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WOMENS RIGHTS IN INDIA: MARITAL RAPE AND OTHER SEXUAL OFFENCES UNDER THE BHARATIYA NYAYA SANHITA – A CRITICAL REVIEW

-Adv. Druva PC¹

“Human rights are women’s rights, and women’s rights are human rights.”

Hillary Rodham Clinton

ABSTRACT

The Indian legal framework for protecting women, historically rooted in the colonial-era Indian Penal Code, has undergone a profound transformation through constitutional interpretation and judicial activism. However, the recent shift to the Bharatiya Nyaya Sanhita (BNS), 2023, presents a complex landscape of continuity and change. This paper conducts a critical review of the BNS, specifically examining its efficacy in addressing sexual violence, domestic cruelty, and the persistent legal immunity surrounding marital rape. Drawing upon landmark judicial precedents—from the Vishaka Guidelines to the progressive expansion of bodily autonomy in *X v. Principal Secretary*—this study evaluates whether the BNS achieves the constitutional mandates of Articles 14, 15, and 21. By analyzing the sentencing disparities in gang rape and trafficking provisions, this research identifies a concerning “hierarchy of victims” that prioritizes the age of the survivor over the gravity of the violation. Furthermore, the paper highlights the friction between the judiciary’s evolution toward individualistic rights and the legislative retention of archaic marital rape exemptions. The findings suggest that despite legislative efforts to modernize criminal law, systemic patriarchal underpinnings continue to obstruct the practical enforcement of gender justice. The paper concludes by advocating for a victim-centric, intersectional approach to criminal law that reconciles statutory provisions with the progressive ethos

¹ Legal practitioner, Thiruvananthapuram, Kerala, India

of the Indian Constitution, ensuring that gender equality remains an enforceable reality rather than a theoretical aspiration.

Keywords: Bharatiya Nyaya Sanhita, Marital Rape, Gender Justice, Constitutional Law, Bodily Autonomy, Sexual Violence, Indian Judiciary.

INTRODUCTION

The Constitution of India, enacted in 1950, serves as the bedrock for gender justice, embedding the principles of equality, dignity, and justice into the nation's governance. By establishing a framework through Fundamental Rights, Directive Principles of State Policy (DPSP), and Fundamental Duties, the Constitution actively works to dismantle discrimination and foster an environment where women can flourish in every aspect of life.

THE FOUNDATION OF EQUALITY: FUNDAMENTAL RIGHTS

Article 14 (Equality Before Law): This article guarantees that every individual, regardless of gender, receives equal protection and treatment under the law. It acts as a legal shield against arbitrary state actions and has been a primary tool for the judiciary to invalidate discriminatory practices.

Article 15 (Prohibition of Discrimination): While Article 15(1) forbids the State from discriminating based on sex, Article 15(3) acts as a vital mechanism for substantive equality. It empowers the government to enact affirmative action and special provisions—such as maternity benefits and reservations in local

Governance—to address historical and social disadvantages.

Article 16 (Equal Opportunity in Employment): This ensures that gender is not a barrier to accessing public employment, promoting economic independence and representation for women in government roles.

Guiding Principles for Social and Economic Justice

Although not legally binding in courts, the Directive Principles of State Policy provide a moral and policy-making compass for the government:

Article 39: This article mandates that the State work toward equal means of livelihood (39a), equal pay for equal work (39d), and the protection of the health and strength of female workers (39e).

Article 42: This provision directs the State to ensure humane working conditions and provide maternity relief, which has paved the way for essential labor legislation.

Article 44 (Uniform Civil Code): Often discussed in debates on gender justice, this article envisions a unified legal framework to replace discriminatory personal laws, thereby fostering national uniformity and equality.

SOCIETAL RESPONSIBILITY: FUNDAMENTAL DUTIES

The Constitution also calls upon citizens to participate in upholding women's rights. Under Article 51A(e), every citizen has a fundamental duty to reject any practices that demean the dignity of women. This serves as a constitutional mandate to combat societal ills such as domestic violence and the dowry system.

JUDICIAL PROGRESS AND LEGISLATIVE IMPLEMENTATION

The judiciary has significantly broadened the scope of these rights by interpreting Article 21 (Right to Life and Personal Liberty) to encompass reproductive rights, personal privacy, and protection from sexual harassment. Furthermore, these constitutional mandates have necessitated legislative action, leading to statutes addressing workplace harassment, domestic violence, and dowry. While reforms such as the Bharatiya Nyaya Sanhita continue to evolve the legal landscape, challenges such as the legal status of marital rape highlight the ongoing need for progress. Despite this robust legal architecture, the practical enjoyment of these rights is often obstructed by deeply ingrained patriarchal norms and a lack of societal awareness. Achieving the constitutional vision of true gender parity requires more than just legislation; it demands, Progressive and empathetic judicial interpretation, and a fundamental transformation in societal attitudes toward women.

Ultimately, the Indian Constitution offers a powerful, living framework designed to ensure that equality for women is not merely a theoretical concept but a reality. The path toward complete gender justice remains a shared responsibility of the State and its citizens, as the empowerment of women is fundamental to the nation's overall progress.

The progression of women's rights in India has been deeply influenced by the judiciary's proactive interpretation of the Constitution. By converting broad constitutional assurances of equality into practical and enforceable rights, the Supreme Court has played a vital role in breaking down

entrenched barriers in professional, domestic, and religious spheres. The following discussion highlights these landmark developments.

1. WORKPLACE DIGNITY: VISHAKA V. STATE OF RAJASTHAN (1997)²

Before 1997, India lacked a dedicated legal framework to address sexual harassment at the workplace, leaving women exposed with minimal legal remedies. The turning point arose from the brutal gang rape of Bhanwari Devi, a social worker in Rajasthan.

Recognizing sexual harassment as a grave violation of fundamental rights—specifically equality (Article 14), freedom of profession (Article 19), and the right to life and dignity (Article 21)—the Supreme Court intervened to address the legislative vacuum. It laid down the “Vishaka Guidelines,” directing all employers, both in the public and private sectors, to ensure a safe working environment. These guidelines introduced:

Internal Complaints Committees to provide accessible grievance redressal systems

Preventive measures to deter harassment

Accountability measures, defining sexual harassment to include unwelcome physical, verbal, and non-verbal conduct

This judgment became a milestone and eventually led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, thereby institutionalizing protections for women in workplaces across the country.

2. ECONOMIC EMPOWERMENT: VINEETA SHARMA V. RAKESH SHARMA (2020)

Under the Mitakshara system of Hindu law, daughters were traditionally denied coparcenary rights, placing them at a disadvantage compared to sons in inheritance matters. Although the Hindu Succession (Amendment) Act, 2005 sought to eliminate this inequality, confusion remained regarding its applicability when the father had passed away before the amendment came into force.

In *Vineeta Sharma v. Rakesh Sharma*,³ the Supreme Court clarified this ambiguity by holding that:

A daughter acquires coparcenary rights by birth, just like a son

These rights are not dependent on whether the father was alive on September 9, 2005

² (1997) 6 SCC 241

³ (2020) 9 SCC 1

By affirming that daughters continue as coparceners throughout their lives, the Court ensured substantive equality in inheritance. This ruling strengthened women's economic independence and curtailed patriarchal practices that previously restricted their rights to ancestral property.

3. RELIGIOUS EQUALITY: SHAYARA BANO V. UNION OF INDIA (2017)⁴

The practice of talaq-e-biddat (instant triple talaq) allowed Muslim men to unilaterally and irrevocably end marriages without due process, leaving women in a vulnerable position.

In this landmark decision, the Supreme Court, by a 3:2 majority, declared the practice unconstitutional.

The Court held that:

Arbitrary practices violate Article 14 and fail the equality test

Constitutional morality must prevail over personal laws that sustain gender injustice

This judgment invalidated a discriminatory custom and reinforced the principle that religious practices cannot override fundamental rights. It also paved the way for subsequent legislation criminalizing the practice, thereby strengthening protections for Muslim women.

LEGISLATIVE PILLAR: PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Alongside judicial interventions, the Protection of Women from Domestic Violence Act (PWDVA), 2005 represents a significant legislative measure. Unlike conventional criminal laws that primarily emphasize punishment, this Act adopts a civil, relief-oriented approach. Its key features include:

A broad definition of domestic violence, covering physical, emotional, verbal, sexual, and economic abuse

Expanded applicability, extending protection to women in various domestic arrangements, including live-in relationships

Provision for immediate relief, such as protection orders, residence rights, and monetary compensation

Collectively, these judicial decisions and legislative measures indicate a progressive movement toward gender equality in India. By aligning social practices with constitutional values, the judiciary has affirmed that women's dignity, financial independence, and safety are fundamental rights rather than

⁴ (2017) 9 SCC 1

privileges. However, the real effectiveness of these developments depends on proper implementation and societal acceptance.

CRIMINAL LAWS AND WOMEN

The development of women's rights jurisprudence in India has been significantly shaped by several landmark criminal law decisions that have strengthened the rights and protections available to women. This section examines a wide range of criminal cases dealing with offences such as sexual violence, physical assault, and other prohibited acts, including adultery, bigamy, and child marriage.

The intersection of criminal law with domestic violence is addressed separately under the section on "Rights within the Family." Similarly, issues concerning the rights of sex workers, which frequently come into conflict with criminal provisions, are discussed under "Equality in the Workplace."

The first category of cases relating to sexual violence and assault highlights recent developments in criminal law that better recognize and protect women's rights. Historically, women who were victims of rape faced severe scrutiny, violations of bodily integrity, and frequent challenges to their credibility, reflecting deep-rooted societal bias and misogyny.

In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991),⁵ the Supreme Court, for the first time, held that a victim's past sexual history is irrelevant to the determination of the case. This marked an important shift toward according full evidentiary value to the testimony of rape survivors, irrespective of their background.

In *Chairman, Railway Board v. Chandrima Das* (2000),⁶ the Supreme Court granted compensation to a Bangladeshi national who was gang-raped by railway employees. This judgment expanded the scope of compensation in cases of sexual violence and underscored the State's obligation to safeguard women from such offences. Other judicial decisions have similarly addressed the Court's approach to gender-based violence, including acid attacks and honour crimes.

The next group of cases relates to criminal laws addressing child marriage, adultery, and bigamy. In *Independent Thought v. Union of India* (2017),⁷ the Supreme Court played a crucial role by declaring Section 376 of the Indian Penal Code—which permitted marital rape of girls between the ages of 15

⁵ (1991) 1 SCC 57

⁶ (2000) 2 SCC 465

⁷ (2017) 10 SCC 465

and 18—unconstitutional. Nevertheless, the broader struggle to criminalize all forms of marital rape continues.

In *Joseph Shine v. Union of India* (2018),⁸ the Supreme Court decriminalized adultery, holding that the provision treated women as subordinate to men within marriage and thereby violated their fundamental rights.

STATE OF MAHARASHTRA V. MADHUKAR NARAYAN MARDIKAR

Issue in Question:

Whether the past sexual history of a rape survivor is relevant to assessing the credibility of her testimony.

Facts:

The respondent, a Police Inspector, committed rape against a woman in her home. Following an inquiry, he was dismissed from service. However, the Trial Court set aside his dismissal, and this decision was upheld by the High Court on the ground that he had not been given a fair opportunity to defend himself and that the evidence was insufficient to establish guilt. The State subsequently appealed to the Supreme Court.

Court's Decision and Reasoning:

The Supreme Court re-examined the evidence and found it sufficient to establish the respondent's guilt. It strongly rejected the reasoning of the Trial Court, which had described the victim as an "unchaste woman" and expressed reluctance to rely on her uncorroborated testimony.

The Court emphasized that every woman, regardless of her past or perceived character, is entitled to privacy and legal protection against violations of her person. It held that even a woman of "easy virtue" possesses the right to bodily integrity, and no individual has the authority to infringe upon it. Consequently, the Court overturned the High Court's decision, which had cast doubt on the victim's credibility based on her character.

Significance:

This judgment paved the way for significant legal reforms, including the removal in 2003 of provisions allowing evidence of a woman's "immoral character," and the 2013 clarification that a victim's prior

⁸ (2019) 3 SCC 39

sexual experience is irrelevant in rape cases. Women's rights movements played a key role in advocating for these reforms.

RUPAN DEOL BAJAJ V. KANWAR PAL SINGH GILL (1995)⁹

Issue in Question:

The protection of a woman's personal dignity in the context of the offence of outraging her modesty.

Facts:

The petitioner, an IAS officer, alleged that the respondent, the Director General of Police in Punjab, behaved in a manner that outraged her modesty at a social event. His conduct included pulling her chair close, standing too near her, and slapping her on the posterior in public. The respondent sought to quash the FIR before the High Court, arguing that the acts were trivial and did not constitute a cognizable offence. The High Court accepted this contention and quashed the FIR.

Court's Decision and Reasoning:

The Supreme Court reversed the High Court's decision, holding that the allegations disclosed offences under Sections 354 and 509 of the IPC. It clarified that such conduct could not be dismissed as trivial under Section 95 IPC, as it violated the dignity of the woman.

The Court laid down that the determining test for outraging modesty is whether the act is capable of shocking the sense of decency of a woman. In this case, the conduct was found to be both an affront to feminine decency and a violation of the petitioner's dignity. The Court also observed that the High Court erred in assessing the credibility of the allegations at the FIR stage, which should ordinarily be determined during trial, and therefore refused to quash the FIR.

Significance:

This case was among the earliest judicial recognitions of sexual harassment, predating both the Vishaka guidelines and subsequent legislative protections.

Guidelines and the POSH Act. However, despite its importance, the reliance on the concept of "modesty" under Sections 354 and 509 of the IPC reflects a patriarchal framing of the offence. This approach contrasts with the modern understanding of sexual harassment as a violation of bodily autonomy, integrity, and agency. Notably, these provisions, rooted in patriarchal notions, have been retained in the Bharatiya Nyaya Sanhita, 2023.

⁹ (1995) 6 SCC 194

MARITAL RAPE IN INDIA

The criminalization of marital rape in India remains a contentious and evolving legal debate. While the nation's courts are increasingly emphasizing individual autonomy, the legal exemption for husbands currently persists in colonial-era statutes.

The Current Legal Standoff

The controversy centers on Exception 2 to Section 375 of the Indian Penal Code, which shields a man from being charged with raping his wife.

The Delhi High Court Split: The issue recently reached a breaking point in the Delhi High Court, resulting in a split verdict. Justice Rajiv Shakdher argued that the exception is unconstitutional and violates Article 14 (Equality), while Justice C. Hari Shankar dissented, maintaining that the law is based on a valid "intelligible differentia."

Supreme Court Intervention: The matter is now before the Supreme Court, which is currently reviewing several petitions challenging the constitutionality of this exception.

X VS. PRINCIPAL SECRETARY: A PROGRESSIVE INTERPRETATION

In a landmark ruling, in *X v. The Principal Secretary, Health and Family Welfare Department*,¹⁰ bench led by Justice D.Y. Chandrachud provided a critical bridge in this debate. While the Court did not explicitly strike down the entire marital rape exception, it held that for the purposes of the Medical Termination of Pregnancy (MTP) Act,¹¹ the definition of "rape" must include "marital rape."

Recognition of Reality: The Court acknowledged that marriage does not negate a woman's bodily autonomy or her right to consent. It dismissed the outdated myth that rape is exclusively committed by strangers, affirming that sexual violence frequently occurs within intimate relationships.

Access to Healthcare: By ruling that women do not need to initiate formal criminal proceedings to prove marital rape for abortion services, the Court prioritized the health and mental well-being of survivors over the stigma surrounding domestic sexual violence.

¹⁰ Govt of NCT Delhi & Anr. (2022) 9 SCC 682

Inclusive Language: Demonstrating a move toward gender-inclusive jurisprudence, the Court affirmed that the law must protect all persons—including those who do not identify as cis-gender women—who require access to safe reproductive care.

The Colonial Hangover: Hale's Principle: The persistence of the marital rape exception is largely attributed to "Hale's Principle," a 1736 doctrine by British jurist Sir Matthew Hale. He posited that a wife gives "irrevocable consent" to sexual relations upon marriage. This archaic notion, which reduced a woman's body to a husband's property, was codified into the 1860 Indian Penal Code by Thomas Babington Macaulay.

The Path Forward: Autonomy over "Tyranny"

The judicial discourse is shifting toward a rights-based approach:

Justice Shakti Singh's Critique: In his dissenting opinion, Justice Shakti Singh famously noted, "When marriage is a tyranny, the state cannot have a plausible legitimate interest in saving it." He emphasized that non-consensual sex inflicts profound psychological and physical trauma, regardless of marital status.

Constitutional Mandates: Drawing on precedents like *K.S. Puttaswamy v. Union of India*¹² (the Right to Privacy case), the judiciary is increasingly viewing bodily integrity as an inalienable right. The current sentiment in the Supreme Court suggests a growing recognition that the State cannot use the "institution of marriage" as a pretext to undermine the fundamental liberty and dignity of individuals. As the Supreme Court continues its examination of the petitions, the legal landscape is moving away from the Victorian-era view of marriage and toward a modern understanding where privacy, consent, and bodily agency are protected as supreme constitutional values.

In 2025, the Chhattisgarh High Court acquitted the accused, holding that marital rape is not prosecutable under Indian law (*Gorakhnath Sharma v. State of Chhattisgarh*,¹³ para. 14). The Court set aside the trial court's decision and relied on the marital rape exception, observing that if the wife is above fifteen years of age, any sexual intercourse or act by the husband with her cannot be classified as rape. It further stated that the wife's lack of consent to an unnatural act becomes immaterial.

However, this reasoning—based on a 15-year threshold—stands in direct conflict with the Supreme Court's ruling in *Independent Thought v. Union of India* (2017),¹⁴ which clarified that the marital rape exception applies only where the wife is above eighteen years of age.

¹² (2017) 10 SCC 1

¹³ (2025) SCC Online Chh 1076

¹⁴ (2017) 10 SCC 800

CRITICAL ANALYSIS OF DEFECTS UNDER THE BHARATIYA NYAYA SANHITA (BNS): FOCUS ON GANG RAPE PROVISIONS

The Bharatiya Nyaya Sanhita, while introduced as a reformative criminal code, continues to reflect certain inconsistencies, particularly in offences relating to sexual violence.

One notable defect lies in the punishment framework for gang rape. Under the BNS, where a woman above 18 years of age is subjected to gang rape by one or more persons acting in furtherance of a common intention, the prescribed punishment is imprisonment for life, extending to the remainder of the natural life of the offender. However, where the victim is below 18 years of age, the law provides for a harsher punishment, including the possibility of the death penalty.

At first glance, this distinction appears to be based on the vulnerability of minors. However, from a critical perspective, this classification raises serious concerns. The nature and gravity of gang rape— involving extreme physical and psychological violence, violation of bodily autonomy, and lasting trauma— remain equally severe irrespective of the age of the victim. The harm caused is not necessarily diminished merely because the victim is an adult.

This differential sentencing framework may therefore be seen as arbitrary and lacking a rational nexus with the objective of deterrence and justice. It creates an implicit hierarchy of victims, undermining the principle that all individuals are equally entitled to dignity and bodily integrity.

Further, after the 2012 Delhi gang rape case, the legislative intent was to adopt a stricter and more victim-centric approach to sexual offences. In that context, limiting the death penalty only to cases involving minors appears inconsistent with the broader objective of addressing the brutality of gang rape as a category of offence.

From a constitutional standpoint, this distinction may also be questioned under Article 14, as it potentially fails the test of reasonable classification.

CRITICAL ANALYSIS OF SECTION 85 OF THE BHARATIYA NYAYA SANHITA

Section 85 of the Bharatiya Nyaya Sanhita, which corresponds to Section 498A of the IPC, penalises cruelty by a husband or his relatives against a woman. Although the provision acknowledges both physical and mental cruelty, its effectiveness remains questionable.

The prescribed punishment—imprisonment up to three years along with fine—appears inadequate when viewed against the seriousness of the offence. Cruelty in a marital setting often involves not only physical abuse but also emotional, economic, and even sexual violence, all of which can have deep and lasting consequences on the victim.

Statistical data underscores the gravity of the issue. As reported by the National Crime Records Bureau, around 380–400 cases of cruelty by husbands or their relatives are registered daily across the country. The 2022 data alone reflects more than 1.4 lakh such cases annually. In a broader context, crimes against women collectively account for nearly 49–51 reported cases every hour, indicating the pervasive nature of such violence.

In light of these figures, the relatively mild punishment weakens the deterrent function of the law. It fails to proportionately address the severity of domestic violence, which directly impacts a woman's dignity and personal liberty under Article 21 of the Constitution.

Additionally, practical challenges such as underreporting, societal stigma, family pressure, and difficulties in proving such offences further dilute the effectiveness of the provision. Thus, the issue extends beyond sentencing to systemic shortcomings in enforcement.

Critical Analysis of Section 144 of the Bharatiya Nyaya Sanhita (Exploitation of a Trafficked Person)
Section 144 of the Bharatiya Nyaya Sanhita deals with the offence of exploiting a trafficked person, recognising both physical and sexual forms of exploitation. While the provision is a significant step in addressing human trafficking, certain aspects of its punishment framework invite critical scrutiny.

Under the provision, where a person knowingly engages a trafficked child for sexual exploitation, the punishment prescribed is a minimum of five years, which may extend to ten years. Although this reflects legislative intent to treat offences against children with seriousness, the adequacy of this punishment remains debatable considering the extreme vulnerability of trafficked children and the grave nature of sexual exploitation.

More concerning, however, is sub-clause (2), which deals with the exploitation of trafficked persons above 18 years of age. In such cases, the punishment is comparatively lower, with a minimum of three years extending up to seven years. This differential treatment raises important concerns.

It must be emphasised that "exploitation" under this provision includes any form of physical or sexual exploitation, both of which cause severe violations of bodily integrity, dignity, and autonomy, regardless of the victim's age. While children undoubtedly require heightened protection, reducing the punishment solely on the basis that the victim is an adult risks undervaluing the gravity of harm suffered by adult victims of trafficking.

Such a distinction may appear disproportionate and insufficiently justified, as trafficked adults are often equally vulnerable due to coercion, deception, or socio-economic constraints. The lower sentencing framework may, therefore, weaken the deterrent effect of the law and fail to adequately reflect the seriousness of the offence.

FINDING OF REPORTS AND COMMITTEES THAT DECLARE MARITAL RAPE AS UNCONSTITUTIONAL

In its report dated 23 January 2013, the Justice Verma Committee made a number of recommendations, including the repeal of Exception 2 to Section 375 of the Indian Penal Code and the recommendation that the relationship (marital or otherwise) between the accused and the victim should not be taken into account as a defence. The committee further advised against using the relationship between the accused and victim as a defence for lighter rape sentencing.

Speaking through its Special Rapporteur on Violence Against Women, the Human Rights Council stated that in order to maintain India's commitment to the Universal Declaration of Human Rights, it was necessary to include a description of marital rape as a criminal offence. The International Covenant on Civil and Political Rights (ICCPR) of 1976 expresses that all parties to the said covenant undertake to respect and ensure that all individuals within their jurisdictions have the rights recognised in the covenant without discrimination based on religion, sex, colour, language, birth, or status, etc. The marital rape exemption is thus a clear violation of Article 2(1) of the ICCPR. The state is also required under Article 3 of the covenant to guarantee that men and women have equal access to and enjoyment of all civil and political rights. While Article 9 acknowledges the right to liberty and security of the person, Article 7 forbids the use of cruel or degrading treatment.

In a comprehensive report on 82 legal systems published in late 2014 and early 2015, titled "The World's shame: The global Rape Epidemic," the data that was gathered showed that India was among

at least 10 of the 82 countries that still legalised rape within marriage and protected the rapist husband from prosecution, rather than protecting the wife who experiences rape, assault, or abuse at the hands of the husband. In addition, a UN Women report titled "Progress of World's Women: In Pursuit of Justice" found that India was one of the few countries that still allows men to defend violence against their wives.

CONCLUSION

India's framework for protecting women's rights stands at a significant turning point, characterized by a clear conflict between progressive judicial developments and the continued survival of outdated legislative norms. Although the Constitution guarantees equality through Articles 14, 15, and 21, the shift from the Indian Penal Code to the Bharatiya Nyaya Sanhita (BNS) reveals a blend of reform and continuity that does not amount to a complete transformation.

The judiciary has played a pivotal role in strengthening women's rights by converting constitutional values into enforceable protections, as reflected in landmark decisions such as *Vishaka*, *Vineeta Sharma*, and *Shayara Bano*. These judgments have expanded safeguards in areas like workplace safety, inheritance, and personal laws.

Rights and personal laws notwithstanding, the continued recognition of the marital rape exception—grounded in the outdated "Hale's Principle"—remains a serious impediment to bodily autonomy and is inconsistent with global human rights standards.

A closer scrutiny of the BNS further uncovers structural shortcomings. In particular, disparities in sentencing create the impression of a hierarchy among victims, with punishments often based on age rather than the gravity of the offence. Additionally, provisions such as Section 85 regarding domestic cruelty prescribe comparatively mild penalties, raising concerns about their effectiveness in addressing the seriousness of marital abuse.

In essence, achieving the constitutional ideal of gender equality requires more than mere legislative change. It calls for a victim-centric and intersectional approach that aligns criminal law with the dynamic spirit of the Constitution. Genuine justice will be realized only when legal frameworks move beyond entrenched patriarchal notions and firmly uphold dignity, consent, and equality as inviolable rights for all women, irrespective of their marital or social status.