
SOCIO-LEGAL BARRIERS TO THE CRIMINALISATION OF MARITAL RAPE IN INDIA: A CRITICAL ANALYSIS

Dr. V J Praneshwaran, School of Legal Studies, CMR University.

Arundathi. R, School of Legal Studies, CMR University.

ABSTRACT

The criminalisation of marital rape in India remains a deeply contested issue at the intersection of law, society, and cultural norms. Despite growing global recognition of marital rape as a violation of bodily autonomy and human rights, Indian criminal law continues to retain the marital rape exception under Section 375 of the Indian Penal Code. This paper critically examines the socio-legal barriers that hinder the criminalisation of marital rape in India, focusing on cultural norms, misuse arguments, and the persistent problem of underreporting.

The study adopts a doctrinal and analytical approach, drawing upon legal provisions, judicial pronouncements, and scholarly discourse to explore how entrenched patriarchal values shape both legal frameworks and societal attitudes. It argues that traditional notions of marriage, which imply irrevocable consent, continue to influence resistance to reform. Additionally, concerns regarding the potential misuse of rape laws are critically evaluated to assess their validity and impact on legislative inaction. The paper also highlights how stigma, economic dependency, and lack of awareness contribute to the underreporting of marital rape, thereby obscuring the true scale of the issue.

The research contends that these socio-legal barriers, while significant, do not provide sufficient justification for the continued exclusion of marital rape from the ambit of criminal law. It concludes that aligning legal standards with constitutional principles of equality, dignity, and personal autonomy requires both legal reform and broader societal change. The paper ultimately advocates for a balanced and context-sensitive approach to criminalisation.

1. Introduction and Background

The issue of marital rape continues to remain one of the most complex and debated concerns within Indian criminal law. Although global legal systems increasingly recognise non-consensual sexual intercourse within marriage as a violation of bodily autonomy and dignity, India retains an exception under Section 63 of the Bharatiya Nyaya Sanhita, 2023, which excludes sexual acts by a husband with his wife (subject to certain conditions) from the definition of rape. This exception reflects longstanding socio-cultural assumptions that marriage implies continuing consent, rooted in patriarchal traditions and historical legal doctrines.

While countries such as the United Kingdom and Canada have decisively rejected the marital rape exemption through judicial and legislative reforms, India's legal position continues to face resistance. Such resistance is often justified on grounds of preserving the institution of marriage and preventing potential misuse of criminal law. However, this stance raises serious concerns regarding constitutional guarantees of equality, dignity, and personal liberty.

The continued existence of the exception highlights the tension between evolving constitutional morality and entrenched societal norms. This study examines the socio-legal barriers underlying this resistance and evaluates whether they provide a legitimate basis for denying legal protection to married women against sexual violence.

The historical foundation of the marital rape exception can be traced to English common law, particularly the doctrine propounded by Matthew Hale, who asserted that a wife, by entering into marriage, gave irrevocable consent to sexual intercourse with her husband. This notion was later inherited into colonial Indian law and continued to influence statutory frameworks long after independence. Despite significant legal reforms over time, this archaic understanding of consent continues to shape the legal treatment of sexual violence within marriage in India.

In the contemporary constitutional framework, such an exception appears increasingly incompatible with the principles enshrined in the Constitution of India, particularly the rights to equality, dignity, privacy, and personal liberty. Judicial developments in cases such as *Justice K.S. Puttaswamy v Union of India* have expanded the scope of individual autonomy, including decisional and bodily privacy, thereby indirectly challenging the validity of the marital rape exception. Similarly, evolving interpretations of sexual consent emphasise that

consent must be free, voluntary, and ongoing, regardless of the nature of the relationship between the parties.

Furthermore, the debate surrounding marital rape in India cannot be viewed in isolation from broader societal structures. Deep-rooted patriarchy, economic dependency of women, lack of comprehensive sex education, and societal stigma attached to reporting sexual offences contribute significantly to the invisibility of the issue. Institutional barriers, including reluctance within law enforcement and the judiciary to intervene in what is often perceived as a “private” marital matter, further exacerbate the problem.

Thus, the background of marital rape in India reflects a complex interplay between outdated legal doctrines and evolving constitutional and human rights standards, necessitating a critical re-evaluation of existing legal provisions.

The persistence of the marital rape exception in India also reflects a cautious and often fragmented approach to law reform. While criminal law has undergone substantial changes—culminating in the enactment of the Bharatiya Nyaya Sanhita, 2023—the specific issue of marital rape has largely remained untouched, indicating legislative hesitation to intervene in deeply personal and socially sensitive domains. Parliamentary debates and policy discussions have frequently highlighted concerns that criminalising marital rape may destabilise the institution of marriage or lead to an increase in false or motivated complaints. However, such arguments often lack empirical substantiation and tend to prioritise institutional preservation over individual rights.

Additionally, judicial discourse in India reveals a lack of uniformity in addressing this issue. While some courts have acknowledged the need to reconsider the marital rape exception in light of constitutional values, others have deferred the matter to legislative wisdom, thereby creating a gap between rights recognition and enforceability. This inconsistency contributes to legal uncertainty and delays meaningful reform.

Another important dimension is India’s obligation under international law. As a signatory to conventions such as CEDAW, India is expected to take appropriate measures to eliminate discrimination against women, including addressing violence within marriage. However, the continued existence of the marital rape exception indicates a disconnect between international commitments and domestic implementation.

In this context, the background of marital rape in India is not merely a legal anomaly but a reflection of broader societal resistance to recognising women's sexual autonomy within marriage, reinforcing the need for a nuanced and comprehensive socio-legal analysis.

2. Research Problem

The central problem addressed in this research is the persistent non-criminalisation of marital rape in India, notwithstanding sustained advocacy, progressive judicial observations, and increasing international pressure to align domestic law with human rights standards. The continued retention of the marital rape exception under Section 63 of the Bharatiya Nyaya Sanhita, 2023 raises fundamental concerns regarding the protection of married women against sexual violence and the consistency of criminal law with constitutional guarantees.

A key dimension of the problem lies in the tension between formal legal principles and prevailing societal norms. While constitutional jurisprudence increasingly emphasises autonomy, dignity, and equality, societal perceptions of marriage as a private and sacrosanct institution often resist legal intervention. This creates a structural barrier where law reform is influenced not only by legal reasoning but also by cultural expectations and political considerations.

Further, the discourse surrounding marital rape is significantly shaped by concerns regarding the potential misuse of criminal provisions. Arguments suggesting that criminalisation may lead to false allegations or harassment of husbands have contributed to legislative hesitation, despite limited empirical evidence supporting such claims. Additionally, the issue of underreporting complicates the problem, as the absence of reliable data obscures the true prevalence of marital rape and weakens the urgency for reform.

Thus, the research problem is not confined to a mere legislative gap but extends to a broader sociolegal dilemma, where entrenched patriarchal attitudes, institutional reluctance, and evidentiary challenges collectively impede the recognition of marital rape as a criminal offence.

3. Research Questions

1. What are the key socio-cultural factors that hinder the criminalisation of marital rape in India?

2. To what extent do legal arguments regarding misuse of law influence legislative inaction?
3. How does underreporting of marital rape cases affect the discourse on criminalisation?
4. Are the existing socio-legal barriers sufficient to justify the retention of the marital rape exception?
5. What reforms can reconcile societal concerns with constitutional principles of equality and dignity?

4. Hypothesis

The study hypothesises that the continued non-criminalisation of marital rape in India is driven more by entrenched socio-cultural norms and misconceptions about marriage than by valid legal justifications, thereby undermining the constitutional principles of equality, dignity, and personal autonomy.

5. Legal Framework on Marital Rape in India

The legal framework governing marital rape in India has undergone structural change with the replacement of the Indian Penal Code by the Bharatiya Nyaya Sanhita, 2023. However, despite this legislative transition, the substantive position on marital rape remains largely unchanged. Section 63 of the BNS defines the offence of rape, retaining the essential elements of lack of consent, coercion, and absence of voluntary agreement. Notably, it continues to recognise consent as a central component in determining sexual offences, aligning with broader constitutional principles of bodily autonomy.

However, the law simultaneously preserves the marital rape exception, which excludes non-consensual sexual intercourse by a husband with his wife (subject to specified conditions) from the ambit of rape. This exception creates a legal distinction based on marital status, effectively denying married women the same protection afforded to unmarried women. The retention of this provision reflects legislative continuity rather than reform, indicating reluctance to interfere in marital relations.

Judicial interpretations have played a crucial role in shaping the discourse around this exception. In *Independent Thought v Union of India*, the Supreme Court read down the

exception to protect minor wives, thereby recognising the inconsistency between the exception and constitutional values. Similarly, constitutional principles articulated in cases such as *Justice K.S. Puttaswamy v Union of India* and *Joseph Shine v Union of India* have emphasised dignity, autonomy, and equality within intimate relationships, indirectly challenging the legitimacy of the marital rape exception.

Further, ongoing judicial debates, such as in *RIT Foundation v Union of India*, highlight the lack of consensus within the judiciary itself, with divergent opinions on whether the exception violates constitutional guarantees under the Constitution of India. These developments indicate a growing judicial awareness but also underscore the absence of definitive legal reform.

Thus, while the *Bharatiya Nyaya Sanhita, 2023* modernises criminal law in form, it retains a significant substantive gap by continuing the marital rape exception, leaving the issue unresolved within the Indian legal system.

A closer examination of the *Bharatiya Nyaya Sanhita, 2023* reveals that, although the statute adopts a more modern and structured approach to defining sexual offences, it does not fundamentally alter the position concerning marital rape. Section 63 continues to emphasise consent as a decisive factor, recognising that sexual acts without free and voluntary agreement constitute rape. However, the simultaneous retention of the marital rape exception creates an inherent contradiction within the provision itself, as it effectively presumes consent within marriage irrespective of the factual circumstances.

This presumption stands in tension with evolving legal standards that increasingly recognise consent as situational, revocable, and independent of relational status. The exception thereby introduces a legal fiction that undermines the principle of individual autonomy, particularly in the context of intimate relationships. It also raises questions regarding equal protection under law, as it differentiates between victims solely on the basis of marital status without a rational nexus to the objective of criminal law.

Further, while certain legal remedies exist outside the criminal framework—such as protection under domestic violence laws—these are primarily civil in nature and do not equate to recognition of marital rape as a criminal offence. This fragmented legal approach results in partial protection, where the harm is acknowledged but not fully addressed through penal consequences.

Judicial developments have gradually exposed these inconsistencies, yet courts have often exercised restraint, deferring comprehensive reform to the legislature. This has resulted in a legal framework where constitutional values and statutory provisions remain misaligned. Consequently, the current framework under the Bharatiya Nyaya Sanhita, 2023 reflects continuity rather than transformation, leaving the issue of marital rape inadequately addressed within Indian criminal law.

6. Socio-Cultural Barriers

The persistence of marital rape as a non-criminalised offence in India is deeply rooted in socio-cultural structures that shape both societal attitudes and legal responses. One of the most significant barriers is the prevalence of patriarchy, which positions men as dominant figures within the marital relationship and often reduces women's autonomy over their own bodies. This hierarchical understanding of marriage reinforces the belief that a पत्नी's consent is secondary or even irrelevant within the institution of marriage.

Traditional notions of marriage further strengthen this perception by treating it as a sacred and indissoluble union, where sexual access is considered an implicit marital right. Such beliefs are historically influenced by legal doctrines like those articulated by Matthew Hale, which continue to resonate within societal consciousness. Consequently, forced sexual relations within marriage are frequently normalised and not recognised as violence.

Another critical barrier is the stigma associated with reporting marital rape. Women often face social ostracism, victim-blaming, and familial pressure to remain silent in order to preserve family honour. The private nature of marriage further discourages external intervention, with such issues being regarded as personal rather than legal matters. Economic dependence and lack of support systems exacerbate this silence, making it difficult for victims to seek justice.

Moreover, limited awareness regarding sexual rights and consent within marriage contributes to the invisibility of the problem. Many women may not even identify their experiences as abuse due to entrenched cultural conditioning. These socio-cultural barriers collectively sustain the legal status quo, highlighting that the challenge of criminalising marital rape extends beyond law into the realm of societal transformation.

An additional dimension of socio-cultural barriers lies in the internalisation of patriarchal

values by both men and women, which perpetuates acceptance of unequal marital relations. In many instances, women themselves may perceive compliance with a husband's sexual demands as a marital duty rather than a matter of choice, reflecting deep-rooted social conditioning. This normalisation of coercion within marriage reduces the likelihood of resistance and further obscures the recognition of marital rape as a form of violence.

The role of family structures and community influence also significantly contributes to the persistence of these barriers. In collectivist settings, decisions relating to marriage are often influenced by extended family, where maintaining marital harmony is prioritised over individual well-being. Women are frequently advised to tolerate abuse to avoid social stigma, divorce, or familial dishonour. Such pressures discourage legal recourse and reinforce silence around marital sexual violence.

Religious and customary beliefs may further reinforce these attitudes by prescribing gender roles that emphasise obedience and submission within marriage. Although not uniform across all communities, these interpretations often contribute to resistance against legal reforms perceived as disruptive to traditional family structures.

Media representation and lack of comprehensive public discourse on marital rape also play a role in sustaining ignorance and misconceptions. The absence of widespread awareness campaigns and sex education limits understanding of consent, particularly within marriage. Consequently, the issue remains marginalised in public consciousness, reducing pressure on lawmakers to enact change.

These interconnected socio-cultural factors demonstrate that the challenge of criminalising marital rape is not solely legal but deeply embedded in societal attitudes, requiring broader transformation alongside legal reform.

7. Misuse of Argument and Legal Concerns

One of the most frequently cited objections to the criminalisation of marital rape in India is the apprehension that such a provision may be misused through false or exaggerated allegations. This argument has gained prominence in legislative and judicial discourse, often influencing the reluctance to introduce reform. Concerns are raised that criminalising marital rape could potentially be weaponised in matrimonial disputes, including divorce proceedings, custody

battles, or personal vendettas, thereby exposing individuals to unjust prosecution.

However, a critical evaluation of this argument reveals that it is largely speculative and not sufficiently supported by empirical evidence. While misuse of certain legal provisions, such as Section 498A of the former Indian Penal Code, has been debated, courts have consistently emphasised that the possibility of misuse cannot be a valid ground to deny legal protection in genuine cases. In *Rajesh Sharma v State of Uttar Pradesh*, the Supreme Court acknowledged concerns regarding misuse but also cautioned against undermining the legislative intent of protecting victims of domestic violence.

Further, the argument of misuse tends to disproportionately focus on the rights of the accused while overlooking the absence of legal remedies available to victims of marital rape. Criminal law, by its very nature, incorporates procedural safeguards such as investigation, evidentiary standards, and judicial scrutiny to prevent wrongful conviction. Therefore, the potential for misuse exists in all criminal statutes and is typically addressed through procedural mechanisms rather than by withholding legal recognition of an offence.

Additionally, this narrative risks reinforcing harmful stereotypes that discredit women's complaints and deter victims from seeking justice. It diverts attention from the substantive issue of sexual violence within marriage and contributes to policy inertia. A balanced approach would involve acknowledging concerns of misuse while designing appropriate safeguards, rather than using such concerns as a basis to deny criminalisation altogether.

8. Underreporting and Institutional Challenges

A significant barrier to addressing marital rape in India is the persistent problem of underreporting, which obscures the true extent of the issue and weakens the demand for legal reform. One of the primary factors contributing to underreporting is fear—fear of retaliation by the husband, fear of social ostracism, and fear of disrupting familial stability. In many cases, women are discouraged from speaking out due to the potential consequences on their marital and social standing, including abandonment or loss of financial support.

Economic and emotional dependency further compounds this reluctance. Many women rely on their spouses for financial security and social legitimacy, making it difficult to pursue legal action that could jeopardise their livelihood. This dependency often forces victims to endure

abuse rather than seek justice, particularly in the absence of adequate institutional support systems.

Lack of awareness also plays a critical role. A considerable number of women are not fully aware of their legal rights or may not recognise non-consensual sexual acts within marriage as a form of violence. Deeply internalised social norms often lead to the acceptance of coercive behaviour as part of marital life, thereby normalising abuse.

Institutional challenges further discourage reporting. Law enforcement authorities may lack sensitivity or training in handling such cases, often treating them as private marital disputes rather than criminal offences. Additionally, the absence of clear legal recognition of marital rape under the Bharatiya Nyaya Sanhita, 2023 creates ambiguity, limiting the ability of victims to seek effective remedies.

These combined factors result in a systemic silencing of victims, making underreporting not merely a statistical issue but a reflection of deeper structural and institutional inadequacies.

9. Conclusion

The analysis undertaken in this study demonstrates that the non-criminalisation of marital rape in India is not merely a legislative omission but the result of a complex interaction between socio-cultural norms and legal structures. The persistence of patriarchal values, traditional conceptions of marriage, and societal stigma continues to shape both public opinion and institutional responses, thereby reinforcing resistance to reform. At the same time, arguments relating to the potential misuse of criminal law, though frequently invoked, lack substantial empirical support and often divert attention from the need to protect victims.

The study further highlights that underreporting and institutional challenges significantly obscure the magnitude of marital rape, creating a false perception that the issue is neither widespread nor urgent. This, in turn, contributes to legislative inertia and delays meaningful legal recognition. The current framework under the Bharatiya Nyaya Sanhita, 2023 reflects continuity rather than transformation, as it retains the marital rape exception despite evolving constitutional jurisprudence emphasising dignity, equality, and personal autonomy under the Constitution of India.

In conclusion, the study finds that the existing socio-legal barriers do not provide a sufficient or justifiable basis for the continued exclusion of marital rape from criminal law. Addressing this issue requires not only legislative reform but also broader societal change aimed at redefining notions of consent and equality within marriage. A balanced and rights-oriented approach is essential to ensure that the legal system adequately protects the dignity and autonomy of all individuals, irrespective of marital status.

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