia, Marital Rape Laws by Country, https://en.wikipedia.org/wiki/Marital_rape_laws_by_country (last visited May 9, 2026); see also Whistler & Acker, Safe at Home? Examining the Extension of Criminal Penalties for Marital Rape in Cross-National Context, 1979–2013, 57(4) *Law & Soc'y Rev.* 813 (2023).

legislative reform across its states beginning in 1976, under the influence of the second-wave feminist movement. The United Kingdom's criminalization came through judicial decision in *R v. R* [1991] 4 All ER 481, subsequently codified in the Sexual Offences Act, 2003, which prescribes life imprisonment upon conviction for marital rape. The United States achieved criminalization in all fifty states by 1993, following the New York Court of Appeal's landmark 1984 decision striking down marital immunity as unconstitutional.

Of particular relevance to India is the experience of Nepal, a country that shares significant cultural, religious, and socioeconomic commonalities with India. Nepal criminalized marital rape in 2002, following a ruling by the Supreme Court of Nepal that the marital rape exemption violated the constitutional right to equal protection. South Africa criminalized marital rape under the Prevention of Family Violence Act as early as 1993, though enforcement remained uneven for years thereafter.²⁰

Germany, after more than two decades of lobbying by women's rights activists, criminalized marital rape only in 1997 demonstrating that even democratic nations with sophisticated legal systems can resist this reform for extended periods, but ultimately cannot sustain the resistance against the force of human rights argument.

International human rights instruments have been unequivocal on this question. The UN Committee on the Elimination of Discrimination Against Women (CEDAW), in 2013, specifically recommended that India eliminate the marital rape exemption. The UN Human Rights Committee reiterated this concern in September 2024. India's continued non-compliance with these recommendations represents a progressive erosion of its standing as a State committed to gender equality under international law.

13) SOLUTIONS AND RECOMMENDATIONS

13.1 Amendment of the Bharatiya Nyaya Sanhita, 2023

The most direct and doctrinally complete reform would be the deletion of Exception 2 to Section 63 of the BNS, making marital rape a criminal offence subject to the same penalties prescribed for rape in Sections 64 to 70. A proviso could be incorporated to address procedural concerns for instance, providing that a complaint of marital rape shall be investigated by a Special Cell constituted within the State police, and that the matter shall be placed before a Family Court simultaneously for consideration of matrimonial relief, thereby ensuring that the

²⁰Legal Service India, Marital Rape Laws: An International Overview, <https://www.legalserviceindia.com/legal/article-7872> (last visited May 9, 2026); Prevention of Family Violence Act, No. 133 of 1993, Art. 5 (South Africa).

criminalization framework is not weaponized but is administered with sensitivity to the familial dynamics involved.

13.2 Amendment of the Protection of Women from Domestic Violence Act, 2005

As a legislative stepping-stone, the PWDVA could be amended to incorporate a specific criminal offence of 'Marital Sexual Violence' within Section 3 of the Act, carrying a minimum sentence of three years' rigorous imprisonment and a maximum of ten years, with power in the Magistrate to also pass civil reliefs simultaneously. This hybrid model combining criminal accountability with civil protection would be contextually sensitive, recognizing the family law dimension of the offence while affirming its criminal nature. This approach draws on the model adopted in South Africa, where sexual violence within marriage is treated both as a criminal offence and as a ground for civil protection.

13.3 Mandatory Mental Health Support for Survivors

Any legislative reform must be accompanied by the creation of a mandatory survivor support framework. This should include: (i) the right to free and confidential psychological counselling for any woman who discloses marital rape to a Protection Officer under the PWDVA, (ii) mandatory training for police officers, prosecutors, and judicial officers in trauma-informed investigation and adjudication of marital rape cases and (iii) the establishment of dedicated One-Stop Centres that integrate legal aid, psychological counselling, and safe shelter for marital rape survivors.²¹

13.4 Judicial Interim Relief Pending Legislative Action

Given the current uncertainty about the Supreme Court's timeline for deciding the marital rape exemption challenge, there is an immediate need for the Court to issue interim directions. These could include directing that any disclosure of marital rape to a medical professional or Protection Officer shall not be dismissed without investigation, that survivors shall have access to psychological support under the government's existing One-Stop Centre scheme pending final adjudication, and that the term 'sexual abuse' in the PWDVA shall be interpreted expansively to include non-consensual sexual intercourse, regardless of whether the act amounts to 'rape' under the BNS.

²¹Ministry of Women and Child Development, One Stop Centre Scheme, <https://wcd.nic.in> (last visited May 9, 2026); cf. U.N. Comm. on Elimination of Discrimination Against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India.

14) FUTURE PROSPECTS

The recent judicial and legislative developments suggest that the criminalization of marital rape in India may now be a question of when rather than whether. The Supreme Court's continued hearings on the challenge to the marital rape exception, along with the Union government's October 2024 affidavit responding to the issue, show that the debate can no longer be treated as a marginal or peripheral legal question, even though the government has opposed criminalization.²²

The field of psychology is increasingly providing strong empirical support for legal reform on marital rape. As more long-term studies document PTSD, institutional trauma, and the intergenerational effects of marital rape, and as the idea of therapeutic jurisprudence gains greater recognition in Indian legal discourse, the demand for criminalization is likely to be supported not only by constitutional values but also by growing clinical and psychological evidence. The generational shift in India's judiciary and legislature reflected in judgments like Justice K.S. Puttaswamy and Joseph Shine also suggests a progressive recalibration of constitutional morality around individual dignity and bodily autonomy. The marital rape exemption, which fundamentally contravenes both values, will find it increasingly difficult to survive this jurisprudential evolution.

At the same time, the lessons of comparative experience counsel against complacency. Australia's criminalization in the 1970s and Germany's only in 1997 remind us that reform requires not only judicial or legislative goodwill but sustained civil society advocacy, public education about consent and bodily autonomy within marriage, and crucially the construction of support infrastructure so that criminalization translates into actual access to justice for survivors, not merely a change in the statute books.

15) CONCLUSION

Marital rape is, at its simplest, rape. The fact that it occurs within the bounds of marriage does not alter the act's fundamental character, the survivor's experience of violation, or the psychological harm it inflicts. What it does alter is the legal framework within which the survivor must navigate her reality. By declining to name the act as a crime, the State withholds from survivors the most basic form of institutional recognition: the acknowledgment that what was done to them was wrong, that they were wronged, and that the law stands behind

²²Supreme Court Observer, *supra* note 17; U.N. Human Rights Comm., Concluding Observations on the Fourth Periodic Report of India.

them.

This paper has demonstrated that the consequences of this legal silence are not abstract or rhetorical. They are clinical, measurable, and transmissible across generations. Survivors develop PTSD at rates comparable to, and often exceeding, those seen in stranger-rape cases. Trauma bonding often keeps survivors trapped in abusive relationships, while the law fails to provide a proper criminal framework to recognize the violence they experience. Children exposed to such environments frequently internalize the emotional consequences of parental trauma and unhealthy family dynamics, carrying forward the psychological impact of a harm that the law still refuses to clearly acknowledge. Ironically, the very family structure that the marital rape exception claims to protect is itself damaged from within by the violence that remains unaddressed.

The reform suggested in this paper is not radical, but necessary and consistent. It simply seeks to extend the same legal protection given to unmarried women to married women as well, recognizing that consent continues to matter within marriage. Whether this change comes through removing Exception 2 to Section 63 of the BNS, amending the PWDVA, or both, the core principle remains the same: marriage does not take away a woman's bodily autonomy, and the law should protect that right.

