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# STRUCTURAL INCOHERENCE IN CONSENT-BASED LAW: A CRITIQUE OF INDIA'S POST-2013 MARITAL RAPE EXCEPTION

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## ABSTRACT

This paper examines the impact of the marital rape exception on the doctrinal coherence of consent-based rape law in India under the post-2013 criminal law reform regime. Although the recent reforms formally position consent as the central attribute that distinguishes legal sexual acts from violations, the fact that the marital rape exception is still in effect creates a structural contradiction in this framework. Through qualitative doctrinal exploration of (i) statutory language, (ii) legislative history, (iii) judicial argumentation, and (iv) constitutional discourse, the paper demonstrates that the exception does not simply deprive married women of legal protection; rather, it actually distorts the inner logic of rape jurisprudence by selectively interrupting the consent inquiry in the marriage.

The discussion shows that such selective suspension produces a bifurcated regime of sexual legality where the same acts of non-consensual sexual violence receive different treatment based on marital status only. Courts, legislatures, and executive justification recursively buttress consent rhetoric but limit its functioning in practice, making the legal system fractured and distributing sexual legality based on relation status and not evaluative inquiry. The paper further situates this doctrinal incoherence in the context of larger constitutional commitments of dignity, autonomy, and equality, demonstrating how the marital rape exception redefines the law to understand harm and victimhood.

By reframing the marital rape exception as an issue of doctrinal incoherence instead of incomplete criminalisation, this paper enters the rape law and consent research field by clarifying the boundaries of a consent-based model that functions *conditionally*. It argues that until consent is considered a homogeneously functioning legal norm in all sexual relations, the rape law in India cannot be a self-coherent and credible system of sexual regulation.

**Keywords:** Marital rape exception, affirmative consent, selective suspension, doctrinal incoherence, jurisprudence, contradictions.

## INTRODUCTION

### Background and Legal Context

The law of rape in India underwent a significant reorientation with the Criminal Law (Amendment) Act (2013), which explicitly positioned consent as the central criterion for determining sexual criminality. The statutory definition of consent as an “unequivocal voluntary agreement” sought to move adjudication away from resistance-based standards, moral judgments about sexual behaviour, and reliance on sexual history. The reform reframed rape primarily as a violation of sexual autonomy rather than an offence grounded mainly in physical force or overt coercion, establishing consent as the organising principle through which lawful sexual relations were to be distinguished from criminal violation.

Yet this consent-centred framework coexists with a categorical marital rape exception retained under Section 375 of the Indian Penal Code and subsequently under the Bharatiya Nyaya Sanhita. Under this exception, non-consensual sexual intercourse by a husband with his adult wife remains outside the definition of rape. The result is a legal structure in which consent operates as the decisive benchmark across most contexts of sexual relations but becomes *legally irrelevant* within marriage. The simultaneous elevation and suspension of consent within the same statutory framework creates a *doctrinal tension* that invites closer examination.

### The Problem of Doctrinal Incoherence

The continuance of the marital rape exception is frequently explained in reference to social conservatism, patriarchal norms, or legislative reluctance to criminalise intimate relations. Although these views are significant insofar as they highlight the normative issues, they fail to fully explain the internal legal implications of continuing to have an exception in an otherwise consent-based offence. The issue is not merely that certain victims remain unprotected but that the structure of rape law itself becomes conceptually unstable when consent is treated as both foundational and dispensable.

This instability becomes visible in both legislative design and judicial application. Identical acts of non-consensual sexual violence attract radically different legal responses solely because of marital status, reintroducing a *status-based determinant* into what is otherwise framed as a *conduct-based offence*. Judicial responses have reflected this tension, with some decisions

emphasising sexual autonomy even within marriage, while others have strictly enforced statutory immunity despite evidence of coercion or harm. Existing scholarship has largely analysed these developments through the lenses of constitutional morality, gender justice, or social reform, often treating consent as a settled doctrinal achievement whose shortcomings arise mainly from enforcement deficits. What remains insufficiently examined is whether the coexistence of an affirmative consent framework with a categorical marital exemption *compromises the coherence of rape law* as a doctrinal system. It is this question of internal *legal consistency* (or lack thereof) that frames the inquiry undertaken in this paper.

### Research Objectives and Hypothesis

Against this background, the inquiry focuses on whether rape law in India can sustain a coherent consent-based framework while retaining a categorical marital rape exception. The central research question guiding the analysis is how the marital rape exception affects the doctrinal coherence of consent-based rape law in India in the post 2013 criminal law framework, particularly by suspending the role of consent within marriage while affirming it elsewhere. It is framed thus:

**Research Question:** What is the impact of the marital rape exception on the doctrinal coherence of consent-based rape jurisprudence for married women in India after the Criminal Law (Amendment) Act, 2013 reform?

The objective is not to evaluate the desirability of criminalising marital rape as a matter of policy or morality, but to examine the internal logic of rape law itself. The analysis treats rape law as a doctrinal system whose stability depends on the *consistent application of its organising principles*. When consent functions as the defining threshold of sexual criminality in most contexts but becomes legally irrelevant in marriage, the question arises whether the offence continues to operate as a conduct-based crime or shifts toward status-based classification.

The working hypothesis underlying this study is that the marital rape exception is not an isolated irregularity but an expression of a deeper instability within consent jurisprudence. Once consent can be selectively suspended without inquiry, its role as a universal criterion of sexual legality becomes uncertain. The exception, therefore, does not merely exclude a category of cases from criminalisation. It alters the conceptual structure of rape law itself by permitting relational status to override the evaluative framework through which sexual

violation is otherwise determined.

## Scope and Roadmap

The analysis is situated within Indian criminal law in the period following the Criminal Law (Amendment) Act, 2013, which marked a decisive shift toward a consent-centred framework for rape law. The focus remains on statutory design, legislative history, and judicial interpretation under both the Indian Penal Code and the Bharatiya Nyaya Sanhita. The inquiry is confined to doctrinal coherence within criminal law and does not undertake an empirical assessment of prevalence, reporting patterns, or enforcement outcomes. Feminist theory, constitutional principles, and comparative materials are engaged only where they illuminate the internal structure of rape law rather than as independent sites of normative debate.

The discussion proceeds by first examining consent as the organising principle of rape law after the 2013 reforms, with attention to statutory definitions, evidentiary assumptions, and judicial reasoning. It then turns to the marital rape exception itself, tracing its historical foundations and legislative retention as a status-based override of consent. Subsequent sections analyse judicial engagement with this contradiction and the resulting fragmentation in adjudicatory practice. The argument is then located within the broader constitutional landscape of autonomy, dignity, and equality before concluding with a synthesis that assesses how the marital rape exception affects the coherence of consent-based rape jurisprudence in India.

## METHODOLOGY

### Research Design: Qualitative Doctrinal Method

This study adopts a *qualitative doctrinal research design* centred on interpretive analysis of statutory texts, judicial decisions, legislative materials, and scholarly commentary relating to rape law in India. The focus of the inquiry is not empirical prevalence, enforcement outcomes, or behavioural patterns, but the internal coherence of legal doctrine. Questions of doctrinal consistency, conceptual stability, and interpretive alignment cannot be meaningfully addressed through quantitative measurement. They require close reading of legal texts, analysis of judicial reasoning, and evaluation of how legal principles operate across institutional contexts.

A doctrinal approach is particularly appropriate because the central concern of the study lies in how consent functions as an organising principle within rape law and how the marital rape

exception alters that function. The inquiry examines (i) how legal categories are constructed, (ii) how statutory language is interpreted, and (iii) how courts reconcile competing legal commitments such as autonomy, marital status, and constitutional guarantees. This form of analysis treats laws not merely as a set of rules but as a structured argumentative system whose legitimacy depends on coherence and consistency.

Qualitative design also allows engagement with theoretical scholarship that interrogates consent, autonomy, and legal personhood, while remaining grounded in positive law. Rather than measuring attitudes or outcomes, the study evaluates how doctrinal claims about consent are articulated, limited, or displaced within legal reasoning. This interpretive orientation enables a closer examination of whether the consent-based framework established after the 2013 reforms operates uniformly or whether the marital rape exception produces a structural discontinuity within rape jurisprudence.

The methodological emphasis throughout remains analytical rather than normative. The objective is not to advocate a particular legislative outcome but to assess whether the current legal framework sustains a coherent doctrinal structure. By situating statutory provisions, judicial interpretation, and constitutional discourse within a single analytical frame, the doctrinal method provides an appropriate foundation for examining how legal coherence is constructed, challenged, and maintained in the context of rape law.

### **Data Sourcing and Inclusion Criteria**

The research is based on a desk-based doctrinal analysis of secondary legal materials and academic literature relevant to the structure of rape law in India. Sources of legal materials include statutory provisions under the Indian Penal Code and the Bharatiya Nyaya Sanhita, parliamentary committee reports, government affidavits submitted in constitutional litigation, and judicial decisions of the Supreme Court and various High Courts addressing rape law, consent, and marital immunity. These materials provide the institutional framework within which consent is articulated, limited, and interpreted.

Sources of relevant academic literature consist primarily of peer-reviewed legal scholarship on rape law, consent doctrine, constitutional autonomy, and marital rape in India, supplemented where necessary by socio-legal and feminist analyses that illuminate the institutional context in which consent operates. Case commentaries and contemporary legal analyses have also been

used selectively where they contribute to understanding evolving judicial reasoning or legislative debates. The emphasis throughout has remained on sources that engage directly with legal doctrine rather than those focused exclusively on sociological prevalence, psychological impact, or policy advocacy.

Inclusion criteria were guided by doctrinal relevance. Sources were selected where they contributed to understanding how consent is defined, interpreted, or displaced within rape law, particularly in the context of marriage. Materials addressing legislative history, judicial fragmentation, constitutional implications, or theoretical critiques of consent were prioritised where they assisted in evaluating the internal coherence of the legal framework. Sources were excluded where their primary orientation was empirical reporting, journalistic narrative, or advocacy without sustained engagement with legal reasoning, except where such materials clarified institutional context without displacing doctrinal analysis.

This selective sourcing strategy ensures that the study remains focused on legal coherence as a doctrinal question while still situating rape law within its broader institutional and constitutional setting. By prioritising interpretive relevance over descriptive breadth, the research maintains analytical consistency with its central objective of examining how consent operates within Indian rape jurisprudence.

## **LITERATURE REVIEW**

This literature review utilizes a thematically layered search strategy, incorporating keywords ranging from specific statutory provisions like Section 375 IPC to broad constitutional principles under Article 21. The review synthesizes an eclectic collection of primary legal texts, including the Indian Penal Code and Bharatiya Nyaya Sanhita, alongside peer-reviewed scholarship, case commentaries, and feminist legal studies. By applying strict inclusion criteria centered on doctrinal relevance, the study identifies a significant research gap: the tendency of existing literature to treat the marital rape exception (MRE) as a moral or policy omission rather than a structural contradiction that destabilizes the internal logic of consent-based jurisprudence.

To address this gap, the study adopts an integrative conceptual framework, adapting criminal law **consent theory**, **feminist legal theory**, and **socio-legal analysis**, to trace how consent is articulated in statutory reform but selectively suspended through institutional interplay. This

multi-institutional approach serves as a “bridging theory” to follow the movement of doctrinal ideas across statutes, legislative debates, and judicial applications. By re-focusing the debate on the long-term doctrinal coherence of Indian rape law, this section provides the necessary foundation for examining how marriage functions as a juridical replacement for evaluative inquiry rather than merely a social context.

### **Part I: Consent as the Organising Principle of Rape Law: Conceptual and Doctrinal Foundations**

In contemporary rape legislation, consent is the legal yardstick for distinguishing a legal sexual act from a criminal sexual violation. In 2013, the criminal law reforms in India attempted to entrench this status by codifying consent as “unequivocal voluntary agreement,” a step largely interpreted as a signal of a shift in history in adjudicative practices towards a reliance on resistance, sexual history, or judgment of moral character. Formally, the reform seemed to put rape jurisprudence on a stable footing, referring to autonomy and choice. However, with the doctrinal criticisms of the post-reform framework, researchers have challenged whether this statutory repositioning has fixed the conceptual problems of consent. Instead, the reform seems to have encouraged it by making the concept, which is not well defined in legal terms, even more heavily doctrinal (Kulshreshtha, 2023; Pendharkar, 2019). This brings us to a further analysis of whether consent, as formulated statutorily, can continue playing its part as the organising principle of the offence.

The doctrinal analyses at the statutory interpretation level will all lead to the opinion that the legal understanding of consent is not steady internally. According to the critique of the statutory formulation by Pendharkar (2019), there is a fundamental issue with the statutory formulation, which is the conflation of different concepts, including “agreement, willingness, and voluntariness,” into one threshold question, which is whether the sexual act can be treated as having occurred with legally operative consent. This issue is reflected and supported by subsequent scholarship, which notes that this conflation hides the intended particular legal labour that consent is supposed to undertake in its role in criminal law (Kulshreshtha, 2023; Pendharkar, 2019). Widely applied fears have been made in the larger criminal law theory where the standards of consent have been denounced to confuse the distinction between subjective and normative mental states (Ryssdal et al., 1995). When taken together, these criticisms imply that the statutory definition fails to explain when consent is legally effective,

but rather creates interpretive flexibility, which compromises its stabilising effect. Such a lack of certainty in doctrine provides the conceptual backdrop against which consent is then applied in the reasoning of court cases.

By implementing this criticism into the adjudicatory practice, judicial involvement with consent demonstrates the movement of doctrinal ambiguity in statutory language through judicial argument. Studies on post-2013 case law reveal that judges often do not consider consent as an independent legal standard (Pendharkar, 2019). Rather, they evaluate it indirectly by measuring the credibility, narrative consistency, and plausibility in behaviour. As shown by Kulshreshtha (2023), the investigation tends to change the situation of whether consent was present or not to whether the account of the complainant is consistent with judicial expectations of rationality, resistance, or consistency, which is effectively a replacement of doctrinal analysis with the analysis of credibility. In this, consent stops serving as a legal standard and turns into a conclusion made based on behavior and character (Kulshreshtha, 2023; Pendharkar, 2019). What we find between cases is a patterned judicial reaction where statutory uncertainty is normalised and not resolved, making doctrinal weakness institutionalised in the day-to-day adjudication.

The continuation of this trend is further clarified as doctrinal and judicial criticism is deciphered in conjunction with theoretical explanations of bodily violation and legal narrative. Instead of being destructive to doctrinal analyses, the study of pain and embodied harm can be used to understand the reasons why instability surrounding consent resurfaces repeatedly. The description of bodily pain that Scarry (1990) provided shows how the experiences of violation are resistant to the stable articulation within the legal framework that requires linear and coherent, rational narratives, which has been and remains confirmed in subsequent socio-legal studies of the concept of trauma and narration (Featherstone and Winn, 2018; Scarry, 1990). When sexual damage to language and memory is a factor, and legal judgments of permission rely on the memory, narration, and behaviour, interpretive flux is structurally predetermined. This theoretical approach explains why doctrinal clarification on its own has not been sufficient to stabilise consent in rape law and why judicial oppression on credibility continues even when the legislation has changed.

Collectively, these strands of scholarship show a constant pattern in literature. The unresolved conceptual contradictions in the statutory definition of consent are revealed through doctrinal

critiques (Ramamurthy at al., 2025; Uma & Mohan, 2025), judicial interpretations reveal how such contradictions are reflected in adjudicatory practice (SCC Online, 2022), and theoretical accounts leave us with an explanation as to why such patterns are difficult to rectify. Although the legislative reform has formally institutionalised consent as the organising principle of rape law, it has done so without ensuring its conceptual grounding, making consent both crucial and unstable to the legal system (Kulshreshtha, 2023; Pendharkar, 2019; Scarry, 1990). Therefore, rape law is based on a principle that is central and has not been stabilised enough.

This already existing weakness preconditions the needed approach to discussing the treatment of consent in the context of marriage, where the doctrinal frailty does not just exist but threatens to be turned into a systematized suspension of consent as such.

## **Part II. The Social Construction of Consent Within Marriage: Feminist and Socio-Legal Perspectives**

Feminist and socio-legal perspectives show that the lack of stability of consent takes on a distinct institutional character when it is situated within marriage, where sexual access is *normatively presumed* rather than episodically negotiated (Agarwal, 2019). This literature reveals that the essence of marriage defines the notion of consent. It does so by redefining sexual availability in the context of marriage as an unchanging relational obligation, instead of the positioning of marriage as a non-judging situation in which consent is achieved as a constellation of discrete, retractable decisions (Kaushik & Vyas, 2022). Sexual intimacy in marriage is commonly regarded as a predetermined assumption or as a spousal obligation and not as a continuous and renewable exercise of sexual choice, which radically alters our perception of what real enthusiastic consent really means.

Principles of socio-legal studies find this restructuring within the boundary between the state and the family that has historically shielded marriage relationships against legal values. The work of Basu (2019) demonstrates how the law constitutes a domain of marriage as a place of intimacy and trust, which replaces the discourse of rights and consent with the rules of relationships. This observation is supported by feminist narratives, which underscore the concept of marital sexuality being normalised with concepts of duty, compromise, and adjustment, in which refusal seems aberrational and not safe. Consent in this context is not extinguished in theory, but displayed in practice, as a presumed state of matrimony, and not a separate legal investigation.

The later scholarship elaborates on this account through exploring the material and relational conditions that further restrict consent in marriage. Sreejitha (2025) and Dutt (2025) explain that the ability of women to refuse sex in marriage is influenced by economic reliance, emotional susceptibility, and social stigma associated with separation or complaint. Yadav (2020) and Vinod (2023) carry this discussion by revealing that consent under marital situations is mainly negotiated when the terms are unevenly distributed, and acquiescence operates as a survival tactic rather than being an expression of free will. All those narratives are a challenge to the episodic model of consent that is presumed by criminal law and an indication of how marital intercourse methodically undermines the circumstances under which consent can be given or taken out freely.

It is also difficult to assume that evidential difficulty is all that consent in marriage will present based on this literature. The analysis by Kotiswarna (2016) demonstrates that it concerns not only recognition but also evidentiary visibility. Even before a legal norm is enforced, socially coded marital sexuality makes the concept of non-consensual sex disappear when it is socially coded as legitimate. The threshold question that has been discovered in the doctrinal critiques is, in such contexts, pre-empted, because both the law and society are already aware that there is consent, unless extreme physical violence can be demonstrated. The result is that the lack of consent is not only difficult to prove but systematically discredited.

Read with reference to the doctrinal framework we have outlined above, feminist and socio-legal scholarship reveal a more disturbing implication of marriage regarding consent. The threshold question that the law of rape is designed to address, or whether the consent was in a legally effective form, is practically obsolete within marriage, and in its place is assumed the presumption of sexual entitlement based on the status of the relationship. This instability of consent found in the doctrinal analysis then becomes institutional invisibility, whereby the norms of marriage supersede the legal question that rape law purports to pose.

The loss of the consent question in marriage thus turns a fundamental doctrinal defect into an institutionalised reality which can be reinforced and reproduced by the justice system itself.

### **Part III: Legislative Reform and the Selective Application of Consent**

The fact that the marital rape exception has remained cannot be attributed to oversight in an otherwise consent-centred approach to rape. Legislative history shows that the selective

suspension of consent within marriage has been a conscious and frequently reaffirmed option, even at moments when criminal law reform expressly foregrounded autonomy and sexual self-determination into the future. The 2013 rape law construct is not an expression of a lack of reflection upon consent, but a move to restrict the scope of consent's legal operation (Kulshreshtha, 2019).

The Report of the Justice Verma Committee (2012) formulated a clear and straightforward consent-based vision of rape law. The Committee dismissed moralised evaluations and assessments of sexual behaviour through resistance and offered sexual autonomy and dignity as the fundamental components of criminal responsibility. It specifically identified the marital rape exception as a vestige of archaic property-based notions of marriage and suggested the elimination of Exception 2 to Section 375 of the IPC. By doing so, the Committee reiterated that marriage or any other intimate relationship should be legally irrelevant to the determination of consent, implied consent in marriage is not legally grounded, and that marital status should not be used as a defence to rape or as a mitigant. Based on its findings and guided by constitutional protections of dignity and bodily autonomy and international commitments under various documents such as CEDAW (1979), the Committee provided a framework for what a rape statute would look like, where consent would work identically across the board across relational contexts.

The political reaction to this plan marked a decisive break with its logic (Ramamurthy et al., 2025). The recommendation that marital rape should be criminalised was expressly rejected by parliamentary discussions that took place after the submission of the Verma Committee Report. The Parliamentary Standing Committee acknowledged the harms inherent to non-consensual sex in marriage, but criminalisation was seen as disruptive to society and could upset the family unit. Rather than following the Committee's logic that consent had to be central regardless of whether one was married or not, the discourse in parliamentary debates considered marriage as a stabilising institution that deserved special treatment under the law. Under this rationale, the marital status, per se, was even allowed to serve as a substitute for the consent inquiry, thus negating the very inquiry that the revised rape law otherwise demands.

This trend is also exemplified by the government affidavit submitted in 2022 in *Hrishikesh Sahoo v. Union of India* as part of constitutional attacks on the marital rape exception. This affidavit continued to affirm the core of consent in the law of rape, but at the same time, it states that marriage is accorded a special status within the rape law jurisprudence, and therefore, criminalisation would be disruptive. This is supported by the fact that the justification is not that there is consent in marriage, but that the law must avoid inquiring into the absence of such

consent. In such a manner, the state openly supports a model where consent is a general principle, which can be suspended when sex takes place in a marriage.

Examining legislative reports, parliamentary debates, and statutory outcomes, it is possible to see a definite legislative trend. Consent is reiterated to be the moral and doctrinal basis of rape law, and its functioning is intentionally limited through the establishment of marriage as an exceptional area. This is not done through the redefining of the concept of consent, but by making it redundant where marital status exists. The outcome is a paradigm of consent being inevitable to sexual legality in concept, but in practice, permitting its displacement in the case of sexual action within a marital relationship. The selective application of the standard in such a way is not only what leaves the concept of consent in the limelight, but it also breaks it apart. The result of this is a rape law that claims to be general, but it sanctions the systematic exclusion of married women from its protection.

The Criminal Law Amendment Act of 2013, therefore, comes out as a highly ambiguous reform. Although it reformulated the law of rape, using an affirmative definition of consent, it did not change the marital rape exception. This coexistence is not coincidental. It is an expression of a legislative desire to adopt consent as an organising principle only to the extent that it does not challenge traditional conceptions of marital sexuality. This trend was followed in the later adoption of the *Bharatiya Nyaya Sanhita*, which only preserves this exception in substance, even as it seeks to modernise criminal law wording and framework. The persistence of exclusion of marital rape between statutory regimes highlights the point that the omission of marital rape is not a temporary flaw, but a consistent characteristic of the design of the law.

This juridical stance formalizes the unstable nature of consent, codifying unequal standards of sexual autonomy that hinge on marital status. In doing so, the law sets unequal standards of sexual autonomy based on marital status, and the unequal standards provide the foundation for the law's failure in judicial application.

#### **Part IV: Judicial Engagement with Marital Rape Exception and Fragmentation in Theory and Practice**

Judicial scrutiny of the marital rape exception reveals the practicality of a rape statute that simultaneously treats consent as the foundation while permitting its selective suspension within marriage. The common situation in which courts are put in the conflict of constitutional

commitments to dignity, autonomy, and bodily integrity with a statutory framework in which marital status is treated as a legally decisive factor, creating a direct conflict. The jurisprudence thus emerging is not one of uniformity of ideology, but one of disunity and unwavering doctrinal inconsistency, of the internal antagonisms within the law itself.

The Supreme Court's decision in *Independent Thought v Union of India* is an example of how the judiciary has been able to challenge marital immunity while also illustrating the statutory constraints imposed by legislative design. Justice Madan B. Lokur, who wrote the court opinion (2017) with Justice Deepak Gupta agreeing, decided that the exception of marital rape could not apply to a sexual intercourse with a wife under the age of eighteen since it would be inconsistent with the constitutional provisions that guaranteed dignity, bodily integrity, and child protection. The court explicitly rejected the idea that marriage would justify non-consensual sex with underage children and acknowledged that bodily autonomy could not be extinguished by marriage. Simultaneously, however, the Court was keen on limiting its decision to child marriages, whereas it did not stipulate the constitutionality of the marital rape exception in adult marriages. This is a major self-imposed restriction. Although the Court's logic affirmed that consent and autonomy are governing principles, the decision saved the larger statutory exception, which is an example of how judicial logic is limited by a legislative framework that applies consent selectively on the sole basis of marital status.

Greater fragmentation emerges in High Court jurisprudence. Sexual violence in marriage had been identified in earlier dicta as being a violation of bodily integrity in *State of Karnataka v Krishnappa*, but decisions post 2013 have wavered on the broad constitutionalism versus narrow statutory obedience. In a recent High Court case in Karnataka, Justice M. Nagaprasanna rejected an appeal by the husband on the issue of overturning charges at the initial stage because marriage does not imply immunity against examination in the case of allegations indicating serious sexual harm. Although it did not go further to declare the marital rape exception unconstitutional, its rationale approached consent as a live question even in a marriage context, implicitly challenging the statutory rationale of marriage, raising the consent question.

Conversely, the judgment by the Chhattisgarh High Court acquitting a husband of conducting non-consensual sex with his wife as provided by IPC Section 377, reveals the reverse legal reaction. Justice Gautam Chourdiya ruled that non-consensual intercourse on the part of a husband did not warrant criminal prosecution because the marital rape exception and the

marital exemption, as it was historically construed and interpreted into Section 377, had a compounding effect. The ruling considered marriage as a whole bar to considering sexual violation, even where the acts in question had devastating physical injuries and death. This argument can be used as an example of how the courts, when they stick rigidly to the exclusions given in the statutes, are forced to treat the absence of consent as legally irrelevant, and offer results which are not very comfortable to constitutional obligations to dignity and to life.

These judicial differences cannot be simply described as mere differences in judicial philosophy; instead, they are an outcome of a structural predicament brought about by the legislative structure. Indirectly, courts that attempt to enforce consent and autonomy have to do so by constitutional interpretation, procedural thresholds, or limited factual differences. Courts which emphasise the importance of statutory fidelity are compelled to make marriage dispositive where such a course of action has morally and constitutionally disturbing consequences. In either scenario, the law of rape, which is the language of consent in both instances, is used to condition and restrain judicial rationale in cases involving married women.

What emerges from this jurisprudence is a tendency towards fragmentation of the doctrines instead of continuous growth. Consent functions as a key value of judicial rhetoric, but there is a significant difference in the way it works in terms of marital status. The same act can be examined as a serious sexual offence or will be legally invisible depending solely on the relationship between the parties involved. It is not that the judiciary is making arbitrary decisions; it is merely a natural outcome of a legislative structure compromising the rape statute.

Courts using the marital rape exception in these varying ways reveal the doctrinal incoherency found in the previous sections. The law creates unbalanced, unstable, and normatively tense jurisprudence that compels the courts to make a decision between constitutional principles and statutory bars. Thus, it validates the fact that the marital rape exception is not just restrictive of the application of rape law, but is destructive of its coherence in a manner that creates an obscurity around the very concept of consent-based adjudication.

### **Part V: Constitutional Implications of Suspending Consent in Marriage**

The institutional and doctrinal contradictions of the marital rape exception assume their greatest significance when considered in the context of the constitutional law. Sexual legality

that upholds consent as the basis of rape but allows its suspension in marriage is a constitutionally incongruent one in terms of the constitutional promise of dignity, autonomy, and equality. The exception of marital rape does not merely raise questions of criminal policy, but also the consistency of constitutional safeguards for married women.

In its interpretation of Article 21 of the Indian Constitution, constitutional jurisprudence has increasingly recognised bodily autonomy and decisional liberty as a part of the right to life and personal liberty (Dutt, 2025). Judicial interpretations of dignity have underlined the idea of autonomy, which extends to control one's body, sexual choices, as well as intimate status. In this context, the failure to attach criminal liability to non-consensual sex within marriage is a constitutional anomaly. Unmarried women can claim the criminal law to defend bodily autonomy, but married women are denied the same protection, not because consent is present, but because the law is unwilling to inquire into its absence. This preferential treatment reveals a contradiction between constitutional guarantees framed in universal terms, on one hand, and a criminal law, which, on the other hand, requires the enforcement of its guarantees to be conditional upon marital status.

The scholarly engagement with the marital rape exception has revealed this disjunction as a type of constitutional exclusion as opposed to under-inclusion. According to Tarafder and Ghosh (2020), the exception works by suspending the applicability of autonomy and dignity at the very moment when they are most susceptible and undermining constitutional subjecthood within marriage. In the same vein, the exception has been viewed as incompatible with substantive due process as described in the analyses published in the *Harvard Human Rights Journal*, according to which the exception justifies the lack of state action in cases of grave bodily violation even though it is claimed to introduce sexual autonomy as a value of the Constitution (Tripathi, 2023). These analyses all converge on the fact that the marital rape exception does not simply fail to secure protection to women; it reconstructs the definition of constitutional personhood in the context of marriage.

This criticism is further enhanced by equality jurisprudence. Article 14 states that the categories of law should be rationally related to a legitimate state end. The marital rape exception classifies women based on marital status and attributes legal consequences of the same acts of sexual violation unequally. Both courts and academics have found it difficult to provide a constitutionally coherent justification of this difference. The claim that marriage is a distinct

legal domain has increasingly been rejected in other constitutional law contexts, especially in cases holding in favor of the rights of women in the context of family and intimate relations. But the marital rape exception remains dependent on this very reasoning: how marriage provides an adequate rationale for the withdrawal of criminal protection without showing the furtherance of equality or justice.

This tension in the constitution is worsened by the fact that the judiciary is partly involved in marital immunity. Cases like *Independent Thought v Union of India* confirm that marriage does not extinguish bodily autonomy, but limits the principle to certain situations while leaving the broader exception intact. Consequently, constitutional values are upheld in rhetoric but limited in practice. The pattern of jurisprudence of marital rape as studied by Thakur (2018) describes this trend as a practice of constitutional evasion, where the courts recognise the incompatibility of the exception with the principle of dignity and autonomy but leave it to the modern legislature to resolve. This deferral nevertheless enables a constitutionally questionable statutory provision.

Combined, the constitutional scholarship and judicial reasoning show that the marital rape exception causes a structural imbalance between criminal law and constitutional principle. Consent acts as a constitutional value that supports the concepts of dignity and autonomy, but the denial of consent within marriages creates a category of relationships where constitutional safeguards are diluted instead of being worked out. This discrepancy does not happen by chance; it is a direct result of the legislative and doctrinal decisions that were discussed above, which view marriage as a substitute for consent without replacing constitutional rhetoric.

The constitutional implication of the marital rape exception extends beyond the question of criminalisation. The coherence of constitutional protection is subverted by allowing the selective suspension of consent, and marriage becomes the place where dignity and autonomy are theorised and violated in practice.

## **Part VI: Contemporary Efforts and Doctrinal Incoherence**

In recent years, both political and popular responses to the issue of marital rape have indicated a rising uneasiness with the fact that married women are still assumed to fall outside the protection of rape law. Such changes suggest that the exemption of marital rape is under an ever-growing contest despite remaining formally entrenched. But a more careful examination

will show that the modern reform movements, however symbolically important, are not yet sufficient to tackle the underlying doctrinal incoherence caused by selective suspension of consent within marriage.

There are legislative efforts, like the reintroduction of a private member bill by Shashi Tharoor, that aim at eliminating the marital rape exception and bringing the rape law in line with the constitutional obligations of dignity and autonomy. The bill is based on the recommendations made by the Justice Verma Committee and conceptualises consent as a cumulative and revocable condition of sexual legality regardless of whether the individual is married or not. Though these interventions are significant in resetting the terms of public discussion and reclaiming constitutional principles, the fact that they have had little success in legislation points to the institutional persistence of unchanging marital privilege. The failure of these initiatives is not, however, just procedural, but representative of a more profound unwillingness to permit consent doctrine to operate fully within marriage.

Recent judicial developments also indicate a recognition of the constitutional tension that the marital rape exception has also produced, as the courts remain constrained by statutory limitations. Observations in the High Court proceedings have shown that the court is not comfortable with the approach of considering marriage as a wholesale bar to the acknowledgment of sexual violation, especially where allegations disclose grievous harm (Uma & Mohan, 2025). However, such manifestations of concern rarely translate into substantial constitutional adjudication. Courts still leave resolutions to the legislature, thus perpetuating a loop where the exception continues to exist in spite of the common acceptance of the fact that it does not conform to the idea of consent-based reasoning.

The passage of Bharatiya Nyaya Sanhita also demonstrates the boundaries of contemporary reform. Despite being a wholesale modernisation of criminal law, the new code nevertheless retains the marital rape exception, which gives credence to the idea that it is the continuity rather than the conceptual correction of the law that has been given priority by the legislature (Dutt, 2025). This retention is significant as it shows that, despite rewriting criminal law in terms of the language of modernity, the logic that treats marriage as a substitute for consent persists.

Viewed collectively, these developments indicate that the issue facing rape law is not that there is a lack of reform intent, but instead that reform does not operate at the level of doctrinal

coherence. Attempts to criminalise marital rape are usually morally, socially, or policy-based, and the underlying contradiction of consent as an organising principle and marriage as an exception is inadequately addressed. Consequently, the reform efforts remain circular rather than addressing the underlying doctrinal contradiction.

The ongoing existence of the marital rape exception thus confirms the central claim advanced here. Rape jurisprudence will be doctrinally divided so long as consent is treated as universally foundational to rape cases, but applies selectively to marriage. In the absence of such a solution on the level of legal principle, neither a legislative proposal nor a court adjudication can *restore coherence* to a *consent-based system* that makes married women a priori marginal.

## DISCUSSION

### A: Consent Made Conditional

The main conclusion that can be drawn after the above analysis is that although consent is formally placed as the organising principle of rape law, its normality is no longer a universal threshold of sexual legality. Rather, it is contingent in its applicability on marital status. This conditional operation signifies a fundamental change of doctrine. A principle, which was supposed to be the distinguishing element between lawful sexual behaviour and criminal infraction, becomes useless as a classifying feature because it may be suspended without investigation (Pendharkar, 2019; Kulshreshtha, 2023). Rape law, therefore, starts to categorise sexual acts not based on a stable evaluation criterion but based on relational categorisation.

This contingency essentially changes the legal definition of consent. Instead of serving as an absolute within which all sexual activities are regulated, the concept of consent is transformed into a principle, the applicability of which is determined by the very nature of the relationship in which sexual activity takes place. Where there is marriage, the law does not make another evaluation of consent. It refuses to evaluate it in any way. Current socio-legal and feminist literature elucidates the vulnerability that consent faces in the institutional setting, where the elements of dependency, privacy, and social norms of access to sexual partners are prominent (Basu, 2015; Sreejitha, 2025; Dutt, 2025). What becomes apparent, however, is that rape law does not simply face this weakness but inculcates it as a rule of operation. By doing so, rape law stops considering consent as a defining feature of legality, but as an *ex post facto* element.

As soon as the consent is conditional, the coherence of the rape law in the doctrines starts to disintegrate. Certainly, the law goes on to enshrine consent as the normative basis, but at the same time allows its suspension in marriage without defining rape in any different way. This creates a contradiction within itself. As Elaine Scarry (1990) shows in her description of bodily violation and legal narration, criminal systems that are based on consent, yet refuse to confront its absence, reproduce instability at the very adjudicative level. Continuing on this observation, the current analysis demonstrates that this instability is not simply an effect of evidentiary difficulty or a breakdown of narrative, but it is a result of the legislative construction that formally permits the non-inquiry into consent. The same statutory definition of rape is claimed to have universal application, and its main evaluative question is reserved for a particular type of case. What comes out is not just an exception, but a disintegration of the law rule as such, whereby the same behaviour is subjected to various forms of logic, that is, based on relational status.

This disintegration has a direct implication on the interpretation of sexual violence under the law. In case of marriage where consent has not been analysed, the lack of consent becomes irrelevant as a legal fact in that case. Actions that would have otherwise provoked questioning of force, rejection, or injury become invisible in legal terms due to marriage status as a sole factor. The study of judicial reasoning has demonstrated that courts often replace credibility, behaviour, or relational expectations with an explicit inquiry into consent (Kulshreshtha, 2023). The current analysis builds upon this by showing that rape law is in this way no longer a general law of sexual violation, but a differentiated regime of sexual legality where the absence or presence of consent is no longer the determinant of sexual legality, but the category of the relationship itself.

At this stage, the issue is no longer that of seclusion as such. The selective suspension of consent is a redefinition of the form of rape jurisprudence, where relationship status is permitted to prevail over the inquiry that constitutes the offence. Marriage is not only a contextual aspect but also a replacement of the same question that spells out the meaning of rape as a crime. This change justifies the fact that doctrinal instability solidifies into systematic invisibility in marriage and preconditions the interpretation of how matrimony comes to serve not simply as a circumstantial factor, but as a juridical replacement of law enquiry as such, a step that is more precisely followed in the ensuing section.

## **B: Marriage as a Judicial Substitute for Consent-Based Adjudication**

When consent is rendered conditional within rape law, the next step of analysing it is examining how that conditionality is operationalised. This discussion demonstrates that marriage does not merely complicate the assessment of consent. In its place, marriage serves as the consent inquiry. Instead of influencing the formulation of consent assessment, the marital status replaces the necessity of the evaluation. This reading builds upon socio-legal and feminist accounts, which refer to marriage as an institution that normalises sexual access and obscures coercion (Basu, 2015; Dutt, 2020) and extends it by demonstrating that sexual access normalisation is not just social but juridically institutionalised.

This substitution operates by positioning marriage as a proxy for sexual legality. In the case where consent would otherwise call upon consideration of willingness or refusal or coercion, marriage performs that classificatory labour in advance. Feminist theory has long held that marital relationships are organised in terms of dependency and expectation, conditions under which consent becomes difficult to articulate (Sreejitha, 2025; Yadav, 2020). What becomes apparent here is that rape law transforms this challenge into a rule of operation. The rule then closes all possible real inquiries into the issue of whether consent has been established in marriage. It achieves this by defining marriage itself as something of significance, thus making the question of consent *legally redundant*.

Such foreclosure implies that sexual harm becomes legally unintelligible in marriage. In cases where marriage takes the place of consent, the lack of consent becomes legally non-cognisable. The use of coercion, fear, or even physical injury cannot provoke legal inquiry in the same manner since the scheme has already rendered the facts in question irrelevant. This explains why doctrinal refinements of consent have limited or minimal effect within marriage. As Kulshreshtha (2023) notes, consent can function as a meaningful legal standard only where the law is willing to confront its absence. In the case of inquiry, which is foreclosed, doctrinal precision becomes irrelevant.

This realization also explains the inability of procedural or evidentiary reforms to address the issue. Marriage operates upstream of adjudication. It determines whether any claims of sexual violation will be heard at all. Although judicial reluctance has been explained by a lot of literature in terms of cultural attitude or interpretive conservatism (Dutt, 2025), the analysis here points to a structural explanation. Courts are not just reluctant to use the standards of

consent in marriage; they are limited by a legal structure that has already established marital identity as the *prerequisite condition of legality* in place of consent.

As soon as marriage is conceptualized as a replacement, and not a setting, the doctrinal incoherence becomes explainable. The rape law is structured around an inquiry into the presence of consent, and when marriage provides a pre-emptive legal answer, it renders the inquiry redundant. Such substitution does not merely narrow the scope of rape jurisprudence. It restructures its internal logic, permitting the relational identity to prevail over assessment reasoning. By so doing, it preconditions a system where the sexual legality is unevenly allocated between relationships, a consequence that the next section examines through the prism of fragmented jurisprudence and stratified victimhood.

### **C: Fragmented Sexual Legality and Stratified Victimhood**

When marriage substitutes the consent inquiry, rape law ceases to function as a general law of sexual violation and instead generates a fragmented regime of sexual legality. The same behaviour is subjected to completely different legal treatment solely on the basis of marital status. This divergence does not arise from ambiguity in the definition of rape, but rather from the law's deliberate willingness to privilege relational status over evaluative inquiry that would have governed sexual offences. Consequently, the rape law operates unevenly, transforming what purports to be a universal standard into a stratified legal system.

This stratification is most clearly visible in judicial reasoning. The courts have recognised that sexual violence within intimate relationships amounts to a violation of bodily integrity and dignity, most notably in *State of Karnataka v. Krishnappa*. At the same time, constitutional interventions, as in *Independent Thought v. UOI*, reflect a judicial willingness to restrict marital immunity only in narrowly defined circumstances, although leaving the overall exception intact. On the other hand, rulings like the one made by the Chhattisgarh High Court under Section 377 IPC demonstrate how rigid statutory fidelity can render serious sexual harm legally invisible where marriage is operating as a dispositive. Taking together, these judgments do not reflect an inconsistency of principle, but the operation of a legal system that permits treating people unequally based on status rather than conduct.

This differential treatment produces stratified victimhood. Victimhood under rape law is no longer determined by the occurrence of violation, coercion, or harm, but rather by the legal

intelligibility of the experiences. As Tarafder & Ghosh (2020) posit, the marital rape exception operates as a form of constitutional exclusion that suspends the applicability of dignity and autonomy where they are required the most. The current analysis extends this claim by showing that this exclusion is not simply constitutional in character but is doctrinally entrenched in rape law itself, which creates two classes of legal subjects within a single statutory framework.

This doctrinal stratification is also reflected in the empirical outcomes. National Family Health Survey data from 2019-22 consistently indicates the high rates of sexual violence committed by husbands and insignificantly low percentages of legal reporting. The significance of this data lies not in establishing the existence of harm, which is already well documented, but in revealing the consequences of legal non-recognition. The rape law, which is unwilling to recognise non-consensual sex in marriage as legally cognisable, produces *structural invisibility* of such violence. Legal exclusion, therefore, not only influences the results of enforcement but the very possibility of naming sexual harm as criminal.

At this point, the issue cannot be reduced to an unequal degree of application or judicial reluctance. Rape law operates through two simultaneous regimes of sexual legalities. In one consent can be seen to be an effective criterion of criminality. In the other, matrimonial conditions preclude inquiry altogether. This dichotomy invalidates the argument that the law of rape is a coherent system of sexual control and supports why the efforts to reform the law continue to fail in explaining the contradiction. Understanding this failure necessitates examining the boundaries of reform itself, a question that is addressed in the following section.

#### **D: Reform Without Doctrinal Reorientation**

The persistence of the marital rape exception cannot be sufficiently explained because of legislative inertia or ignorance. The issue has been repeatedly acknowledged in the efforts to reform, consent-centred frameworks have been articulated, and even concrete statutory changes have been proposed. But these efforts have consistently stopped short of changing the doctrinal architecture that permits consent to be selectively suspended within marriage. The ineffectiveness of reform is thus not in its absence, but rather in its unwillingness to confront the structural role of marriage within rape law jurisprudence.

This is best exemplified by the Justice Verma Committee Report (2013), which formulated a coherent and constitutionally aligned vision of the rape law centred around autonomy, dignity,

and free consent. The Committee directly opposed the concept of marriage implying sexual consent and recommended the removal of the marital rape exception. What makes this moment analytically significant is not the substance of the recommendation, but its clarity. A consent-based rape statute, the Committee demonstrated, could operate uniformly across all relational contexts without doctrinal collapse. The subsequent rejection of this proposition can then be construed as an uncertainty about consent itself, but as a *deliberate refusal* to extend its operation.

The parliamentary response to the Verma Committee is the first formal retreat from this logic. Deliberations in parliament recognised the damage done by non-consensual sex in marriage, but criminalising it was framed as socially disturbing and institutionally destabilising. As Kallakuru and Soni (2018) observe, the reform discourse around marital rape is often redirected towards issues of abuse, false charges, and the preservation of family institutions. These apprehensions function less as *empirical objections* and more as *instruments of justification* that enable consent to be treated as negotiable instead of being foundational. Consent as a principle is not repudiated but contained strategically.

This containment is additionally reinforced by executive reasoning. Government affidavits submitted in constitutional objections to the marital rape exception invariably affirm that consent is central to rape law, and at the same time maintain that marriage warrants special legal treatment. The interesting aspect in this case is that the state does not assert that consent exists in marriage. Rather, it claims that the law must not seek any inquiry into its deficiency. This position reflects a *calculated tolerance of doctrinal inconsistency*. Consent is maintained as an abstract norm and suspended in practice, thereby preserving legal outcomes while maintaining the appearance of reform.

Comparative frameworks underscore that such failure is not inevitable. In the United Kingdom, the Sexual Offences Act (2003) eliminated the factor of marital status in the question of consent without destabilising the structure of sexual offence law, or producing institutional disintegrations commonly predicted about in the Indian debates. The significance of this comparison lies not in transplanting foreign solutions but in demonstrating that doctrinal coherence is achievable when consent operates uniformly. The Indian refusal to follow suit, hence, is not a matter of inability, but a *matter of choice*.

Contemporary reform initiatives continue to operate within this constrained logic. Private Member's Bills like those presented by Dr. Shashi Tharoor are a direct appeal to constitutional principles and the argument of the Verma Committee, but are nonetheless politically peripheral and legislatively ineffective. The symbolic lies in confirming that the problem is discussed across institutional sites. It is their constant failure to do so that demonstrates that reform is tolerable only to the extent that it does not interfere with the legal fiction that marriage can replace consent.

This trend is also confirmed by the enactment of the *Bharatiya Nyaya Sanhita* (2023). The new code continues to preserve the marital rape exception substantially despite its having been packaged as a modernisation of criminal law. This continuity, as Dutt (2025) observes, is a legislative bias toward formal rather than conceptual rectification. The language changes, even reformed, but the underlying doctrinal framework is maintained. Consent is reaffirmed rhetorically while being operationally restricted.

Taken together, these developments demonstrate that reforms fail not due to the misunderstanding of consent, but because it is politically controlled. The marital rape exception is one of those cases in which the *law allows itself to be incoherent*. The reformation efforts likely to fail to address this underlying contradiction are bound to reproduce it. That explains why successive interventions repeatedly reproduce the same contradiction rather than resolving it. The impact of this conditional consent also extends beyond marriage, becoming apparent when examining its implications in relation to the entire consent-based rape law.

### **E: Conditional Consent and the Limits of Consent-Based Rape Law**

The analysis developed in this paper demonstrates that the marital rape exception is not an isolated doctrinal anomaly, but a symptom of a structural weakness in the consent-based rape law. When consent is permitted to operate conditionally, its role as a *universal threshold of sexual legality* is undermined. Rape law continues to speak in the language of consent, while no longer guaranteeing that consent will be the decisive legal inquiry in every case of alleged sexual violation. This tension exposes the limits of an operating framework that treats consent as fundamental and negotiable, both at the same time.

The instability revealed by the marital rape exception has wider consequences for how rape law identifies harm. As Scarry (1990) demonstrates in her work on bodily injury and legal

narration, people have difficulty in recognizing experiences of violation because the law does not provide a stable framework for hearing them. The current discussion builds upon this observation by demonstrating that rape law is not failing to listen to some harms. It actively structures itself to *refuse recognition* in certain relational contexts. In the case of suspended consent, the violation becomes legally unspeakable not because it cannot be articulated, but because the *law has pre-emptively determined the irrelevance of such articulation*.

This foreclosure also explains the persistence of credibility-based adjudication in rape jurisprudence through its perpetuation. Kulshreshtha's (2020) analysis of judicial reasoning reveals the patterns of courts replacing evaluations of conduct, consistency, or plausibility with a direct evaluation of consent. The present analysis suggests that this kind of substitution cannot be merely an adjudicative habit. It is an anticipated implication of a legal system that undermines consent as a decisive measure in another domain. When the destabilisation of consent is introduced in marriage, its authority as a legal norm in other areas becomes more vulnerable, creating room for the indirect and discretionary forms of assessment.

The constitutional implications are equally significant. According to Tarafder & Ghosh (2020), the marital rape exception produces a *conditional constitutional personhood*, in which dignity and autonomy are suspended in marriage. This present analysis supports this claim while situating it within the logic of rape law itself. Conditional consent does not simply restrict the accessibility to criminal remedies. It also reshapes who the law recognizes as a subject capable of perpetuating sexual violence. This way, rape law becomes a mechanism where constitutional guarantees are realised unevenly as opposed to being realized universally.

This conclusion further complicates broader critiques of criminalization more generally. Law experts like Kotiswarana (2016) warn that the criminal law should not be applied broadly to control sexual behaviour and intimate relations. Inasmuch as such critiques point to critical issues, the current discussion has shown that incoherence in rape law discredits both carceral and non-carceral structures. A legal regime incapable of identifying violations with consistency cannot meaningfully seek protection, accountability, or restraint. Any normative position on the role of criminal law in the regulation of sexual harm must therefore be doctrinally coherent.

Viewed in this light, the marital rape exception emerges as more than an inclusion failure. It exposes a structural contradiction of the consent-based rape law. A legal regime claiming a certain organising rule, namely consent, is supposed to have been consenting, and where a

certain suspension thereof is permissible without any investigation, is unable to support its own organising logic. As long as this contradiction is not resolved at the level of jurisprudence, the history of rape will be torn into loose fragments, its safeguards uneven, and its protections uneven, and its promises of autonomy and dignity fully fulfilled but incompletely.

## **CONCLUSION**

This paper aimed at discussing whether the marital rape exception compromises the doctrinal consistency of the consent-based rape law in India within the criminal law reform regulation of the post 2013 criminal law reform framework. The analysis demonstrates that the exception is not merely an incomplete subfield of criminalisation but a structural contradiction within rape jurisprudence itself. The Indian criminal law creates a bifurcated system of sexual legality where the same acts of non-consensual sexual violence are treated differently just because of their marital status by permitting consent to serve as the organising principle of rape law and, at the same time, dispensing with its legal applicability in marriage.

This discrepancy has not been revealed to be accidental and transitional, as has been determined in the study. Consent rhetorically has been reasserted and limited in the field of practice through legislative options, judicial restraint, and policy discussion on reform. Consent, therefore, ceases to be a stable legal threshold and becomes conditional based on relational status. This undermines the logic of rape as a law, makes judicial adjudication difficult, and creates disproportionate awareness of sexual harm, especially to married women.

By treating the marital rape exception as an issue of doctrinal coherence and not just an issue of rights, criminalisation, or social reform, the paper introduces a new method of analysis to the current literature on rape law and consent in India. It emphasises the possibility of the normative power of law principles in selective application and explains why attempts to reform, which fail to take the structural place of marriage in rape jurisprudence, are likely to recreate rather than eliminate its underlying contradiction.

Future studies can be informed by this analysis through investigating the mechanisms of consent-based rape in jurisdictions that have abolished marital exemptions and by considering how the doctrinal inconsistency predetermines reporting patterns, adjudication, and legal consciousness about sexual violence in marriage. This would further the knowledge about how legal coherence, rather than reform rhetoric itself, influences the ability of rape law to be a

credible system of sexual regulation.

Finally, the findings imply that a consent-based rape law cannot exist in a conceptually stable state when it is granted to act conditionally. This contradiction will persist in India until it is resolved on a legal principle level, which is that rape jurisprudence will continue to be internally fragmented, with its pledges to autonomy, dignity, and equality having an uneven fulfilment on the ground.

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