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THE UNSPOKEN CRIME: MARITAL RAPE AND INDIA'S LEGAL SYSTEM

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ABSTRACT

This paper analyses the legal, social, and judicial dimensions of marital rape in India from 2019 to 2024. It focuses on major cases, legislative developments, and public discourse. Marital rape remains a contentious issue in India, where it is not entirely criminalized under the current legal framework except in special circumstances. Examining the judgment of the Supreme Court and legal challenges under the surfacing trends of societal perception towards marital rape, this piece provides a synopsis of how the Indian state responded to this offense for five years. This paper analyses case laws, public debates, and comparisons with international practices. It also highlights the need for legislative reform, evaluates the obstacles in its implementation, and underscores the importance of protecting women's autonomy and dignity within marriage.

INTRODUCTION

Marital rape is non-consensual sexual intercourse by a spouse, an issue that has long been controversial in India's legal and social spheres. India, unlike most other countries where marital rape is a crime, has exempted it under Section 375 of the Indian Penal Code (IPC), except where the wife is under 18 years of age or is living separately under a judicial order. This legal immunity reflects deep-rooted patriarchal beliefs that view marriage as granting unconditional sexual rights over a spouse.

Debates over marital rape in India have picked up great momentum between 2019 and 2024, mainly due to judicial activism, public protests, and growing awareness of women's rights. Important cases, such as *X v. State of Jharkhand* (2020), and petitions challenging the constitutional validity of the exemption for marital rape have fuelled this growing debate. What can happen here is that public opinion becomes polarized, as progressive voices would support criminalization of marital rape and conservative factions would not want state intervention in marriage matters at all. An example can be cited in the case of *Independent Thought v. Union of India* (2017), where the Supreme Court enhanced the age of consent in cases of marriage but did

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not finally decide the issue of marital rape. Legal contestation at this level does not help ease the deep divisions in society or law.

HYPOTHESIS

Although there's increasing societal awareness and judicial scrutiny, the Indian legal framework fails to criminalize marital rape perpetuates a systemic violation of women's rights. This reflect is deep-seated cultural norms and political resistance. **Bharatiya Nyaya Sanhita (BNS) 2023** and prior **Indian Penal Code (IPC)** provide legal immunity, and these provisions highlight a disconnect between evolving societal norms and legislative inaction. These necessitate urgent reforms to align with constitutional and international human rights standards.

OBJECTIVES

- To analyse the evolution of marital rape laws in India from 2019 to 2024, with a specific focus on legislative, judicial, and societal responses.
- To compare India's approach to marital rape with international practices, highlighting gaps and areas for reform.
- To evaluate challenges, including societal resistance, cultural norms, and political hesitations, in criminalizing marital rape.

1. LEGAL FRAMEWORK AND CONTEXT (2019-2024)

1.1 The Indian Penal Code and Marital Rape Exception

1.1.1 Section 375 of the Indian Penal Code (IPC) and Marital Rape: Pre-BNS 2023

Before the **Bharatiya Nyaya Sanhita (BNS) 2023**, **Section 375 of the Indian Penal Code (IPC)** defined the crime of rape in India. The section outlined the conditions under which sexual intercourse or sexual acts could be considered rape, but it also included **an exception for marital rape**, meaning that sexual intercourse between a husband and wife would not be classified as rape, regardless of the wife's consent, as long as she was above 15 years of age.

This exception to the definition of rape for marital relationships had its roots in **the old IPC**. It rooted in the patriarchal norms of that time and effectively shielded husbands from criminal liability for non-consensual sex within marriage. The provision assumed that marriage implied consent to sex, essentially reducing the wife's autonomy and disregarding the idea of sexual consent within the marital relationship.

1.1.2 THE 2017 SUPREME COURT RULING: INDEPENDENT THOUGHT V. UNION OF INDIA ¹

A significant debate over marital rape occurred in 2017 when the Supreme Court of India ruled in the case of *Independent Thought v. Union of India*. The petition challenged the marital rape exemption for minor wives (i.e., those under the age of 18). It argued that the exception violated constitutional principles of equality and dignity.

Thereafter, the court ruled sexual intercourse with a wife below the age of 18 as rape, thus extending protection to minor wives. This focused on importance of sexual autonomy and consent. Therefore, it criminalized sexual intercourse between a husband and a wife below 18 years of age, aligning India's law with child protection statutes like the Protection of Children from Sexual Offences (POCSO) Act.

However, the ruling did not address the broader issue of marital rape involving adult women. The **exception for adult wives** (i.e., women over the age of 18) **remained intact**. This meant that it won't be considered rape in case the wife is above 18 years of age, despite any lack of consent. This left the legal framework with a gap and didn't provide equal protection for adult women within marriage.

1.2 CONTINUED LEGAL AND SOCIAL CHALLENGES

Although the *Independent Thought v. Union of India* case was an important step toward protecting minors from marital rape, the larger issue of recognizing marital rape as a crime was not addressed. The exception for adult women meant that marital rape was still not criminalized and sexual autonomy within marriage was not fully recognized. This was, of course, in stark contrast to international norms that call for the decriminalization of non-consensual sex in all relationships, including marriages, under the United Nations' Declaration on the Elimination of Violence against Women and other human rights.

This provoked further legal petitions especially from women's rights groups who demanded a more comprehensive legal reform to criminalize marital rape for all women, regardless of age. Other conservative voices argued that marital rape being criminalised would undermine the sanctity of marriage and personal choice of the family, reflecting cultural norms that are embedded and strongly believed that marriage by default means consent.

1.2.1 THE PATH TO REFORM: BNS 2023

Bharatiya Nyaya Sanhita (BNS) 2023 has been a step forward, as it changed the age limit from 15 to 18 in the marital rape exemption, thus synchronizing the legal structure with the majority age of the citizen and child protection laws. The exemption for marital rape of adult women had not been removed and non-consensual sex within marriage is still unpunished for women over 18.

1.3 JUDICIAL DEVELOPMENTS AND CASE LAWS

Split Verdict (2022): In 2022, the Delhi High Court delivered a split verdict on petitions challenging the marital rape exception in India. This means the judges are not decided on their ruling, resulting in totally contrasting opinions on whether the exemption in the law should be abolished. One of the judges supported criminalising marital rape, arguing that such a violation violates women's rights, and bodily autonomy. The other judge did not agree that the law should prevent personal matters involving marriage. Because of this disagreement, the legal status of marital rape remained unclear and unresolved. The decision highlighted the judicial divergence or difference of opinion on this sensitive issue. This left the law unchanged, leading to people's disappointment.

Supreme Court Petitions (2023): In 2023, there were several petitions challenging the constitutional validity of the marital rape exception in Section 375 of the Indian Penal Code (IPC) on the grounds that it infringes upon the fundamental rights of women and causes them to suffer a blow to their dignity and equality. The matter was escalated to the Supreme Court. It was urged to amend the law so that all non-consensual sexual acts within marriage would amount to rape without any consideration for the wife's age.

The Supreme Court started entertaining these petitions, but till 2024, there was no conclusive judgment. The court didn't make a law, and continued to delay in delivering a judgment. This kept the law for marital rape in India uncertain. Thus, there is ongoing discussion and debate both in the legal and public domains. Many of the advocates continue to clamour for an immediate legal reform, which criminalizes marital rape.

2. SOCIETAL AND POLITICAL CHALLENGES

2.1 SOCIETAL NORMS AND CULTURAL BELIEFS

In many parts of India, views regarding marriage, mostly traditional in nature, will form the ideas and thoughts surrounding sexual relationships within marriage. For example, a common belief, especially deeply entrenched in Indian psyche, is irrevocable consent in marriage: once married, a woman must be open to sexual intercourse at any moment and at her partner's will. This belief ignores the basic principle of consent, which says that every person has the right to say no to any sexual activity, even within marriage.

This view of the marriage as the contract containing unrestricted sexual rights in marriage poses as a serious stumbling block towards obtaining autonomy in sexual matters among many women. Cases of marital rapes and other various forms of sexual violence committed within marriages create numerous situations of forced cohabitation for most females. A considerable number of

ladies find themselves incapacitated or muted from opening up on matters by the different sociological expectations around sexuality.

2.2 STIGMA AND UNDERREPORTING

The stigma associated with marital rape has become a serious barrier to seeking assistance. In most homes, sexual violence cases have been considered domestic issues that need to be hidden from the rest of the family members. This traditional belief forces women into keeping quiet under such circumstances and tolerating their mates' ill behavior. Even if a woman does speak up about marital rape, she may be turned against by her family and the community. They are likely to brand her as a troublemaker or even accuse her of disgracing her marriage. The threat of social ostracism therefore deters a lot of women from fighting for justice.

2.3 NATIONAL FAMILY HEALTH SURVEY (NFHS-5)

The National Family Health Survey (NFHS-5) has revealed the disturbing scale of domestic violence in India. It was found that nearly one-third of women in India have faced either physical or sexual violence at some point in their lives. Though the overall rates of domestic violence have improved a little and have decreased from 31.2% to 29.3%, the numbers are still frighteningly high.

Even more alarming, world health organizations report that globally, almost a third (27%) of women aged 15-49 years who have been in union report that they have experienced any of the different types of physical and/or sexual violence by their intimate partner. And although physical violence is widely acknowledged, sexual violence within marriage is less recognized. According to the NFHS-5, 6.6% SC women and 4.6% General women reported experiencing sexual violence from their husbands during their lifetime. This statistic highlights a major gap in awareness and legal protection, as marital rape continues to be excluded from criminal laws.

These figures speak of the very deep roots the problem of marital violence has taken in India and show the necessity for legal reforms, acknowledging the rights of women to say no within the bond of marriage. They further highlight how it becomes really hard for women to get out of those cycles of abuse or speak freely about what happened due to social norms, stigma, and fear of reaction.

2.4 POLITICAL AND LEGISLATIVE RESISTANCE

In 2024, the Indian government's position on criminalizing marital rape was at the center of national debate. The government formally opposed the move, stating that labeling marital rape as a criminal offense would be "excessively harsh" and could destabilize the institution of marriage.

2.5 POLITICAL PARTIES' VIEWS

On the whole, Indian politics are divided into reformists who emphasize that it is their right and are to be safeguarded from rape by the husband through marital violence and traditionalists cautioning that its misuse can come up, even if it was not used previously as well, for instance, can create an interruption in a personal relationship.

2.6 PUBLIC DISCOURSE AND LEGAL CASES

The debate has just intensified as India's Supreme Court started hearing numerous petitions challenging its constitutionality as an exception, and the judgments are awaited-they will influence the future of women's rights and the structure of marriage and law in general.

3. COMPARE INTERNATIONAL ANALYSIS

3.1 GLOBAL PRACTICES

Criminalizing marital rape is an essential human rights matter, and almost every country in the world has made significant progress in recognizing marital rape as an infringement of fundamental human rights. Still, India has not fully criminalized marital rape, although many countries have passed laws protecting women from such abuse.

3.2 CRIMINALIZATION OF MARITAL RAPE AROUND THE GLOBE

Marital rape has been criminalized in more than 150 countries across the globe, including the United Kingdom, United States, Canada, Australia, and several European nations, with the understanding that it is a form of violence and a violation of women's bodily autonomy and human rights. In these countries, marital rape is treated on par with non-marital rape, meaning both parties must give consent, and any non-consensual sexual act within marriage is punishable by law.

For example:

- In the United Kingdom, marital rape became a criminal offense since 1991 after the Court of Appeal had made a landmark ruling.
- In the United States, marital rape laws differ from one state to another, but in 1993, all the 50 states had criminalized marital rape; marriage does not mean a lifetime of consent.

- In Canada, marital rape became a criminal offense in 1983, in harmony with its dedication to women's rights and gender equality.
- Similarly, in Australia, marital rape has been recognized as a crime since the 1980s, thus upholding the stance of the country in protecting women's autonomy.

3.3 GLOBAL COMPARISONS

- United Arab Emirates (UAE): Not like Western states, the criminalization of marital rape is not done explicitly in UAE. In a country where the sexual act within marriage still differs because their legal system always assumes that a husband has a right to sexual access, it's really challenging to many women regarding their rights as a married individual. International pressure and discussions surrounding gender equality might change the way the UAE handles such issues in the future.
- China: In China, marital rape is criminalized, but like in most other countries, it is difficult for women to report such offenses because of the societal taboo that surrounds sexual violence and marriage. Although legal provisions are in place, cultural reluctance to recognize marital rape as a crime leads to underreporting. However, China has slowly made progress over the last decade regarding women's empowerment and legal protection for victims of domestic violence, including marital rape.

3.4 WOMEN EMPOWERMENT AND INTERNATIONAL COMMITMENTS

International human rights, for example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), enumerate how legal reforms must be made to shield women from violence in marriage and marital rape. The CEDAW Committee has reiterated its demand multiple times to criminalize marital rape and make proper legal provisions that would guarantee that women's bodily autonomy and right to be safe from any sort of violence shall be maintained at all costs. India, therefore, being a party to CEDAW, experiences increased pressure as it tries to align the national laws in light of international rules set forth by the United Nations.

The United Nations has also brought attention to gender equality and women's empowerment, realizing that legal protections are critical to the achievement of these goals. UN Women, the global agency dedicated to gender equality, reports that one in three women worldwide has experienced physical or sexual violence in their lifetime. There's a significant gap in legal protections, with many countries failing to criminalize marital rape or provide adequate support systems for survivors.

This, at least in recent years, seems to have really taken a thrust in India itself: the country with national campaigns asking for women's rights, for consensual relations only, and finally, an end to gender-based violence. Even so, this has yet to happen; indeed, there's much more public resistance as well as political debate towards criminalizing marital rape.

While there is a clear worldwide trend in the direction of respecting marital rape as a serious offense, India stands apart from the world, with the legal system still protecting marital rapists by invoking marital rights. The international community, including the United Nations and women's rights organizations, has urged that marital rape should be fully criminalized as part of a more significant commitment to gender equality and the elimination of violence against women. To achieve this, India must reconcile its legal practices with its international obligations by ensuring that the autonomy of women, whether within or outside of marriage, is adequately protected by law. The voices of advocates, activists, and survivors will be critical in pushing forward legal reforms that reflect the evolving global consensus on women's rights and bodily autonomy as the fight for gender equality continues.

4. THE WAY FORWARD: RECOMMENDATIONS

4.1 LEGAL REFORMS

- Remove the exemption on marital rape provided in Clause 63 of BNS 2023 for married women who, regardless of their age, be made liable before the court under criminal procedure codes.
- Codifying consent in marriage by laying down clear standards, legally recognized, of what constitutes consent to be an express requirement of all sexual acts within marriage.
- Strengthen the implementation of reforms by introducing specialized training programs for law enforcement to ensure that cases of marital rape are handled sensitively, efficiently, and with full adherence to the law.

4.2 AWARENESS AND EDUCATION

- Public Awareness Campaigns: Educate the public about the importance of consent and the criminal nature of marital rape through media campaigns and grassroots initiatives.
- Judicial and Police Training: Sensitize law enforcement and judiciary to handle marital rape cases with empathy and efficiency.

4.3 OVERCOMING SOCIETAL RESISTANCE

- Involving Religious and Community Leaders: Work with key leaders to discuss cultural concerns and reform within the communities themselves.

- Support Mechanisms for Victims: Design strong support mechanisms such as counselling, legal aid, and shelters to help victims of marital rape.

5. CONCLUSION

Though there are minor amendments in the rules and laws related to marital rape in India and various reforms have been implemented since 2019 to 2024, such as adjusting the age threshold under the BNS 2023, the legal framework remains inadequate in dealing with non-consensual sexual violence within marriage. However, societal norms, political resistance, and lack of comprehensive data continue to impede progress.

Its time to implement reforms that ensure that India approaches marital rape-a change recognizing consent as central to marital relations and aligning domestic laws with constitutional rights and international human rights standards. By seeking cultural sensitivities and ensuring robust implementation mechanisms, India can go a long way toward gender equality and justice for married women.

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