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MARITAL RAPE IN THE REPUBLIC OF INDIA

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Abstract

Marital rape, meaning sexual intercourse or sexual acts by a spouse without the other's free and voluntary consent, remains an under-recognised form of gender-based violence in India. Under Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023, non-consensual intercourse by a man with his adult wife is excluded from the definition of rape. This raises serious questions about equality before the law, dignity and bodily autonomy, and about how far marital status should shape the legal recognition of sexual violence. This study looks at marital rape from legal, psychological, criminological, jurisprudential and comparative angles. It uses a mixed-methods approach: surveys of women and men across age groups and marital status, a small number of in-depth conversations with survivors, a review of psychological literature, consultations with psychologists and psychiatrists, and a study of legal principles and of countries that have criminalised marital rape. It gives particular attention to survivors' psychological harm and to the concerns that surround criminalisation: misuse, proving consent in private, and the line between non-consensual and agreed sexual practices. It proposes removing the marital exception, defining consent clearly, proportionate punishment, procedural safeguards, training for police and judges, survivor support and public awareness. Its central argument is that marriage cannot be treated as permanent or unconditional consent, and that fear of misuse calls for careful drafting, not continued immunity.

Keywords: Marital Rape, Marital Exception, Consent, Bodily Autonomy, Gender Based Violence, Bharatiya Nyaya Sanhita, 2023, Psychological Trauma, Constitutional Equality.

INTRODUCTION

Marital rape is sexual intercourse or any other sexual act forced on a person by their spouse without consent. Marriage is usually understood as a relationship of love, trust and mutual care, but for those who experience sexual violence within it the reality is very different. For a long time, many legal systems treated marriage as a relationship in which one spouse's sexual autonomy could be disregarded, so that sexual violence within it was invisible or, in some cases, legally permitted. That silence is now breaking. Survivors, activists and scholars

increasingly see non-consensual sex in marriage not as a private domestic matter but as a violation of human rights that engages gender equality, bodily autonomy, dignity and access to justice.

Recognition and criminalisation nevertheless remain contested. The debate turns on consent within marriage, the difficulty of proving or disproving non-consent in a private setting, the possibility of false or retaliatory allegations, cultural stigma, and the proper role of the State in intimate relationships. This research therefore examines marital rape through the development of legal doctrine, comparative jurisprudence and the lived experience of survivors. It also considers the barriers survivors face in seeking help or redress, and the ways in which law can balance protection, prevention, procedural fairness and wider socio-legal reform. Recognition is more than a technical reform: it is tied to dignity, equality, personal freedom and the right to feel safe in one's own home.

INTERNATIONAL PERSPECTIVES ON MARITAL RAPE LAWS

Legal recognition of marital rape has developed gradually. For a long time, many legal systems treated marriage as implied or permanent consent to sex, which effectively shielded husbands from prosecution. That approach shifted as bodily autonomy, sexual self-determination and equality came to be seen as fundamental rights. The shift is neither recent nor exclusively Western; countries have reformed at different times and by different routes, through legislation, judicial decisions or by treating spousal rape as an aggravating circumstance.

Early International Recognition of Marital Rape. The movement began well before the feminist campaigns of the 1970s. The Soviet Union removed the marital exemption from its rape laws in 1922 and Poland explicitly criminalised marital rape in 1932, followed by Czechoslovakia and other communist-bloc states. These reforms treated rape as an offence against the person, not against marriage, family honour or morality. The lesson for India is that consent, not marital status, decides whether intercourse is lawful; a person does not lose bodily autonomy by marrying.

The Nordic and European Experience. Sweden, Norway and Denmark moved progressively away from the marital exemption and came to treat sexual violence in marriage as a violation of the individual. In 1986 the European Parliament called for spousal rape to be criminalised, and France, Germany, the Netherlands, Belgium, Luxembourg and Finland developed laws that do not exclude it. In France the Court of Cassation had already accepted that a spouse could be prosecuted; legislation followed in 1994, and a law of 2006 made rape by a spouse or partner an aggravating circumstance.

Development in Common-Law Countries. Reform in the common-law world gathered pace from the 1970s, driven by changing views of women's rights and bodily autonomy. In Australia it began with partial criminalisation in South Australia in 1976; New South Wales and Victoria moved to full criminalisation in 1981, Queensland in 1989 and the Northern Territory in 1994. Canada (1983), New Zealand (1985) and Ireland (1990) followed, along with South Africa, the United States, Malaysia, Ghana and Israel. In the United Kingdom, in *R v R*, the House of Lords rejected the common-law presumption that a wife irrevocably consents to intercourse by marrying. The significance is not only that a form of violence was criminalised, but that the assumption that marriage creates permanent consent was rejected.

Marital Rape in the United States. From the 1970s states progressively abolished their marital rape exemptions, and today all 50 criminalise spousal rape, although definitions differ and some states have kept limits or loopholes for incapacity, unconsciousness or intoxication. For India the lessons are twofold: marital status should give no blanket immunity, and criminalisation needs clearly defined standards so that the law is neither uncertain nor arbitrary.

International Developments Beyond Europe and North America. Reform is not confined to the West. Countries identified in this study include Ghana, The Gambia, Gabon, South Africa, Nepal, Cambodia, Chile, Comoros, Cuba, Albania, Venezuela, Vietnam, Namibia and Mexico, so criminalisation can develop in very different cultural, religious and legal settings. Gabon criminalises it under Articles 11-1 and 137 of its Criminal Code, with substantial imprisonment and fines; Greece's Law 3500/2006 on domestic violence, in force from 24 October 2006, covers spousal rape; and Guyana did so through sections 3 and 7 of its Sexual Offences Act, 2010. Nepal shows the exemption can be challenged even where marriage and family are socially central.

Different Models of Punishment. Countries do not share a single model. Some use the ordinary rape provisions; others treat the marital relationship as aggravating or set specific ranges. France treats rape by a partner as aggravated, Gabon imposes imprisonment and heavy fines, Greece provides five to twenty years for serious offences, and the United Kingdom, Rwanda, South Korea and Mongolia can impose life imprisonment in serious cases. Criminalisation alone is therefore not enough: the law must set proportionate punishment and ensure that marital status never lowers the seriousness of sexual violence. On this material, India could prescribe roughly seven to ten years for ordinary cases and ten to twenty years for aggravated ones, with substantial fines.

The Importance of Consent in International Law. The central lesson is the move from marital status to consent. France, Germany, the United Kingdom, Canada and Australia

understand consent as something freely and voluntarily given, never presumed because two people are married. Consent should be specific to the particular act, informed and capable of withdrawal, and neither earlier consent nor marriage counts as consent to a later act. It is also invalid were obtained through coercion, threats, intimidation or fear, which matters in marriage because domestic relationships can involve emotional, economic, social and physical control.

International Experience and the Problem of Misuse. Comparative studies also record concerns about misuse: allegations made after marital disputes, financial conflict, separation or divorce; difficulty in proving or disproving consent in private; and uncertainty about consensual role-play. These concerns should not be ignored, but comparative experience suggests they are met by careful drafting, evidentiary safeguards, procedural protection and judicial sensitivity, not by a blanket exemption.

Lessons for India from International Experience. Six lessons emerge. First, remove the marital exception: under Exception 2 to Section 375 of the Indian Penal Code, 1860, and now Section 63 of the Bharatiya Nyaya Sanhita, 2023, a husband's non-consensual intercourse with his adult wife is not rape, whereas the international approach treats rape as an offence against the person. Second, define consent in statute as free, voluntary, specific, informed and capable of withdrawal, making clear that past consent is not present consent and marriage is not blanket consent. Third, set clear punishment ranges and treat spousal or partner rape as an aggravating circumstance. Fourth, give safeguards to survivors and accused alike: allegations are not proof, but marriage should not raise the burden on a complainant. Fifth, train police, prosecutors and judges so that complaints are not dismissed as family disputes. Sixth, pair legal reform with awareness and education programmes, as in Canada, the United Kingdom, Australia, South Africa and France, to challenge the belief that a wife owes sexual access to her husband.

Overall Comparative Perspective. International development shows a gradual change in how marriage is understood: permanent sexual consent has given way to the principle that each person keeps control over their own body. From the Soviet Union and the Nordic countries to Australia, Canada, the United Kingdom, France, South Africa, Nepal, Gabon and Guyana, different routes lead to the same principle, that marriage should not be a legal immunity for sexual violence. India need not copy any one country; it can draw on these models to build a framework suited to its own constitutional structure, social realities and evidentiary requirements. Removing the exception would not reject marriage or family life. It would affirm that marriage rests on mutual respect and that no one should be compelled to give up bodily autonomy on entering it.

NATIONAL PERSPECTIVES ON MARITAL RAPE LAWS IN INDIA

The Present Legal Position in India. Although Indian law treats rape as serious, it still distinguishes between sexual violence by a stranger and non-consensual intercourse by a husband with his adult wife. Under Section 63 of the Bharatiya Nyaya Sanhita, 2023, intercourse by a man with his own wife is not rape where she is eighteen or older, as under Exception 2 to Section 375 of the Indian Penal Code, 1860. Marital rape is thus recognised only where the wife is a minor. A married woman may suffer the same force, fear and trauma as any rape victim, yet the marital relationship prevents the conduct from being rape. The central question is whether marriage should continue to justify disregarding the absence of consent.

The Constitutional and Human Rights Perspective. The issue touches equality, dignity, bodily autonomy, personal liberty and protection from violence, not only criminal policy. The idea that a wife gives permanent or implied consent on marrying is hard to reconcile with modern constitutional understanding. Under Articles 14, 15 and 21, a law that protects a woman against a stranger but withdraws that protection when the offender is her husband draws a distinction based on marital status, although the harm is the same. This study takes the position that criminalisation would be consistent with dignity, equality, bodily autonomy and personal liberty.

The Social Reality Behind the Legal Problem. Because the law does not treat such intercourse as rape, many women may not see their experience as a recognised offence. Many families still believe a wife owes sex to her husband, which discourages refusal and leads survivors to blame themselves. Economic dependence, family pressure, stigma and fear of separation make leaving harder, and the perpetrator may remain in the same home.

The Problem of Under Reporting. With no separate official category for marital rape against adult wives, crime statistics are incomplete. National Family Health Survey data for 2019–2021 show that a substantial proportion of married women experience violence from their current husbands and that, among those who experienced sexual violence, the husband was most often the perpetrator, while sexual violence is heavily under-reported generally. The apparent absence of cases is not proof that marital rape is rare; under-reporting may itself result from the legal and social structure.

Arguments and Concerns Regarding Criminalisation. The main concern is misuse. After a marital dispute, financial disagreement, separation or divorce, an allegation might be made strategically to gain advantage in matrimonial, custody or property proceedings, as is sometimes said of the laws on dowry, cruelty and domestic violence. A second concern is proof.

Intimate acts happen in private, with no witness, recording or message to show whether consent was present, which is a difficulty for both sides: an accused husband may struggle to show consent, and a survivor to show its absence. Any future law must meet this through carefully designed evidentiary and procedural safeguards, not through a complete marital exemption.

The Problem of Subjective Definitions of Consent. A vague definition could also create uncertainty. If mental pressure, coercion, fear or implied consent are loosely drafted, a person may fear that an act that seemed consensual could later be recast as non-consensual, especially in relationships involving consensual rough, submissive or role-play activity. The answer is a clear statutory definition: consent freely given, specific to the act, ongoing and capable of withdrawal.

Consensual Role Play Sexual Activities and Other Sexual Activity. Married couples may voluntarily engage in dominance, submission or physical intensity. That is not itself evidence of rape, and their agreement should be taken into account. But earlier consent cannot establish consent to every later act; a person who agreed once may refuse on another occasion. The study therefore distinguishes activity that was consensual at the time but later regretted from activity that was forced when it occurred. Past participation does not show consent on the occasion in question, so courts would have to examine the particular incident.

Retrospective Reinterpretation of Sexual Conduct. After a serious quarrel, separation or divorce, one spouse may describe a past act differently from how it was understood at the time, so that consensual role-play is later called coercive. The answer is not to deny marital rape but to set clear principles on consent, evidence, and how an allegation can be established.

How Marital Rape Can Be Criminalised in India. A carefully structured framework is needed, not a simple extension of the existing rape provision. The first step is to amend Section 63 of the Bharatiya Nyaya Sanhita, 2023 to remove the marital exception, so that rape is an offence against the person and no distinction is made between married and unmarried women. Consent, not marital status, should determine whether intercourse is lawful.

A Clear Statutory Definition of Consent. Consent should be free, voluntary, specific, informed, ongoing and capable of withdrawal at any time. It may be communicated by words, gestures or other means, but absence of physical resistance is not consent. Previous consent is not permanent consent, marriage is never blanket consent, and coercion, threats, intimidation or fear can invalidate consent.

Punishment for Marital Rape. Marital rape should carry clearly defined punishment: roughly seven to ten years for ordinary cases and ten to twenty years for aggravated cases, with rape by a spouse or intimate partner an aggravating circumstance, as in some other jurisdictions, and

heavy fines where appropriate. It must not be treated as a minor domestic disagreement.

Procedural and Evidentiary Safeguards. Criminalisation should come with safeguards for both sides. Allegations should be judged on evidence, conviction should not follow from accusation alone, particular care is needed where a case rests on alleged patterns of past behaviour, and marriage should not lower the burden of proof for either party. Deliberately false or malicious accusations should carry legal consequences, which guards against misuse without closing the door on genuine survivors.

Recognition of Consensual Sexual Activity. A properly drafted law must separate consensual activity from criminal conduct. Where spouses have voluntarily agreed to particular practices, that agreement is relevant to whether an offence occurred, but it does not prevent withdrawal of consent, and continuing after withdrawal may be unlawful. The law should neither presume marriage to be permanent consent nor treat every physically intense act as violence.

Protection of the Accused and Protection of the Survivor. Protecting women from marital rape and protecting men from false accusation are not contradictory aims. Survivors need recognition, access to justice, medical help, counselling, legal aid and protection from intimidation. Accused persons keep the presumption of innocence, proper investigation and protection from conviction on untested allegations. Safeguards exist to improve the criminal process, not to preserve immunity for a whole category of offenders.

Judicial and Police Sensitisation. Police must understand that sexual violence in marriage is not automatically a private family dispute, and judges and prosecutors must understand the psychological and social realities that affect a survivor's ability to report quickly. Delay caused by fear, economic dependence, children, social pressure or trauma is not proof that an allegation is false. Scrutiny must still remain objective and evidence-based.

Support Mechanisms for Survivors. Criminal law cannot solve the problem alone. Survivors may need counselling, medical care, legal assistance and safe accommodation, particularly because the perpetrator may also be the woman's economic provider and the father of her children.

Public Awareness and Social Reform. A major obstacle is the belief that marriage gives a husband a right to sexual access to his wife. Awareness programmes should communicate that marriage is not blanket consent, that consent can be withdrawn, that previous consent is not present consent, and that sexual violence within marriage is serious. Without social change, legal reform stays incomplete.

A Balanced Model for India. The study proposes a balanced model: delete the marital exception; define consent as free, voluntary, informed, specific, ongoing and capable of

withdrawal; set proportionate punishment, with spousal rape an aggravating circumstance; add safeguards against false and malicious allegations; distinguish consensual activity from sexual violence; sensitise police, prosecutors and judges; support survivors; and run public awareness campaigns. This recognises both the serious harm suffered by survivors and the legitimate concerns about evidence, false allegations and the rights of accused persons.

National Perspective: The Way Forward. The Indian debate is ultimately about marriage and individual autonomy. Marriage creates legal, emotional and social responsibilities, but it does not transfer control over one spouse's body to the other; a wife keeps her bodily autonomy after marriage, just as a husband does not lose legal protection merely because he is accused. The task is to move beyond the assumption that marriage supplies consent, without criminalising ordinary marital disagreement. Marriage may create a relationship, but it cannot create permanent consent.

JUDICIAL PERSPECTIVES ON MARITAL RAPE LAWS IN INDIA

The judicial perspective turns on whether marriage can be treated as continuing, irrevocable consent to sex, and whether marital status can justify treating the same non-consensual act differently from one committed outside marriage.

1. The Existing Judicial and Legal Position. As the law stands in 2026, Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 provides that sexual intercourse or sexual acts by a man with his own wife, not under eighteen, are not rape. It continues the exception in the Indian Penal Code, 1860, while raising the relevant age from fifteen to eighteen. The question is whether marital status can constitutionally justify excluding a whole category of women from the law of rape, and whether marriage can reduce the legal significance of a woman's refusal.

2. Constitutional Values and the Judicial Perspective. The jurisprudential foundation lies in constitutional values and principles of justice. The law should not distinguish between married and unmarried women when the conduct is the same. Article 14 guarantees equality before the law, Article 15 is relevant because the distinction operates in the context of gender and marital status, and Article 21 has been read to include dignity, privacy, bodily integrity and personal autonomy. Marriage creates a relationship but does not transfer control of one spouse's body to the other.

3. Bodily Autonomy and Consent. A person does not lose the ability to refuse by marrying. The law should establish that consent must be free, voluntary, specific to the act and capable of withdrawal; that earlier consent is not consent to a later act; that marriage is not blanket

consent; and that coercion, threats, intimidation or fear invalidate consent. This puts consent, not marital status, at the centre of the analysis.

4. Judicial Recognition of the Rights of Married Women. Understanding of women's rights has moved away from treating marriage as the disappearance of a woman's independent identity. A married woman keeps her rights to dignity, privacy, bodily integrity and liberty, so marriage cannot turn non-consensual conduct into consensual conduct.

5. Jurisprudential Basis for Removing the Marital Exception. The study examined the foundations needed for a law on marital rape: the theory behind removing the exemption, the principles of justice, constitutional values, and the role of international human rights law and comparative jurisprudence.

6. Judicial Concerns Regarding Misuse. A judicial approach cannot ignore the risk of false or retaliatory accusations in disputes over divorce, custody, finances or property, or the fact that marital sexual violence occurs without witnesses or recordings. But these are problems of legislation, evidence and procedure, to be met by careful drafting, safeguards, fair procedure and judicial oversight, not reasons for complete immunity.

7. The Evidentiary Challenge Before Courts. The hardest question for courts would be whether intercourse was consensual inside a private marriage, with no third-party evidence and with past conduct and previous consent likely to arise. The framework should say that previous consent is not permanent consent, while distinguishing non-consensual conduct from consensual activity between spouses. Consensual role-play or rough activity should not later be treated as rape merely because it looks violent out of context, where there was prior agreement, a safe word or other means to stop, and no coercion or injury beyond what was agreed. The law must protect both the survivor's right to refuse and the accused's right to a fair, evidence-based determination.

8. The Need for a Balanced Judicial Approach. Courts should protect survivors while ensuring that prosecution rests on proper evidence and fair procedure. An accusation does not itself establish guilt, and the fact that an offence occurs within marriage creates no presumption of consent.

9. The Role of Judicial and Police Sensitisation. Judicial reform cannot work without institutional reform, and cases should not be dismissed as ordinary family disputes. Judges should be trained in consent and sexual autonomy, police in handling allegations of intimate-partner sexual violence and collecting evidence in domestic settings, and prosecutors should be given guidance so that complaints are properly assessed.

10. Comparative Jurisprudence and Its Judicial Significance. Canada, the United

Kingdom, Australia, South Africa, France, Germany and others have abandoned the idea that marriage creates permanent consent while developing safeguards on evidence, consent, procedure and the rights of the accused. India can likewise build a framework in which marital status does not diminish the seriousness of sexual violence.

11. The Judicial Importance of the Marital Exception. The same conduct may be rape outside marriage but not between a husband and his adult wife. The central judicial question is whether marital status is a sufficient constitutional justification for that difference. Criminal law should focus on the conduct and on the presence or absence of consent. Marriage may create a relationship, but it cannot create permanent consent.

12. The Proposed Judicially Consistent Legal Framework. India should remove the exception and establish that rape is an offence against the person irrespective of marital status, amending Section 63 of the Bharatiya Nyaya Sanhita so that married and unmarried women receive equal protection. Consent should be defined as free, voluntary, informed, specific, ongoing and capable of withdrawal, and threats, coercion, intimidation or fear should invalidate it even in marriage. Punishment should be proportionate, about seven to ten years for ordinary and ten to twenty for aggravated cases, with spousal rape an aggravating circumstance and heavy fines. Procedural safeguards should protect survivor and accused without making marriage a defence to rape, and genuinely consensual activity within agreed boundaries should not be criminalised. It should be completed by training, survivor support and public education.

13. Judicial Perspective on the Way Forward. The judicial approach should be neither one-sided nor dismissive. Courts must recognise that married women have bodily autonomy and constitutional rights, and the system must protect the accused from arbitrary prosecution. Misuse should not be ignored, but nor should it be used to deny protection to genuine survivors.

14. Overall Judicial Perspective. The analysis suggests that the continued exception is hard to reconcile with dignity, equality, bodily autonomy and personal liberty. A married woman remains an individual before the Constitution, and marriage does not extinguish her ability to refuse. Courts must interpret criminal law consistently with constitutional values while respecting the limits of judicial power; where substantial change is needed, legislative action may be necessary. The goal is a framework that protects survivors without exposing husbands to arbitrary prosecution and treats sexual violence within marriage with the seriousness it deserves. The silence of the law cannot mean that consent stops mattering after marriage.

PSYCHOLOGICAL AND PSYCHIATRIC EFFECTS OF MARITAL RAPE ON WOMEN

Marital rape violates bodily autonomy, and it is also a deeply traumatic psychological experience. It happens within a relationship expected to rest on trust, intimacy and protection, and the perpetrator is not a stranger but the woman's spouse, with whom she may share a home, finances and children. She cannot easily distance herself: he may still live in the house, take part in family life, provide for the family and be the father of her children. The harm therefore interacts with safety, identity, economic dependence, motherhood and social expectation, and it can continue after the abuse ends, as the bedroom, his voice, his presence, household routines or even talk about money become reminders. This study examines nine effects: post-traumatic stress, depression, hopelessness, anxiety, fear of intimacy, shattered self-image, guilt, loss of trust and emotional detachment, and the impact on motherhood and family roles.

I. Post Traumatic Stress Disorder (PTSD). Women subjected to repeated marital rape may develop flashbacks, intrusive memories, nightmares, hypervigilance, panic, avoidance and dissociation. Unlike an event involving a stranger, the trigger may be the spouse himself, the bedroom or daily routines, so avoidance means restricting her own life and symptoms persist. The trauma is also one of betrayal and collapsed trust, which can spread to friendships and future relationships. Survivors may be unsure what consensual sex should feel like, panicking at any advance or dissociating and going through the motions, which reflects freeze and avoidance, not simple lack of desire. The myth that a wife owes sex leads to guilt, shame and self-blame, which deepen depression. Symptoms spill into parenting through numbness, irritability or difficulty bonding, and children who witness or sense the violence may suffer secondary trauma. Because the abuse is repeated within a setting of economic dependence, isolation and threats, many women meet the criteria for complex PTSD, with disturbed identity ("I am nothing"), emotional regulation and trust ("I cannot trust anyone"). Avoidance may extend to police stations, courts and counselling, which institutions can misread as lack of evidence. Unexplained pelvic pain, headaches and stomach disorders may be dismissed, and some women leave work or education and become more dependent.

II. Depression. Chronic marital rape erodes self-worth and agency. Survivors report persistent sadness, loss of interest, fatigue, disturbed sleep, poor concentration, and a sense that "no one will believe me," especially where the law does not recognise the offence. Guilt, shame and self-blame, fed by the belief that a wife owes sex, become core features and reduce willingness to seek help. Intrusive negative thoughts and rumination lead to a belief of being "damaged."

Depression is often comorbid with PTSD, anxiety disorders and substance misuse, which prolongs recovery. Social withdrawal removes informal support, and somatic symptoms may be dismissed as over-reacting. Suicidal thoughts and self-harm are serious risks where depression combines with abuse, stigma and lack of support. Depression can become chronic or recurring, but it is treatable with trauma-informed psychotherapy (such as cognitive-behavioural therapy or EMDR), medication where needed, and supportive social and legal environments.

III. Hopelessness. Hopelessness is a persistent belief that the future will not change, that no help will come and that there is no way out. Repeated overriding of her body and choices destroys a woman's sense of control and produces passive resignation. Because the abuse recurs over months or years, she may lose belief that it will ever stop, and her own family may not help: the response she hears is "*pati hai, thoda toh tumhe hi samajhna padega*" (he is your husband, you will have to adjust). Where the law does not recognise marital rape, survivors feel their suffering is invisible and that the State does not care. Economic dependence, fear of losing children or being cut off from family, loss of faith in love and emotional deadness reinforce the belief that no safe future exists outside the marriage. Hopelessness is a key risk factor for suicidality, and meeting disbelief or hostility from police, courts, doctors or the community deepens it.

IV. Anxiety. Repeated, intimate abuse produces a chronic state of fear and tension. Survivors become hypervigilant to their husband's mood, tone and movements, which leads to exhaustion and irritability. Panic-like symptoms such as a racing heart, breathlessness, dizziness, trembling, nausea and sweating can be set off by the bedroom, his touch or arguments, and may be misdiagnosed as medical problems. Sex becomes a source of terror, causing sexual anxiety and a fear that spreads to future partners. Sleep problems, social anxiety and catastrophic thoughts ("he will hurt me again") feed isolation and helplessness. Anxiety may generalise into fear of men, crowds or being alone, often occurs alongside PTSD, depression and substance misuse, and without trauma-informed therapy, safe living conditions and legal and social support it can last for years.

V. Fear of Intimacy. Because the perpetrator is the person who should provide safety and affection, survivors may develop a lasting fear of emotional closeness, physical contact and sexual relations. They may avoid hugs, hand-holding or sitting close, sleep in another room or wear layers to avoid skin contact. Sex becomes associated with pain, coercion and humiliation, a partner's touch can feel threatening, and many survivors dissociate, feeling as if they are watching themselves from outside. Mistrust extends to all intimate partners, because intimacy

requires giving some control to another person. Emotional guardedness makes it hard to share feelings or ask for help, and small cues can trigger panic. The fear can outlast the marriage, leaving loneliness and a belief that love is no longer possible.

VI. Shattered Self-Image. Marital rape can erode a woman's sense of who she is beyond the abuse. She may drop former goals and see herself only as a victim, with automatic thoughts such as "I am worthless" or "I am broken." She may hide her pain, appearing "normal" while feeling shattered. She may think she is a "bad mother" or unworthy of kindness, push people away, or stay in an abusive relationship believing she deserves nothing better. Confidence and decision-making decline, which reinforces powerlessness, and some women resist therapy because they feel "too broken" to be helped.

VII. Guilt. Many survivors believe they are responsible: that they "provoked" their husband, "did not resist enough" or "should have known better." They may feel guilty about the effect on their children, about wanting help, reporting or leaving, and about emotional numbness, which they treat as personal failure and not as a trauma response. Some feel guilt over involuntary physical responses, misreading them as proof that they wanted it. Guilt is a chronic background state that can last for years. It makes survivors feel unworthy of help or love, and leads some to resist therapy as a deserved punishment, so it needs to be addressed in trauma-informed care.

VIII. Loss of Trust and Emotional Detachment Due to Marital Rape. The first loss of trust is in the husband, and it extends to money, decisions and shared life. When survivors seek help and meet disbelief or blame from family, police, courts or doctors, their mistrust widens to people and institutions generally and to all intimate relationships, which can make new relationships nearly impossible. As protection, many disconnect from their emotions and become numb, unable to feel joy, sadness, anger or love. They may be physically present but emotionally absent, which can strain relationships with children and leave them lonely even in company. Many lose faith in love itself and doubt that therapy will work. Without trauma-informed therapy, safe relationships and supportive systems, the detachment can last for decades.

IX. Impact on Motherhood and Family Roles. Because the abuse happens at home and the abuser is also a parent, the harm spreads to the whole family. Emotional numbness can make it hard to bond with children, who may feel confused, insecure or blame themselves. Some mothers become over-protective, particularly of sons, monitoring and restricting them. Irritability and emotional volatility can frighten children and disrupt the stability they need, and intense guilt about being a "bad mother" or about children witnessing violence can worsen

depression and make it harder to take steps towards healing or leaving.

Overall Psychological and Psychiatric Impact. These effects are not nine separate problems but interconnected ones. PTSD produces avoidance, avoidance leads to isolation, isolation deepens depression, depression produces hopelessness, and hopelessness reinforces dependence on the abusive spouse, which makes escape harder. What is distinctive is that the source of the trauma stays in daily life: the home becomes a place of fear, the bedroom a trigger, touch threatening, marriage associated with coercion and love with danger. This is why survivors cannot be expected to behave as outsiders think normal. Silence, delayed reporting, avoiding police and courts, emotional detachment or difficulty describing what happened can themselves reflect trauma, and do not show that the experience was insignificant. Survivors therefore need more than legal recognition: trauma-informed psychological care, psychiatric help where clinically needed, medical support, safe housing, legal assistance, financial support, and relationships in which trust can be rebuilt. Recovery is not just the absence of further violence. It means rebuilding identity, dignity, autonomy, safety, trust and hope. A meaningful legal response must therefore be matched by a psychological and psychiatric one, moving beyond punishing an act to helping survivors rebuild their lives.

DATA RELATED TO MARITAL RAPE

Marital rape is not criminalised in India, so official crime statistics do not track it as a separate offence. Large-scale health surveys and academic studies nevertheless give some picture. The National Family Health Survey found that between 2019 and 2021, 32% of married women experienced physical, sexual or emotional violence by their current husbands, and that 82% of married women aged 18–49 who had experienced sexual violence named their current husband as the perpetrator.¹ The same survey indicates that 9.9 out of 10 cases of sexual assault go unreported in India.

METHODOLOGY OF THE RESEARCH

1. Overview of the Research Design. The study adopts a mixed-methods design, combining qualitative and quantitative approaches to explore public perceptions of marital rape across age groups and marital status (older, younger and unmarried women and men); views on criminalising marital rape in India; the psychological impact on victims and on the person

¹Oxford Human Rights Hub, <https://ohrh.law.ox.ac.uk/the-decriminalisation-of-marital-rape-how-india-continues-to-refuse-justice-to-its-married-women/>

committing the act; the criminological and jurisprudential dimensions, including the perpetrator's mindset and the legal principles needed for a law; and a comparative analysis of countries where it is criminalised.

1.1 The Research Is Multi-Source, Drawing on: primary data, namely surveys and interviews with different groups of women and men and direct conversations with victims of marital rape; and secondary data, namely psychological literature, consultations with psychologists and psychiatrists, criminology, jurisprudential analysis and comparative legal research. This allows the study to capture statistical trends and personal experience while also addressing the perpetrator's behaviour and the legal theory needed to criminalise marital rape in India.

2. Participants and Sampling. Participants were women (older, 40+; younger, 18–39; unmarried, 18–45, including students), men (older, 40+; younger, 18–39; unmarried, 18–40, including students), victims of marital rape who shared their experiences, and experts, namely psychologists and psychiatrists consulted on the mental-health effects on victims and perpetrators.

Sampling Approach. The study uses non-probability sampling: convenience sampling for surveys of accessible groups of women and men, and purposive sampling for victims and for psychologists and psychiatrists, who are directly relevant to the objectives. Sample size for each group was set by feasibility and depth of information, aiming at a representative range of opinions and not statistical generalisation.

3. Data Collection Methods. 3.1 Surveys with Women and Men. Structured questionnaires combined closed-ended questions for quantitative analysis with open-ended questions for personal views. They were completed independently, in person or online where possible, with clarification from the researcher. They asked whether respondents see marital rape as a serious issue, how they understand consent in marriage, what they think of criminalisation, and how aware they are of existing and comparative laws, and they recorded age, gender and marital status.

3.2 Direct Conversations with Victims of Marital Rape. Semi-structured, in-depth interviews were held in a private, safe setting with an interview guide of open questions, to gather first-hand accounts of the nature and frequency of the abuse, its emotional and psychological impact, barriers to seeking help or justice, and views on criminalisation. Informed consent was obtained, no names or identifying information were recorded, a trauma-sensitive approach avoided re-traumatising questions and let participants pause or stop at any time, and information on support services was provided where needed. These accounts give a depth that surveys alone cannot capture.

3.3 Psychological Literature Review. A systematic review of books, peer-reviewed articles and reports of reputable mental-health organisations covered sexual and intimate-partner violence, trauma and PTSD, depression, anxiety and other conditions, and the psychological impact of marital rape. It looked at effects on victims (the nine effects discussed above) and on perpetrators (underlying psychological factors, attitudes to power, control and consent, and possible mental-health issues).

3.4 Consultations with Psychologists and Psychiatrists. Structured and semi-structured consultations were held with clinical and counselling psychologists and with psychiatrists on the effects on victims and perpetrators, common symptoms and long-term consequences, therapeutic approaches for survivors, and psychological factors behind perpetrators' behaviour. They gave clinical validation to the findings from the literature and added professional depth.

3.5 Jurisprudential Study to Constitute Law on Marital Rape. This analysed the legal and philosophical principles needed for such a law: the foundations of criminalisation, the theory behind removing the marital exemption, principles of justice, constitutional values, and the role of international human rights law and comparative jurisprudence. It reviewed legal theory, philosophy of law and human rights literature, analysed Indian constitutional provisions and case law on women's rights, bodily autonomy and sexual violence, and examined how other countries justify criminalisation.

3.6 Comparative Legal Research. This examined how other countries criminalise marital rape: their legal frameworks, definitions of consent, punishment ranges and safeguards against misuse, and how they handle retaliatory accusations, proof of consent in domestic settings and consensual role-play. It drew on statutes, codes and case law, international reports and academic articles, legal databases and government websites, and compared them with Indian law to formulate a model for India.

4. Data Analysis. 4.1 Quantitative Analysis (Survey Data). Survey data were analysed with descriptive statistics: frequencies and percentages for categorical variables, and means and standard deviations for rating scales. Cross-tabulations by age group, gender and marital status were used to identify patterns and differences in perceptions of marital rape and attitudes towards criminalisation.

4.2 Qualitative Analysis (Interviews, Victim Narratives, Expert Consultations). Victim interviews, open-ended survey responses and expert consultations were analysed thematically. Recurring themes were identified and grouped into categories, and key findings were illustrated with anonymised excerpts where appropriate. This captures the criminological and jurisprudential angles of marital rape and how it can be criminalised.

CONCLUSION

Marital rape is a grave violation of bodily autonomy, dignity and equality. When the law refuses to treat it as rape, married women are left without an adequate remedy against a serious violation of their physical and personal autonomy. As the law stands in 2026, Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 keeps a husband's non-consensual intercourse with his adult wife outside the offence of rape, and at the time of this research the constitutional validity of the exception is under challenge before the Supreme Court of India.

This research has shown that the harm the exception overlooks is real, serious and can last for years. Survivors may experience PTSD, depression, hopelessness, anxiety, fear of intimacy, a shattered sense of self, guilt, loss of trust and emotional detachment, all made deeper because the violation is committed by someone expected to be a trusted partner and a source of safety at home.

The study has not disregarded the opposing concerns. Misuse through retaliatory or false allegations after disputes, separation or divorce cannot simply be dismissed, and proving or disproving consent in private is genuinely hard, especially where the parties have shared consensual activity before. These are, however, questions of drafting, evidence and procedure, which comparative experience shows can be managed with legal safeguards. They are not sufficient reason to deny protection to women who suffer genuine sexual violence in marriage. The way forward proposed here is a balanced one: (i) remove the marital exception, so that marital rape is an offence against the person irrespective of marital status; (ii) define consent in statute as free, voluntary, specific, informed, ongoing and capable of withdrawal, stating that marriage is not blanket consent; (iii) provide proportionate punishment, with spousal rape an aggravating circumstance; (iv) add procedural and evidentiary safeguards against false or malicious accusations, while recognising consensual role-play where there was prior agreement, a means to stop and no coercion or injury beyond what was agreed, always subject to withdrawal of consent; (v) train police, prosecutors and judges; (vi) give survivors counselling, medical help, legal aid and shelter; and (vii) run public awareness and education to challenge the belief that a wife owes sex to her husband.

Law alone cannot end marital rape. But law matters, because its silence tells a married woman that her consent stops counting once she marries. Criminalising marital rape would affirm that every person keeps dignity, bodily autonomy, equality and personal liberty within marriage, and that consent, not marital status, decides whether intercourse is lawful. A carefully drafted law, with safeguards, sensitised institutions and strong survivor support, can protect married women without exposing husbands to arbitrary prosecution.

SUGGESTIONS AND RECOMMENDATIONS

The question of marital rape cannot be answered either by keeping the marital exception or by criminalising without a procedural framework. Protection from sexual violence in marriage must come with safeguards for fair proceedings and against misuse. Other jurisdictions show that criminalisation can be structured to protect survivors, set appropriate punishment and guard against false allegations. The following suggestions are proposed for a balanced framework in India.

1. Removal of the Marital Exception from the Definition of Rape. Delete the exception in Section 63 of the Bharatiya Nyaya Sanhita, 2023 (formerly Exception 2 to Section 375 of the Indian Penal Code), so that no distinction is made between married and unmarried women. The reform should establish that rape is a crime against the person, that the marital relationship does not decide whether an act was lawful, and that consent is the key.

2. Clear and Comprehensive Statutory Definition of Consent. Define consent as free, voluntary, specific, informed, ongoing and capable of withdrawal. The law should state that past consent is not permanent consent, that coercion, threats, intimidation or fear invalidate consent, that absence of resistance is not consent, and that marriage is never blanket consent.

3. Recognition of Consent as Ongoing and Withdrawable. Consent to one act or occasion does not extend to another, and withdrawal must be respected. The law should prevent the argument that “she consented before, therefore she must have consented now.”

4. Recognition and Protection of Consensual Sexual Activity and Role Play Sexual Activities. Genuinely consensual role-play or rough activity should not be treated as rape merely because it looks violent out of context. Relevant circumstances include prior agreement, a safe word or other means to stop, and the absence of coercion or physical injury beyond what was agreed, and consent remains capable of withdrawal.

5. Clear and Proportionate Punishment. A differentiated structure is proposed: roughly seven to ten years of imprisonment for ordinary cases and ten to twenty years for aggravated cases, with substantial fines, and with spousal or partner rape treated as an aggravating circumstance, as in France. Aggravating factors could include repeated violence, serious injury, use of weapons, severe psychological harm and exceptional brutality. Marital rape is not a minor domestic disagreement.

6. Procedural and Evidentiary Safeguards. Because accusations may follow disputes over money, separation or divorce, allegations should be evaluated on evidence beyond mere allegation, especially where they rest on alleged patterns of past behaviour. The burden of proof should remain consistent with criminal law, and marital status should neither create a

presumption of guilt nor reduce the seriousness of the offence.

7. Protection Against False or Malicious Accusations. Deliberately false or malicious accusations, for example in property, custody or divorce disputes, should carry consequences under criminal and family law. The law must distinguish deliberate fabrication from a genuine complaint that cannot ultimately be proved to the criminal standard, which should not be treated as false.

8. Judicial and Police Sensitisation. Specialised training should be developed for police, prosecutors, forensic personnel and others who meet survivors. Judges should be trained in consent and sexual autonomy, and police should understand that “it is a family matter” is not an answer. Prosecutors need guidelines so that cases are not dismissed as domestic issues and evidence is properly evaluated.

9. Robust Support Mechanism for Survivors. Survivors need counselling for trauma, depression, anxiety and loss of self-worth, medical care including forensic examination, legal aid, shelter and safe accommodation, and protection from continuing abuse, with particular attention to economically dependent women.

10. Public Awareness and Social Reform. Campaigns should state that marriage is not blanket consent, that consent is ongoing and can be withdrawn, that previous consent is not present consent, and that sexual violence within marriage is serious. Schools should teach consent and gender equality, and media campaigns should challenge the view of marital rape as a family matter.

11. Balancing Survivor Protection with Protection Against Misuse. A balanced law protects the survivor’s bodily autonomy and the accused’s right to fair process; the two aims are compatible. Recognising marital rape as a crime does not mean every allegation ends in conviction. The answer is careful drafting, which keeps the debate from becoming a choice between complete immunity for husbands and a system without safeguards.

12. A Balanced Legal Model for India. The model begins with removing the marital exception from Section 63 of the Bharatiya Nyaya Sanhita, 2023, defines consent clearly, states that marriage is not blanket consent, invalidates apparent consent obtained by coercion, threats, intimidation or fear, and distinguishes consensual activity from sexual violence. It sets proportionate punishment, gives safeguards to both parties, and strengthens police and judicial training and survivor support. Deliberate fabrication should have consequences, but a complaint is not false merely because it cannot be proved beyond the criminal standard.

13. Final Recommendation. India should criminalise marital rape through a carefully drafted, balanced and rights-conscious framework: one that protects bodily autonomy without arbitrary

prosecution, recognises consent without ignoring the complexity of intimate relationships, punishes proportionately, protects survivors without removing the accused's right to a fair trial, and addresses false allegations without denying genuine survivors justice. Police, prosecutors, judges and medical professionals should be trained, and survivors given counselling, medical care, legal aid and safe accommodation. Legal reform must also be matched by social change, since law alone cannot remove the belief that a wife owes sex to her husband. The principle is simple: marriage creates a relationship but not permanent consent, and a married woman remains an individual with bodily autonomy, dignity and equality, while the criminal process stays fair and evidence-based. The way forward is neither continued immunity nor an unregulated criminal process, but careful legislation, clear consent standards, proportionate punishment, safeguards, sensitised institutions, survivor support and social awareness, so that the legality of sexual intercourse is decided by consent and not by marital status.

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