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Critically Analyzing Legislative Intent behind inclusion of Marital Rape and Sedition in BNS

ABSTRACT

The objective of enacting new criminal laws was to replace the colonial-era criminal law which promised to replace and overhaul India's current colonial criminal justice framework. However, the retention of some provisions like the exception of marital rape to the definition of rape and the rebranding of the offense of sedition under a different guise has a sparked a critical debate. This paper aims to investigate the legislative intent behind these inclusions by analyzing parliamentary debates, committee reports and judicial pronouncements. This study seeks to determine whether the BNS 2023 genuinely advances justice or merely repackages the old colonial and patriarchal setup. This continued exclusion of marital rape from the definition of rape has raised serious concern about gender justice and bodily autonomy of women and is in direct contrast with the fundamental rights provided by the Constitution of India. On the otherhand, the sedition clause after being rebranded threatens to prevail the state control over free speech in a democracy where democracy should mean dissent and not detention. This paper gives a critical perspective on whether the BNS 2023 actually brings legal reforms or is it regressive and patriarchal in nature.

KEYWORDS

Bharatiya Nyaya Sahita, Indian Penal Code, Sedition, Marital Rape, Constitution of India, Law Commission of India.

1. INTRODUCTION

In 2023, the new criminal laws namely, Bharatiya Nyaya Sahita, Bharatiya Nagarik Suraksha Sahita and Bharatiya Sakshya Adhiniyam were introduced in the monsoon session of Parliament to replace the existing colonial-era criminal laws namely, Indian Penal Code, Criminal Procedure Code, and Indian Evidence Act. The objective was to overhaul these existing laws according to the current needs of the society and align with the demands of the contemporary era and also to done away with some draconian laws like sedition and make criminal laws more citizen-centric.

The intent was to achieve these objectives but the process followed to pass these laws in the Parliament remains contentious since they were

passed in undue haste and around 146 opposition members[1] of parliament were suspended from the Parliament which questions the manner of passing these laws which seek to replace around 70 year-old laws in such a short span of time. It is said that the MPs represent the will of the people but since many of them were suspended, it raises a big question whether the will of the people were adequately taken into account. This paper seeks to analyze provisions relating to sedition and marital rape and to determine the legislative intent behind them and whether it aligns with the need of society and will of people.

1.1 Aim

This research project aims to critically analyze the legislative intent behind inclusion of marital rape exception and sedition in the newly enacted criminal law in India.

1.2 Research Objective

- To critically analyze the legislative intent behind inclusion of marital rape exception in the definition of rape in newly enacted Bharatiya Nyaya Sahita.
- To critically analyze the legislative intent behind inclusion of offence of sedition in newly enacted Bharatiya Nyaya Sahita.

*1.*3 Scope and Limitation

Due to paucity of time and resources the scope of the projected is limited to the analysis of section 152 and 63 of the Bharatiya Nyaya Sahita which deal with the sedition and marital rape respectively. However, the researcher has tried to explain all the relevant subject matter to give a critical analysis of these provisions and its impact.

1.4 Literature Review

In his analysis, Ishan Atrey[2] has comprehensively addressed the deeply rooted patriarchal issue of marital rape which is a form of sexual violence historically protected by existing legal provisions and societal norms. The journal deals with the evolution, legal complexities and socio-cultural complexities arising out of this exception. The journal has greatly

[1] India Today, 'As new criminal laws take effect, Oppositions 'bulldozer justice' jab at centre' (New Delhi, 1 July 2024) https://www.indiatoday.in/india/story/opposition-congress-vs-centre-new-criminal-laws-take-effect-mps-suspension-bulldozer-justice-2560550-2024-07-01 accessed 10 May 2025.

[2] Ishan Atrey, 'Marital Rape: Unveiling the Hidden Crime within Intimate Relationships' (2023) 2 International Journal of Human Rights and Law Review 75 <www.humanrightlawreview.in/vol-2-issue-4/>.

helped the researcher to get the nuances of this historical complex issue and its role in the institution of marriage.

1.5 Research Questions

- Why the legislature has not omitted the exception of marital rape under the new criminal law despite repeated demands by different reports and by judiciary and by civil society?

- Why the legislature has rebranded the offence of sedition despite receiving criticisms from civil society, judiciary and reports of the Law Commission?

1.6 Research Methodology

- Research Method: In this project the doctrinal research was involved. The researcher analyse synthesize legal provisions, statutes, and court decisions. The primary goal of doctrinal research is to analyze legal rules, identify gaps, inconsistencies, or ambiguities in laws, and provide interpretations and recommendations based on existing legal frameworks.

- Sources of Data: The researcher has used both primary and secondary sources of data collection. The project includes cases, statutes which are considered primary sources in legal research, and books and journals fall under the category of secondary sources.

- Mode of Citation: 4th edition of OSCOLA Mode of Citation has been used for this project.

2. MARITAL RAPE

The new criminal laws were passed with the purpose of replacing the colonial era laws and also sought to 'modernize' the current judicial system and make it more citizen centric and plug the existing lacuna in the laws. One of the contentious provisions is the marital rape exception in the definition of rape which was formerly in exception 2 of the Section 375[3] of Indian Penal Code (IPC) and now it has been rebranded under exception 2 of Section 63[4] of the newly enacted Bharatiya Nyaya Sahita (BNS). There has been a debate since 1970s to remove this exception so as to ensure the bodily autonomy and dignity to women who have been long sexually assaulted and raped by their husbands. In particular, the 42nd Law Commission report of 1971[5] for the first time observed the

[3] Indian Penal Code 1860, s 375.
[4] Bharatiya Nyaya Sanhita 2023, s 63.
[5] Law Commission of India, Indian Penal Code, Report No 42 (June 1971)

exception of marital rape. It was observed by the report that this exception does not appear to be correct, however, it did not discuss why it was not correct and also did not comment on whether the exception should be retained or deleted. More than four decades later, the Justice J.S. Verma Committee[6] was established in 2013 after the Delhi gang-rape case and this committee also called for the abolition of this exception.

Even in significant court rulings this demand and the need of the hour has been highlighted. In the case of Independent Thought vs Union of India[7], The Supreme Court had observed this problematic provision in exception 2 of Section 375 of the IPC which defines the definition of rape and addressed this issue of child marriage and its intersection with marital rape. The court had read down this exception the Indian Penal Code, which allowed sexual intercourse with the wife between the age of 15 and 18 years. The court had subsequently held that this exception was arbitrary in nature and was violative of the rights of the girl child under articles 14[8], 15[9] and 21[10] and struck down this provision till the extent it allowed sexual intercourse with minor wife. And aligned this law with the Protection of Children from Sexual Offences Act (POCSO), 2012. However, the husband was still not liable if he committed rape with a major wife and it was very well expected from the parliament that it would remove this exception so as to make any kind of sexual intercourse punishable if a man commits it with his wife. But what the parliament did was that it rebranded this exception in the BNS. In this new version of the exception, the Parliament inculcated the decision given by the Supreme Court of making it punishable for committing rape with minor wife but still in this exception major wife was not included. Despite the progressive approach of the Supreme Court regarding the gender justice laws and the demand of the society, the BNS retained this marital rape exception and this decision of parliament demonstrates a conservative stance on the institution of marriage reflecting that there is a legislative intent to preserve marital relations over recognizing individual rights within a marriage.

This exception is so problematic that even if the wife has concrete evidence of being raped by the husband, the rape laws are blind to recognize her individual autonomy and dignity and the husband goes unpunished. It is very inhuman and vague to observe that forced sexual

http://lawcommissionofindia.nic.in/1-50/report42.pdf accessed 7 May 2025.

[6] Justice JS Verma Committee, Report of the Committee on Amendments to Criminal Law (23 January 2013).

[7] *Independent Thought v Union of India* (2017) 10 SCC 800.

[8] The Constitution of India 1950, a 14.

[9] The Constitution of India 1950, a 15.

[10] The Constitution of India 1950, a 21.

intercourse outside marriage is real rape and that within the institution of marriage it is not a real rape. Providing immunity to the offender based on the relationship with the victim is cruel for her. According to the National Family Health Survey[11] everyone out of three women has experienced spousal sexual violence.

It is also important to deliberate upon the reasoning based behind this stance or intent of the legislature to make marital rape an exception to the definition of rape:

- **Protection of Marital Harmony**: One of the prominent reasons is that the legislature has time and again consistently emphasized the sanctity of marriage as a social institution and therefore allowing marital rape as a crime would disrupt stability of families. The government also in its submission to the Supreme Court had opposed the criminalization of marital rape which reinforces this view and in its summation the government had argued that criminalizing marital rape could lead to excessive criminalization of husbands and would undermine the institution of marriage.

- **Privacy in Marriage**: The BNS reflects a legislative apprehension that if militant rape is criminalized then it may fringe on marital privacy and this notion is a part of the old belief that marriage implies perpetual consent to sexual relations and this belief historically contrasts with the Supreme Court's evolving decisions and jurisprudence which increasingly emphasize upon individual autonomy and dignity and it has been seen in the cases like KS Puttaswamy v. Union of India[12] which relates to right to privacy and Joseph Shine v. Union of India[13] which relates to decriminalization of adultery.

- **Sensitive socio-political circumstances**: The Legislature often perceives criminalization of marital rape as a political sensitive issue which creates a fear of backlash from conservative social groups who view marriage as an inviolable bond.

- **Patriarchal Legal Framework**: The BNS has continued to reflect a patriarchal understanding of marriage like its older version the IPC where the wife's consent is presumed upon marriage and it

[11] Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5), Phase II https://mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf accessed 08 May 2025.
[12] *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
[13] *Joseph Shine v Union of India* (2019) 3 SCC 39.

> cannot be denied that this outdated perception disregards evolving norms of gender equality and autonomy.

The judiciary had signaled much in advance to the legislature to struck down this exception and a similar case was in RIT Foundation v. Union of India[14]. In this case the Delhi High Court had delivered a split verdict on the constitutional validity of marital rape exception under Section 375 of the IPC. Justice Rajiv Shakdher had held that the exception is unconstitutional violates articles 14[15], 15[16], 19(1)(a)[17] and 21[18] of the Constitution because it violates a woman's right to bodily autonomy and dignity and also emphasized that the exception is steeped in patriarchy and misogyny. In addition to this, it was further observed by Justice Shakdher that this exception does not falls within the criteria of 'reasonable nexus' under article 14 as it shields an act which would otherwise be an offence if it was not within the institution of marriage and therefore this classification was held to be unreasonable and arbitrary. On the other hand, Justice C. Hari Shankar had upheld this exception based on the reasoning that introducing the possibility of a husband being labeled as a rapist of his wife would be antithetical to the institution of marriage as understood in India. While the Supreme Court through its judgments has recognized that marriage does not imply absolute consent and despite these rulings the Legislature's stance remains rooted in patriarchal norms. In October 2024[19], in its reply to the Supreme Court relating to marital rape, the government defended this exception by saying that criminalizing this would lead to severe damage to conjugal relationships and could lead to serious disturbances to the institution of marriage which marks that the legislature had indeed no intent to remove this exception in the first place.

And the legislature's reluctance to criminalize marital rape has exposed this that there is a disconnection between judicial progressiveness and legislative conservatism. And despite increasing demands for reform from civil society women's rights groups and progressive voices within the judiciary, the legislature has failed to proactively address this issue and ignores judicial advances and societal evolution. And bridging this gap requires a paradigm shift in legislative thinking, moving away from

[14] *RIT Foundation v Union of India* (2022) 3 HCC (Del) 572
[15] Ibid (n 6)
[16] The Constitution of India 1950, a 15.
[17] The Constitution of India 1950, a 19(1)(a).
[18] Ibid (n 8)
[19] The Hindu, 'Supreme Court to Hear Petitions Challenging Marital Rape Exception on October 23' (New Delhi, 9 May 2024) https://www.thehindu.com/news/national/supreme-court-on-marital-rape-exception-hearing-oct-23/article68781795.ece accessed 10 May 2025.

preserving marital unity at the cost of individual rights and personal dignity of wives.

3. SEDITION

The Section 152[20] of the Bhartiya Nyaya Sahita has been a point of debate and criticism due to its perceived resemblance to the repealed sedition law under Section 124-A[21] of the Indian Penal Code. While in the new provision the term sedition has been omitted but the provisions within Section 152[22] are argued to retain and in some aspects, expand upon the draconian scope of the former law.

The wordings of Section 152[23] cover similar scope as Section 124-A[24] but is more expansive in nature. It has also dropped overt references to the "government" in favor of "India" and has also added modern modes such as "electronic and financial", and also enumerates categories like "subversive" or "separatist" activities that were absent in Section 124-A. Punishments are also increased but the structure and the dissent exception remains close to the old law and due to these reasons, although, the term sedition has been removed but Section 152[25] essentially rebrands sedition and holds spirit of the old provision and has added some new elements. A key change in the definition of the provision is that there is a substitution of 'government established by law in India' with 'India' which expands its scope and now unlike the earlier provision, the provision is not limited to the 'government' but to the 'nation' itself which also includes the sense of national identity, culture and unity and now potentially it can also criminalize criticisms that does not directly threaten law and order and in short it can be said that even if the target is not the government, now any act seen as hostile to the country's integrity can be punished.

Even the Supreme Court of India, in the case of S.G. Vombatkere v. Union of India[26], had observed that the government had been blatantly misused Section 124A and urged it to rewrite the provision and till then had put this provision in abeyance and no further prosecution or arrests could be made on the charges of sedition. With the enactment of BNS, it may be inferred that the government adhered to the Court's ruling and had omitted sedition but reintroducing its substance and elements in a

[20] Bharatiya Nyaya Sanhita 2023, s 152.
[21] Indian Penal Code 1860, s 124-A.
[22] Ibid.
[23] Ibid (n 18).
[24] Ibid (n 19).
[25] Ibid (n 18).
[26] *S.G. Vombatkere v. Union of India* (2022) 7 SCC 433

completely different guise does not serve the purpose and inclines the intent of legislature towards suppressing dissent voices against it.

Crucial terms in Section 152[27] are undefined and overbroad. For example, some phrases like 'subversive activities', 'separatist activities' in relation to endangering unity and integrity of India have no statutory definition and maybe interpreted in a variety of ways by those who are enforcing it. Even a political speech which supports a controversial issue may be seen as endangering the unity and integrity of India and which may result in criminal liability.

Section 152[28] has also expressly included financial or indirect support to separatist causes and this move significantly expands the prosecution criteria by including financial support which may result in criminal prosecution of a person who made a simple donation to any organization which may be associated with seditious activities. Overall the intention of the legislature has been to retain the old restrictions of Section 124A[29] of IPC and then add new ones like subversion, separatism, financial inducement and also increased the penalties for that. Since the term endangering sovereignty is also undefined the law leaves an open possibility that even criticizing the government or showing solidarity without dissident cause might be portrait as sedition.

Even in the Parliament's own Standing Committee on Home Affairs report no. 246[30] had inculcated this concern and the report indicated the broad scope of the revised sedition law. The report admits that the definition of Section 152[31] is overly broad which gives the authorities great discretion which contradicts the Law Commission's[32] call for a 'well-defined' sedition law which fails to curb the constitutional vagueness which the courts and advocates. The change from 'government' to 'India' anyway enlarges the scope of the offence which also contradicts the Supreme Court's intention under Kedar Nath's[33] case where it ruled that the provision should be narrowly interpreted and should be invoked only when the speech has the potential to incite violence or creates public disorder.

[27] Ibid (n 18).
[28] Ibid (n 18).
[29] Ibid (n 19).
[30] Standing Committee on Home Affairs, Report on the Bharatiya Nyaya Sanhita 2023 https://prsindia.org/files/bills_acts/bills_parliament/2023/SC_Report_Bharatiya_Nyaya_Sanhita_2023.pdf accessed 10 May 2025.
[31] Ibid (n 18).
[32] Law Commission of India, *Report No 277: Usage of the Law of Sedition* (August 2018) https://lawcommissionofindia.nic.in/report_twentysecond/ accessed 10 May 2025.
[33] Kedar Nath Singh v State of Bihar (1962) SCC OnLine SC 6

When this bill was introduced in the Parliament by the Union Home Minister Amit Shah[34] he had told that sedition would be completely repealed in a democracy where everyone has the right to speak and this was the intention that was portrayed. But Section 152[35] retains the elements of sedition in a different guise which contradicts the legislative intent which was initially decided. On these facts the parliamentary majority appears to believe that Section 152 was intended to ensure national integrity without unduly curbing free speech which appears illusory.

Overall, legislative intent was to remove the colonial name 'sedition' and curb its misuse, not to broaden the offence. However, the changes brought do not clearly narrow down the scope of the law. It can be implied that the new provision is a rebranded sedition law which mirrors much of the old sedition law's substance and some new language has been added with tougher penalties. However, whether Section 152[36] will stand the test of constitutionality or it will continue to trouble people like earlier Section 124A[37] remains to be seen pending further judicial review.

4. CONCLUSION

The legislative objective for including delicate and contentious clauses like marital rape and rebranding sedition under Section 152[38] of the Bharatiya Nyaya Sanhita (BNS), 2023, has been critically explored in this research paper. In addition to undermining Indian society's progressive goals, the inclusion of these charges under a vague and expansive clause seems to go against both the Constitution's ethos and existing legal precedents.

In particular, the Supreme Court's historic decision in Kedar Nath Singh, which narrowly construed sedition to apply only in cases of incitement to violence or public disorder, shows a legislative reluctance to embrace democratic dissent. This is evident in the continued use of sedition in a rebranded form. The legislature has tried to preserve the chilling effect of sedition under the pretext of national security and penal offense, rather than outright banning or severely limiting its use in accordance with the Court's interpretation and the growing public opinion for its repeal.

[34] India Today, 'Sedition Law Repealed: Amit Shah Tables Bills to Overhaul Colonial-Era Criminal Laws in Parliament' (11 August 2023) https://www.indiatoday.in/law-today/story/sedition-law-repeal-amit-shah-parliament-indian-criminal-laws-overhaul-2419568-2023-08-11 accessed 11 May 2025.
[35] Ibid (n 18).
[36] Ibid (n 18).
[37] Ibid (n 19).
[38] Ibid (n 18).

Similar to this, the fact that marital rape is not explicitly criminalized but rather is incorporated into a general phrase shows a lack of awareness of the changing norms of gender justice, physical integrity, and individual autonomy. This is in spite of growing judicial support, Law Commission recommendations, and civil society calls for marital rape to be recognized as a separate and criminal offense.

As a result, the language of Section 152[39] shows a gap between legislative intent and constitutional morality, with antiquated ideas of social control and governmental power seemingly superseding the principles of individual liberty and human dignity. The BNS must complement, not conflict with, judicial rulings and democratic goals if it is to be a forward-thinking legal code. Clarity, consistency, and bravery are urgently needed in legislative reforms, particularly when they deal with matters that have a significant impact on the foundation of individual rights and the advancement of society.

BIBLIOGRAPHY

India Today, 'As new criminal laws take effect, Oppositions 'bulldozer justice' jab at centre' (New Delhi, 1 July 2024) https://www.indiatoday.in/india/story/opposition-congress-vs-centre-new-criminal-laws-take-effect-mps-suspension-bulldozer-justice-2560550-2024-07-01 accessed 10 May 2025.

Ishan Atrey, 'Marital Rape: Unveiling the Hidden Crime within Intimate Relationships' (2023) 2 International Journal of Human Rights and Law Review 75 www.humanrightlawreview.in/vol-2-issue-4/

Law Commission of India, Indian Penal Code, Report No 42 (June 1971) http://lawcommissionofindia.nic.in/1-50/report42.pdf accessed 7 May 2025.

Justice JS Verma Committee, Report of the Committee on Amendments to Criminal Law (23 January 2013).

Ministry of Health and Family Welfare, National Family Health Survey (NFHS-5), Phase II https://mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf accessed 08 May 2025.

The Hindu, 'Supreme Court to Hear Petitions Challenging Marital Rape Exception on October 23' (New Delhi, 9 May 2024) https://www.thehindu.com/news/national/supreme-court-on-

[39] Ibid (n 18).

marital-rape-exception-hearing-oct-23/article68781795.ece accessed 10 May 2025.

Standing Committee on Home Affairs, Report on the Bharatiya Nyaya Sanhita 2023 https://prsindia.org/files/bills_acts/bills_parliament/2023/SC_Report_Bharatiya_Nyaya_Sanhita_2023.pdf accessed 10 May 2025.

Law Commission of India, *Report No 277: Usage of the Law of Sedition* (August 2018) https://lawcommissionofindia.nic.in/report_twentysecond/ accessed 10 May 2025.

India Today, 'Sedition Law Repealed: Amit Shah Tables Bills to Overhaul Colonial-Era Criminal Laws in Parliament' (11 August 2023) https://www.indiatoday.in/law-today/story/sedition-law-repeal-amit-shah-parliament-indian-criminal-laws-overhaul-2419568-2023-08-11 accessed 11 May 2025.