

MARITAL RAPE AND NUTRITIONAL DEPRIVATION IN INDIA: A DOCTRINAL ANALYSIS OF THE RIGHTS OF WOMEN AND CHILDREN

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ABSTRACT

The persistence of the marital rape exception in Indian criminal law constitutes not merely a legislative lacuna but a structural condition that reproduces gendered harm across multiple dimensions of well-being. This paper undertakes a doctrinal analysis of the legal framework governing marital rape in India — from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita, 2023 — and examines its intersection with the nutritional deprivation of women and children. Drawing on constitutional jurisprudence, feminist legal theory, international human rights instruments, and peer-reviewed empirical research, the paper argues that the non-criminalisation of marital rape violates the fundamental rights of women and children, including the constitutionally recognised right to nutritious food under Article 21 of the Constitution of India. The analysis establishes that legal reform criminalising marital rape is not merely a gender justice imperative but a necessary public health intervention to safeguard the nutritional rights of women and children. The paper proceeds through a critical engagement with judicial decisions, statutory provisions, treaty obligations, and empirical findings to demonstrate the normative and material connections between sexual coercion within marriage and nutritional deprivation as a justiciable constitutional harm.

Keywords: Marital Rape, Nutritional Deprivation, Article 21, Women's Right, Child Rights, Intimate Partner Violence, Right to Food, Bodily Autonomy, Feminist Legal Theory

INTRODUCTION

The relationship between legal impunity and bodily harm is seldom as pronounced as in the context of marital rape in India. India remains one of the few jurisdictions in the world that explicitly decriminalises spousal rape, a position rooted in the colonial-era Doctrine of Coverture, which presumed irrevocable matrimonial consent upon the conclusion of marriage. Exception 2 to Section 375 of the Indian Penal Code, 1860 (hereinafter "IPC") — replicated with marginal modification in Section 63 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter "BNS") — categorically exempts a husband from criminal liability for non-consensual sexual intercourse with his wife, provided she has attained the prescribed minimum age. The legislative persistence of this exception, despite sustained constitutional scrutiny and civil society advocacy, has generated a regime of legal silence with consequences that extend far beyond the criminal law — consequences that penetrate the nutritional, physical, and psychological well-being of women and their dependent children.

The relationship between sexual violence within marriage and nutritional deprivation is no longer speculative. Peer-reviewed studies using nationally representative data from

India confirm that intimate partner violence (IPV), including its sexual dimension, is significantly associated with undernutrition, anaemia, poor dietary intake, and compromised infant-feeding practices among Indian women. The National Family Health Survey-5 (NFHS-5, 2019–21) establishes that approximately 29% of ever-married Indian women have experienced some form of partner violence. Children born to mothers who have been subjected to spousal violence exhibit substantially higher rates of stunting, underweight, and wasting. The World Health Organisation (WHO) has confirmed that globally, women who have experienced physical or sexual partner violence are 16% more likely to have a low-birth-weight baby, more than twice as likely to have an abortion, and almost twice as likely to experience depression as women who have not experienced such violence. Yet Indian law refuses to name, let alone criminalise, the most intimate form of sexual violence — that perpetrated by a husband against his wife — thereby denying its victims any pathway to justice or institutional protection.

The doctrinal inquiry undertaken in this paper begins with the law's historical complicity in normalising marital sexual violence, moves through the constitutional framework that condemns such violence, and culminates in demonstrating the empirical harm that the law's continued silence produces. The argument advanced is that the marital rape exception is not a legal technicality confined to the criminal law; it is a constitutional violation with measurable nutritional consequences for women and children — consequences that the State has an affirmative duty under Articles 21 and 47 of the Constitution to prevent and remedy.

THE MARITAL RAPE EXCEPTION: DOCTRINAL ORIGINS AND LEGISLATIVE CONTINUITY

A. HISTORICAL FOUNDATIONS:

(i) The Doctrine of Coverture

The marital rape exception in Indian law derives from the dictum of Sir Matthew Hale, Lord Chief Justice of England, in his *History of the Pleas of the Crown* (1736): "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract." This statement — pronounced without citation to any judicial authority and subsequently treated as an authoritative legal proposition — encapsulated the Doctrine of Coverture: the complete absorption of the wife's legal identity into that of her husband upon marriage. It was this doctrine that was incorporated by Lord Macaulay's Law Commission into the Indian Penal Code, 1860, thereby transplanting into Indian criminal law the colonial presumption that a married woman irrevocably surrenders her right to bodily autonomy upon matrimony.

Exception 2 to Section 375 IPC provided: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape." This provision did not merely create a procedural immunity; it extinguished the very legal category of non-consensual marital sex as a criminal act. As feminist legal scholars have observed, the effect of this exception was to institute an assumption of "consent in perpetuity" — a legal fiction

that has no basis in constitutional values of equality, dignity, or autonomy. The assumption that marriage confers upon the husband a permanent right of sexual access to the wife, irrespective of her will, is, in the words of Catharine MacKinnon, a manifestation of the structural inequality embedded in the very concept of legal consent as applied to marital relations — an inequality that the law has historically ratified rather than interrogated. As MacKinnon argues in her reformulation of the law of rape, consent as currently constructed in the law incorporates gender hierarchy by assuming that men initiate sexual contact which women then either accept or refuse, thereby placing the burden of refusal upon the victim rather than the obligation of affirmative consent upon the perpetrator.

(ii) Irrevocable Consent in Ancient Hindu Texts

The concept of marital rape is far from a novel occurrence, with roots tracing back to ancient India. The specific timeframe of its emergence remains unknown, yet its presence throughout ancient, medieval, and modern Indian history is irrefutable. In those eras, women were often not recognized as individuals with autonomy but rather were viewed as the possessions of their fathers, and subsequently their husbands after marriage. They lacked independence and were deprived of rights. Such erroneous beliefs gave rise to the scourge of marital rape in India. During those times, India lacked robust legal protections for women. Women had scant rights, and even the minimal rights they possessed were often unknown to them. Additionally, women were entirely dependent on their husbands and had no choice but to comply with their husbands' wishes, whether just or unjust. These factors collectively facilitated the rampant incidence of marital rape in India. Thus, the spectre of marital rape spans across the nation's ancient, medieval, and modern eras.

References to marriage, family, and sexual relations are abundant in various Hindu texts and Vedas. Interpretations of these codifications reveal contrasting views on women's status. Some scholars argue that women have been subjugated and deprived under the guise of social values and norms, while others believe that women once held high and respectable positions in ancient Indian society. Hindu religious texts and their varied interpretations have made marriage both intriguing and sacred in India. Marriage is regarded as one of the primary 'Samskaras' of life, becoming mandatory, especially for women. During the later Vedic period, husbands became authoritative figures with the power to coerce their wives if they committed any misstep. Over time, this power grew boundless. While both partners took marriage vows as 'dampati' (joint holders), societal expectations did not enforce the same level of conjugal duty on husbands. Rituals in the later Vedic period legitimized male control over resources and women's reproductive roles. Displays of power and coercion became accepted behavior, further entrenching the patriarchal and social framework within family and marriage.

Normative texts such as the *Manusmriti* and other *Dharmashastras* articulate a marital framework in which the wife's fidelity and obedience to her husband are elevated as cardinal virtues, often treating marital consent as permanently subsumed within the institution of marriage itself. Although early Vedic hymns occasionally portray marriage as a relationship grounded in companionship and mutual respect, subsequent patriarchal exegesis marginalised these egalitarian strands and reinforced the belief that a wife's consent, once given through

marriage, was irrevocable. Over time, Hindu legal and social practices increasingly legitimised male authority over female autonomy, thereby entrenching the notion of perpetual marital consent. Vātsyāyana's *Kāmasūtra* presents a more nuanced, though still patriarchal, articulation of marital sexuality. While the text does not conceptualise consent in contemporary terms and reflects the subordination of women within sexual relations, it simultaneously cautions against the use of force by husbands. Vātsyāyana warns that coercive sexual conduct may engender aversion towards intimacy and even hostility towards men, thereby advocating an approach that accounts for a woman's disposition and preferences. He further suggests that marriage does not confer upon a man an absolute proprietary right over his wife as a person, although he circumscribes the scope of legitimate female resistance.

B. Conceptual Framework: Sexual Violence, Nutrition, and Structural Harm

Understanding the nutritional consequences of marital rape requires moving beyond an individualised conception of violence to a structural analysis. Sexual violence within marriage rarely occurs in isolation; it is embedded within power relations characterised by gender inequality, economic dependence, and social control. These conditions shape women's access to food, healthcare, and decision-making authority within the household.

One pathway linking marital rape and malnutrition is reproductive coercion. Forced sexual intercourse often results in repeated and unintended pregnancies, which deplete women's nutritional reserves, particularly in contexts where access to antenatal care and supplementation is limited. Anaemia, low body mass index, and micronutrient deficiencies are common outcomes of closely spaced pregnancies, especially among women with limited autonomy.

Another pathway operates through psychological trauma. Survivors of sexual violence frequently experience depression, anxiety, and post-traumatic stress, all of which can disrupt appetite, eating patterns, and self-care practices. In households where violence is normalised, women may prioritise feeding other family members over themselves or may be deliberately denied food as a form of control.

Children are affected through both biological and social mechanisms. Maternal undernutrition during pregnancy increases the likelihood of adverse birth outcomes, while postnatal exposure to violence is associated with neglect, poor feeding practices, and reduced healthcare utilisation. Thus, nutrition emerges as an inter-generational site of harm produced by marital sexual violence.

THE BNS 2023: A MISSED LEGISLATIVE OPPORTUNITY

The enactment of the Bharatiya Nyaya Sanhita, 2023 — which replaced the IPC with the stated objective of decolonising Indian criminal law — presented a critical legislative opportunity to excise this colonial-era anomaly. Parliament chose to retain the marital rape exception in Section 63 of the BNS, with only one modification: the minimum age threshold was raised from fifteen to eighteen years, pursuant to the Supreme Court's direction in *Independent Thought v Union of India* (2017). This retention occurred notwithstanding the explicit recommendation of the Justice J.S. Verma Committee (January 2013) — constituted in the immediate aftermath of the Delhi gang-rape case of December 2012 — that "the

exception for marital rape be removed" from the definition of rape in the IPC, the Committee having stated that it "could find no logical reason for the same." The Committee's recommendation was unambiguous: the marital rape exception "should be removed" because "a marital relationship should not be regarded as a permanent license" for sexual coercion.

The BNS thus perpetuates the colonial legacy of coverture under the guise of legislative modernisation, leaving married women without the most elementary protection of criminal law against sexual violence by their husbands. From a feminist jurisprudential perspective, this legislative choice epitomises what feminist legal theory identifies as the law's complicity in institutionalising the idea that a wife's consent is irrevocable once marriage occurs — reinforcing a structure in which the husband's access to his wife's body is legally guaranteed while her autonomy is systematically denied

JUDICIAL INTERPRETATIONS OF MARITAL OBLIGATIONS AND WOMEN'S BODILY AUTONOMY

The judiciary has engaged the marital rape exception with increasing constitutional rigour, though not without internal tension. In *Independent Thought v Union of India*, AIR 2017 SC 4904, a Division Bench of the Supreme Court struck down Exception 2 to Section 375 IPC in so far as it permitted sexual intercourse with a girl child aged between fifteen and eighteen years, holding the exception to be "unreasonable, unjust, unfair and violative of the rights of the girl child" and "arbitrary and discriminatory," in violation of Articles 14, 15, and 21 of the Constitution. The Court found the exception irreconcilable with the Protection of Children from Sexual Offences Act, 2012 (POCSO), which treats all non-consensual sexual activity with a minor as rape regardless of marital status, and with the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court consciously refrained from adjudicating upon the marital rape exception in relation to adult wives, thereby leaving the core constitutional question for future adjudication.

The more direct constitutional contest arose before the Delhi High Court in *RIT Foundation v Union of India*, W.P.(C) 284/2015, decided by a Division Bench on 11 May 2022 in a split verdict. Justice Rajiv Shakdher held the marital rape exception unconstitutional, finding that it created an "unreasonable, discriminatory and arbitrary classification" between married and unmarried women in violation of Article 14; infringed upon a married woman's bodily autonomy, dignity, and reproductive freedom in violation of Articles 19(1)(a) and 21; and that "immunity from prosecution based on the relationship between the parties is unjust and manifestly arbitrary." Justice C. Hari Shankar, in dissent, upheld the exception, reasoning that an intelligible differentia existed between a husband and a stranger and that the preservation of the institution of marriage constituted a rational nexus sufficient to justify the classification under Article 14. The Karnataka High Court, in *Hrishikesh Sahoo v State of Karnataka* (Criminal Petition No. 3423/2021, decided 23 February 2022), adopted a progressive position, holding that the exception was "regressive" and violated the right to equality, and that "no exception under law can be so absolute that it becomes a license for the commission of a crime against society." The consolidated challenge is currently pending before the Supreme Court.

CONSTITUTIONAL INFIRMITIES OF THE MARITAL RAPE EXCEPTION

A. VIOLATION OF ARTICLE 14: THE RIGHT TO EQUALITY

The marital rape exception fails the twin-test under Article 14 — intelligible differentia coupled with rational nexus to the object of the legislation — as articulated by the Supreme Court in *State of West Bengal v Anwar Ali Sarkar*, AIR 1952 SC 75. The classification it creates between married and unmarried women — granting the former inferior criminal law protection against sexual violence — rests upon no constitutionally defensible basis. The act of non-consensual sexual penetration is identical in its physical commission and psychological harm whether perpetrated by a stranger or a husband; no rational principle supports criminalising the former while immunising the latter. The BNS 2023 was enacted to eliminate colonial anachronisms, yet the marital rape exception was retained, an inconsistency that is itself evidence of the exception's irrationality as a matter of legislative policy. The petitioners in *RIT Foundation* cogently argued that the exception violates Article 14 because it creates "an unreasonable classification between married and unmarried women, denying married women equal protection and equal treatment by the state." India's retention of this exception also places it in sharp contrast with global legislative trends: more than 150 countries, including the United Kingdom (since 1991), Canada, South Africa, Australia, and the United States, have criminalised marital rape, recognising that the marital relationship cannot serve as a constitutional basis for perpetuating sexual violence with legal impunity.

B. VIOLATION OF ARTICLE 21: BODILY AUTONOMY, DIGNITY, AND REPRODUCTIVE FREEDOM

The most fundamental constitutional objection to the marital rape exception is its incompatibility with Article 21. The Supreme Court has progressively expanded Article 21 to encompass the right to live with human dignity (*Francis Coralie Mullin v Union Territory of Delhi*, AIR 1981 SC 746); the right to privacy, including sexual and reproductive privacy (*Justice K.S. Puttaswamy v Union of India*, (2017) 10 SCC 1); and the right to reproductive autonomy, including "the right to refuse participation in sexual activity" (*Suchita Srivastava v Chandigarh Administration*, (2009) 13 SCR 989). In *Suchita Srivastava*, the Court held unequivocally that "reproductive choices can be exercised to procreate as well as to abstain from procreating," and that "a woman's right to privacy, dignity and bodily integrity should be respected" — a right that admits of "no restriction whatsoever." Read alongside the *Puttaswamy* judgment's recognition of privacy as a fundamental right intrinsic to individual autonomy and dignity, the legal proposition that a woman loses these rights in the conjugal sphere is constitutionally untenable.

The marital rape exception extinguishes a married woman's right to refuse sexual intercourse with her husband, nullifying her Article 21 rights of privacy, dignity, and bodily integrity within the domestic sphere. As Justice Rajiv Shakti held in *RIT Foundation*, "marriage cannot extinguish a woman's autonomy or her right to bodily integrity." The Oxford Human Rights Hub has observed that the exception "forces [the wife] to enter into a sexual relationship under duress, infringing her right to privacy by denying her the ability to make autonomous decisions about her sexual life." The non-criminalisation of marital rape therefore violates Article 21 on multiple overlapping grounds: deprivation of bodily autonomy, degradation of human dignity, and infringement of reproductive freedom.

C. ARTICLE 21 AND THE CONSTITUTIONAL RIGHT TO NUTRITIOUS FOOD

Article 21's expansive judicial construction has specifically encompassed the right to food. In *People's Union for Civil Liberties v Union of India (PUCL)*, Writ Petition (Civil) No. 196 of 2001, the Supreme Court held that the right to food is a fundamental component of the right to life under Article 21, observing that a State which allows its people to go hungry despite having the means to prevent it fails in its most basic constitutional duty. The Court issued a series of continuing directions requiring the State to ensure that no one dies of hunger or malnutrition, and mandated the supply of nutritious food to pregnant women, lactating mothers, and children through the Integrated Child Development Services (ICDS) and the Midday Meal Scheme. The Karnataka High Court further held in 2009 that "women and children have a right to nutritious food under the right to life protected by Article 21 of the Constitution." Article 47 of the Constitution, as a Directive Principle of State Policy, additionally enjoins that "the raising of the level of nutrition and the standard of living of its people" shall be among the State's "primary duties."

The doctrinal significance of these pronouncements is direct: if Article 21 guarantees a right to nutritious food, and if marital rape and associated forms of intimate partner violence cause demonstrable nutritional deprivation to women and children, then the State's failure to criminalise marital rape constitutes a failure to protect the constitutionally guaranteed nutritional rights of its most vulnerable citizens. The legal impunity conferred by the marital rape exception thus does not merely perpetuate criminal injustice; it actively undermines constitutional guarantees of nutritional well-being. The State's obligation under Article 21 is not merely negative — to refrain from depriving citizens of nutritious food — but positive: to create the legal, social, and institutional conditions under which women and children can exercise their nutritional rights without subjection to intimate partner violence.

INTERNATIONAL HUMAN RIGHTS OBLIGATIONS: CEDAW, ICESCR, AND THE CRC

A. CEDAW AND THE OBLIGATION TO CRIMINALISE MARITAL RAPE

India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993, thereby incurring binding obligations under international law to eliminate all forms of discrimination against women in law and in practice. The CEDAW Committee's General Recommendation No. 19 (1992) explicitly recognised gender-based violence, including marital rape, as a form of discrimination under Article 1 of the Convention, defining it as "violence that is directed against a woman because she is a woman or violence that affects women disproportionately," including "acts that inflict physical, mental or sexual harm or suffering" occurring "within the family or domestic unit." General Recommendation No. 35 (2017), which updates and supersedes GR-19, goes further: it explicitly requires State parties to "ensure that the definition of sexual crimes, including marital and acquaintance/date rape, is based on lack of freely given consent, and takes account of coercive circumstances," and calls upon States to criminalise marital rape as a crime against women's right to personal security and their physical, sexual, and psychological integrity.

The CEDAW Committee has directly engaged with India's non-compliance. In its Concluding Observations following India's combined fourth and fifth periodic reports (58th Session, 2014), the Committee urged the Government of India "to amend the Criminal Law (Amendment) Act to ensure that marital rape is defined as a criminal offence," observing that the existing definition of rape failed to reflect the realities of sexual abuse experienced by women and girls in India. Under Article 2(f) of CEDAW, India is obligated to "modify or abolish existing laws, customs and practices that constitute discrimination against women" — an obligation that the retention of the marital rape exception in the BNS 2023 directly and unambiguously contravenes. As the Berkeley Journal of International Law has observed, India's maintenance of the exception constitutes a failure to meet the due diligence standard of CEDAW, which requires States to prevent, investigate, and punish acts of gender-based violence, regardless of whether those acts are perpetrated by State or private actors. The due diligence obligation extends to reforming laws that facilitate or excuse violence against women — a standard that the marital rape exception openly violates.

B. ICESCR AND THE RIGHT TO ADEQUATE FOOD AND HEALTH

India acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979. Article 11(1) of the ICESCR recognises "the right of everyone to an adequate standard of living for himself and his family, including adequate food," while Article 12 recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment No. 12 on the Right to Adequate Food (1999), confirmed that the right to food imposes upon States not merely negative obligations but positive obligations to protect individuals from deprivation of food security caused by third parties, including intimate partners. As demonstrated in the empirical analysis below, marital rape and associated IPV are linked to nutritional deprivation and adverse health outcomes in women and children. India's failure to criminalise marital rape therefore implicates its positive obligations under the ICESCR to take all appropriate steps toward the realisation of the right to food and the right to health.

. THE CONVENTION ON THE RIGHTS OF THE CHILD

India ratified the Convention on the Rights of the Child (CRC) in 1992. Article 27 of the CRC recognises "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development," while Article 24 recognises the child's right to "the enjoyment of the highest attainable standard of health," including access to "adequate nutritious foods." As extensive empirical evidence confirms, children born to mothers subjected to marital rape and intimate partner violence exhibit significantly elevated rates of stunting, underweight, and wasting — nutritional deficits that compromise their right to adequate development under the CRC. The marital rape exception thus indirectly violates India's obligations under the CRC by creating and sustaining a legal environment that tolerates the conditions producing child malnutrition.

MARITAL RAPE AND NUTRITIONAL DEPRIVATION: THE EMPIRICAL-JURIDICAL NEXUS

A. NUTRITIONAL CONSEQUENCES FOR WOMEN: PUBLIC HEALTH EVIDENCE

The relationship between marital rape, intimate partner violence, and nutritional deprivation among Indian women is robustly documented in peer-reviewed literature. A major study by Bhandari, Prusty, and Begum, published in Archives of Public Health (2023), utilised data from 60,622 ever-married women aged 15–49 years drawn from NFHS-5 (2019–21) and applied latent class analysis to assess the association between typological patterns of IPV and nutritional outcomes. The study found that women experiencing the combined pattern of high physical and high sexual violence — the typology most closely approximating marital rape — were significantly more likely to be undernourished, with Body Mass Index (BMI) below 18.5 kg/m², compared to women who did not experience such violence. This finding is consistent with the WHO's 2024 global estimates, which confirm that women experiencing physical or sexual violence from a partner report substantially higher rates of health impairments including undernutrition and anaemia.

The NFHS-5 further documents that the overall prevalence of anaemia among women of reproductive age in India has increased from 53% in NFHS-4 (2015–16) to 57% in NFHS-5 (2019–21). In at least twelve Indian states, over 60% of women surveyed were found to be anaemic. In states with high IPV prevalence — such as Assam, Uttar Pradesh, Bihar, and Rajasthan — anaemia rates among women of reproductive age remain among the highest in the country, with Assam recording a 10–15% rise in anaemia prevalence between NFHS-4 and NFHS-5. The epidemiological literature has consistently identified intimate partner violence as a significant independent predictor of nutritional deficits in women, operating through pathways including depression-induced appetite suppression, reproductive coercion, economic control, and restricted access to food and healthcare.

B. THE CAUSAL PATHWAYS: DEPRESSION, REPRODUCTIVE COERCION, AND FOOD INSECURITY

The mechanisms through which marital rape produces nutritional deprivation are multifactorial and empirically established. The first and most direct pathway operates through mental health. A systematic review by Agarwal, Abdalla, and Cohen, published in PLOS Global Public Health (2022), identified 11 studies meeting rigorous inclusion criteria and found that marital rape is significantly associated with clinical depression (reported in 7 of 8 studies) and Post-Traumatic Stress Disorder (PTSD). The review found that sexual coercion by an intimate partner was highly prevalent in India, ranging from 9% to 80% across study populations, and marital rape prevalence ranged from 2% to 56%. One study included in the review found that 99% of women experiencing spousal abuse met the criteria for depression, and 42% were suffering from severe depression. Clinical depression is causally linked to appetite suppression, disrupted eating patterns, and neglect of dietary self-care — all of which translate directly into inadequate caloric and micronutrient intake, producing undernutrition over time. Marital rape victims suffer more severe psychological consequences and for a longer period than those raped by strangers, because the violence occurs within a relationship from which escape is legally, economically, and socially constrained.

A study by Brandhorst and Clark published in *Health and Social Care in the Community* (2022) found that survivors of intimate partner violence experienced food insecurity at 53.8% — a rate substantially higher than the general population average — and confirmed a statistically significant relationship between food security and mental health outcomes including depression and PTSD. A global study published in *BMJ Global Health* (2025), using nationally representative survey data from 156 countries, confirmed an independent cross-sectional association between food insecurity and IPV ($b = 0.49$; 95% CI 0.37 to 0.62), finding that food insecurity predicted higher IPV two years later even after controlling for GDP ($b = 0.78$; 95% CI 0.48 to 1.06). This food insecurity–mental health nexus is bidirectional: poor mental health arising from marital rape impairs a woman's ability to obtain and prepare adequate food, while food insecurity itself exacerbates depression and anxiety, further deteriorating nutritional status.

The second pathway operates through reproductive coercion. Silverman and Raj, in an analysis published in *PLOS Medicine* (2014), demonstrated that IPV is a major contributor to poor reproductive outcomes including unintended pregnancy and loss of reproductive autonomy for women globally. A study by Silverman et al. on reproductive coercion in Uttar Pradesh, India, published in *SSM Population Health* (2019), found that coercion and sabotage by husbands and in-laws to inhibit women's access to contraception — a direct manifestation of marital sexual violence — were prevalent and significantly associated with poor reproductive health outcomes. Repeated unwanted pregnancies resulting from marital rape impose severe nutritional burdens: each pregnancy demands additional caloric intake and micronutrient supplementation, resources that women subjected to marital rape are systematically denied access to by virtue of their subordinated position within the marital household. A study by Garg et al., published in *BMC Pregnancy and Childbirth* (2022) using NFHS-4 data, found that sexual violence is a significant predictor of unintended pregnancy among married women in India, establishing that sexual IPV within marriage generates the conditions for nutritional depletion through forced reproductive cycling.

The third pathway operates through economic control and food deprivation as instruments of marital coercion. Studies on intimate partner violence in India document that economic abuse — including denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to healthcare and employment — is a common accompaniment of abusive marital relationships. An IMF Working Paper (2024) found that in India, each incidence of IPV implies at least five paid days of work lost, with cascading effects on household food security. The UNFPA has specifically documented "the link between marital violence and malnutrition among women and their children," recommending that nutritional programmes must address marital violence as a structural determinant of nutritional outcomes.

C. Nutritional Consequences for Children: Stunting, Underweight, and Wasting

The nutritional consequences of marital rape and intimate partner violence extend beyond the immediate survivor to establish an intergenerational cascade of nutritional deprivation. A seminal study by Mondal, published in *Children and Youth Services Review* (2020), utilised NFHS-4 data from a nationally representative sample and found that approximately 27% of

currently married Indian women reported experiencing violence from their husbands within the preceding year. Children whose mothers experienced physical, sexual, or emotional violence exhibited substantially elevated rates of stunting (37%), underweight (21.6%), and wasting (20.4%) compared to children of non-abused mothers. Maternal IPV exposure was found to be a significant independent predictor of childhood underweight, maintaining its statistical significance even after controlling for maternity care, birth outcomes, and sociodemographic variables.

A secondary analysis by Lakhtdir et al., published in *BMJ Open* (2024), using Demographic and Health Survey data from four South Asian countries including India, found that the prevalence of IPV among women in India was the highest in the sample at 31%. In India specifically, children whose mothers were exposed to IPV showed a 7% increase in the prevalence of moderate to severe child stunting (OR: 1.07; 95% CI: 1.01 to 1.14), confirming the independent role of maternal violence exposure in determining child anthropometric outcomes. A multi-country study by Lin et al., published in *Frontiers in Public Health* (2024), found that sexual violence was the strongest IPV predictor of child stunting across 29 countries, remaining statistically significant even after controlling for all other variables (AOR: 1.11; 95% CI: 1.02 to 1.21; $p = 0.012$).

D. Disruption of Infant Feeding Practices

Marital rape and intimate partner violence further disrupt infant feeding practices, with direct downstream consequences for child nutritional status. A cross-sectional study by Zureick-Brown, Lavilla, and Yount, using a national sample of 3,552 mothers and infants from India's NFHS, found that mothers exposed to any form of physical or sexual IPV had significantly higher adjusted odds of giving their infant liquids other than breast milk (aOR: 1.37; 95% CI: 1.08 to 1.75) and significantly lower adjusted odds of exclusively breastfeeding their infant (aOR: 0.74; 95% CI: 0.58 to 0.95). The WHO recognises exclusive breastfeeding during the first six months of life as the single most important determinant of infant nutritional status, growth, and immunological development. The disruption of breastfeeding practices through marital rape and IPV therefore has profound and lasting consequences for child health and nutrition that extend well beyond infancy, reinforcing the argument that the legal impunity enjoyed by marital rapists carries measurable, multigenerational costs for children's nutritional rights.

CHILD RIGHTS: A SPECIFIC DOCTRINAL DIMENSION

A. THE CHILD BRIDE AND THE MARITAL RAPE EXCEPTION

The intersection of marital rape and children's rights demands specific doctrinal attention in the Indian context, where child marriage remains prevalent — particularly in Rajasthan, Bihar, Uttar Pradesh, Madhya Pradesh, and Assam. The Supreme Court in *Independent Thought* directly confronted this intersection, holding that the marital rape exception as applied to girl children aged 15–18 years was unconstitutional and irreconcilable with POCSO 2012 — which treats all sexual activity with a minor as rape regardless of marital status — and with the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court observed that child marriage "violates the human rights of a child" and that the

exception's application to girl children created a situation where a married girl "loses the right to bodily integrity and to refuse sexual intercourse with her husband." By raising the minimum age threshold to 18 years, the BNS 2023 has incorporated this ruling. However, the exception continues to operate in full force for all adult wives above 18 years, leaving the fundamental constitutional anomaly unresolved.

The anomaly is not merely formal: child marriage typically entails early and repeated sexual activity, often without consent, producing nutritional deprivation through accelerated reproductive cycling, poor antenatal care, and severe micronutrient deficiencies. The UNFPA has documented that married girl children subjected to sexual violence by their husbands experience heightened rates of anaemia, underweight, and poor reproductive health outcomes, establishing the concrete public health dimension of the marital rape exception's application to child brides.

B. CHILDREN AS SECONDARY VICTIMS: THE INTERGENERATIONAL NUTRITIONAL HARM CASCADE

The doctrinal significance of nutritional harm to children caused by marital rape extends beyond the CRC to engage the constitutional right to life of the child under Article 21. If a mother's repeated experience of marital rape results in chronic undernutrition, depression, disrupted breastfeeding, and compromised infant feeding practices — all of which are empirically documented — then the child suffers a deprivation of its constitutionally protected right to life and health as a direct consequence of the legal impunity that the marital rape exception extends to the perpetrator. Maternal stunting and undernutrition caused by marital rape increase the risk of low birth weight, preterm delivery, and early childhood malnutrition, establishing an intergenerational cycle of nutritional deprivation that the State's failure to criminalise marital rape actively perpetuates.

The State's failure to criminalise marital rape is therefore not merely a failure to protect the wife; it is a constitutionally actionable failure to protect the child who bears the nutritional consequences of the mother's victimisation. This conclusion is consistent with the Supreme Court's approach in *PUCL v Union of India*, where the right to food was extended to cover the nutritional needs of children through mandated directions on ICDS and the Midday Meal Scheme. A State that is constitutionally obligated to ensure that no child goes hungry cannot simultaneously refuse to criminalise the sexual violence that produces the very conditions of child hunger.

DOCTRINAL RECOMMENDATIONS

The Supreme Court of India, in the consolidated petitions presently pending before it challenging Exception 2 to Section 63 of the BNS 2023, should declare the exception unconstitutional in its entirety on the grounds of its incompatibility with Articles 14, 15, and 21 of the Constitution, including the constitutionally recognised right to nutritious food as a component of the right to life. The Court should apply the constitutional standard articulated in *Puttaswamy* and *Suchita Srivastava* to hold that a married woman retains, in full measure, her right to refuse sexual intercourse with her husband and that this right cannot be extinguished by matrimony.

Parliament should amend Section 63 of the BNS 2023 to delete Exception 2 in its entirety, and enact a specific provision criminalising spousal rape as an aggravated form of rape, recognising the particular harm caused by sexual violence within a relationship of trust. This reform is consistent with the recommendations of the Justice J.S. Verma Committee (2013), the CEDAW Committee's Concluding Observations on India (2014), and the legislative trend across over 150 jurisdictions.

The National Commission for Women and the Ministry of Women and Child Development should mandate that nutritional assessment and intervention programmes under the Integrated Child Development Services (ICDS), Poshan Abhiyaan, and the National Food Security Act, 2013 incorporate systematic screening for intimate partner violence, including sexual violence within marriage. The UNFPA has specifically recommended that ICDS personnel "be made aware of the link between marital violence and malnutrition" and "trained to support women" experiencing such violence.

India's periodic reports submitted under CEDAW and the ICESCR should include disaggregated data on the nutritional status of women and children in households characterised by intimate partner violence, enabling effective monitoring of State compliance with its international nutritional rights obligations. Courts adjudicating cases under the Protection of Women from Domestic Violence Act, 2005 should recognise sexual coercion within marriage as a cause of nutritional harm and ensure that monetary relief orders under Section 20 of the PWDVA specifically address the nutritional rehabilitation of survivor women and their children.

CONCLUSION

The marital rape exception in Indian criminal law is not a neutral legislative omission. It is an active juridical choice to extend immunity to a specific category of violent offender — the husband — at the cost of the constitutional rights of the most vulnerable: the wife and her children. Through doctrinal analysis of constitutional provisions, judicial precedents, feminist legal theory, and international human rights instruments, this paper has demonstrated that the exception violates Articles 14, 15, and 21 of the Constitution, including the constitutionally recognised right to nutritious food. Through engagement with peer-reviewed empirical evidence drawn from nationally representative datasets, it has further established that marital rape and its associated forms of intimate partner violence cause measurable, statistically significant nutritional deprivation to women and children — producing undernutrition, anaemia, disrupted breastfeeding, stunting, and underweight — that compound the cycle of poverty, marginalisation, and intergenerational harm already borne disproportionately by women in India.

The right to nutritious food, guaranteed by Article 21 and Article 47 of the Constitution and by India's international commitments under the ICESCR and the CRC, cannot be fully realised for women and children so long as the law permits the sexual violation of married women to proceed with impunity. The criminalisation of marital rape is therefore not merely a matter of criminal justice reform. It is a constitutional imperative, an international legal obligation, a feminist jurisprudential necessity, and a public health priority — one that India can no longer defer in the name of preserving the "sanctity" of a matrimonial institution that,

for too many women and children, is not a site of sanctuary but of systematic, legally entrenched, and nutritionally consequential harm.

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