



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

THE CRIMINALISATION OF MARITAL RAPE IN INDIA: NEED FOR LEGAL REFORM

~ *Mamta Sharma*

For decades, the legal architecture of Indian criminal law has shielded a profound violation of bodily integrity behind the sanctity of the wedding vow. When India replaced its colonial-era Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS) in 2024, the nation missed a critical opportunity to fix one of its most glaring human rights anomalies. While the statutory numbering shifted, moving the definition of rape from Section 375 of the IPC to Section 63 of the BNS, the text preserved a historic injustice: the marital rape exception.¹

Under the current legal framework, sexual intercourse by a man with his own wife, provided she is not under eighteen years of age, is explicitly excluded from the definition of rape.² This legal immunity treats a married woman's consent as an unretractable commodity, creating a systemic gap where wives are denied state protection against sexual violence perpetrated within their own homes. Criminalising marital rape is no longer just an academic debate; it is an urgent legislative necessity to align Indian law with constitutional morality, human rights standards, and modern understandings of individual autonomy.

The Historical Relic of Implied Consent

The foundation of the marital rape exception does not stem from indigenous Indian jurisprudence, but rather from a 17th-century English common law doctrine. Sir Matthew Hale, Chief Justice of the King's Bench in England, famously articulated the rationale in his 1736 treatise, *Historia Placitorum Coronae*:

¹ The Bharatiya Nyaya Sanhita, 2023, § 63, No. 45, Acts of Parliament, 2023 (India).

² (Exception 2 outlines that sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape).

"[T]he 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 kind of this kind unto her husband, which she cannot retract."³

This doctrine operates on the archaic premise of "coverture," a legal fiction wherein a woman's independent legal personhood is absorbed into her husband's status upon marriage. Under this property-based lens, a wife is viewed as a chattel extension of her husband. Consequently, a husband could not legally rape his wife because he could not be prosecuted for forcibly taking what was already deemed his legal right.

While the United Kingdom completely abolished this archaic immunity in the landmark House of Lords decision *R v. R* in 1991, recognising that marriage is a partnership of equals and not a contract of submission India has stubbornly retained the rule.⁴ By embedding Hale's doctrine within modern statutes, the state continues to institutionalise a patriarchal double standard: an unmarried woman possesses full sovereignty over her body, but a married woman cedes that same sovereignty the moment she walks around the sacred fire or signs a marriage registry.

The Constitutional Crisis: Violating Equality and Dignity

The non-criminalization of marital rape creates a severe internal contradiction within the Constitution of India. It creates an arbitrary classification that directly undermines Articles 14 Right to Equality, 15 Prohibition of Discrimination based on Sex, and 21 Right to Life and Personal Liberty.

In *K.S. Puttaswamy v. Union of India* 2017, a nine-judge bench of the Supreme Court of India firmly established that the right to privacy and bodily integrity are intrinsic components of the right to life under Article 21.⁵ The Court emphasised that an individual's control over their own body is non-negotiable. By maintaining the spousal exception, the state effectively declares that a woman's fundamental right to bodily autonomy terminates at the threshold of marriage.

Furthermore, this exception creates an irrational classification between married and unmarried women. If an unmarried woman is subjected to non-consensual sexual penetration, the law rightfully classifies it as a heinous offence carrying severe punitive consequences.

³ 1 Matthew Hale, *Historia Placitorum Coronae* 629 (1736)

⁴ *R v. R*, [1991] 4 All E.R. 481 (H.L.) (UK).

⁵ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

However, if a married woman experiences the same physical and psychological trauma inflicted by her spouse, the law categorises it as a mere matrimonial dispute or a civil wrong under the Protection of Women from Domestic Violence Act, 2005. This classification lacks an intelligible differentia and bears no rational nexus to any legitimate state objective, rendering it manifestly arbitrary.⁶

Debunking the Arguments Against Reform

Opponents of criminalisation, including various state submissions over the years, frequently rely on two primary arguments: the preservation of the "institution of marriage" and the fear of rampant "misuse" of the law. Both positions crumble under closer legal and sociological scrutiny.

The Myth of "Preserving Marriage"

The argument that criminalising spousal rape will destabilise the sanctuary of marriage is fundamentally flawed. A marriage that is sustained only through the state-sanctioned right to commit sexual violence is already structurally hollow. As the Justice Verma Committee Report noted in 2013, the law must stop viewing marriage as an institutional shield for criminal behaviour.⁷ Relationships are built on mutual respect and consent; shielding a perpetrator under the guise of family harmony values the preservation of an abusive structure over the survival and dignity of the human being trapped within it.

The Bogeyman of Misuse

The argument that a marital rape law will be weaponised by disgruntled wives to file false cases is a standard patriarchal pushback used against every piece of progressive legislation, from anti-dowry laws to domestic violence protections. While the potential for the misuse of any criminal statute exists, the legal system possesses robust evidentiary safeguards, such as cross-examination and strict standards of proof, to filter out malicious prosecutions.⁸ The abstract fear of false claims cannot justify the total denial of substantive justice to millions of actual victims who suffer in silence.

The Path Forward: True Legislative Reform

⁶ Independent Thought v. Union of India, (2017) 10 S.C.C. 800 (India) (where the Supreme Court previously read down the exception age from 15 to 18 to protect minor wives under similar Article 14 and 21 contentions).

⁷ Justice Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Jan. 23, 2013).

⁸ M. Meena, *Criminalisation of Marital Rape in India*, 3 Int'l J. Integrated Legal Res. 45, 48-50 (2024).

The modern paradigm of criminal jurisprudence must shift from protecting "masculine pride" and marital structures to protecting individual human rights. In international forums, India's stance stands increasingly isolated. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly urged India to criminalise marital rape, pointing out that leaving women unprotected within the home violates international human rights covenants to which India is a signatory.⁹

True legal reform requires a direct legislative excision. The legislature must completely delete the marital rape exception from Section 63 of the Bharatiya Nyaya Sanhita. Incremental changes such as merely allowing marital rape to be treated as "cruelty" fall short of recognising the distinct, severe trauma of sexual assault.

Rape is an act of violent subjugation, and its character does not change based on the identity or relationship of the perpetrator. It is time for Indian law to recognise a simple, universal truth: a husband is a partner, not a master, and "No" means "No," even within the bonds of marriage.

⁹ Tareq Abedin Siraji et al., *Examining Spousal Rape and the Gap in Criminal Law Frameworks*, 6 Ind. J. Multidisciplinary Res. 1, 12-14 (2026).