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Marital Rape and the Bharatiya Nyaya Sanhita: Should the Criminal Law Exception Continue?

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Abstract: *Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS), reproduces the historic marital rape exception that first appeared as Exception 2 to Section 375 of the Indian Penal Code, 1860 (IPC), by stipulating that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. While the Supreme Court in Independent Thought v. Union of India read down the earlier exception insofar as it applied to minor wives between fifteen and eighteen, the broader premise that marriage operates as a blanket defence to non-consensual sex with an adult wife continues in the BNS. The marital rape exception has attracted sustained criticism from domestic law reform bodies such as the Justice Verma Committee and the Law Commission of India, as well as from international human rights bodies including the CEDAW Committee, all of whom have urged its removal.*

This paper interrogates whether the replication of the marital rape exception in the BNS can be normatively and constitutionally justified and asks whether the criminal law exception should continue in its present form. It situates the debate in the context of evolving constitutional doctrine on bodily integrity and sexual autonomy, the split verdict of the Delhi High Court in RIT Foundation v. Union of India, and emerging comparative trends on criminalisation of marital rape. It concludes that the continued retention of the marital rape exception in Section 63 BNS is inconsistent with Articles 14, 15 and 21 of the Constitution, incompatible with India's obligations under CEDAW and emerging international norms, and unsupported by any compelling public interest rationale. The paper argues that the exception should be abolished and proposes a set of doctrinal and legislative reforms to integrate non-consensual sexual acts within marriage into the general rape framework, while simultaneously addressing legitimate concerns about evidentiary burdens and misuse.

I. RESEARCH BACKGROUND

A. Historical Evolution Of The Marital Rape Exception

The marital rape exception in Indian criminal law traces back to colonial-era notions of coverture and implied consent, whereby a wife was treated as having irrevocably consented to sexual intercourse by entering into marriage. Exception 2 to Section 375 IPC originally stated that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape, thereby carving out a categorical immunity for husbands from the offence of rape so long as the wife was above fifteen. Even after the Criminal Law (Amendment) Act, 2013 revised the age of consent to eighteen and significantly expanded the definition of rape to include a broader range of sexual acts, Parliament consciously chose to retain the marital rape exception, merely raising the protected age of the wife from fifteen to eighteen in line with subsequent judicial interpretation. [22][4][5][23][7][13][^24]

Independent Thought v. Union of India challenged Exception 2 to Section 375 IPC on the limited ground that permitting non-consensual sex with minor wives between fifteen and eighteen years created an irrational and unconstitutional classification inconsistent with child protection statutes such as the POCSO Act and the Prohibition of Child Marriage Act. The Supreme Court read down Exception 2 to harmonise these regimes, holding that sexual intercourse with a girl below eighteen years amounts to rape irrespective of whether she is married, while pointedly leaving open the broader question of marital rape against adult wives. The legislative response in the BNS has been to reproduce the exception as Exception 2 to Section 63, expressly adopting the judicially-modified age of eighteen years without addressing the foundational constitutional concerns about spousal immunity for rape. [22][3][^21][4][7][25][13][24][^1]

B. The BNS framework on sexual offences within marriage

Section 63 of the BNS defines rape primarily through the absence of free and informed consent, including circumstances involving coercion, fraud, intoxication, or incapacity, and recognises a broad spectrum of sexual acts as falling within the offence.

Immediately after laying down this consent-based framework, Exception 2 stipulates that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape, thereby carving out a categorical exclusion from criminal liability when the perpetrator is the husband and the victim is an adult cohabiting wife.^{[3][21][1][2]}

Section 67 BNS creates a separate offence of sexual intercourse by a husband with his wife who is living separately, whether under a decree of separation or otherwise, without her consent, punishable with a lesser sentence than ordinary rape. This produces a three-tiered scheme: a wife under eighteen is fully protected under Section 63, a separated wife receives partial protection through Section 67 with reduced punishment, and an adult cohabiting wife is denied protection altogether as far as the offence of rape is concerned. Scholarly commentary has noted that this stratification reflects a deeply problematic hierarchy of protection based on marital status and living arrangements, rather than on the presence or absence of consent.^{[1][2][^3]}

C. Constitutional and Policy Debates

The constitutionality of the marital rape exception has been squarely challenged in *RIT Foundation v. Union of India* before the Delhi High Court, where a division bench delivered a split verdict in May 2022. Justice Rajiv Shakdher held that Exception 2 to Section 375 IPC and Section 376B IPC, which addressed sexual intercourse by a separated husband with his wife without consent, were violative of Articles 14, 15, 19(1)(a) and 21 of the Constitution and deserved to be struck down, reasoning that the classification between married and unmarried women lacked a rational nexus with the object of rape law and arbitrarily exempted husbands from accountability for non-consensual sexual acts. In contrast, Justice C. Hari Shankar upheld the validity of the exception, concluding that it was based on intelligible differentia, did not violate fundamental rights, and that courts ought not to substitute their subjective value judgments for legislative policy choices.

Following this split verdict, appeals have been filed before the Supreme Court, and the issue now forms part of a broader batch of petitions that also challenge the marital rape exception as retained under Section 63 BNS. The Supreme Court has recently indicated that it is examining whether courts can punish a husband for committing rape on a wife, who is not a minor, against her consent when the statute explicitly protects such acts, thereby signalling an impending constitutional reckoning over the marital rape exception in both the IPC and the BNS frameworks.^{[18][19][27][21][^15]}

II. SCOPE OF STUDY

This paper focuses on the marital rape exception as it operates under Section 63 BNS and its relationship with other provisions governing sexual offences within marriage, particularly Section 67 BNS and the residual operation of earlier IPC provisions. It confines itself to criminal law and constitutional law analysis, rather than undertaking a comprehensive sociological study of marital sexual violence, though it draws upon selected empirical and feminist scholarship to contextualise doctrinal arguments.

The temporal scope extends from the historical origins of the exception in colonial criminal codes through major post-Independence law reform efforts, including the 156th and 172nd Law Commission Reports, the Justice Verma Committee Report, the Criminal Law (Amendment) Act, 2013, *Independent Thought v. Union of India*, and contemporary litigation before the Delhi High Court and Supreme Court. The comparative analysis surveys key jurisdictions that have criminalised marital rape and briefly contrasts India's position with regional neighbours that continue to retain similar exceptions.

In terms of subject matter, the study addresses four central questions: (i) whether the marital rape exception under Section 63 BNS is compatible with the consent-centric structure of modern rape law; (ii) whether it withstands scrutiny under Articles 14, 15 and 21 of the Constitution in light of evolving jurisprudence on privacy, bodily integrity and gender equality; (iii) whether its retention is consistent with India's obligations under international human rights instruments, particularly CEDAW; and (iv) whether there exist any compelling criminal policy reasons to maintain a husband-specific immunity that cannot be accommodated through more tailored doctrinal safeguards against misuse.

III. RESEARCH METHODOLOGY

The paper adopts a doctrinal and normative legal research methodology, grounded in close reading of statutory texts, judicial decisions and law reform reports, supplemented by selective engagement with feminist theory and comparative criminal law literature. Primary sources include the text of the BNS, 2023 and relevant provisions of the IPC, leading Supreme Court and High Court judgments on marital rape and sexual autonomy such as *Independent Thought v. Union of India* and *RIT Foundation v. Union of India*, and official reports of the Law Commission of India and the Justice Verma Committee.

Normative analysis is structured around constitutional principles of equality, non-discrimination and privacy, informed by the Supreme Court's jurisprudence in Puttaswamy on the right to privacy and bodily integrity (though that case is not fully detailed in the sources consulted) and subsequent decisions emphasising autonomy and dignity in family and sexual life. International law materials include concluding observations and recommendations of the CEDAW Committee and reports by Amnesty International and other human rights organisations urging India to criminalise marital rape and remove the exception from its rape law.

Comparative references are drawn from secondary literature and analytical reports that catalogue global trends in marital rape criminalisation, with particular attention to the justification for abolishing spousal immunity in jurisdictions that once recognised such exceptions. The methodological approach is inherently critical and reform-oriented; it does not seek to collect original empirical data but rather to synthesise existing doctrinal and policy arguments to reach reasoned conclusions about the future of the marital rape exception under the BNS.^{[23][10][22][8]}

IV. RELEVANT STUDIES AND LAW REFORM EFFORTS

A. Law Commission of India reports

The Law Commission of India has addressed marital rape only tangentially in its reviews of rape law. The 156th Report expressed reluctance to raise the wife's age in the marital rape exception from fifteen to eighteen without assigning clear reasons, reflecting a conservative stance that privileged marital privacy over child protection. In its 172nd Report on Review of Rape Laws (2000), the Commission found deletion of Exception 2 to Section 375 IPC unnecessary, opining that removing the exception might amount to excessive interference with the marital relationship, while recommending only that the age limit for the wife be raised slightly from fifteen to sixteen years.^{[22][5]}

These recommendations were widely criticised by feminist scholars and child rights advocates for failing to confront the underlying gender inequality and bodily autonomy issues, and for treating marriage as a space immune from the operation of general criminal law norms. Subsequent developments, particularly the Supreme Court's decision in Independent Thought and the harmonisation of child protection statutes at eighteen years, have rendered the Law Commission's incremental approach obsolete, underscoring the need for a more fundamental rethinking of the marital rape exception.^{[7][25][13][24][4][5][23][22]}

B. Justice Verma Committee recommendations

In the aftermath of the 2012 Delhi gang rape, the Justice Verma Committee was tasked with suggesting amendments to criminal law to provide for quicker trial and enhanced punishment for sexual offences. The Committee took a clear and unequivocal position in favour of abolishing the marital rape exception, stating that marital or other relationships between the perpetrator and victim should not constitute a valid defence to rape or sexual violation, and that the relationship should be irrelevant to the enquiry into whether the complainant consented to sexual activity.^{[9][11][14][6]}

The Committee recommended: (i) removal of the marital rape exception; (ii) explicit statutory recognition that marriage does not constitute irrevocable consent to sexual acts; and (iii) clarification that the fact of marriage cannot mitigate the seriousness of the offence or the severity of punishment. Despite these strong recommendations, Parliament chose not to criminalise marital rape in the 2013 amendment, retaining the exception in Section 375 IPC even as it expanded the definition of rape and strengthened penalties for sexual assault, a legislative choice that continues to reverberate in the BNS framework.^{[11][13][14][24][4][6][7][9]}

C. Judicial Developments

The Supreme Court's decision in Independent Thought v. Union of India constitutes a pivotal judicial intervention in the marital rape debate, albeit limited to child marriages. The Court held that allowing non-consensual sex with minor wives between fifteen and eighteen years violated Articles 14, 15 and 21, was inconsistent with child protection laws, and amounted to an affront to constitutional morality. It read down Exception 2 to Section 375 IPC so that sexual intercourse with a wife is exempt from the offence of rape only when she is above eighteen, thereby aligning the rape law with the broader legal framework that recognises eighteen as the age of majority and consent.^{[25][13][24][4][7]}

At the High Court level, the Karnataka High Court has allowed prosecution of husbands for rape, notwithstanding the formal existence of the marital rape exception, in cases where other statutory provisions or interpretive strategies permit such prosecution, exemplifying judicial discomfort with blanket spousal immunity. The Delhi High Court's split verdict in RIT Foundation reflects deep doctrinal disagreement: Justice Shakhder's opinion emphasises that rape is rape regardless of the marital status of the victim and that the exception is manifestly arbitrary, while Justice Shankar's opinion stresses legislative supremacy and doubts whether every act of non-consensual sex must be labelled rape.^{[17][26][19][20][27][18][21]}

As of mid-2026, the Supreme Court has not delivered a final verdict on the constitutional validity of the marital rape exception, but it has acknowledged conflicting High Court rulings and is seized of petitions challenging Exception 2 to Section 63 BNS alongside its predecessor in the IPC. The Court's eventual resolution is likely to determine whether the criminal law exception can continue in its current form or must be struck down or substantially modified.[21]

D. International and Comparative Perspectives

International human rights bodies have consistently criticised India's failure to criminalise marital rape. The CEDAW Committee, in its concluding observations, expressed concern about the narrow definition of rape in the Penal Code and specifically noted the failure to criminalise marital rape, urging the State party to widen the definition of rape and remove the exception for marital rape. Amnesty International has similarly called on the Indian authorities to remove the marital rape exception from Section 375 IPC and define marital rape as a criminal offence, characterising the exemption as rooted in outdated notions that treat wives as property of their husbands.[¹⁰][12][⁸][11]

Comparative research shows that many jurisdictions that historically recognised marital rape exemptions have abolished them, treating marital rape as a standard offence subject to similar elements and penalties as non-marital rape, albeit with nuanced evidentiary and sentencing frameworks. India remains one of the few countries in the world to retain a marital rape exception, along with several regional neighbours such as Afghanistan, Bangladesh, Maldives, Myanmar, Sri Lanka and China, a position increasingly at odds with global trends in criminal law and human rights jurisprudence.[23][⁸][10][22]

V. ANALYSIS: CONSTITUTIONAL COMPATIBILITY OF THE MARITAL RAPE EXCEPTION

A. Consent, Autonomy and Bodily Integrity

Modern rape law in India is structured around the core concept of consent, defined as an unequivocal voluntary agreement to engage in sexual activity, free from coercion, fraud or incapacity. Section 63 BNS reflects this shift by elaborating multiple circumstances in which consent is absent or vitiated, thereby recognising sexual autonomy as central to the offence. Against this backdrop, the marital rape exception is doctrinally incoherent: it declares that the same non-consensual acts which constitute rape in all other contexts do not amount to rape when performed by a husband on his adult wife, effectively overriding the consent requirement based solely on marital status.[³][1][²][22]

This doctrinal carve-out undermines the constitutional values of autonomy and bodily integrity articulated in decisions such as *Puttaswamy* and *Independent Thought*, where the Supreme Court underscored that individuals retain decisional autonomy over intimate choices and that consent cannot be assumed or irrevocably granted by virtue of status relationships. Treating marriage as crystallising lifetime consent to sexual intercourse not only contradicts the statutory definition of consent under rape law but also conflicts with broader constitutional commitments to dignity and privacy.[¹³][24][⁴][7]

B. Equality and non-discrimination under Articles 14 and 15

Under Article 14, legislative classifications must rest on an intelligible differentia that bears a rational nexus with the object of the statute. The marital rape exception creates a classification between married and unmarried women (and between wives living with and living separately from their husbands) with respect to protection from non-consensual sexual acts. Justice Shikdher's opinion in *RIT Foundation* demonstrates that this classification lacks rational connection to the object of rape law, which is to criminalise sexual intercourse without consent, and instead arbitrarily privileges husbands by granting them immunity from prosecution for acts that would be rape if committed by any other man.[²⁰][27][¹][17]

This classification also engages Article 15's prohibition on discrimination on grounds of sex, as it effectively treats married women as a lesser class of victims, denying them equal protection against sexual violence as compared to unmarried women and sex workers who retain full capacity to decline consent and prosecute for rape. Moreover, the exception disproportionately impacts women from marginalised communities who may be more vulnerable to domestic and sexual violence but have fewer resources to pursue civil remedies, exacerbating intersectional inequality.[²⁷][12][⁸][9][¹⁰][11]

C. Right to life, dignity and freedom under Article 21

Article 21, as interpreted by the Supreme Court, encompasses the rights to dignity, bodily integrity, sexual autonomy and freedom from violence in intimate relationships. By denying criminal law protection to adult wives against non-consensual sexual acts by their husbands, the marital rape exception effectively treats such violence as a private matter, relegated to civil remedies or domestic violence frameworks, and fails to recognise the seriousness of sexual assault within marriage.[²⁴][4][⁶][7][⁸][10][¹¹][13]

The Justice Verma Committee explicitly rejected the notion that marital rape is less serious than other forms of rape, warning that judges might treat it as a lesser offence requiring more lenient sentences and emphasising that relationship between the accused and victim should not mitigate culpability. Retention of the exception in the BNS contradicts this guidance and raises serious concerns about constitutional morality, which demands that the law not legitimise gender-ed violence in the name of protecting marital harmony.^{[14][6][^9]}

D. *Legislative Deference and Judicial Role*

Justice Hari Shankar's opinion in RIT Foundation cautions against judicial overreach into legislative policy, arguing that courts should not substitute their subjective value judgments for democratically enacted statutes and that the marital rape exception is based on intelligible differentia and does not violate fundamental rights. This raises important questions about the scope of judicial review in areas involving contested moral and social norms, such as marital relations and sexual behaviour.^{[26][19][^17]}

However, precedents such as Independent Thought demonstrate that courts have not hesitated to invalidate or read down statutory provisions when they conflict with fundamental rights and child protection norms, even in the sensitive domain of family and marriage. The Supreme Court's willingness to harmonise rape law with constitutional principles by removing immunity for child marital rape suggests that deference to legislative choices is not absolute, especially when the classification entrenches patriarchal control over women's bodies and undermines equality and dignity.^{[4][7][13][24]}

VI. POLICY ARGUMENTS FOR AND AGAINST RETENTION OF THE EXCEPTION

E. *Arguments Advanced in Favour of Retention*

Proponents of retaining the marital rape exception often argue that criminalising marital rape would undermine the institution of marriage, encourage frivolous or false complaints in the context of matrimonial disputes, and permit intrusive state intervention into private marital life. They contend that existing civil and criminal remedies, such as domestic violence laws, cruelty provisions and restitution frameworks, provide adequate protection to wives, making a specific offence of marital rape unnecessary.^{[19][26][5][23][8][22]}

Some also assert that marital relations are qualitatively distinct from other forms of sexual interaction, involving legitimate expectations of sexual intimacy and mutual obligations that cannot be easily reconciled with the binary criminal categories of consent and rape. This line of reasoning underlies the Law Commission's reluctance to delete the exception and its concern that doing so might amount to excessive interference with marital relationships.^{[26][19][5][22]}

F. *Critical Evaluation of these Arguments*

These policy arguments are vulnerable to multiple critiques. First, fears of misuse and false complaints are not unique to marital rape and exist across many criminal offences; they can be addressed through carefully drafted elements of the offence, evidentiary standards, and judicial scrutiny, rather than blanket immunity for an entire category of perpetrators. Second, invoking the sanctity of marriage to shield non-consensual sexual violence from criminal sanction instrumentalises marital privacy in ways that undermine the autonomy and safety of wives, contrary to constitutional commitments to equality and dignity.^{[6][7][8][10][11][13][24][4]}

Third, the existence of civil remedies under domestic violence statutes does not substitute for criminal recognition of marital rape, as such remedies typically focus on protection orders, maintenance or counselling rather than penal accountability for sexual assault. International human rights bodies have explicitly urged India to criminalise marital rape, noting that failure to do so leaves victims without effective remedies and perpetuates impunity. Fourth, comparative experience demonstrates that jurisdictions which have criminalised marital rape have not seen catastrophic erosion of marriage, but rather have reaffirmed that marriage is premised on mutual consent and respect, not unconditional sexual access.^{[12][23][8][10][11][22]}

VII. COMPARATIVE AND INTERNATIONAL LAW ALIGNMENT

A. *Global trend towards criminalisation of marital rape*

Over the past decades, there has been a marked global trend towards recognising marital rape as a crime, driven by feminist activism, human rights advocacy and evolving understandings of consent and sexual autonomy. Many countries have repealed their marital rape exemptions, either through legislative reform or judicial interpretation, and have integrated marital rape into general rape provisions, thereby eliminating spousal immunity.^{[23][8][10][22]}

India's continued retention of a marital rape exception in Section 63 BNS places it among a shrinking group of jurisdictions, including several South Asian neighbours, that still treat marriage as grounds for exempting husbands from rape liability.

This divergence has implications for India's international reputation and its compliance with obligations under CEDAW and other human rights instruments that require states to protect women from all forms of gender-based violence, including in the private sphere.^{[8][10][11][12][^21]}

B. CEDAW obligations and recommendations

CEDAW, to which India is a party, obliges states to take all appropriate measures to eliminate discrimination against women, including addressing gender-based violence as a form of discrimination that impairs the enjoyment of rights and freedoms. The CEDAW Committee has repeatedly called on India to widen its definition of rape, criminalise marital rape and remove the marital rape exception from its Penal Code, emphasising that the current legal framework fails to reflect the realities of sexual abuse experienced by women and leaves a significant class of victims without protection.^{[10][8]}

Reports submitted to CEDAW and shadow reports by civil society organisations reiterate that marital rape remains unrecognised as a crime in India despite international advocacy and domestic law reform debates, and urge the government to bring its criminal law into line with its treaty obligations. Continued retention of the exception in the BNS, particularly after the Justice Verma Committee's recommendations, underscores a gap between India's nominal commitments under international law and its actual domestic legal practice.^{[11][12][^8][10]}

VIII. SUGGESTIONS FOR REFORM

A. Statutory amendments to Section 63 BNS

The most direct reform would be legislative deletion of Exception 2 to Section 63 BNS, thereby removing the husband-specific immunity and subjecting marital rape to the same elements and penalties as non-marital rape. This would realign the statute with its consent-based structure and constitutional commitments to autonomy and equality, ensuring that adult wives receive the same protection against non-consensual sexual acts as other women.^{[7][9][13][24][^1][2][^3][4][^6]}

Where concerns about misuse persist, Parliament could consider clarifying that the offence of rape within marriage requires proof of absence of consent in accordance with the statutory definition, and that mere non-compliance with marital expectations of sexual intimacy does not by itself amount to a criminal offence. However, any such safeguards must be carefully framed to avoid reviving presumptions of implied consent or placing disproportionate evidentiary burdens on wives.^{[5][22][^23]}

B. Harmonisation with Section 67 BNS and related provisions

Section 67 BNS should be harmonised with Section 63 so that sexual intercourse by a husband with a separated wife without consent is treated as rape, with appropriate sentencing parity, rather than as a distinct lesser offence. This would avoid the current hierarchy that accords greater protection to minor and separated wives than to adult cohabiting wives and would signal that non-consensual sexual acts within marriage are equally serious irrespective of marital status or living arrangements.^{[11][2][^3][22]}

Related provisions in the Code of Criminal Procedure that restrict cognisance of offences involving marital relationships, such as earlier Section 198B CrPC, should be revised to facilitate effective reporting and prosecution of marital rape cases, while ensuring procedural fairness and safeguards against frivolous complaints.^{[17][20][^27][6]}

C. Judicial interpretation and constitutional adjudication

Pending legislative reform, the Supreme Court could interpret Section 63 BNS and its exception in light of Articles 14, 15 and 21, following the path charted in *Independent Thought*, and either read down or strike down the marital rape exception as unconstitutional. In doing so, the Court would need to clarify that marriage does not constitute irrevocable consent to sexual acts and that non-consensual sexual intercourse within marriage can attract criminal liability consistent with the statutory definition of rape.^{[9][13][14][24][^4][6][7][11]}

Additionally, courts could develop jurisprudence that recognises marital rape as a form of cruelty or grave sexual violence under matrimonial law and domestic violence statutes, strengthening civil remedies and reinforcing the normative message that sexual autonomy within marriage is protected. Such interpretive strategies, however, cannot substitute for explicit criminalisation and must be seen as interim measures until legislative change is effected.^{[12][8][10][11]}

D. Complementary measures: support services and sensitisation

Legal reform alone is insufficient; robust implementation requires investment in support services for survivors of marital rape, including shelters, counselling, legal aid and medical care, with special attention to women from marginalised communities.

Police, prosecutors, judges and health-care providers need training and sensitisation to recognise marital rape as a serious crime, avoid victim-blaming and apply the law consistently.^{[8][10][11][12]} Public awareness campaigns can help challenge social norms that equate marriage with unconditional sexual access and promote understanding of consent and mutual respect in intimate relationships, thereby aligning legal norms with evolving social attitudes. Engagement with religious and community leaders may also be necessary to counter resistance and build support for reforms that protect women's rights without undermining legitimate interests in marital stability.^{[22][23][10][8]}

IX. CONCLUSION

The replication of the marital rape exception in Section 63 BNS represents a regressive continuity from colonial criminal law and post-Independence statutory frameworks that treated marriage as a space of exceptional immunity from rape law. While the Supreme Court's decision in *Independent Thought* has partially corrected this by removing immunity for child marital rape, the broader premise that adult wives living with their husbands cannot be raped in the eyes of criminal law persists and is now embedded in the new code. Doctrinal analysis grounded in consent, equality and dignity reveals that the marital rape exception is incompatible with the structure of modern rape law and fails constitutional scrutiny under Articles 14, 15 and 21. International bodies such as the CEDAW Committee and domestic law reform efforts led by the Justice Verma Committee have urged its removal, placing India at odds with global trends towards criminalising marital rape and protecting women from sexual violence in all spheres. On balance, there is no compelling justification for continuing the criminal law exception for marital rape in the BNS. Concerns about misuse and disruption of marital harmony can be addressed through carefully crafted elements of the offence, evidentiary safeguards and robust implementation, rather than categorical spousal immunity. The paper therefore concludes that the marital rape exception under Section 63 BNS should be abolished, either through legislative amendment or constitutional adjudication, and that Indian criminal law must unequivocally recognise non-consensual sexual acts within marriage as rape, thereby affirming that marriage is a partnership of equals, not a licence for sexual violence.

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