Peer Reviewed Journal
ISSN 2321-4333

# FIMT LAW JOURNAL

VOL. VIII, ISSUE NO. 1, 2025

NAAC ACCREDITED

तेजस्वि नावधीतमस्तु

ISO 21001: 2018 & ISO 14001: 2015 & ISO 9001:2015

School of Law
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This volume should be cited as: *Vol. VIII, FIMT L J* Issue 1, 2025

**ISSN:** 2321-4333

**Published By:** FIMT, School of Law, New Delhi, India


Address for Correspondence Editor

**Editor**

**FIMT LAW JOURNAL**

Fairfield Institute of Management & Technology

FIMT Campus, Bijwasan Road, Kapashera

New Delhi-110037 (INDIA)

## CHAIRMAN'S MESSAGE

Fairfield Institute of Management and Technology in the year 2018 started this journal to facilitate sharing of information, knowledge and experience on diverse legal issues, National and International. Since its inception, it has simulated a great deal of interest amongst legal scholars, academicians, and lawyers. With the passage of time, the journal has proved to be a notable platform for scholarly work.

I hope that this edition of the journal, which contains a fine collection of articles on pressing issues of law and dispute resolution will be a precious reserve for policy makers, administrators, legal fraternity, human rights institutions and defenders, research scholars, members of civil society organizations, students and others.

I sincerely trust that the FIMT Law Journal, Vol.8, Issue 1 will deepen interest and awareness about notable legal issues cursing the justice loving members of our society.

I would like to compliment and express my deep gratitude to the editorial board members for providing their full cooperation and authors for their contribution, enabling FIMT to produce this issue. Insightful critiques of readers are welcome for our further growth.

**– V. K. N. Bhardwaj**
**Chairman**
**FIMT Group of Institutions**

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1

# Redefining Security: How The BNS Act, 2023 Could Be A Game Changer In India's Fight Against Terrorism

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## ABSTRACT

The Bharatiya Nyaya Sanhita (BNS), 2023 marks a paradigm shift in India's criminal law framework, replacing the Indian Penal Code with provisions that directly address the evolving nature of terrorism and threats to national security. **Section 113** provides a comprehensive definition of terrorism, encompassing acts intended to threaten the unity, integrity, sovereignty, or security of India, intimidate the public, or destabilize public order. By integrating terrorism into the core penal code rather than relying solely on special statutes like the Unlawful Activities (Prevention) Act (UAPA), the BNS strengthens legal coherence and prosecutorial capacity.

The Act also redefines offences against the State under **Sections 147–158**, moving away from the colonial sedition provision and focusing instead on "Deshdroh" and subversive acts that involve violence, armed rebellion, or secessionist intent. The inclusion of organized crime and terrorism as scheduled offences aligns the BNS with robust procedural mechanisms, enabling faster investigation, coordination with national agencies, and use of advanced digital forensic tools.

If implemented with judicial safeguards and precision

in application, these provisions could act as a gamechanger closing legal loopholes, enhancing deterrence, and ensuring swift accountability for acts that endanger national security. However, the transformative potential of the BNS will depend on balancing strong state powers with the protection of civil liberties, preventing misuse while maintaining an unwavering stance against terrorism.

**Keywords:** *BNS Act 2023, terrorism, national security, Deshdroh, legal reforms*

## I. INTRODUCTION

The enactment of the Bharatiya Nyaya Sanhita (BNS), 2023 signifies a transformative departure from colonial-era penal codes and represents a broader effort to contemporize India's criminal law. By replacing the Indian Penal Code (IPC) of 1860, the BNS incorporates terrorism into the mainstream criminal justice system, thereby eliminating the earlier divide between "ordinary" penal provisions and "special" statutes. Section 113 of the BNS provides a comprehensive and modern definition of terrorism, reflecting India's experience with multifaceted security threats and aligning with global counterterrorism standards.[1]

This shift is not merely procedural but symbolic, as it seeks to redefine the very conception of offences against the State. The move from the sedition framework to "Deshdroh" underscores an attempt to shed colonial legacies while simultaneously ensuring robust mechanisms against violent subversion. The integration of digital forensics, organized crime provisions, and inter-agency coordination highlights the ambition of the BNS to serve as a gamechanger in India's fight against terrorism. However, the efficacy of this framework will ultimately hinge on its ability to balance national security imperatives with civil liberties.

1. The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 113.

## II. HISTORICAL CONTEXT OF TERRORISM LAWS IN INDIA

India's engagement with terrorism laws has been deeply shaped by its colonial past and post-independence security challenges, creating a layered legal history that informs the present reforms under the BNS Act, 2023. During colonial rule, provisions such as Section 124A of the Indian Penal Code, 1860[2] commonly referred to as the sedition law were primarily used to suppress political dissent and nationalist movements rather than address genuine threats to public safety. After independence, the persistence of cross-border insurgencies, the rise of separatist movements in Punjab, the northeast, and Jammu and Kashmir, as well as violent left-wing extremism, compelled the Indian state to introduce specific anti-terror legislations.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) marked the first comprehensive statutory response to terrorism, empowering agencies with preventive detention and extended periods of custody, but it was eventually repealed in 1995 due to widespread allegations of misuse. Its successor, the Prevention of Terrorism Act, 2002 (POTA), was enacted in the aftermath of the Parliament attack and global pressure post-9/11, but it too was repealed in 2004 for similar concerns regarding abuse and human rights violations. In their absence, the Unlawful Activities (Prevention) Act, 1967 (UAPA), initially enacted to address secessionist activities, was progressively amended to serve as the primary anti-terror law, introducing provisions related to terrorist organizations, funding, and stringent bail restrictions.[3]

2. The Indian Penal Code, 1860 (Act 45 of 1860), s. 124A.

3. Anil Kalhan, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller and Jed S. Rakoff, "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India" 20 Columbia Journal of Asian Law 93 (2006).

However, critics have long argued that the reliance on special statutes created a fragmented framework, often bypassing ordinary criminal law and undermining due process. This trajectory demonstrates a recurring tension in Indian lawmaking between empowering the state to address extraordinary threats and safeguarding the fundamental rights enshrined in the Constitution. It is within this contested historical context that the BNS Act, 2023 emerges, attempting to mainstream terrorism provisions into the general penal code to provide coherence, accountability, and legitimacy to India's counterterrorism regime.

## III. THE BNS ACT, 2023: PARADIGM SHIFT IN CRIMINAL LAW

The Bharatiya Nyaya Sanhita (BNS), 2023, represents one of the most ambitious overhauls of India's criminal justice system since independence. By replacing the Indian Penal Code (IPC), 1860, which had served as the backbone of criminal law for over a century and a half, the BNS signifies both continuity and rupture: continuity in preserving the core principles of criminal liability, and rupture in redefining offences to align with contemporary socio-political realities. The most striking feature of this shift is the mainstreaming of terrorism within the general penal code, a deliberate departure from India's long-standing dependence on special legislations such as the Unlawful Activities (Prevention) Act, 1967 (UAPA). By placing terrorism directly within the criminal code under Section 113[4], the BNS acknowledges that terrorism is not an exceptional threat to be dealt with separately, but rather a systemic challenge to national security and constitutional order that must be addressed through an integrated legal architecture.

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[4] *Supra note 1,* s. 113.

This paradigm shift has several implications. First, it enhances legal coherence and prosecutorial capacity. Earlier frameworks often forced courts and agencies to navigate inconsistencies between the IPC and special statutes, leading to delays and jurisdictional ambiguities. The BNS simplifies this by embedding terrorism alongside other offences against the State, thereby ensuring that investigators, prosecutors, and judges operate under a unified framework. Second, the BNS moves beyond colonial legacies by replacing the much-criticized sedition law with provisions on "Deshdroh" that focus on violent subversion, armed rebellion, and secessionist activities. This shift underscores the government's intent to modernize criminal law in a manner that resonates with democratic values while maintaining zero tolerance toward acts that threaten sovereignty and integrity.

Another dimension of this paradigm shift is the BNS's recognition of the technological and organizational sophistication of modern terrorism. By explicitly acknowledging organized crime, the use of digital communication platforms, and cross-border financing networks, the law seeks to strengthen state capacity to detect, investigate, and prosecute terrorism in the digital age. The integration of provisions on digital forensics, inter-agency coordination, and faster procedural mechanisms indicates a forward-looking approach. Unlike the IPC, which was primarily reactive, the BNS attempts to build a proactive security framework capable of preempting threats before they escalate into full-blown acts of violence.

Equally significant is the symbolic aspect of the BNS. The IPC, drafted in colonial times, was designed to safeguard imperial interests rather than protect democratic institutions. Its provisions on sedition, public order, and offences against the state reflected a colonial mindset of suppressing dissent. In contrast, the BNS's emphasis on terrorism and Deshdroh

signals a postcolonial effort to redefine security in national terms. It frames terrorism not merely as a law-and-order issue but as a direct assault on the sovereignty, integrity, and unity of the republic. By doing so, the BNS situates counterterrorism at the heart of India's legal system, aligning it with constitutional principles and democratic legitimacy.

However, the transformative potential of the BNS must be viewed with caution. While mainstreaming terrorism into the general penal code strengthens coherence, it also risks normalizing extraordinary powers within ordinary law. This could have far-reaching implications for civil liberties, particularly if provisions are misapplied against political dissent or marginalized groups. The paradigm shift of the BNS, therefore, lies not only in its statutory innovations but also in its ability to strike a delicate balance: empowering the state to protect national security while upholding the fundamental rights that form the bedrock of the Indian Constitution.

## IV. COMPREHENSIVE DEFINITION OF TERRORISM

Bharatiya Nyaya Sanhita (BNS), 2023 introduces one of the most significant reforms by providing a **comprehensive definition of terrorism** within the general penal code. Unlike the earlier reliance on the Unlawful Activities (Prevention) Act (UAPA), terrorism is no longer treated as an exceptional offence under special legislation but is mainstreamed into the criminal justice system. The section defines terrorism as acts intended to threaten the **unity, integrity, sovereignty, or security of India**, or to **intimidate the public and disrupt public order**. This expansive scope reflects India's long experience with diverse forms of terrorism, from cross-border militancy to urban radicalization.

Importantly, definition of terrorism under BNS goes beyond physical violence by encompassing **financing, planning, and digital facilitation of terror activities**, thus

acknowledging the complex and networked character of modern terrorism. By doing so, it aligns India's framework with global standards where funding, recruitment, and online propaganda are considered integral parts of terrorism.

While the provision enhances prosecutorial capacity and reduces dependence on overlapping statutes, its broad phrasing also raises concerns about potential overreach. Without careful judicial interpretation and procedural safeguards, there is a risk of conflating legitimate dissent with terrorist activity. Hence, its effectiveness will ultimately depend on **balanced enforcement and constitutional oversight.**

## V. FROM SEDITION TO DESHDROH: REFRAMING OFFENCES AGAINST THE STATE

One of the most significant and symbolic reforms introduced by the Bharatiya Nyaya Sanhita (BNS), 2023 is the **abolition of sedition under Section 124A of the Indian Penal Code, 1860**[5] and its replacement with a more narrowly tailored offence of *Deshdroh* under Sections 147–158 of the BNS.[6] For decades, sedition was one of the most contentious provisions in Indian criminal law. Originally enacted by the colonial government to suppress nationalist movements, it criminalized any speech or action that brought the government "into hatred or contempt." While retained after independence, its application in independent India was frequently criticized for being inconsistent with the constitutional guarantee of free speech under Article 19(1)(a). Courts attempted to narrow its scope, most notably in *Kedar Nath Singh v. State of Bihar* (1962)[7], where the Supreme Court upheld sedition but limited its operation to incitement of violence or public disorder.

5. *Supra note 2,* s. 124A.
6. The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 147–158.
7. AIR 1962 SC 955.

Despite this judicial restraint, the provision continued to be misapplied against journalists, students, and political activists, raising questions about its compatibility with democratic principles.

The BNS's replacement of sedition with *Deshdroh* represents a conscious effort to move away from the colonial legacy and reframe offences against the State in a manner that is both **contemporary and constitutionally aligned**. Unlike sedition, which was broad and vague, *Deshdroh* focuses explicitly on acts involving violence, armed rebellion, secessionist movements, or subversive activities that threaten the sovereignty, unity, or integrity of India. By requiring a nexus between the act and violent intent, the provision attempts to draw a sharper distinction between legitimate dissent and unlawful rebellion. This reframing not only strengthens the legitimacy of the criminal justice system but also reassures citizens that political criticism, however harsh, will not automatically be conflated with anti-national activity.

The introduction of *Deshdroh* also carries **symbolic significance**. It signals the Indian state's commitment to protecting national security while discarding colonial laws designed for suppression rather than democratic governance. It reflects a modern understanding that true threats to sovereignty arise from organized, violent, and coordinated challenges, rather than from mere criticism of government policies. At the same time, the shift underscores the state's intent to clamp down firmly on separatist and insurgent movements that seek to destabilize India's constitutional order.

Nevertheless, the success of this reform will depend on its **judicial interpretation and enforcement practices**. If applied with restraint and in line with constitutional guarantees of free speech, *Deshdroh* could represent a long-overdue balance between safeguarding sovereignty and protecting

democratic freedoms. If misapplied, however, it risks becoming a new avatar of sedition under another name.

## VI. ORGANIZED CRIME, DIGITAL FORENSICS, AND PROCEDURAL MECHANISMS

The Bharatiya Nyaya Sanhita (BNS), 2023 acknowledges that terrorism is often sustained by **organized crime networks** and facilitated through digital platforms. Terrorist groups frequently depend on arms trafficking, narcotics trade, extortion, and money laundering to finance their operations. By explicitly categorizing organized crime and terrorism as scheduled offences, the BNS empowers law enforcement to dismantle these networks holistically rather than treating them as isolated incidents. This approach strengthens the state's capacity to attack the financial and logistical backbone of terrorism.

A notable innovation is the emphasis on **digital forensics**. Terrorists increasingly exploit encrypted communication, online propaganda, and cross-border digital financing. The BNS allows investigators to deploy advanced forensic tools for retrieving, preserving, and presenting digital evidence, thereby closing evidentiary gaps that hampered earlier prosecutions. This shift aligns Indian law with global counterterrorism practices that recognize cyberspace as a key battlefield.

Additionally, the BNS introduces **procedural reforms** aimed at ensuring speed and coordination. By facilitating greater collaboration with agencies like the National Investigation Agency (NIA), it reduces jurisdictional conflicts and accelerates case transfers. Together, these measures reflect a modern legal vision, one that treats terrorism as a multi-dimensional threat, integrating crime control, technology, and efficiency into India's security framework.

## VII. COMPARATIVE ANALYSIS: GLOBAL APPROACHES TO TERRORISM LAWS

Terrorism is a global phenomenon, and legal systems across the world have grappled with the challenge of designing frameworks that both empower the state to combat security threats and safeguard civil liberties. A comparative analysis of approaches in jurisdictions such as the **United States, United Kingdom, and European Union** offers valuable insights into how India's BNS Act, 2023 positions itself in this evolving landscape.

In the **United States**, the response to terrorism has been shaped primarily by the **USA PATRIOT Act (2001)**, enacted in the aftermath of the 9/11 attacks. The Act expanded surveillance powers, strengthened financial tracking of terrorism funding, and enabled preventive detention in certain cases.[8] While effective in disrupting terror plots, it has been heavily criticized for infringing privacy rights and enabling racial profiling. Judicial oversight mechanisms and periodic legislative reviews have been employed to balance state power with constitutional protections under the Bill of Rights.

The **United Kingdom** has developed one of the most comprehensive counterterrorism regimes, embodied in the **Terrorism Act, 2000** and subsequent amendments. The Act defines terrorism broadly, covering threats to influence the government or intimidate the public, and includes preparatory offences such as incitement and possession of terror-related materials. It also authorizes proscription of terrorist

8. Unit21, "USA PATRIOT Act: Purpose, Pros & Cons & Compliance Requirements" Fraud & AML Dictionary, available at: https://www.unit21.ai/fraud-aml-dictionary/usa-patriot-act (last visited on Sept. 2, 2025)

organizations and allows for extended pre-charge detention.[9] The UK model highlights the importance of a preventive legal framework, but has similarly raised concerns about misuse against minority communities and political activists.

At the **European Union level,** counterterrorism is guided by the **EU Counter-Terrorism Directive (2017),** which harmonizes member state laws on definitions, terrorist financing, foreign fighters, and online radicalization. The EU places strong emphasis on **human rights compliance**, ensuring that measures align with the European Convention on Human Rights (ECHR). This dual focus on security and rights protection offers a useful model for balancing enforcement with constitutional safeguards.

Against this backdrop, the **BNS Act, 2023** aligns more closely with the UK's preventive framework by embedding terrorism into the core penal code and emphasizing organized crime, digital forensics, and financial tracking. At the same time, its success will depend on adopting the EU's rights-conscious approach and the US model of institutional oversight to prevent overreach. Thus, while the BNS is a uniquely Indian response to terrorism, it reflects broader global trends toward integrating counterterrorism into mainstream criminal law while grappling with the enduring challenge of reconciling security with liberty.

## VIII. BALANCING NATIONAL SECURITY WITH CIVIL LIBERTIES

The BNS Act, 2023 places terrorism provisions within the general penal code, strengthening coherence but also raising concerns about the **expansion of state power** into areas that

9. JUSTICE, "Counter-Terrorism and Human Rights" JUSTICE, available at: https://justice.org.uk/counter-terrorism-human-rights/ (last visited on Sept. 2, 2025).

may affect fundamental rights. India's Constitution guarantees freedoms under Articles 19, 21, and 22, yet these rights can be reasonably restricted in the interest of sovereignty and public order. The challenge lies in ensuring that such restrictions do not erode the democratic ethos they aim to protect.

Broad definition of terrorism under BNS, such as "intimidation of the public" or "destabilizing public order," could, if loosely applied, blur the line between **legitimate dissent and unlawful rebellion.** This risk necessitates vigilant **judicial oversight**. The Supreme Court has historically balanced state interests with civil liberties, as in *Kedar Nath Singh v. State of Bihar* (1962)[10], where sedition was upheld but confined to incitement of violence. A similar interpretive approach is vital for the BNS.

Beyond the judiciary, **parliamentary reviews and independent oversight mechanisms** can prevent misuse and enhance transparency. Drawing lessons from global frameworks such as the EU's emphasis on human rights the BNS must ensure that enhanced investigative powers coexist with constitutional safeguards, thereby protecting both **national security and democratic freedoms**.

## IX. CONCLUSION AND RECOMMENDATIONS

The Bharatiya Nyaya Sanhita (BNS), 2023 represents a historic moment in India's legal evolution, marking a decisive break from colonial criminal codes and attempting to align the nation's penal framework with the complexities of modern security threats. By embedding terrorism into the mainstream penal code by replacing sedition with *Deshdroh*, and incorporating provisions on organized crime and digital forensics, the BNS redefines how India perceives and addresses

[10] Kedar Nath Singh v. State of Bihar, supra note 1.

threats to sovereignty and public order. These reforms carry the potential to act as a **gamechanger in India's fight against terrorism**, offering greater coherence, faster prosecution, and stronger deterrence.

Yet, the transformative potential of the BNS is contingent upon its **implementation with precision and restraint**. Broad definitions, if left unchecked, risk conflating dissent with terrorism and undermining constitutional liberties. Likewise, institutional capacity gaps could reduce the effectiveness of the law while increasing the risk of misuse. The lessons of TADA, POTA, and UAPA remind us that counterterrorism legislation must be carefully balanced with safeguards to prevent abuse and preserve democratic legitimacy.

To maximize the effectiveness of the BNS, the following **recommendations** are vital:

**Judicial Safeguards**: Courts must strictly interpret terrorism provisions to ensure that only acts with a demonstrable nexus to violence or coercion fall within their ambit.

**Institutional Capacity Building**: Investment in digital forensics, inter-agency coordination, and specialized training for law enforcement is essential for effective enforcement.

**Independent Oversight**: Establishing review boards and parliamentary committees to monitor the application of terrorism laws can reduce misuse and build public confidence.

**Community Engagement**: Counterterrorism must be supplemented with preventive strategies, including deradicalization programs and community outreach, to address root causes.

In conclusion, the BNS Act, 2023 can be a cornerstone in India's counterterrorism framework if its provisions are applied with **restraint, proportionality, and accountability**, thereby safeguarding both **national security and democratic freedoms**.

2

# The Ethics of Reproductive Choices: Religious Codes and Women Autonomy

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## ABSTRACT

Women's roles, sexual rights, and freedom have long been shaped by cultural, historical, religious, and social norms. These norms often expect women to confine their sexual behavior within marriage and under male authority, requiring maintenance of "sexual purity" as a gendered norm. Religious doctrines, for example, in Hindu texts like the Manusmriti, have codified restrictions on women's autonomy: denying property rights, limiting choice, enforcing chastity, and institutionalizing practices like sati, child marriage, widowhood taboos and polygamy. B. R. Ambedkar, in his critique (in *Riddles in Hinduism*, *Bahishkrit Bharat*, *Mook Nayak*) challenged the hypocrisy and structural discrimination in these religious and social practices. He argued that many of these practices were mechanisms devised to control "surplus women" women who became socially surplus when they were not married or remained widows. Legal reforms in India, many spearheaded or inspired by Ambedkar, have addressed some of these structural inequalities. The Hindu Code Bill (which resulted in the Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Adoption & Maintenance Act, and Guardianship

Act) brought legal recognition to women's rights in marriage, divorce, inheritance, adoption, and guardianship. Constitutional guarantees also enshrine equality: Articles 14, 15 (especially clause 3), 16 among others. On the international front, the 1994 International Conference on Population and Development (ICPD) shifted global discourse toward reproductive rights: emphasizing that women must have agency in matters of family planning, safe childbirth, access to contraception and safe abortion, moving beyond demographic targets to human rights and empowerment frameworks. Modernisation, education and legal reforms have slowly altered gender roles, though resistance remains strong because cultural tradition, religious authority, and social stigma persist. In practice, women continue to face double marginalization by gender *and* caste or class which intensifies the constraints on their sexual autonomy and rights. Ambedkar's work remains influential in legal doctrine as well as social activism in contesting these norms. In sum, though there has been progress legally and socially, much of women's sexual rights remain contested territory in the intersection of law, religion, and culture.

***Keywords:*** *Sexual morality, women right, gender construction,Hindu scriptures,*

## I. Sexual Morality and Religion.

The Cultural, historical, religious and social factors have shaped the perceptions and roles of women in society since ancient **times**. Gender roles are integrated deeply within cultural practices, traditions and institutional structures and are reinforced over time with slow changes over time with modernisation, education and legal reforms. The traditional conservative or modern view of women's sexual rights vary across cultures, historical periods and contexts in urban and rural areas equally. Social norms are influenced by social

systems like patriarchy, religion, economic and political ideology. Dominance of males[1] over females is significant feature of patriarchal societies, exerting control over the women in all domains of life including the androcentrism to ensure patrilineal inheritance, family honour and male dominance and constraining women's worth to her chastity, modesty and reproductive capacity to be calculated by norms settled by patriarchal society. The sexual behaviour of women is controlled by the institution of marriage, through which virginity before marriage and fidelity after marriage are maintained, calling for strict enforcement as parameters of sexual purity[2], chastity and modesty. Womens are expected to engage in sexual behaviour[3] only within the agency of marriage or under the authority of the husband. Religious teaching, principles, ideologies, doctrines across various faiths play a significant role in constructing women's sexual rights. Sexuality of women is central in conforming the gendered expectations restricting their freedom and rights, emphasising on maintaining sexual purity. All religious and personal law codes value modesty of women, sacredness of sexual intimacy within marital relations with limited recognition of the right

1. Eissa D. Constructing the Notion of Male Superiority over Women in Islam: The Influence of Sex and Gender Stereotyping in the Interpretation of the Qur'an and the Implications for a Modernist Exegesis of Rights. Grabels, France: Women Living Under Muslim Laws

2. Maintenance of wife.¯(1)Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

3. Linda Edvardsson, "Crimes of Honour- Females' Right for Support in the Multicultural Society" (2008),available at:https://muep.mau.se/bitstream/handle/2043/6820/

to refuse sex in certain circumstances. Hindu scriptures like Manusamriti, puranas and vedas touch various aspects of life of women but specific regulatory provisions for women's sexual rights are patchy as these issues are of contemporary origin. These texts reflect the social, cultural and religious values confining the roles of women to society, family and husband. *Manusamriti* emphasised motherhood as sacred duty in hindu tradition, symbolising nurturing and creation as one of the auspicious roles. The shloka

मातृ देवो भव[4]

"**Mâtr devo bhava** — *"Let your mother be like a god to you."*

addressing the reproductive duties of women is a well-known Sanskrit expression from the **Taittiriya Upanishad** and "Revere your mother as a deity.". The philosophical and spiritual text in hindu literature **Bhagavad Gita (भगवद् गीता)** known as The Gita, emphasises the importance of free will and making one's own choices in the shloka

''यथेच्छसि तथा करु''

**Yathecchasi tathâ kuru** — *"As you wish, so you act."* grapples with reproductive rights, speaking on the border idea of individual autonomy in decision making and could be interpreted as giving the individuals including women to make decisions relating to their bodies including the matters related to reproduction too[5]. Other narratives from religious codes, and traditional religious beliefs restrict women's rights and freedoms.

''न स्त्री स्वातन्त्र्यम् अर्हति''

**"na strî svâtantryam arhati" "***A woman does not deserve independence."*

4. Shiksha Valli, 1.11.2)

5. Bhagavad Gita 18.63

The verse demonstrates the dependence of women on men as code for women to be followed denying her autonomy and individual rights and articulation of her duty to be under protection of her father, husband and son in different stages of life restricting her right to equality and autonomy according to modern standards of autonomy[6]. The significance of women consents in in marriage in connection with woman right to choose her husband is augmented in the *Manusmriti* (9.90) verse,

**"उद्यता तु यदि स्त्री स्यान् न दद्यात् कस्यचित् स्वयम्,**

**उद्धृत्य तां हरेत् क्षत्रम् अक्षताम् आर्यमाणिनीम्।"**

"Udyatâ tu yadi strî syân na dadyât kasyacit svayam,

Uddh[tya tâA haret kcatram akcatâm âryamâGinîm.[7]"

**"***If a woman is of marriageable age but has not been given (in marriage) by her family, she can choose her husband herself, and the kcatriya can wed her by following appropriate rites.*"

Articulating the preposition allowing the women's agency in choosing her husband represents her autonomy in choosing her husband as an established tradition found in many epics including *Ramayan* and *Mahabharat* suggesting certain circumstances wherein women belonging to certain classes could exercise their right to choose their spouse. Hinduism glorified womanhood in verse

**(यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः)**

**"Yatra nâryastu pûjyante ramante tatra devatâ:"** — "Where women are honoured, divinity blossoms there; where they are not, all actions remain unfruitful.[8]"

6. Manusmriti 5.148
7. Manusmriti 9.90
8. *Manusmriti* 3.56

Women status in ancient Indian culture focussed mainly on women's responsibilities prioritising her role in care giving for the family and supportive to husband elucidated in the traditional social structure and she should be respected and honoured linking her honour to overall prosperity and virtue. Hindu scripture *Manusmriti* in

**स्त्रियो राज्यं न रोचयेत्**

**"Striyo râjyaA na rocayet"** — "Women should not rule the kingdom." discourage women's formal education and political participation restricting women's role to the domestic sphere[9].

Expressing the patriarchal idea of male governance and power where leadership, authority and power are reserved for men and enforces the tradition of women not aspiring for leadership and control. While there may not be specific *œlokas* addressing modern concepts like reproductive rights, the underlying principles of autonomy, respect, and the sacredness of life found in Hindu teachings can be interpreted to support a woman's right to make decisions about her own body. Manusamriti accentuate strict standards of sexual morality for women articulating chastity, obedience to husband and untolerated women fidelity. Women is expected to devote herself to the service of husband regardless of his deeds, behaviour and response towards her.

**पतिं शुश्रूषते या तु नान्नानि चैव भुञ्जते।**
**स वै भर्ता यथा देवः सा वै भार्या यथा दासी॥**

**"Patim úuúrûcate yâ tu nânnâni caiva bhuñjate, sa vai bhartâ yathâ devah sâ vai bhâryâ yathâ dâsî[10]"** — "A woman who serves her husband and does not eat before him

9. Manusmriti 9.3

10. Manusmriti 5.154.

becomes like a goddess, while he is like a god and she is like a servant".

Her status is of a slave, servant or *dasi* without any expectation in return. She is expected not to consume food before his husband.Following this code will make her equal to Goddess within the status of slave.Harsh code is prescribed for widows expecting her to lead a life of austerity and socially approved no widow remarriage later evolved into a more inhuman practice of *sati(self- immolation of widows).* These practices highlight the rigid discriminatory gender norm in the society where men can marry any number of times and have the privilege to have food before women, participate in political life and perform leadership roles.

In the **Manusmriti**, an ancient legal and social text that outlines moral codes and laws for individuals and society, the **inheritance rights of women** were significantly limited in comparison to those of men. Manusmriti reflects the patriarchal nature of society at that time, wherein women were often excluded from direct inheritance of property, especially immovable assets like land, unless under certain specific circumstances.

## "पिता रक्षति कौमारे, भर्ता रक्षति यौवने,

**"Pita raksati kaumare, bharta raksati yauvane, putra raksati vardhakye, na stri svatantryam arhati.[11]"** "The father protects her in childhood, the husband protects her in youth, and the sons protect her in old age; a woman is never fit for independence."

reflects the idea that women were considered dependent on males throughout their life and they deserve no independent legal status in terms of inheritance. Patriarchal inheritance

11. Manusmriti, 9.206.

system ordinarily passed down to male line of descent, sons being the primary inheritors and women largely excluded from inheritance except in few circumstances in absence of males. Women's wealth consists of generally moveable property that she might receive as a gift on different occasions and typically exclude immovable property and land. Her right is limited to her maintenance from male relatives and in absence of male heirs widows and daughters might inherit property usually limited to using property during their life time without any right to transfer or sell freely[12].

**"DâyâdânâA tu yâ strîGâm patiputrâparigrahâ:, tecâA syâd[cmabhart[GâA samastavidhi: samâ:[13]."** "Among those women who do not have a husband or sons, the property shall be inherited by the next closest male relatives." systematic denial of property rights to women creating structural oppression and dominance is achieved in

12. Section 14 in The Hindu Succession Act, 1956

14 Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited ownerExplanation.

—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act. Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

13. Manusmriti 9.130.

conjunction with religion, dharam and law. The female without any male heirs or husband have no rights in property and the property is conventionally transferred to male relatives of male members of the family[14].**"Bhart[dayârdhâ: striya: proktâ bharturdâyâdyaA eva ca, bhartu: putrâGâA caiva syur bhartrâbhâve striyo 'pi hi.[15]"** "Women are entitled to a share of their husband's property only when there are no male heirs (sons) to inherit the property." domino effect leading to her non entitlement to the property inheritance rights except in limited cases and often conditional. **"Kanyâ dâyaA haranîyâ: pit[dâyâA ca yâ striya:, bhrât: Gâm bhaginîbhâgaA striyâ vâ bhajet priyâ.[16]"** "A daughter should receive her father's inheritance only if there are no sons, and similarly, the wife or mother may share in the inheritance if there are no male heirs.". In the *Manusmriti*, women have limited inheritance rights. Property typically passed through male heirs, and women's inheritance was often limited to gifts received at marriage (dowry). Daughters did not have equal rights to inherit property from their parents compared to sons.The deep patriarchal landscape reflected in *Manusmriti* which considers women subordinate to men is widely criticised by many Hindu reformers, especially during 19th and 20th century as oppressive in nature towards women and they rejected and reinterpreted such texts in favour of promoting women's education, equality and individual human rights.Dr. Bhimrao Ambedkar, Constitution giver of India theorise the relationship between caste and gender in gender based oppression in India[17]. In criticising *Manusamriti* Ambedkar discussed the mechanism how gender evils practised in Indian society like sati, chill

14. Hindu Women Right to Property Act, 1937

15. Manusmriti 9.212.

16. Manusmriti 9.200

17. Castes In India, B.R Ambedkar 1917.

marriage, polygamy etc are devised to deal with the "Surplus Women". In his book *Riddles in Hinduism*[18] He criticised many hindu texts, brahanamic theology and sanatan view of Hinduism including the authority of men over women,caste system and religious practices as discriminatory towards women as a source of double marginalisation. His many writing like "Mook Nayak[19]" and "Bahishkrit Bharat[20]" extensively discussed women issues and women oppression prevalent in Indian Society.

The legal framework leads to institutionalised perpetuation of unequal treatment and gender roles affecting social, economic and political marginalisation of women. Historically, in many societies inheritance laws favoured male over female based on patriarchal norms restricting women (*Manusmriti)* preventing women from accumulating wealth and barrier to financial independence reinforcing their economic dependence on men. Family Laws also set a legal tradition establishing hierarchy where men are the head of family having greater authority in all family matters. The little recognition of right to refuse sex in marriage and non-recognition of marital rape as crime even currently implying husband right over wife's bodylimits women autonomy and contributing to domestic violence and abuse[21].Unequal divorce and custody of children laws favouring men granting preferential treatment in custody of children disputes due to financial security, social norms and assumption of father as the natural guardian are disadvantageous to women and

18. ibid

19. Mooknayak was a Marathi-language newspaper founded by Dr. Bhimrao Ramji Ambedkar in 1920.

20. Bahishkrit Bharat was a Marathi-language newspaper founded by Dr. Bhimrao Ramji Ambedkar in 1927

21. Section 85 of the Bharatiya Nyaya Sanhita (BNS)

provide privileged conditions to men in divorce and related issues. Employment laws and gender pay gap laws and norms in lack of enforcement mechanisms perpetuate structural biases and perceived physical weakness of women restricts women from working in certain industries and jobs and thus restrict them to only traditional gendered roles. Male dominance in terms of nationality and lineage is reinforced through many genders discriminatory laws provisioning for passing of nationality through father and defining women status in relation to his father and husband limit her autonomy[22].Criminal laws of many countries treat men and women differently particularly in cases of sexual violence and adultary[23]women may be punished severely and men's fidelity can be ignored. These laws protect patriarchal control over women's sexuality and reinforce male authority, often at the expense of women's safety and freedom were killing or punishing women for tarnishing family honour is seen as justified. Discriminatory reproductive rights such as access to contraception, abortion[24] and other family planning devices disproportionately affect women's autonomy and greater control over decisions related to family planning to men limits their ability to make choices about their own lives and bodies. The preference for male children is deeply rooted in Indian historical, cultural, religious life shaping societal attitudes for centuries which reinforces the desire for a son to carry forward the family name[25].

22. Gopika Solanki, 'Defining Domestic Violence and Women's Autonomy in Law' (2016) 12(1) Socio-Legal Review 51.

23. Vishnu Revathi vs. Union of India ((1988) 2 SCC 72), Abhinav Sekhri, 'The Good, The Bad and The Adulterous: Criminal Law and Adultery in India' (2014) 10(1) Socio-Legal Review 47.,

24. #NiUnaMenos (Not One Less) The feminist movement began in Argentina in 2015 in response to rising femicide rates and violence against women.

25. State of Bombay v. Narasu Appa Mali Air 1952 Bom 84

## II. WOMEN AUTONOMY IN POST INDEPENDENCE ERA.

The social implications of prenatal sex determination[26] are deeply rooted in cultural, economic, and gender-based issues leading to significant social consequences, often tied to gender discrimination and patriarchal norms, particularly the preference for male children. Women culturally have least control over their choices in relation to marriage and children. They are pressured by their families, especially husbands and in-laws, to undergo sex determination tests and decisions about continuing or terminating a pregnancy based on the fetus's sex are often made by male family members or elders, reducing women's autonomy over their reproductive choices. Daughters perception as economic burden due to practice of dowry, an established custom increases the financial burden on bride's family on the contrary makes male child as a promise of economic security and status leading to discrimination against female children even before they are born. Restrictive legal abortion services undermines her right to make decisions about her own body[27] forcing women to carry pregnancies to term against their wish subjecting them to societal, religious, or governmental control over their reproductive choices. Culturally women are denied their right to body autonomy by not recognising marital rape as offence and secondly denying her right to go for legal medical termination of pregnancy, thereby causing double marginalisation of women. Suchita Srivastava & Anr vs Chandigarh Administration[28] SC declared

26. Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994,

27. Abortion Unintended: Available at: https://www.guttmacher.org/report/abortion-unintended-pregnancy-six-states-india (last accessed on 24 March 2024)

38. 2009 AIR SCW 5909.

abortion is a facet of the right to privacy and body integrity and recognized women's right to final say in matters of abortion and reproductive choices.

The Medical Termination of Pregnancy (Amendment) Act, 2021 is a significant step forward in India's reproductive rights framework, as it enhances women's autonomy by expanding access to safe and legal abortion. The Act[29] increases the upper gestational limit for abortion from 20 weeks to 24 weeks for certain categories of women, including survivors of rape, incest victims, and other vulnerable women such as minors and women with disabilities. This extension gives women more time to make decisions about their pregnancies, especially in cases where health risks or fetal abnormalities may only become evident later in pregnancy. Allowing women to make decisions based on their personal circumstances and medical advice, even in the late stages of pregnancy where severe foetal abnormalities are detected, or where women face high-risk pregnancy due to foetal anomalies the amendment strengthens a woman's right to make informed and autonomous decisions about her health and future. The amendment specifically acknowledges the needs of vulnerable groups—such as survivors of sexual assault, minors, and women in abusive relationships—by extending the gestational limit for abortion to 24. This recognition of the unique challenges faced by these women is crucial in enabling them to have greater autonomy over their reproductive health. Supreme Court of India providing for more women autonomy[30] observed that the word " married women" " husband" are replaced by the the word "any women" and "partner" filling the gap created by conventional relationship created by society in

29. Medical Termination of Pregnancy (Amendment) Act, 2021

30. X v. Principal Secretary . Health and Family Welfare Department, (2022) 2022 SCC OnLine SC 1321

reconstructing women's reproductive rights.Denying the inconceivable assumption of marital rape Supreme court specified no requirement of registration of FIR against her spouse to terminate pregnancy and articulated the recognition of marital rape[31] as a category of offence against women. The Protection of Children from Sexual Offences Act 2012 (POCSO) criminalises sexual activity with minor girls as not competent to give consent to sexual engagements. In view of mandatory requirements of section 19(1) of POCSO Act[32] to destigmatize abortion because of which women are forced to take services of unreported unregistered and unqualified practitioners. The POSCO[33] Act,2012 rectified the UN convention under section 18 denied women the freedom to explore their sexual identity criminalising consensual relationships before the age of majority and preventing them from accessing sexual and reproductive healthcare out of fear of legal consequences. The graph[34] below shows the increase in numbers of women accessing legal and safe abortion in India granted on a wide range of justification, humanity and change in gender norms.

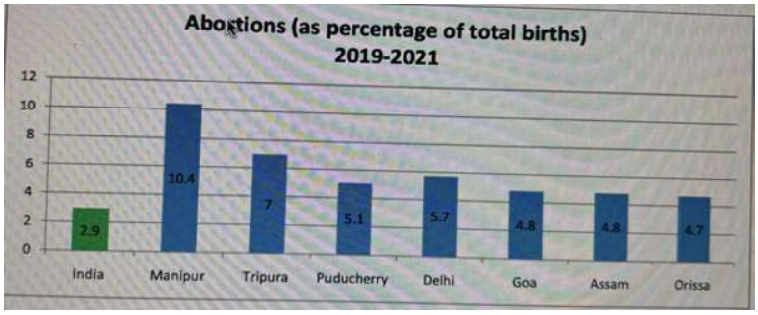
31. Jain D, Sengupta S.. Reproductive rights and disability rights through an intersectional analysis. Jindal Global L Rev. 2021;12(2):337.

32. Reporting of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974)any person(including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,— (a) the Special Juvenile Police Unit; or (b) the local police rule 3B(a) of the MTP Rules 2003

33. UN Convention on the Rights of the Child in 1992.

34. National Family Health Survey (NFHS-5)




International Institute for Population Sciences (IIPS) and ICF. 2021. National Family Health Survey (NFHS-5), 2019-21, Volume I.

Contemporary hindu thoughts especially in the light of human right principles advocates for gender equality, women autonomy and non-discriminatory norms that differ significantly from the teachings of *Manusmriti and are not followed in present times as* incompatible with modern ideals of justice and equality including reproductive rights. Different religions in India have their own personal laws regarding marriage, divorce, inheritance, and custody having varying provisions that can impact women's rights differently reflecting patriarchal values, limiting women's autonomy in personal matters.Numerous feminist movements and organisations actively work to challenge patriarchal norms and advocate for women's rights.Women within religious communities are increasingly advocating for their rights and seeking reforms as women in the Muslim community have fought for the abolition of triple talaq[35] and to have greater rights within personal laws[36] Women's autonomy is further complicated by intersecting factors in India such as caste and class, thus women of marginalised communities often face additional challenges

35. Shayara Bano v. Union of India is AIR 2017 9 SCC

36. Mohd. Ahmed Khan vs Shah Bano Begum And Ors IR 1985 SC 945

related to economic opportunities and social mobility. These intersecting identities shape their experiences of autonomy within both religious and societal contexts.In present times, the intersection of religion and women's autonomy in India reflects both challenges and advancements. While traditional religious beliefs can restrict women's rights and freedoms, there is a growing movement toward reinterpretation and reform within many religious communities. Legal reforms, increased access to education, and active feminist movements contribute to the ongoing struggle for women's autonomy in India.

The focus in modern times has shifted to rigid interpretation to progressive understanding that prioritises individual freedom, health and safety rather than the collective social governance in the realm of women rights. Few thoughts and reformers have objected to musulinistic conceptions of old age patriarchy for collective development of society and few considered it necessary for removing the negative barriers to women emancipation[37]. The colonial era imposed western ideals of womanhood further reinforcing Victorian sexual standards of morality regulating marriage, gender expression and sexual rights as homosexuality, polygamy and third gender through policies and laws. The Supreme Court of India interpreting Article 21 of Constitution of India, guaranteed the right to bodily autonomy and dignity including the right to consent and refuse sex as fundamental right[38]. The relationship between religion and women's autonomy in India in present times is complex and influenced by a myriad of factors, including cultural norms, legal frameworks, and activism. While traditional religious views continue to shape societal attitudes towards gender roles, there have been significant movements towards enhancing women's autonomy

37. Marina Oshana, Personal Autonomy In Society (2006).

38. Justice K.S. Puttaswamy vs. Union of India. (2018) 12 SCALE 1,

across various religious communities. There are movements within various religions that aim to reinterpret religious texts to empower women. For instance, some progressive Hindu and Muslim organisations advocate for interpretations of texts that support women's autonomy and equal rights.

Women's rights as acknowledged today are the outcome of multilayered and dynamic intercourse emphasising equality, freedom and dignity that developed with the collaboration of governments, civil society, international organisations and individuals to ensure the individual fundamental rights to establish egalitarian society and considered human rights. Human rights in ancient times were recognised in very informal ways, the oldest the Code of Hammurabi (circa 1754 BCE) advocated concepts like justice and fairness and equity in realm of human rights to protect widows and orphans and in certain aspects of commercial relations aimed to protect the humans within structured society. The Pharaoh, the divine ruler in Egyptian society too placed some value on justice and equity(ma'at). The rights of men and women were not of universal application and controlled and limited by social hierarchies, gender role norms, social divisions and rulers' ideology. The practices and institutions socially govern, control, protect, promote and enforce human rights with respect to men and women, as women in ancient Egypt had the right to own property, initiate divorce and inherit property but women were excluded from political participation and priesthood. The punishment system varied depending on gender, caste, status of the individual as slave or free. Modern feminism with the rise of feminist movements in the 19th century brought a strong pushback to traditional patriarchal construction of gender and sexualities. Indian Later religious traditions like Buddhism and Jainism challenged many of the rigid hierarchical structures and advocated for compassion, non-violence (ahimsa), and

respect for all living beings. While these ideas were more spiritual and ethical than legal frameworks, they introduced a broader concept of equality and concern for the well-being of all individuals.

## III. ADVANCING WOMEN'S AUTONOMY AND EMPOWERMENT

Feminism arose as a challenge to the discriminatory social norms highlighting the importance of understanding how race, class and other social institutions participated in hyper sexualisation of women's bodies and their exploitation. In shaping Feminist perspective feminist of modern times argue in favour of women equality and deconstruction of patriarchal construction of women's sexuality defending women's autonomy, having full control over their bodies including the right to engage in consensual sexual acts without shame[39] and punishment, access to contraceptives and abortion services, freedom from sexual violence, choosing their sexual identities, orientation and expression. The unique impact of colonialism and racism in shaping women's sexual rights is adequately highlighted by indigenous feminist underlining the importance of intersection of race, class and status. Though the media has played a crucial role in shaping pro-women perceptions of women's sexual rights, promoting sexual autonomy still media generally to satisfy male gaze portrays women's sexuality through the lens of objectification and commodification compromising women's sexual rights outlining parameters for them to conform to certain beauty and sexual standards[40]. Such a commercialised version of

39. Berhane F, Berhane Y, Fantahun M. Adolescents' health service utilization pattern and preferences: consultation for reproductive health problems and mental stress are less likely. Ethiop J Health Dev. 2005;

40. Kramarae C. Routledge International Encyclopedia of Women. New York: Routledge; 2000. pp. 1374–7.

sexuality constrains women and reinforces unrealistic and harmful ideals that actually limit genuine sexual freedom.

The social governance of human rights refers to the processes, institutions, and practices through which societies promote, protect, and enforce human rights. It involves the way governments, civil society, international organisations, and other actors collaborate to ensure that individuals' fundamental rights are recognized and upheld. This concept operates at both national and international levels, integrating legal frameworks, policies, social norms, and community action to establish a just and equitable society. While significant progress has been made towards deconstruction of gender,[41] The fight for equality[42] and human rights remains a great challenge. It involves the ways in which governments, civil society, international organisations and individuals collaborate to work in ensuring individual fundamental rights. This work mandates national and international cooperation, integral framework policies and sanction. In recent decades, international human right frameworks have increasingly recognised women's sexual rights as a part of their broader human rights to decide freely and responsibly on matters related to one's own reproductive health, including the timings and spacing of children, access to methods and services of contraception and abortion. Growing recognition of the sexual rights of all individuals, regardless of sexual orientation or gender identity, has expanded the conversation about sexual autonomy beyond heteronormative frameworks. Legal frameworks are evolved to recognise sexual violence as violation of human rights with laws criminalising rape, sexual assault, and sexual harassment. The ICPD[43] called for universal

41. Joseph Shine vs Union Of India AIR 2018 SUPREME COURT 4898

42. C. B. Muthamma vs Union Of India, 1980 SCR (1) 668.

43. The Cairo International Conference on Population and Development, 1994

access to comprehensive reproductive healthcare, including family planning, safe childbirth, and access to safe abortion marked as a transformative moment that shifted the focus of the world community from demographic targets to a human-centred framework that emphasised reproductive rights, gender equality and women's empowerment and redefined population policies recognising women empowerment, women participation in decision making about their reproductive lives as essential component in achieving sustainable development. It called for the elimination of gender-based violence, discrimination, and harmful practices such as early marriage and female genital mutilation, which directly impact women's autonomy.The global trend has been towards greater liberalization of abortion laws a allowing elective abortion on humanitarian and therapeutic grounds,however, access to abortion remains highly variable depending on political, social, and cultural factors challenged by issues related to access, stigma, and conscientious objection from healthcare providers. Unsafe abortion is one of the leading preventable causes of maternal death in India[44] unsafe abortions account for 8-9% of all maternal deaths in India, which translates to thousands of women dying every year due to unsafe procedures. India has made strides in improving maternal health and reducing maternal mortality through various programs like Janani Suraksha Yojana (JSY) and Janani Shishu Suraksha Karyakram (JSSK) to reduce maternal and neonatal mortality by promoting institutional deliveries and providing free healthcare services to pregnant women.The Ministry of Health has rolled out Comprehensive Abortion Care (CAC) program to train providers and improve the quality of abortion services in both public and private sectors.The parliamentary committee,

44. Special Bulletin On Maternal Mortality In India 2018-20,Sample Registration System Office Of The Registrar General, India

Committee on Empowerment of Women (2020-2021) plays a crucial role in promoting women's autonomy by addressing systemic barriers and advocating for policies that enhance women's rights and freedoms across various domains and evaluating the effectiveness of government policies, laws, and initiatives related to women's welfare and empowerment, to ensure that women have the autonomy to make decisions regarding their personal, social, economic, and political lives.It monitors initiatives like Skill India, Deen Dayal Antyodaya Yojana, and Self-Help Groups (SHGs), which aim to improve women's participation in the workforce and enhance their financial independence.The committee has reviewed programs such as Beti Bachao Beti Padhao and initiatives under the Samagra Shiksha Abhiyan aimed at increasing girls' access to education and recognizing that political autonomy is critical for women's empowerment advocated women's participation in politics and decision-making by increasing women's representation in Parliament, state legislatures, and local governance (Panchayati Raj institutions). The committee advocated for improved access to reproductive and maternal healthcare services, particularly in rural areas to support women's reproductive autonomy. This includes better implementation of government programs providing contraceptives and safe abortion services.

Today, the conversation about women's sexual rights continues to evolve, with ongoing debates around issues such as reproductive rights, gender identity, sexual violence, and sexual expression[45].The online campaigns play a crucial role in advocating for women's autonomy by addressing a wide range of issues, from sexual harassment to reproductive rights

45. Vibhuti, Sujata, and Padma, The Anti Rape Movement in India in Third World, Second Sex: Women's Struggles And National Liberation, 180–190 (M. Davis, ed., 1983).

and gender-based violence. Through digital activism, these movements have built global communities, raised awareness, and driven policy changes, all while empowering women to claim their rights and break free from patriarchal structures.The Blank Noise Project and the Pink Chaddi Campaign (or Pink Underwear Campaign) are significant movements within India's feminist landscape. They exemplify how activism has evolved to incorporate digital platforms, challenging social norms and advocating for women's rights[46].Pinjra Tod (which means "Break the Cage") is a feminist movement that emerged in Delhi University and other universities across India in 2015. The campaign was created by female students to challenge the restrictive and discriminatory hostel and campus rules imposed on women, which reflect patriarchal notions of controlling women's mobility and autonomy. The #MeToo movement began in 2006 gained global prominence in 2017 when women around the world used the hashtag to share their personal stories of sexual harassment and assault. The campaign focuses on ending sexual harassment and assault, holding perpetrators accountable, and empowering survivors by breaking the silence around abuse led to widespread conversations about workplace harassment, consent, power dynamics. #NotAllMenButAllWomen campaign addresses the widespread prevalence of everyday sexism, harassment, and violence faced by women in public and private spaces, and advocates for male accountability and awareness. The SheDecides campaign was launched in 2017 in response to the reinstatement of the "Global Gag Rule" by the U.S. government, which restricts funding to foreign NGOs that provide or promote abortion services to supports women's right

46. Trishima Mitra-Kahn, Offline Issues, Online Lives? The Emerging Cyberlife of Feminist Politics in Urban India, in South Asian Feminisms: Politics And Possibilities (Srila Roy, ed., 2013).

to make autonomous decisions about their bodies, particularly in terms of reproductive rights and access to abortion. It advocates for sexual and reproductive health rights (SRHR) globally.#MyBodyMyChoice the global hashtag campaign advocates for women's bodily autonomy, particularly around reproductive rights, abortion access, and the right to make decisions about one's own body. Activists use the hashtag to challenge anti-abortion laws, forced sterilisation, and restrictions on women's reproductive rights. The movement calls for the dismantling of patriarchal controls over women's bodies and for upholding the right to choose. Despite these advancements, legal frameworks are often limited by cultural and societal resistance, particularly in regions where patriarchal, religious, and traditional norms continue to dominate. In some parts of the world, women still face significant barriers in accessing reproductive health services, including contraception and abortion, and are subject to harmful practices like female genital mutilation (FGM), forced marriage, and honor killings. Overall, religious interpretations often encourage women to conform to gendered expectations of sexual behaviour, restricting their sexual freedom and rights.

3

# Between Surveillance and Safeguards: Evaluating India's Cybersecurity and Digital Privacy Landscape Under New Criminal Codes

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## ABSTRACT

India stands at a critical juncture in its legal and technological evolution, grappling with an exponential rise in cyber threats while facing growing concerns over digital privacy. This paper offers a detailed evaluation of the newly enacted criminal laws Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) in the context of emerging digital offenses and data vulnerabilities.

It investigates how India's legal system is adapting to complex harms such as AI-driven fraud, deepfake circulation, identity theft, and mass surveillance. By drawing on doctrinal reasoning, comparative legal research, and real-world case studies, the paper maps the evolving tension between national security objectives and constitutional privacy guarantees. The analysis critically engages with global regulatory models including the GDPR, California's CCPA, Brazil's LGPD, and Kenya's Data Protection Act to reflect on India's fragmented and consent-heavy framework.

The paper also explores stakeholder perspectives from law enforcement, judiciary, industry, and civil society, and identifies key institutional bottlenecks in cybercrime response and victim redress. It concludes with concrete policy recommendations for breach reporting mandates, encryption norms, judicial oversight in surveillance, and stronger public awareness mechanisms.

By highlighting both the legislative advances and persistent lacunae, the paper urges a recalibration of India's cyber regime toward a rights-based, technologically adaptive, and constitutionally consistent structure.

**Keywords**: Cybercrime, Digital Privacy, BNS 2023, Surveillance Regulation, Data Protection Frameworks

## X. INTRODUCTION

The last decade has witnessed India's transformation into one of the most digitally connected societies in the world. The growth of smartphones, digital payments, biometric identification, and online governance platforms has redefined the relationship between the State, the citizen, and the market. While this rapid digitalisation has been projected as an engine of growth and inclusion, it has also produced new risks. Every digital transaction generates data, and every data trail can be manipulated or misused. The sheer expansion of India's digital infrastructure has created multiple points of vulnerability, exposing individuals and institutions to sophisticated cyber threats.

India's journey has been marked by high-profile incidents that reflect the scale of the problem. The Cosmos Bank cyberattack in 2018 led to the fraudulent transfer of nearly 94 crore through an international malware scheme.[1] The Pegasus

1. "Cosmos Bank Cyber Attack: Hackers Transfer ₹94 Crore in 15,000 Transactions," The Hindu (14 August 2018).

spyware controversy revealed the extent to which surveillance tools could compromise not only privacy but also democratic accountability.[2] The exponential rise in reported cybercrimes is further documented in the *Crime in India* reports of the National Crime Records Bureau, which recorded over 65,000 cybercrime cases in 2022, a figure that has grown consistently since 2019.[3] These developments confirm that cybercrime is no longer confined to isolated incidents of hacking, but represents a systemic risk to India's financial security, national defence, and the dignity of individual citizens.

The legal framework governing these issues has historically been fragmented. The Information Technology Act, 2000 was India's first attempt to legislate for cybercrimes and digital evidence, yet its provisions were drafted at a time when neither social media nor biometric data ecosystems existed at scale.[4] As digital threats became more complex, the Indian Penal Code of 1860 was invoked for offenses such as identity theft and fraud, often leading to interpretative confusion.[5] In recognition of these limitations, Parliament enacted three new criminal codes in 2023: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA).[6] Together, these codes represent the most significant overhaul of India's criminal law framework since independence.

The enactment of these statutes coincides with an

2. "Pegasus Project: Global Media Consortium Reveals Spyware Abuse," The Guardian (18 July 2021).
3. National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, New Delhi, 2023).
4. Information Technology Act, 2000, No. 21 of 2000.
5. Indian Penal Code, 1860, No. 45 of 1860.
6. Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023.

evolving constitutional understanding of privacy and surveillance. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court declared the right to privacy to be an intrinsic part of Article 21, thereby reshaping the doctrinal foundation for digital rights in India.[7] In *Anuradha Bhasin v. Union of India*, the Court further held that internet access cannot be restricted arbitrarily, linking digital connectivity with constitutional freedoms.[8] Despite these advances, concerns remain about the extent of State surveillance, the absence of comprehensive data protection legislation, and the use of broad statutory terms that risk legitimising disproportionate restrictions.

The problem, therefore, is two-fold. On the one hand, there is an undeniable need for a strong criminal law response to emerging threats such as ransomware, AI-generated deepfakes, and cross-border cyberattacks. On the other hand, unregulated surveillance and weak data protection norms threaten to erode fundamental freedoms. This paper seeks to explore the balance between these competing imperatives, situating India's new criminal codes within the broader discourse on cybersecurity and digital privacy.

The aims of this research are threefold. First, to examine the substantive provisions of the new codes that deal with cyber offenses and digital evidence. Second, to assess whether these provisions adequately safeguard the right to privacy, especially in the absence of a dedicated Data Protection Act. Third, to situate India's legal framework within global regulatory practices such as the European Union's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA).

7. Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161.
8. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

Methodologically, the paper adopts a doctrinal approach, analysing statutory provisions, judicial precedents, and committee reports. It also employs a comparative perspective, drawing upon international models that offer both convergences and departures from India's trajectory. Official statistics, government reports, and civil society studies are used to provide empirical grounding.

The central research questions are therefore: How do the new criminal codes address the challenges of cybercrime? Do they sufficiently embed privacy as a constitutional value in their design? What lessons can India draw from comparative legal frameworks in reconciling security with liberty?

By engaging with these questions, this paper argues that India's cyber law regime requires a recalibration. While the new criminal codes expand the scope of offenses and provide clearer rules on digital evidence, they fall short of embedding privacy safeguards and accountability structures. Unless statutory frameworks evolve in tandem with constitutional jurisprudence, the risks of overcriminalisation and unchecked surveillance will undermine both innovation and liberty.

## II. Cybersecurity Offenses in India

### 2.1 Definition and Evolution

Cybersecurity offenses refer to criminal acts that exploit digital technologies, communication networks, or information systems for unlawful purposes. The term has gradually expanded from early notions of "computer misuse" to complex categories of financial fraud, data manipulation, and critical infrastructure disruption.[9] In India, the initial recognition of such crimes emerged with the Information Technology Act,

8. K.K. Sharma, Cyber Crimes: A Global Concern (Satyam Books, New Delhi, 2018) 24.
9. Information Technology Act, 2000, No. 21 of 2000, ss. 65–67.

2000, which defined offenses such as hacking, identity theft, and publishing obscene information in electronic form.[10] However, the rapid diversification of digital platforms, the proliferation of social media, and the rise of artificial intelligence have broadened the range of risks far beyond what the drafters of the IT Act anticipated.

The evolution of cyber offenses in India mirrors the country's digital growth. As government programmes like Aadhaar, Digital India, and Unified Payments Interface gained momentum, vast quantities of personal and financial data entered electronic systems.[11] These initiatives enhanced efficiency but simultaneously created opportunities for sophisticated frauds, surveillance misuse, and data theft. The increasing reliance on digital governance has made cybercrime not only an individual concern but also a matter of national security.

### 2.2 Major Types of Cyber Offenses

The major categories of cyber offenses in India today can be grouped into six clusters.

First, hacking and unauthorised access to systems remain prevalent, often used for financial fraud or corporate espionage. The Cosmos Bank hack of 2018 remains the largest coordinated attack on an Indian financial institution, where hackers manipulated the bank's ATM switch system and stole funds through thousands of transactions across multiple countries.[12]

Second, ransomware attacks have surged, targeting

10. Ministry of Electronics and Information Technology, Digital India Programme: Progress Report 2022 (Government of India, New Delhi, 2022).
11. "Cosmos Bank Cyber Attack: Hackers Transfer ₹94 Crore in 15,000 Transactions," The Hindu (14 August 2018).
12. Computer Emergency Response Team of India, Annual Report 2022 (CERT-In, New Delhi, 2023) 41.

hospitals, universities, and corporations. The modus operandi involves encrypting data and demanding payment, often in cryptocurrency, to release it. CERT-In reported several large-scale ransomware incidents in 2022 that disrupted supply chains and healthcare operations.[13]

Third, phishing and social engineering frauds exploit human vulnerability rather than technical loopholes. Fake bank websites, fraudulent SMS messages, and malicious emails remain common, with phishing-related complaints forming a significant proportion of cybercrime reports.[14]

Fourth, identity theft and financial fraud have grown with the rise of digital wallets and e-commerce. Fraudsters routinely clone debit and credit cards, while Aadhaar-linked databases have been implicated in leaks that expose sensitive identifiers.[15]

Fifth, cyber terrorism and attacks on critical infrastructure pose systemic threats. In 2020, the Mumbai power outage was widely suspected to have been caused by a cyberattack on power grid systems, although attribution remains disputed.[16]

Finally, cyber offenses involving emerging technologies, such as deepfakes and AI-generated pornography, present unique harms. In 2023, the Delhi High Court directed swift removal of non-consensual deepfake videos, recognising the grave impact on individual dignity and the absence of clear statutory remedies.[17]

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13. NCRB, Crime in India 2022 (Ministry of Home Affairs, New Delhi, 2023) 1292.
14. S. Ramanathan, "The Aadhaar Data Breach and Its Implications," (2019) 61 Journal of the Indian Law Institute 201.
15. A. Sharma, "Was Mumbai Blackout a Cyberattack?" Indian Express (16 October 2020).
16. X v. Union of India, Delhi High Court, W.P. (C) No. 1056 of 2023 (order dated 8 March 2023).
17. R. Abraham, "UIDAI and Data Security Concerns," Economic and Political Weekly (2019) 54(21) 17.

### 2.3 Recent High-Profile Cases

Several incidents demonstrate the growing sophistication of cybercrime in India. The Cosmos Bank hack has already been noted as a benchmark case. The Aadhaar ecosystem has repeatedly faced questions about security vulnerabilities, with reports of unauthorised access to UIDAI databases raising alarm about data protection.[18] In 2021, the Indian Air Force reported a significant leak of recruitment data, later traced to malware infection.[19] The Pegasus spyware revelations, although transnational, underscored the potential misuse of surveillance technologies in the Indian context.[20]

These cases illustrate both the scale and diversity of cybercrime: from financial losses running into crores, to surveillance capable of undermining constitutional governance.

### 2.4 Statistics and Official Reports

Official statistics confirm the rapid escalation of cybercrime. According to the NCRB's *Crime in India 2022* report, cybercrime cases increased from 44,735 in 2019 to over 65,000 in 2022, representing a growth rate of nearly fifty per cent within three years.[21] Uttar Pradesh, Karnataka, and Telangana reported the highest number of registered cases, indicating both the penetration of digital systems and the uneven distribution of cyber infrastructure.

CERT-In, the national nodal agency for cybersecurity, handled more than 13 lakh cyber incidents in 2022, covering

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18. Indian Air Force Press Release, "Cybersecurity Breach in Recruitment Portal" (12 August 2021).
19. "Pegasus Project: Global Media Consortium Reveals Spyware Abuse," The Guardian (18 July 2021).
20. NCRB, Crime in India 2022 (n 6) 1288.
21. CERT-In, Annual Report 2022 (n 5) 19.
21. Interpol, Global Cybercrime Trends Report 2023 (Interpol, Lyon, 2023) 72.

phishing, ransomware, malware propagation, and website defacement.[22] The agency's 2023 Annual Report highlighted a rising trend of attacks originating from outside India, particularly linked to state-sponsored groups.

Interpol's *Global Cybercrime Trends 2023* report noted that India remains one of the most targeted countries for phishing and ransomware attacks, ranking among the top five globally in terms of volume.[23] This international recognition demonstrates that India's cyber vulnerabilities have transnational dimensions.

Three key trends can be identified from these developments.

First, cybercrime is increasingly AI-driven. Automated bots, AI-generated phishing emails, and synthetic media such as deepfakes are now tools of deception and fraud. Courts and regulators in India are struggling to define liability for these technologically advanced crimes.

Second, cybercrime is inherently transnational. Attacks are often orchestrated by networks operating across multiple jurisdictions, which complicates investigation and prosecution. India's lack of clear jurisdictional provisions in the IT Act and even in the new codes has left gaps in addressing crimes with global footprints.

Third, public underreporting continues to distort the picture. Victims, especially of financial or sexual exploitation crimes, are reluctant to report due to stigma or lack of faith in redress mechanisms.[24] NCRB data itself underestimates the

22. Internet Freedom Foundation, Cybercrime Reporting and Access to Justice in India (IFF, New Delhi, 2022).

12. S. Sharma, Information Privacy in the Digital Age (Oxford University Press, New Delhi, 2020) 45.

24. Alan Westin, Privacy and Freedom (Atheneum, New York, 1967) 7.

true prevalence of cybercrime, which experts believe to be far higher than official numbers suggest.

Cybersecurity offenses in India have moved from being peripheral concerns to central challenges of law, governance, and rights. They encompass a wide range of harms, from financial frauds and identity theft to cyber terrorism and AI-enabled abuses. While official reports and judicial interventions demonstrate growing awareness, the pace of digital transformation continues to outstrip legislative and institutional responses. The next chapter will focus on the doctrinal and constitutional foundations of digital privacy, which represent the other side of this debate: the need to protect fundamental rights while ensuring effective enforcement against cyber offenses.

## XI. DIGITAL PRIVACY

### 3.1 Concept and Doctrinal Basis

Digital privacy represents the individual's right to control the collection, use, and dissemination of personal information in electronic form.[25] It is not limited to secrecy of communication but extends to autonomy over one's digital footprint, the right to be forgotten, and freedom from unwarranted surveillance. The idea of privacy as control over personal data has been emphasised in comparative jurisprudence as well as Indian scholarship.[26]

In the Indian context, the constitutional grounding of privacy has evolved slowly. For decades, the Supreme Court did not recognise privacy as a fundamental right, treating it as a derivative interest under Article 21.[27] This changed with

25. Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.
26. Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161
27. Gautam Bhatia, The Transformative Constitution (HarperCollins, New Delhi, 2019) 201.

the landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where a nine-judge bench unequivocally held that privacy is intrinsic to life and liberty.[28] The decision established three key principles: privacy protects individual autonomy, it imposes restrictions on state power, and it includes informational privacy in the digital age.

The doctrinal recognition of privacy has profound implications for cyberspace. It suggests that any collection or processing of data must meet tests of legality, necessity, and proportionality.[29] Yet translating these principles into statutory safeguards has proven difficult, partly because India lacks a comprehensive data protection law even after years of parliamentary debate.

### 3.2 Judicial Developments

After *Puttaswamy*, the Supreme Court and High Courts have confronted several privacy-related controversies. In *Anuradha Bhasin v. Union of India*, the Court ruled that indefinite suspension of internet services was unconstitutional, emphasising that access to the internet is integral to freedom of expression and trade.[30] This case highlighted the constitutional limits of state power in restricting digital connectivity.

The Pegasus spyware revelations, although not resulting in a definitive judgment, prompted the Supreme Court to appoint a committee in 2021 to investigate the alleged use of surveillance software on journalists and activists.[31] The Court

28. Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.
29. "Supreme Court Appoints Committee to Probe Pegasus," Hindustan Times (27 October 2021).
30. X v. Union of India, Delhi High Court, W.P. (C) No. 1056 of 2023 (order dated 8 March 2023).
31. Ministry of Communications, Telecom Subscriber Verification Guidelines (Government of India, New Delhi, 2021).

observed that surveillance without statutory authorisation undermines democracy and chills free speech. Although the committee's findings were limited, the case underscored judicial concern over unchecked technological surveillance.

Other cases demonstrate how lower courts have begun grappling with privacy violations caused by private actors. In 2023, the Delhi High Court ordered the removal of explicit deepfake videos circulated online, recognising the serious harm caused by such digital abuses.[32] Similarly, litigation concerning data sharing by social media platforms has reached courts, raising questions about intermediary liability and the duties of private companies to safeguard privacy.

### 3.3 Contemporary Challenges

India's digital ecosystem faces three interrelated privacy challenges.

The first is mass data collection by both state and private actors. Telecom companies are required to maintain call detail records, internet intermediaries retain metadata, and financial institutions share transaction histories with regulators.[33] The Aadhaar project, while enabling welfare delivery, has raised persistent fears of profiling and exclusion.[34] Health data collection during the COVID-19 pandemic further expanded the scope of personal information available to the state.

The second challenge is surveillance through

32. R. Abraham, "UIDAI and Data Security Concerns," (2019) 54(21) Economic and Political Weekly 17.
33. Internet Freedom Foundation, India's Surveillance State: Legal Framework and Gaps (IFF, New Delhi, 2022).
34. S. Tiwari, "Cambridge Analytica and the Indian Electoral System," (2018) 60 Journal of the Indian Law Institute 303.
35. National Sample Survey Office, Digital Literacy in India 2021 (Ministry of Statistics and Programme Implementation, New Delhi, 2022).

sophisticated technologies. The use of spyware, facial recognition systems, and predictive policing tools has expanded, often without adequate legislative backing.[35] The absence of clear judicial oversight mechanisms makes such surveillance difficult to contest.

The third is weak regulation of private sector practices. Social media platforms, e-commerce companies, and financial intermediaries routinely collect and monetise personal data without informed consent. The Cambridge Analytica controversy, which revealed large-scale profiling of Indian voters, exemplifies the potential manipulation of democratic processes.[36]

### 3.4 Public Attitude and Awareness

Despite these developments, public awareness of digital privacy remains limited. Digital literacy surveys suggest that many users are unaware of how their data is collected or the remedies available when rights are violated.[37] In rural areas, biometric authentication errors in Aadhaar-linked ration schemes have led to exclusion, yet affected citizens rarely pursue legal remedies.[38] The gap between constitutional recognition of privacy and public ability to enforce it remains stark.

Civil society organisations such as the Internet Freedom Foundation and the Centre for Internet and Society have repeatedly emphasised the need for greater public engagement with privacy rights.[39] They argue that without citizen awareness,

36. Reetika Khera, "Aadhaar and the Right to Food," (2017) 52(50) Economic and Political Weekly 81.
37. Centre for Internet and Society, Privacy and Data Protection in India: Policy Review 2022 (CIS, Bengaluru, 2022).
38. Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita , 2023; Bharatiya Sakshya Adhiniyam, 2023.
39. Law Commission of India, Report on Review of the Indian Penal Code (LCI Report No. 262, 2017) 43.

statutory reforms will remain ineffective.

Digital privacy in India has achieved constitutional recognition but remains vulnerable in practice. Judicial interventions in cases such as *Puttaswamy* and *Anuradha Bhasin* represent milestones, yet statutory frameworks have not caught up with technological realities. Mass data collection, opaque surveillance, and weak corporate accountability have created a fragmented and fragile privacy regime. The lack of a comprehensive data protection statute continues to expose citizens to risks of exclusion, manipulation, and surveillance abuse.

As India expands its digital economy and integrates emerging technologies, privacy will remain a foundational concern. The next chapter examines how the newly enacted criminal codes attempt to address cyber offenses and digital privacy, and whether they succeed in aligning statutory provisions with constitutional values.

## XII. RECENT INDIAN CRIMINAL LAWS ON CYBERSECURITY AND PRIVACY

The enactment of the *Bharatiya Nyaya Sanhita (BNS)*, *Bharatiya Nagarik Suraksha Sanhita (BNSS)* and *Bharatiya Sakshya Adhiniyam (BSA)* in 2023 marked the most ambitious criminal law reform since independence. These statutes have replaced the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.[40] The legislative intent behind this overhaul was not only to shed colonial frameworks but also to update the law to address modern concerns, particularly those linked to cybercrime and digital privacy.[41]

One of the most notable provisions of the BNS is Section 303, which defines theft. The provision retains the classical

40. Bharatiya Nyaya Sanhita, 2023, s. 303; s. 2(21).
41. Bharatiya Nyaya Sanhita, 2023, s. 78.

essence of theft but expands its scope by recognising that electronic records and data can constitute movable property.[42] In doing so, the legislature has adapted the law of theft to contemporary realities where stealing may involve the unauthorised transfer of information rather than the physical removal of goods. The statute also criminalises cyberstalking under Section 78, explicitly recognising repeated monitoring of online communications as an offence when it violates the autonomy and dignity of women.[43] This incorporation of digital harms into the general penal framework represents a significant doctrinal shift by treating online violations on par with physical offences.

The procedural reforms introduced by the BNSS reflect the same approach of integrating technology into criminal justice. The law recognises electronic records during search and seizure operations, allows summons and warrants to be issued through electronic means and sets specific timelines for investigation and trial in certain categories of cases.[44] Although these measures improve efficiency, they raise questions about privacy and oversight. Scholars and policy groups have pointed out that the BNSS grants wide powers to the police to access personal data without detailing proportional safeguards, which may lead to executive overreach.[45]

The BSA clarifies the admissibility of electronic evidence, a subject that had long troubled courts under the Evidence Act of 1872. Section 61 of the new law stipulates

42. Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 94–98, 173.
43. Vidhi Centre for Legal Policy, Criminal Law Reforms: A Preliminary Analysis of the New Codes (Policy Brief, New Delhi, 2023).
44. Bharatiya Sakshya Adhiniyam, 2023, s. 61.
45. Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.

that electronic records are admissible provided they are accompanied by certification similar to that required under Section 65B of the Information Technology Act, 2000.[46] This directly addresses judicial confusion highlighted in *Anvar P.V. v. P.K. Basheer*, where the Supreme Court held that oral testimony alone could not prove electronic records without statutory certification.[47] The BSA further recognises electronic signatures, server logs and device-based records, aligning evidentiary rules with technological realities. Nevertheless, practical barriers such as the shortage of trained digital forensic experts and the uneven distribution of forensic facilities remain unresolved.[48]

The continued operation of the Information Technology Act, 2000 alongside the new codes has created duplication. Section 66C of the IT Act, which criminalises identity theft, overlaps with the BNS provision on theft of digital property.[49] Similarly, Section 67 of the IT Act, which penalises obscene content in electronic form, coincides with the provisions of the BNS dealing with obscene material.[50] Such overlaps may produce interpretative inconsistencies and even forum shopping, prompting scholars to call for harmonisation between the IT Act and the new codes.[51]

Reports and committee findings reinforce these concerns.

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46. NCRB, Crime in India 2022 (Ministry of Home Affairs, New Delhi, 2023) 1330.
47. Information Technology Act, 2000, s. 66C.
48. Information Technology Act, 2000, s. 67.
49. P. Raghavan, "Revisiting the IT Act after the Bharatiya Nyaya Sanhita," The Hindu (5 September 2023).
50. Justice B. N. Srikrishna Committee, A Free and Fair Digital Economy: Report of the Committee of Experts on Data Protection Framework for India (Government of India, New Delhi, 2018).
51. Parliamentary Standing Committee on Home Affairs, Report on Police Modernisation and Cybercrime (2021).

The Justice B. N. Srikrishna Committee on Data Protection in 2018 stressed that cybercrime cannot be addressed effectively without a comprehensive data protection law.[52] Despite repeated discussions, Parliament has yet to enact such a statute, leaving privacy regulation fragmented. The Parliamentary Standing Committee on Home Affairs in 2021 identified acute shortages of cyber forensic laboratories and highlighted the lack of specialised training among law enforcement agencies.[53] Without institutional investment, the legal innovations of the new codes will remain difficult to enforce. Civil society organisations such as the Internet Freedom Foundation have also criticised provisions on cyberstalking and surveillance, cautioning that overbroad definitions could chill legitimate expression.[54]

Three central issues emerge from this framework. The first is the absence of codified privacy protections. Even after the Supreme Court recognised privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*, the new codes do not embed proportionality or necessity standards for data access.[55] The second is jurisdictional ambiguity. With many cyber offences involving servers or perpetrators located outside India, the codes provide little guidance on extraterritorial jurisdiction, leaving the State dependent on slow mutual legal assistance processes.[56] The third is implementation capacity. Rules for digital evidence are clearer, but infrastructural

52. Internet Freedom Foundation, Analysis of the Bharatiya Nyaya Sanhita's Cybercrime Provisions (Policy Note, New Delhi, 2023).
53. Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161.
54. United Nations Office on Drugs and Crime, Handbook on Cybercrime Legislation (UNODC, Vienna, 2021) 89.
55. NCRB, Crime in India 2022 (n 9) 1330.
56. Shreya Singhal v. Union of India, (2015) 5 SCC 1.

weaknesses mean that enforcement remains inconsistent.[57] Finally, there is the recurring risk of overreach. The misuse of Section 66A of the IT Act, which was struck down in *Shreya Singhal v. Union of India*, demonstrates the dangers of vague statutory language.[58] Without careful judicial interpretation, the new codes could replicate these problems.

The BNS, BNSS and BSA together represent a significant step toward recognising cybercrime within mainstream criminal law. They create new offences, clarify evidence rules and incorporate technology into procedure. Yet they remain incomplete, limited by overlaps with older statutes, lack of privacy safeguards and weak institutional capacity. These reforms should be seen as a beginning rather than a conclusion. Their success will depend on complementary legislation such as a data protection statute, improved enforcement mechanisms and constitutional oversight by the courts. Only then will India's criminal justice framework be equipped to confront cyber threats while protecting individual liberty.

## XIII. INDIA AND INTERNATIONAL FRAMEWORKS

The conversation on cybersecurity and digital privacy in India cannot be meaningfully advanced without situating it against global regulatory developments. Cybercrime and data protection are by their very nature transnational, since digital networks ignore territorial boundaries and crimes often involve actors, victims and servers spread across jurisdictions. In this setting, comparative legal frameworks provide both inspiration and caution for India's reform trajectory. A review

57. European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the General Data Protection Regulation.

58. Paul De Hert and Vagelis Papakonstantinou, "The New General Data Protection Regulation: Still a Sound System for the Protection of Individuals?" (2016) 32 Computer Law and Security Review 179.

of the European Union, the United States, Brazil, Kenya and certain Asia-Pacific jurisdictions reveals both stark contrasts and significant lessons.

The European Union's General Data Protection Regulation, which came into effect in 2018, is the most widely referenced global model for data protection.[59] The GDPR is distinctive for its rights-based approach. It provides individuals with clear entitlements such as the right to access, rectification, erasure and portability of their personal data.[60] Processing of data must always be founded on a lawful basis, which includes consent, contract, legal obligation, protection of vital interests, public interest and legitimate interests of the controller.[61] This multipronged structure is fundamentally stronger than India's current framework, which relies almost exclusively on consent. The GDPR also contains strict obligations for controllers and processors, mandatory breach notification, and heavy penalties that can reach up to four per cent of a company's global turnover.[62]

In contrast, the United States has traditionally favoured a sectoral approach. Instead of one comprehensive privacy statute, multiple federal and state laws regulate specific industries. The Health Insurance Portability and Accountability Act governs health information, the Gramm-Leach-Bliley Act covers financial data, and the Children's Online Privacy Protection Act protects minors online.[63] At the state level, California has emerged as a frontrunner with the California

59. GDPR, art. 6.
60. GDPR, art. 83.
61. Health Insurance Portability and Accountability Act, 1996; Gramm-Leach-Bliley Act, 1999; Children's Online Privacy Protection Act, 1998.
62. California Consumer Privacy Act, Cal. Civ. Code §1798 (2018); California Privacy Rights Act, 2020.
63. Lei Geral de Proteção de Dados, Law No. 13.709/2018, Brazil.

Consumer Privacy Act of 2018, later strengthened by the California Privacy Rights Act of 2020.[64] These laws create consumer rights akin to the GDPR, such as the right to opt out of data sales, but the enforcement capacity remains uneven across states. The United States model demonstrates flexibility but also highlights fragmentation, a challenge India should avoid while designing its own framework.

Brazil's *Lei Geral de Proteção de Dados* (LGPD), enacted in 2020, is noteworthy as a Global South counterpart to the GDPR.[65] It incorporates principles such as purpose limitation, data minimisation and accountability, while creating a national data protection authority to oversee implementation. The LGPD applies across sectors, both public and private, and explicitly acknowledges the constitutional right to privacy.[66] This model is particularly instructive for India, given the similar challenges of balancing rapid digitalisation with rights protection in large, diverse democracies.

Kenya's Data Protection Act of 2019 also provides useful lessons.[67] It was the first comprehensive privacy law in Africa and introduced strong regulatory oversight mechanisms, including a Data Protection Commissioner with investigative and enforcement powers. The Act is explicit about cross-border data transfers and requires that such transfers occur only when adequate safeguards are ensured.[68] By foregrounding accountability of both state and private actors, the Kenyan

64. Danilo Doneda and Laura Mendes, "The Brazilian General Data Protection Law: A Detailed Analysis" (2020) 6 International Data Privacy Law 80.
65. Data Protection Act, 2019, Laws of Kenya.
66. CIPIT, Strathmore University, Commentary on the Data Protection Act of Kenya (Nairobi, 2020).
67. Cybersecurity Act, 2018, Republic of Singapore.
68. Privacy Amendment (Notifiable Data Breaches) Act, 2017, Commonwealth of Australia.

model shows how developing countries can adopt rights-based privacy protections without waiting for economic conditions to reach Western levels.

Other Asia-Pacific jurisdictions provide additional insights. Singapore has adopted the Cybersecurity Act of 2018, which establishes a Cybersecurity Agency with powers to monitor and manage threats to critical infrastructure.[69] Australia has passed legislation mandating notification of data breaches, with penalties for companies that fail to inform affected individuals.[70] These laws demonstrate how regulatory regimes can combine strict obligations on private actors with strong institutional enforcement.

When India is compared against these frameworks, several contrasts emerge. India's present system, despite the recognition of privacy as a constitutional right in *Justice K.S. Puttaswamy v. Union of India*, remains heavily consent-centric and lacks effective oversight institutions.[71] There is no independent data protection authority, no statutory obligation for breach reporting, and no comprehensive rules on algorithmic transparency. The proposed Digital Personal Data Protection Bill has made limited progress, but it is yet to be enacted into law.[72] The new criminal codes address cyber offences and digital evidence but do not embed privacy protections or procedural safeguards at the level seen in GDPR or LGPD.

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69. Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161.
70. Ministry of Electronics and Information Technology, The Digital Personal Data Protection Bill, 2022 (Government of India, New Delhi, 2022).
71. European Data Protection Board, Annual Report 2022 (EDPB, Brussels, 2023).
72. Human Rights Watch, India: Draft Data Protection Law Weakens Privacy Rights (HRW, 2022).

Enforcement power is another area of difference. European authorities have imposed substantial fines under GDPR, including penalties exceeding hundreds of millions of euros against multinational corporations.[73] California has also begun issuing fines under its CCPA regime. By contrast, India lacks both statutory authority and institutional capacity to levy such sanctions. The absence of financial disincentives allows corporations and state entities to operate without sufficient accountability.

International reports further illuminate these contrasts. Human Rights Watch has expressed concern that India's legal framework provides insufficient safeguards against state surveillance and risks undermining freedom of expression.[74] The Internet Freedom Foundation has pointed out that provisions of the new criminal codes mirror older patterns of executive discretion without codified checks.[75] Comparative analysis underscores that India's focus has been on criminalisation rather than on embedding a culture of privacy protection.

The lessons from international frameworks are therefore clear. India should move beyond consent as the sole basis for data processing and introduce layered lawful bases akin to the GDPR. Mandatory breach notification should be incorporated, alongside strong penalties to ensure compliance. A specialised data protection authority, like those in Brazil and Kenya, must be created with independence and enforcement powers. Jurisdictional clarity is also critical, especially in light of cross-

73. Internet Freedom Foundation, Critical Analysis of the Bharatiya Nyaya Sanhita 2023 (New Delhi, 2023).
74. Justice B. N. Srikrishna Committee, A Free and Fair Digital Economy: Report of the Committee of Experts on Data Protection Framework for India (Government of India, New Delhi, 2018).
75. "Supreme Court Appoints Committee to Probe Pegasus," Hindustan Times (27 October 2021).

border cybercrimes. As demonstrated by Kenya's DPA, developing countries can create robust mechanisms that regulate both state surveillance and private sector exploitation.

Comparative law highlights the path forward for India. While the BNS, BNSS and BSA represent progress in integrating cyber offences into mainstream law, they must be supplemented by a comprehensive data protection statute and empowered institutions. Without these, India will remain at the margins of global privacy and cybersecurity standards, even as its digital economy continues to expand.

## V. SUGGESTIONS AND POLICY RECOMMENDATIONS

The reform of Indian criminal law through the BNS, BNSS and BSA represents a substantial step forward in acknowledging the reality of cyber offences and digital evidence. Yet the framework remains incomplete without parallel measures that focus on privacy, institutional capacity and technological resilience. The following recommendations are designed to strengthen the system in a way that balances the demands of national security with the constitutional promise of liberty.

The first priority is the enactment of a comprehensive data protection law. The Supreme Court in *Justice K.S. Puttaswamy v. Union of India* has already held that privacy is a fundamental right, and the Justice B. N. Srikrishna Committee's 2018 report provided a detailed blueprint for such a statute.[76] Despite this, Parliament has not enacted binding legislation that sets clear rules on consent, purpose limitation, data minimisation and breach notification. Without a statutory privacy framework, the new criminal codes risk operating in a vacuum where personal information can be accessed or

[76] Data Protection Act, 2019, Laws of Kenya.

processed without accountability. India must therefore adopt a law modelled on the GDPR and the Brazilian LGPD, with adaptations to the Indian context.

Second, statutory safeguards against surveillance must be introduced. The Pegasus revelations and the subsequent Supreme Court intervention demonstrate the dangers of unchecked executive power in monitoring digital communication.[77] A proper framework should require judicial authorisation for surveillance and establish a parliamentary or independent oversight body that can audit state practices. International best practices such as Kenya's independent Data Protection Commissioner show that even developing democracies can institutionalise accountability mechanisms.[78]

Third, the investigation and prosecution of cyber offences must be supported by institutional reforms. The Parliamentary Standing Committee on Home Affairs in 2021 identified a shortage of cyber forensic laboratories and inadequate police training as key impediments.[79] These deficiencies persist, and without addressing them, procedural innovations in the BNSS and evidentiary clarifications in the BSA will not achieve their purpose. The creation of specialised cybercrime cells in every state and the integration of digital forensics into police academies are essential. Investment in training judges and prosecutors in handling complex technical evidence is equally important.

Fourth, public engagement and literacy campaigns must be scaled up. Digital privacy is not merely a question of law but also of citizen awareness. Studies by the Centre for Internet and Society indicate that large sections of the population remain

77. Parliamentary Standing Committee on Home Affairs, Report on Police Modernisation and Cybercrime (2021).

78. Centre for Internet and Society, Privacy and Data Protection in India: Policy Review 2022 (CIS, Bengaluru, 2022).

unaware of how their data is collected and monetised.[80] Integrating digital rights education into school curricula, running nationwide campaigns similar to those on financial literacy, and encouraging consumer groups to monitor corporate practices would enhance the culture of privacy.

Fifth, collaboration between the state and the private sector is necessary. Cyber threats often emerge from vulnerabilities in corporate systems, and the state alone cannot anticipate or mitigate them. Incentives should be provided for companies to adopt privacy by design principles, to maintain transparent data protection policies, and to share threat intelligence with national agencies like CERT-In. Comparative practice in Singapore, where the Cybersecurity Agency works closely with industry, can guide Indian reforms.[81]

Finally, India must invest in technology-based solutions that reduce vulnerability. Incentives for the use of strong encryption standards, the adoption of indigenous cryptographic protocols, and the development of secure software lifecycles should be built into national policy. The promotion of cyber insurance markets would further enhance resilience by distributing risk.

These recommendations collectively highlight that the mere criminalisation of cyber offences is insufficient. Criminal law can address individual culpability, but systemic protection requires broader regulatory and institutional reforms. By enacting a data protection law, limiting surveillance through judicial oversight, strengthening investigative capacity,

79. Cybersecurity Act, 2018, Republic of Singapore.

80. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

81. Franklin Foer, 'The Era of Facebook's Spying May Be Ending', *The New York Times* (New York, 4 April 2018) https://www.nytimes.com/2018/04/04/opinion/facebook-spying.html accessed6 October 2025.

empowering citizens through awareness, building partnerships with industry, and investing in secure technologies, India can create a legal and policy environment that protects both security and liberty. This balance is essential for sustaining trust in digital governance and ensuring that constitutional values are not eroded by technological change.

## VI. CONCLUSION

India's criminal law reform of 2023 signals a long overdue recognition of cybercrime and digital evidence, yet the task remains unfinished. The new codes mark progress in defining offences and clarifying procedure, but they fall short of embedding privacy safeguards and institutional capacity. Comparative models demonstrate that strong rights-based protections and independent oversight are essential. For India, the challenge lies in harmonising innovation with liberty. A future-oriented framework must ensure that security does not erode fundamental rights, so that the promise of the digital revolution is matched by the protection of constitutional values.

4

# Right to Privacy and Human Dignity: Constitutional Recognition and Digital Challenges in India

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## ABSTRACT

*This paper critically examines 2017 judgment in Justice K.S. Puttaswamy (Retd.) v. Union of India*[242] *unequivocally elevated the right to privacy to the status of a fundamental right under Article 21 of the Indian Constitution. This paper critically examines the implications of this judicial pronouncement, analyzing the right to privacy as an indispensable facet of human rights within India's constitutional framework Using doctrinal analysis. It traces the historical evolution of this right, from its early association with property to its contemporary, multi-dimensional character in the digital age.*

The paper investigates the persistent issues between this fundamental right and the state's increasing reliance on technological tools for governance and security, as evidenced by recent legislative measures such as the Digital Personal Data Protection Act, 2023, the Telecommunications Act, 2023, and the Criminal Procedure (Identification) Act, 2022. It argues that while these laws aim to modernize the legal landscape, they simultaneously create potential for surveillance overreach, thereby testing the limits of permissible restrictions on privacy.

Furthermore, the study explores the role of the Information Technology Act, 2000, in safeguarding privacy and scrutinizes

the challenges posed by emerging technologies, including Artificial Intelligence, which introduce new threats such as predictive profiling and mass surveillance. Through an analysis of key judicial pronouncements and international human rights instruments, this paper concludes by proposing a balanced framework of recommendations aimed at strengthening statutory protections, ensuring accountability, and preserving individual autonomy in an increasingly data-driven world.

**Keywords:** right to privacy, human rights, IT Act, criminal procedure identification bill, 2022

## I. INTRODUCTION

Any individual, whether married or single, has the right to be free from the meddling of political institutions. This is what is meant by the term "right to privacy. India is a developing nation today, where everyone is surrounded by technology through a variety of platforms, like Facebook, What's App, Instagram, Myntra, and Bestbuy.com, Twitter, WhatsApp etc. where we all use our personal data by just selecting the "ALLOW" option. The issue of an individual's data security when sharing information in respect to his human rights is currently under dispute. To which extent our information is secured from unwanted eyes?

India is a democratic nation, which simply means "of the People," "By the People," and "For the People." In a democratic nation, each individual has the sole discretion over how much information they choose to share with others, including the authorities.

Voyeurism has grown to be a powerful part of Indian society, which is now a recording society where everyone is filming information for various reasons and divulging details about their personal and professional lives without considering the implications for the law or the effect on their privacy.

A fundamental principle of lawmaking is to aim for "Maximum Happiness & Minimum Pain," and in 2017 parliamentarians declared the right to privacy to be a Fundamental Right under Article 21.

"It's a basic, intuitive right, worthy of enshrinement: Citizens, not the corporations that stealthily track them, should own their own data."[1]

Every action has a reaction similarly if no action also has a reaction. If no action is taken for the safety of a privacy of an individual as a matter of right then most of the person could become the victim of identification theft" privacy is considered as an important part of an individual life once it is lost it then a person will loose a very essential part of his own life. Human rights are related to be a *"being human*" not to the "human being" so every person has some rights by his birth and it is the duty of the other person not to violate the right of the other human being.

One of the right is related to the privacy of an individual it is the duty of every person not to violate the privacy or interfere in the private life of the other person. Privacy is challenged with the development of new technologies. Technologies facilitating sharing the personal data (including biometric & DNA test) in public which is the for privacy breach.

Due to these circumstances, about 60 countries have passed legislation establishing controls over how publicly and privately owned entities may gather and utilize data.

An individual's right to privacy is an undeniable freedom intricately linked to his or her life as a human right. When privacy is abused or illegally invaded by wrong people, it becomes a contentious issue. Self-inflicted privacy breaches

1. Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)

are ineffective, while those committed by outside parties sare abhorrent.

Privacy is regarded as a fundamental human right that protects one's surroundings from outside disturbance, including unwanted access, sexual affairs, corporate secrets, and other things.

It would be viewed as a violation of one's right to privacy if any confidential information was released by anyone without authorization. A violation of a person's right to privacy is when a neighbor approaches their property without their consent and stares inside. Thus, privacy is regarded of as that human right that merely sets a person in a state of isolation and separation from others. Generally speaking, it refers to the "right to be left alone[2]."

The primary goal of privacy, according to JUSTICE COOLEY in 1888, is to safeguard an individual's "inviolate personality." He went on to explain that the former remedy only applied to trespassers who interfered with their lives and personal possessions. Following that, lawmakers began linking the right to life to the protection of life from other sorts of battery; later, they acknowledged it in regard to spirituality, nature, and emotions. Finally, these legal considerations are now seen in two ways. The right to be left alone, which was seen as both a human and a constitutional right. Once an American Court observed that every individual has a right to live his/her life in seclusion without interference of unwarranted and undesired publicity.[3]

According to judicial pronouncements and orders, the right to privacy is guaranteed as a fundamental aspect of life and the right to personal liberty as stated in Article 21 of the

2. Thomas M Cooley, *A Treatise on the Law of Torts* (2nd edn, Callaghan & Co 1888) 29.
3. The Indian Penal Code, 1860 (Act No. 45 of 1860)

Indian Constitution.

The right to privacy simply refers to the individual liberty from all forms of involvement in the inner life of an individual, irrespective of that individual's religion, ties, lifestyle, and perhaps other factors.

Regarding privacy as an unalienable right, no definition is offered. Both the right to privacy and the right to information are viewed as two ends of a single thread that run concurrently through every human's life.'

Right to Information Any person can get the information from any public officer

These two rights serve as a unifying principle for the responsibility of the government toward an individual. Technology advancement puts safety in jeopardy.

Right to Privacy

Individual is not bound to disclose the

information to any person.

The needs of society drive changes in the law. Initially, privacy was just associated with property; afterwards, it was tied with the idea of Swaraj; today, privacy is linked with so many life facets that it is impossible to define it in a limited sense. Every individual has been born with the right to privacy as a human right.

As a matter of right and as a fundamental human right, everyone is endowed with the ability to access information stored by governmental entities. Regardless of whether a person is interested in disclosing their identify, identity theft and a violation of their right to privacy occur when someone assumes their identity without their consent.

The right to privacy has become vital around the world and a fundamental right since we all have private or spiritual aspects of ourselves that we do not wish to communicate in

the public sphere.

If someone uploads a video of any person without their permission on an online site. The right to privacy was deemed by the court to be a human right that should be upheld. In response to this, the online publication disputed his authority to publish? The court outlined two sections or conditions and stated that no one has the right to meddle in another person's life without their consent.

Right to privacy can be claimed as fundamental right introduced in 2017; In addition to the Indian Constitution right to privacy is a topic covered by criminal law, laws involving to property and torts. Since the right to privacy is an ever-evolving notion, it cannot be defined in terms of specific objects. Varied parameters must be considered.

There isn't a definition given for a person's total privacy. Today's technology makes the right to privacy a highly important and difficult subject for the development of the nation.

Now the judiciary declared Right to privacy as a fundamental right but still statutory provisions or remedies for violation of right to privacy is in question?

## II. HISTORICAL EVOLUTION OF RIGHT TO PRIVACY IN INDIA

Prior to the Indian judiciary's recent recognition of privacy as a Fundamental right under Article 21 of the Indian Constitution, privacy had actually gone through several successive stages.

**Knightly Era:** Due to the lack of technology and digitalization at the time, privacy was only possible with the right to property in the early medieval period. No one can enter another's property without permission.

**Prior to Independence:** India's right to privacy was linked to the Swaraj concept (self governance) Gandhi

introduced the idea of swaraj, which states that we must carry out all tasks independently.

The process for ensuring privacy as a right has been prescribed by Dharma Shashtras and Kautilya in his Arthashashtra. However, the term "privacy" has never been defined.

The development of the right to privacy is currently in its early stages. If we look at several statutes to understand the privacy situation in India, we will be able to identify a number of clauses that deal with the privacy.

Section 509 of the IPC, 1860[4] now section 79 of BNS, 2023, section 28 of CrPC now section 22 of BNSS, section 29 of CrPC now section 23 of BNSS, section 164(3) of CrPC now section183 of BNSS , section 165 of CrPC now section 185 of BNSS.

Articles 21, 14, and 19 of the Indian Constitution, which were created after the country gained its independence in 1947, are all related to the right to privacy. Article 19, however, was added as a provision relating to freedom of speech and expression, without any reference to privacy. We entered a technologically advanced environment and grew dependent on it as time went on.

## III. ASPECT RELATED TO RIGHT TO PRIVACY

Right to privacy must be tested with reference to Article 14 of Indian constitution:

- Phone tapping,
- Drug testing,
- Prenatal care,
- Reproductive rights,

4. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, Nov. 4, 1950, E.T.S. No. 5.

- Privacy on social media platforms.
- Gender Priority,
- Health,
- Privacy of state,
- Search & seizure by the police,
- Sexual identities.

India implemented data-sharing and surveillance programmes in response to the 2008 Mumbai terrorist attacks in an effort to improve public safety by combating crime and terrorism. Following the implementation of such a programme, it would be connected to the Telephone Call Interception System (TCIS), which will help monitor voice calls, SMS and MMS, fax communications on landlines, CDMA, video calls, GSM & 3 G networks. The Lawful Intercept and Monitoring (LIM) system is one of the other programmes and projects. In these cases, the NHRC's definition of a human rights violation is also violated.

## IV. PURPOSE OF RIGHT TO PRIVACY

1) As declared in our preamble, ensure the individual's dignity.
2) Defending an individual's privacy support to avoid unnecessary and intrusive interference in his or her personal life.
3) If the right to privacy is violated, the rights to freedom of speech and association cannot endure.

## V. DISVANTAGES

The implementation and performance of welfare schemes, like Adhar and direct benefit transfer, which require personal data of the citizens, could be intoxicated. The ability of police and intelligence agencies to gather private information

on suspects and dead persons will also be restricted by the right to privacy. Previously, neither the Indian constitution nor any other statutes recognized the right to privacy as a fundamental right.

## GOVERNMENT MEASURES TO PROTECT PRIVACY OF AN INDIVIDUAL

Protection of citizens' rights is the government's primary duty. The sole credit goes to the judiciary for considering the privacy of an individual as a fundamental human right. The judiciary deserves all the praise for treating an individual's right to privacy as a basic component of a dignified life. In addition, this right to privacy is recognized and protected by Articles 12 of the Universal Declaration of Human Rights, adopted in 1948, Article 17 of the International Covenant on Civil and Political Rights, adopted in 1966, and Article 8 of the European Convention on Human Rights[5]. The Nordic Conference of Jurists and Legal Experts also stressed how crucial privacy rights are to people's success.

Art. 21 of Indian Constitution guarantee of the right to life and personal liberty Right to housing, food, shelter, a free and healthy environment, and now the right to privacy have all been added.

## VI. Government Measures Made To Defend A Person's Right To Privacy

### The Digital Personal Data Protection Act, 2023 (DPDPA)

After years of deliberation, the Indian Parliament enacted the Digital Personal Data Protection Act (DPDPA) in 2023, marking a watershed moment in the country's privacy landscape. The Act establishes a comprehensive framework for the processing of digital personal data, balancing the right

5. A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

of individuals to protect their data with the need to process such data for lawful purposes.

The DPDPA, 2023 received Presidential assent in August 2023 and is a comprehensive law governing the processing of digital personal data in India.

The DPDPA operates on key principles such as lawful consent, purpose limitation, and data minimisation. It grants significant rights to individuals (Data Principals), including the right to access, correct, and erase their personal data. Concurrently, it imposes stringent obligations on entities processing data (Data Fiduciaries), mandating robust data security and breach notification protocols.

However, the Act has been subject to critique for the wide-ranging exemptions it provides to the State. Under Section 17, the government can exempt any instrumentality of the State from the Act's provisions for interests such as national security and maintenance of public order, which critics argue creates a potential for surveillance overreach and dilutes the fundamental right to privacy established in Puttaswamy.

DPDPA is processing personal data requires lawful consent for a specific purpose, Grants individuals (Data Principals) rights to access, correct, erase, and grievance redressal, Places obligations on entities processing data (Data Fiduciaries) for lawful purposes, data security, and breach notification, The Act grants significant exemptions to the government for purposes like national security, public order, and prevention of crimes, which is a point of contention regarding privacy.

**The Telecommunications Act, 2023: A New Frontier for Surveillance**

The recently enacted Telecommunications Act, 2023, which replaces the colonial-era Indian Telegraph Act, 1885, presents a new paradigm for privacy concerns. While aiming

to modernize the regulatory framework, Section 20(2) of the Act empowers the government to intercept, monitor, or block transmissions on grounds including 'public emergency' or 'in the interest of public safety'. This provision mirrors the broad and often-criticized powers of the old regime. The lack of robust, independent oversight and precise definitions for these grounds continues to raise alarms about the potential for unchecked state surveillance, posing a direct challenge to the right to privacy.

Telecommunications Act, 2023 (Replacing the Indian Telegraph Act, 1885). This is a massive, recent development that has direct implications for privacy. This directly relates to your discussions on phone tapping (PUCL case) and surveillance.

## VII. Indian Judicial Pronouncements For The Right To Privacy

### A.K Gopalan v. The State[6]

The petitioner in this case claimed that the search and seizure operation that was conducted on his property was against the law and infringed his right to privacy and violation of human rights as well. However, the court dismissed the right to privacy defence, stating that the police action had a justifiable justification and that there is no such thing as a right to privacy in India and no human right is violated.

**MP Sharma v. Satish Sharma[7]** (8 judges bench)

Private documents were also checked into during the inquiry into the Dalmia Group at the time of the warrants for the search and seizure of public records. The Supreme Court ruled that powers of search and seizure were granted for state security. Also absent from the Indian Constitution is the idea of a right to privacy.

6. M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.
7. Kharak Singh v. State of U.P., AIR 1963 SC 1295

**Kharak Singh v. State of U.P**[8] (6 judges bench)

The petitioner contended that the police were following him and that the daily domicile visits violated his right to privacy and human right. However, the court also stated that the right to privacy was not a basic right, despite the fact that it was acknowledged to be violated. Justice Subba Rao gave a dissenting opinion When there is persistent entrapment, right to movement is impacted.

People'S Union For Civil Liberties (Pucl) V. Union Of India8

Former Prime Minister Chandra Shekher and 27 other individuals asserted that the government is tapping their phones. The Union Home Secretary or State Home Secrecy may allow phone tapping if there is an urgent need or unavoidable circumstances. The Supreme Court ruled that tapping is unlawful.

**Justice K.S. Puttaswamy (Retd) Vs Union of India**[9] **(9 Judges Bench)**

The Aadhar Project was in difficulty. AGI used past cases to support its position that Indian citizens do not have a fundamental right to privacy. The Indian Supreme Court unanimously agreed during the hearing of the suit challenging the constitutional validity of the Aadhar-based biometric system that the right to privacy is a fundamental right protected by the constitution. The court widened the scope of Article 21 and declared that the right to privacy was also included in the right to life and liberty as guaranteed by that provision. It can be protected under Articles 14, 19, and 21 without the

8. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

9. Vineet Kumar v. Central Bureau of Investigation, (2020) 10 SCC 660.

necessity for a separate legislative body.

**Vineet Kumar V. Cbi & Others[10]**

Calls were recorded under suspicion of bribery. According to the court, phone tapping is only legal in situations involving a public emergency and safety. Economic crimes in general are not covered.

The judiciary has continued to refine the scope of the right to privacy post the landmark Puttaswamy judgment. In a subsequent ruling on the Aadhaar scheme, the Supreme Court read down several provisions to enhance privacy safeguards, affirming the citizen's right to delink their Aadhaar from bank accounts and mobile numbers post-authentication.

**Further, In Vahini v. Union Of India (2023),**

The Court recognized the right to privacy of a life partner, explicitly holding that the protection of a relationship under the ambit of privacy is not limited to the institution of marriage. This demonstrates the Court's commitment to viewing privacy as an essential facet of personal autonomy and liberty in its fullest sense.

## IX. RIGHT TO PRIVACY IS NOT AN ABSOLUTE RIGHT

As a human right, fundamental rights are granted to citizens for their development; yet, where there is a right, there is also a duty. Article 21 of the Indian Constitution now recognizes the right to privacy as a fundamental human right that contributes to one's dignity. However, there are some circumstances in which this right cannot be exercised, such as when doing so would contribute to the prevention of crime or other types of disorder, the protection of one's health or

10. Govind v. State of M.P., (1975) 2 SCC 148

decency, or the defense of the rights and freedoms of others. Organizations and businesses today keep an eye on all employee emails and social media activity. It directly infringes on both people's human rights and their right to privacy.

On the one hand, we value each person's right to privacy as a fundamental component of human rights; nevertheless, recently, cell phone providers have been watching the employees phones in order to determine their names and locations. This type of behavior gives the impression that they are being followed and tracked round-the-clock. The human right to freedom and privacy has been flagrantly violated. If we don't have specific legal protections for safety and privacy as a human right, then every person will be a prisoner inside their own property.

**A Judicial Pronouncement of the Right To Privacy as a Conditional Right**

**Govind V. State Of Madhya Pradesh[11]**

The right to privacy is also a fundamental right, and it should be restricted for the good of the public, the court ruled. Fundamental rights cannot be assumed to be absolute rights. Additionally, this court stated clearly that in cases when two or more individuals fundamental rights conflict, the right that best safeguards public morality shall be taken into account.

**Peoles Union For Civil Liberties (Pucl) V. Union of India[12]**

The Supreme Court is faced with the question of whether it is the citizens right to information or a direct breach of their right to privacy if an elected candidate's assets are made public through the media or in any other way

P. Venkatarama Reddy J. noted: When we discuss

11. People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399.
12. The Identification of Prisoners Act, 1920 (Act No. 33 of 1920)

privacy, it mostly pertains to the individual.

The Criminal Procedure (Identification) Act, 2022

In substitute of the Identification of Prisoners Act[13], the legislature recently on March 28, 2022, introduced a new bill known as the criminal procedure (identification) bill. The legislature passed the Criminal Procedure (Identification) Act in April 2022, replacing the archaic Identification of Prisoners Act, 1920. This Act is now in force, and its constitutional validity is currently under challenge before the Supreme Court, reflecting the persistent conflict between the State's investigative powers and the citizen's right to privacy.

In order to conduct criminal investigations, this bill would allow the collection of personally identifiable information on some individuals, such as criminals. This bill's ultimate focus was to authorize the identification and detention of suspected criminals and other individuals for the sake of criminal investigation and prosecution, as well as the preservation of records, among other things. This Bill increases both the number of people who can access and the extent of such information.

The Bill was introduced with the intention of allowing the identification and investigation of criminal suspects as well as the preservation of records by taking actions against prisoners and other individuals. It grants permission to the National Crime Records Bureau to gather, keep, and keep certain documents. It must have been created to enable the use of advanced technologies for gathering and keeping precise body measurements. The definition of "measurements" under the act includes fingerprint, palm, and footprint impressions, photographs, iris, and retina scans, physical, biological samples, and their analysis.

13. The Code of Criminal Procedure, 1973 (Act No. 2 of 1974)

important elements of the act:

- To enable the use of today's technology for obtaining and storing precise body measurements.
- Give the National Crime Records Bureau (NCRB) the power to gather, save, and preserve measurements records as well as to share, circulate, obliterate, and discard records.
- Furthermore, a magistrate may order the collection of fingerprints, palm print impressions, footprint impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting, or any other examination from a specific group of convicted and non-convicted people.
- Anyone who rejects or refuses to offer assistance should be able to have their measures taken by police or jail personnel.

Additionally, the act permits the police to document signatures, handwriting, and other behavioural characteristics for the purposes of an interrogation that are stated in Sections 53 or 53-A of the Code of Criminal Procedure[14].

**Pertinence of the Act in relation to privacy under the Constitution**

The Identification of Prisoners Act of 1920 has been expanded by the legislation by modifying its parameters and eliminating it. The act has defined the term "measurements" under Section 2(1)(b), which includes finger, palm, and foot impressions, photographs, iris, and retina scans, physical, biological samples, and their analysis, as well as behavioural characteristics like signatures, handwriting, or any other

14. Charter of the United Nations, Oct. 24, 1945, 1 U.N.T.S. XVI

examination referred to in Section 53 or Section 53-A of the Code of Criminal Procedure, 1973.

A direct violation of Article 20(3), the right against self-incrimination, and Article 21, the right to life, the Indian Constitution, the legislature's intention to make the word measurement exclusive by including general words like physical and biological samples could result in narcoanalysis and brain mapping through the use of force implicit in collection.

- Nobody ever accused of a crime may be made to testify against himself, as stated in Article 20(3) of the Constitution of India (COI). It has grown to be a concern of worry since people's privacy is in danger.
- It should be highlighted that it also violates the standards for human rights set forth in the United Nations Charter[15]. A fundamental human right, privacy has developed over time through a series of Supreme Court rulings to encompass a variety of factors, including privacy of space, privacy of the body, protection of personal data, and privacy of selection.
- The keeping of measuring records for 75 years is authorized by Clause 4(2) of the act, which is an apparent violation of the right to be forgotten, as acknowledged by the Supreme Court in S. Puttaswamy v. Union of India.
- It also runs counter to the fundamental tenet of criminal law, which holds that a person is innocent until and unless proven guilty in a court of law.
- The Supreme Court held that the term "life" applies to more than just animal existence in Kharak Singh v. State of U.P. All of our limbs and faculties strive to resist its loss, which enables us to appreciate life. One can contend

15. Maneka Gandhi v. Union of India, (1978) 1 SCC 248

that humans also have the right to life. It's not just about a person's physical health.

- **In Maneka Gandhi Union of India**[16], the Supreme Court expanded upon Article 21 by stating that the "right to life or to live" include both the physical and the moral right to survive. A person's life is put on pause by this Bill, and he will always be under government surveillance, which is a significant infringement of privacy.
- The Supreme Court declared in **State of A.P. Challa Ramakrishna Reddy**[17] that everyone is entitled the right to life as one of their fundamental human rights. No one, not even the government, has the right to violate something so fundamental. A person still has humanity even though they are imprisoned. Since he still has human status, he is still entitled to all basic rights.

## X.ROLE OF MEDIA IN RIGHT TO PRIVACY

It is called a major human right violation by media **Sheikh Noorul Hassan** Sting Operation, known as Dansh Patrakarita' in Hindi, is a deceptive operation designed to catch a person committing a crime. In performing sting operation the privacy of the person is affected because his consent is not taken while filsming him.

The purpose of a sting operation is to follow those involved in unethical or anti-national conduct and monitor on corrupt people. Anyone can easily silently record a conversation or questionable action. miniaturized audio-video equipment like pinhole cameras. Briefcases, pagers, cigarette lighters, cell phones, fountain pens, smoke alarms, and even eyeglass

16. State of Andhra Pradesh v. Challa Ramakrishna Reddy, (2000) 5 SCC 712
17. R. K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106

frames are just a few items that can conceal cameras.

Tehelka Case[18] also one of the example which clearly indicates the violation of right to privacy by media.

Issues while implementing Right To Privacy

The right to privacy has become a fundamental right but what are the issues that we are facing

Absence of Statutory Background: There is no specific law governing the right to privacy. There has been an attempt by the legislature to enact various bills to make it statutory, but no such bill has yet been approved.

No guidelines for implementation have been codified; they said it is simply a fundamental right. What steps will you take to hold the person responsible for violating someone's right to privacy accountable if they violate that right? What safeguards are in place to prevent violations of this right, and what severe sanctions may be imposed on those who do?

Absence of stringent sanctions: If someone breaches someone else's right to privacy, the law offers no recourse or relief.

**Privacy Rights As Fundamental Human Rights Under International Law**

Privacy rights are granted by international humanitarian law. The right to privacy is recognized as a fundamental human right in numerous other international and regional agreements, such as the International Covenant on Civil and Political Rights and the UN Universal Declaration of Human Rights. Human dignity, along with other crucial ideas like free expression and association, is fundamentally based on the right to privacy. It has become one of the most significant threats to human rights in the modern era.

In one area of life, social media is quite significant, and

18. The Information Technology Act, 2000 (Act No. 21 of 2000)

both mobile data bases and internet culture encourage screening of connected people's private information. Users are considered to be a marketing platform for goods that take into account their preferences.

This privacy argument can be demonstrated using Facebook as an instance. This particular website solicits precise information from users in order to encourage account creation. Moreover, nearly every user of the site, including those who have never used it before, has access to the basic details that a particular user has provided thanks to the default settings on the website. Individual privacy settings on the website can be modified, including selecting who should be added as a friend and to whom information should be exposed. When creating online profiles, younger folks often don't worry about privacy and include as much sensitive and personal information as they can. Commonly harmful outcomes like identity theft, harassment, online victimisation, etc. can happen when personal information is posted online without first checking the privacy settings.

Data protection is not specifically covered under Indian law. A few data protection principles are contained in the IT Act, RBI guidelines, TRAI regulations, and other sources. One of the most important laws now in place to protect personal data is the Information Technology Act (IT Act). The IT laws penalise unauthorised access to data as well as hacking and tampering with computer systems.

Laws governing data protection should apply equally to the public and private sectors. These days, the government is not the only organisation with access to individual data. More private parties, such as banks, phone companies, loan companies, financial companies, and others, are holding it. All natural beings, regardless of their nationality or place of residence, should be subject to this law as a matter of human

rights.

The Ministry of Electronics and Information Technology has assembled a team of experts to create a data protection law, with former Supreme Court Justice BM Srikrishna serving as the panel's chairman. As part of its legal justifications in the right to privacy dispute, the UIDAI informed the Supreme Court of its decision to create the organisation.

Under the IT Act, 2000, Sections 66-A and 500, 506, and 507 of the IPC are also relevant. Up to three years in prison and a fine could be imposed on the defendant. Contrary to section 77-B of the IT Act of 2000, the offence is non-cognizable, bailable, and compoundable with the court's agreement in the case of public employees if section 500 of the IPC applies.

## XI. CONCLUSION AND RECOMMENDATIONS

### Conclusion:

According to Article 21 of the Indian Constitution, it is vital to have the right to privacy in order to enjoy both life and one's personal freedoms. In order to prevent crime, maintain public order, and protect others, the right to privacy may be subject to reasonable restrictions. In the event of a disagreement between these two derived rights, the right that promotes public morality and the common good will prevail. However, it may also come from a specific relationship, outside of a contract, such as one that is commercial, marital, or even political.

Right to privacy is considered as fundamental human right but till now no statutory provisions are provided. It is a matter of concern for legislature.

The act was introduced in order to permit the use of contemporary tools to measure and record acceptable body dimensions, with the aim of approving the taking of measurements of prisoners and other individuals for purposes

of identification and research in criminal cases, as well as the preservation of records, among others. By allowing the State broad authority to maintain prisoner data and carry out physical and biological testing with the implied force of law, which is against the rule of law and has an arbitrary nature, the Bill has violated citizens fundamental rights. While they are in prison, people do not stop being human.

This stance has been reiterated by the Indian Supreme Court and numerous other Indian courts in a number of situations to prevent inmates from becoming victims. The intangible differentia and reasonable link tests have not since been approved by the legislature. Therefore, it is a flagrant violation of the fundamental rights of citizens as outlined in Sections 14, 19, 20(3), and 21 of the Indian Constitution.

**Recommendations:**

- The right to individuality, personal autonomy, and privacy in the digital age needs a constitutional definition and assurance.
- In this digital age, the state needs to set up a strong personal data protection system.
- Protection of civilians from surveillance Maintaining a balance among promoting national interest and privacy protection.
- A thorough inquiry as well as the prospect of criminal prosecution in cases of serious violations
- The right to privacy must include to private companies that gather data on citizens, not only the government.
- An important barrier against invasions of personal space is the awareness of privacy as a fundamental freedom.
- The individual in charge of keeping data should be made accountable for its gathering, processing, and application.
- The government should also provide internal procedural

safeguards with unbiased external oversight to protect rights.

- The government could start by amending its technology laws to take into consideration the expanding domestic land escape.
- Active user awareness is essential to inform them of their possibilities.
- It is important to address worries about data security, privacy, and protection against unauthorized access.
- People must receive training on how to preserve their data and privacy.
- Although laws offer a solution, prevention is more vital and can only be achieved via education.
- Each and every person must be aware. "Clear-cut workshops, orientations, and programmes for gender sensitization should be implemented at all educational institutions.
- A student code of behaviour should also be included in the prospectus, along with specific guidelines for what would happen if that conduct is broken.
- Since the IT Act's enactment in 2000 and its amendment in 2008, fourteen years have gone and technology has changed swiftly.
- Sextortion scams should be avoided.
- Connect only with friends, don't share your login, keep your settings private, and consider your posts before posting to make Facebook a safe space.

5

# Revisiting the age of Consent with Reference to Close in Age Exemption Clause- A Comparative Study Between Oriental and Occidental Nation With Special Reference to India

*Pragya Gupta*[1]

## ABSTRACT

A judgment by the Karnataka High Court[2] in November of 2022, concerning the issue of acquittal of a male under the Indian law on the Prevention of Child Sexual Abuse (POCSO[3]) wreaked havoc around the nation which arose several allied issues in response to the controversial yet fact provoking judgment of the High Court. It narrowed down the problem of increasing rate of convictions especially under the POCSO Act, 2012 and further suggested the Commission on Legal Reform (India) to reconsider its legislative policy on the matter of Age of Consent. India enacted its first child abuse Act known as the POCSO Act in 2012 and consecutively introduced major reforms under the Amended Criminal Justice Provisions, 2013 as a response to the Nirbhaya Case[4]. The Reforms included

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2. Criminal Appeal No100515 of 2021 (Karnataka HC, Dharwad Bench, 4 November 2022).
3. Protection of Children from Sexual Offences Act 2012 (India).
4. Mukesh & Anrvs. NCT of Delhi & Ors., (2017) 6 S.C.C. 1.

various changes in the Anti-Rape law such as threat of Rape was made punishable, introduction of new degrees of crime to the definition of Rape, changes in the minimum sentencing were also increased. Moreover, the Act within its definition of 'Child' has enhanced the statutory benchmark for valid sexual consent from sixteen to eighteen years. This paper revisits the Historical developments in consonance with Rape and Child Sexual Abuse legislation since its inception to the latest developments and further makes an attempt to track down the judicial approach towards the law concerning Age of Consent. The researcher has subsumed a trail of several prominent legal as well as resulting social, biological, behavioral and cultural issues that arise as a consequence from the parent issue of Age of Consent. Moreover, a Comparative Analysis of an oriental and an occidental nation with special reference to India has also been presented within this paper. Lastly, the researcher has made an attempt to identify contemporary issues and challenges in conjunction with the parent issue while critically examining both the old and the new amended reforms brought forth in the wake of new legislation[5] concerning Adolescents and their sexuality.

**Keywords:** Age of Consent, Adolescents, Close-in Age-Exemption Clause, United Kingdom, Bahrain, India.

## 1.Introduction

India is currently home to a population close to 1.4 billion out of the total world population of billion and counting, which approximately amounts to 17.85% of the total world population[6]. Out of these 1.4 billion populations, 30% of it

5. Herein, the 'new legislation' refers to the enactments of Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita, which are discussed in the later sections of this paper in detail.
6. UN DESA, World Population Prospectus 2022: Summary Of Results, 9 UN DESA/POP/2022/TR/NO.3 (2022) https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/wpp2022_su mmary_of_results.pdf accessed on 27 February, 2025.

constitutes children that are under the age of 18[7] in India. Even though being home to such a large chunk of child population, India still shambles behind on the line of laws in regards to crimes of a sexual nature against children.

Juvenile Sexual Offence Cases (victim as minor) was not even considered a criminal offense unlike Rape until India became a signatory to the United Nations Convention on the Rights of the Child (UNCRC) in 1992, thereby committing to upholding the internationally recognised rights of children[8]. Thereafter, for the first time India recognised the need for extensive child rights[9] to protect its children from all categories of carnal abuses and subjugation that the children might be a victim of. As a result of the above realization an immediate presence of a vacuum in the current legislation on Child Rights was felt, which encouraged India to make an attempt to legislate and codify its own norms and regulations in relation to Child Rights.

As a reference for the codification of law on Child Sexual Abuse, India relied heavily on Article 1 of the UNCRC[10] which defines a child as a sentient being who is under the age of eighteen years either under the applicable law relevant to the child or in case of attaining majority, whichever is earlier. Article 19 and 34 under the Convention stipulates that all signatory states are obligated to take every appropriate National, Bilateral or Multilateral measures and preventive

7. United Nations Children's Fund, US (1946) https://data.unicef.org/how-many/how-many-children-under-18-are-there-in-india/ accessed 28 February, 2025).
8. United Nations Children's Fund, US (1946) https://www.unicef.org/child-rights-convention accessed 28 February, 2025.
9. Savita Bhakhry, Children in India and their Rights (National Human Rights Commission, 2006) 30.
10. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 1.

steps in order to protect children under the vigilance of biological parents, appointed guardians, or individuals[11] responsible for the care of the child from any or all forms of exploitation, abuses including sexual abuse, injury, mistreatment, violence etc. respectively. Moreover, to combat the ongoing exploitation on minors with a more progressive view of protecting a minor from sexual harassment of any kind, the Government of India enacted The POCSO Act, in 2012.

The POCSO Act, 2012 provides a compendious skeleton to lay down both the substantive as well as a set of procedural rules and guidelines in place to address and recognise the sexual offenses that are being performed on the minors who are incapable of defending themselves against the odds. This act is made with an intent to protect children which further goes on to criminalise all from all kinds of sexual abuses including assaults whether penetrative or non- penetrative but not limited to sexual harassment, pornography on a child. The Act[12] provides for the articulation of a child under Section 2(1) d whereby it is stated that a child is any person below the threshold of legal majority[13]. This act clearly demarcates and stipulates a set of very stringent provisions in regards to mandatory reporting of all sexual abuses, assaults whether penetrative or otherwise under any circumstances to the appropriate police authority by the educational or religious institution, parents, doctors, management or staff of hospitals, or any private individual upon a kid or a pubescent individual who is underage in accordance with the provisions of the act. The legislature

11. Basically, any other person recognised by law as having custodial authority.
12. Prevention of Children from Sexual Offences Act 2012, s 2(1) (d). This provision states that 'child' means any person below the age of eighteen years.
13. Here, Below the threshold of legal majority is a contextual substitution for "under 18".

has also in turn increased the Statutory Age of Rape or Age of Consent from 16 to 18 years[14], for any sort of sexual activity for all children regardless of their genders along with deletion of the mandate by the courts to award any lesser punishment than the minimum statutory sentence[15]. Though the act was made with a view to expand the purview under sexual offenses but it received a mixed response from the masses i.e. The child right activists, non-governmental organizations had a positive outlook whereas there were many who opposed such changes brought forth in the legislation.

## 2. Historical Background of Age of Consent

What are the ingredients of a valid consent under the letter of law, or when can one determine in terms of a consensual relation between a male and a female that valid consent was given at the time of consummation of the act. To answer the above posited questions, one must divulge into the background of the inception of the law on Consent in India and more significantly why was the law on consent required in the first place.

India is famous for its rich culture and traditions over centuries. Apart from being famous for its diversified and sundry history it is also known to be a land that has witnessed various glorified battles and foreign invasions by Kings and Generals during its Pre- Independence Era. The origins of the concept of Consent can be traced back to the time when India belonged to the land of Foreign Kings and Generals who were attacking India and simultaneously the soldiers of those invaders were marrying the Indian woman as a price of their

14. Savita Bhakhry, Children in India and their Rights (National Human Rights Commission 2006) 43. Aboven 8.
15. The Protection of Children from Sexual Offences (Amendment) Act, 2019, No. 25 of 2019.

glorious victories[16]. But as a result of such invasions Indian soldiers retaliated and fought against the foreign invaders which resulted in repetition of the fate of Indian Woman. To surpass this evolving problem of Indian woman being violated regressively in the hands of these invaders the concept of Child Marriage as a solution began taking pace in the background of such grave turmoil. As the movement was breathing its first few breaths in India, these invasions were resulting in deaths of many Indian soldiers which kept this vicious cycle of Indian women being violated. Even though people had not yet recovered from these deaths and from the fate of turmoil of Indian women, a new issue faced the then British India which was the death of minor girls in large numbers.

### 2.1 Legislative Policy on The Age of Consent

In 1860, Thomas Babington McCaulay, renowned for his contribution to the Indian legal system drafted the Penal Code of India which stipulated the sexual maturity threshold under law[17] at 10 years[18]. The law also codified Marital Rape as a criminal offense in India pertaining to the condition being stipulated that wife being below the bar of the Age of Consent fixed in India. This codification of the law gave rise to the infamous scuffle between the Recognised Age of Legal Sexual Capacity and the law on Recognised Age for Matrimonial Alliance in India. In 19th century the social reformers started

16. Ajay Amitabh Suman, 'Age of Consent and Romeo-Juliet Clause' Times of India (23 May 2021) https://timesofindia.indiatimes.com/readersblog/ajayamitabhsumanspeaks/age-of-consent-and-romeo-juliet-clause-32417/ accessed 1 March, 2025.
17. Here, the phrase 'Sexual Maturity Threshold Under Law' is a contextual substitution for the term 'Age of Consent'.
18. David Skuy, 'Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century' (1998) 32 Modern Asian Studies 513–57.

protesting against Child Marriages which later on converted into the national movement of increasing the sexual maturity threshold under law from ten to twelve years[19] for all girls including both married and unmarried in all jurisdictions with an explicit aim of increasing the threshold age for conjugal union in India. This assiduous and enduring movement became sharp especially during 1800s, where these social reformers believed that owing to the fact that these marriages were being performed against the will of the girls and many such marriages were leading to the deaths of minor girls the British Government was well within its bound to amend the law in the first place. However, many Hindu Nationalists contended against the same due to the fear of a blanket ban on Child Marriage by the Britishers in India. As a result of which the Britishers unanimously decided to leave the domain of personal laws such as Marriages, Inheritance, etc. aside and provided that these areas to be regulated by the prevailing customary and religious legal frameworks of the community. Eventually the aftermath of the cases such as of Phulmoni Dossee[20] and Rukhmabai[21] respectively[22], pressed the British Government towards the legislation of 1891. The legal records of the same can be traced back to the year 1882, in the wake of which the Age of Consent Act, 1891[23] was introduced.

19. A Pitre and L Lingam, 'Age of consent: challenges and contradictions of sexual violence laws in India' (2021) 29(2), Sex Reproduction Health Matters 464.
20. Queen-Empress vs Hurree Mohun Mythee (1891) ILR 18 Cal 49.
21. Dadaji Bhikaji vs Rukhmabai (1885) ILR 9 Bom 529.
22. One of the girls, being 10 years of age died vicariously through the forceful consummation by her husband of 35 years of age and the other met the same fate just at the age of 11 years.
23. Charles Heimsath, 'The Origin and Enactment of the Indian Age of Consent Bill, 1891' (1962) 21 The Journal of Asian Studies, 491–504.

After the legislation of 1891, came the Child Marriage Restraint Act, 1929 also known as the Sarda Act, 1929 which set forth the minimum Age of Marriage at 14 years. This led to a starling clash with an exception to Consent within marriage which was fixed as 13 years[24] at the time. This went on until 1978, wherein a simultaneous increase in the recognised age of legal sexual capacity and recognised age for conjugal union was witnessed with an exception of Age of Marriage always being set below than the Age of Consent in India. As a concluding measure in 1978, the legislative amendments increased the legal threshold age for matrimonial alliance to 18 years and the recognised age of legal sexual capacity was retained at 16 years. The legal age of carnal consent within marriage was however fixed with a cap at 15 years or above.

In 1980, the 84th Report of the Law Commission[25], recommended to raise the sexual maturity threshold under law from sixteen to eighteen years and bring it in alignment with the Age of Marriage which was fixed at 18 years by the legislation of 1978. This move was initiated with a legislative intent that Section 375 of Indian Penal Code should reflect the same as it prohibited sexual intercourse with a female with or without her Consent as Statutory Rape. The aim was clear that the recognised age of legal sexual capacity should be in congruence with the recognised age for matrimonial alliance. Although the said recommendation was declined and was not deemed accepted at the time. A similar recommendation was made in the 205th Law Commission Report[26], which aimed at

24. Indian Penal Code 1860, s 37.
25. Law Commission of India, 84th Report on Rape and Allied Offenses- Some Questions of Substantive Law, Procedure and Evidence (April, 1980).
26. Law Commission of India, 205th Report on Proposal to Amend the Prohibition of Child Marriage Act, 2006 And Other Allied Laws (February, 2008

amending the Child Marriage Act, 2006 by requesting for a universally standardized statutory legal interpretation of a child across the country's laws, raising the sexual maturity threshold under the law to eighteen years to bring it in alignment with the recognised age for matrimonial alliance and removing the exception of Marital Rape from the Rape laws in India. These recommendations also faced the same fate as the 84th Law Commission Report's recommendation, rejected and denied.

**2.2 Judicial Approach on The Age of Consent**

Although the issue not being resolved at the time but continued to remain in existence as a lost cause until in 2012 the famous Nirbhaya Case or Delhi Gang Rape Case[27] came to the surface. The case shook the nation and forced the Union Government to realise the requirement of more impactful and stringent Rape and Sexual Assault laws in the country. This realization led to the enactment of the Criminal Law Amendment of 2013[28]. The Union Government did not stop at this it further moved on to amend various Sections of the Penal Code of India such as Section 375 (defines Rape), Section 376 (Provides for punishment pertaining to Rape) and Section 354 (provisions in relation to sexual harassment and its related definitions). Subsequently, the nation witnessed an array of amendments in the statute on Protection of Children against Sexual Abuse (POCSO), 2012. The POCSO Act made the Rape laws in India more gender fluid and raised the recognised age of legal sexual capacity from sixteen to eighteen years of age inclusive of all children across the gender spectrum.

Recently, a case under the purview of Madras High Court, 2019[29] was brought forth with the facts stating that an accused

27. Aboven 4.
28. The Criminal Law (Amendment) Act 2013, No13 of 2013.
29. Criminal Appeal No 490 of 2018 (Madras HC, 26 April 2019).

of 19 years was charged with kidnapping and sexual assault with the victim of 16 years of age. Herein, the Madras High Court directed that the Age of Sexual Consent by the Centre be reconsidered with an aim to lower the sexual maturity threshold under law from eighteen to sixteen years of age. This was done in the light of the fact that there is sufficient legal data available that confirms that the laws on Age of Consent and Marriage are selectively being used by parents to target[30] and modify the relationships of their children especially in the cases of inter- caste[31] or inter- religion, wherein they are non- approving of such relationships[32]. The onus of proof is always on the accused/ boy even though in most cases it is found that the relationship is consensual. All the said reasons seemed to be justified on the grounds of Natural justice as stated by the Court.

30. In State v Kaishar Ali AIR Online 2019 DEL 1479. The child involved acknowledged before the court, that the parents of the girl had threatened to kill the accused/boy and forced her to speak against the accused/boy in Court.
31. In Pramod Kumar v State of Uttar Pradesh (Allahabad HC, 21 December 2021). The case fell before the High Court of Judicature at Allahabad which upheld the innocence of the accused/ boy according to the validity and reliability of the evidence and testimonies conducted and received from the victim. Upon further investigation, it was revealed that the victim was coerced by her father to testify against the accused/boy as he belonged to a Scheduled Caste. The court acquitted the accused/boy and upheld the voluntariness of their marriage being free from any form of coercion.
32. Jitender Kumar v State of Himachal Pradesh [2020] Himachal Pradesh High Court, 14 September 2020. The court made an observation stating that the testimony of the mother is totally contradictory from the version of the testimony narrated by her daughter.

A series of similar cases[33] on corresponding facts were filed and heard recently between a period of 2020-2024[34] by various Courts. Each of which have acquitted the accused[35] being sexually involved with the victim under the age of 18 on the grounds that the victim confessed of it being a consensual relation[36] between the parties involved in the sexual act[37]. This

33. R Parthiban v State (Madras HC, 7 July 2022). In this case a twenty-four-year-old boy and a seventeen-year-old girl formed a consensual relationship and later got married when the girl turned of legal age. Upon their marriage, the mother of the girl complained against her daughter's spouse of committing sexual assault upon her daughter. The court upheld the innocence of the spouse and decided not to apply the POCSO's provisions and acquit the accused/boy from all possible charges.
34. Vijayalakshmi v State Rep by (Madras HC, 27 January 2021). The court upheld that children's relationship are a normal and acceptable part of their biosocial dynamics and holding them accountable for such acts would condemn and undermine the purpose and aim behind setting up the POCSO act.
35. Ranjit Rajbanshi v State of West Bengal and Others (Calcutta HC, 18 August 2021). The court was very clear when it pronounced that even though a minor's consent is deemed 'no-consent' in the eyes of law yet voluntary consenting sexual activities between children cannot be criminalized. Atul Mishra v State of Uttar Pradesh and Another (Allahabad HC, 10 November 2022).
In this case court acknowledged the promotion of biosocial approach towards navigating the adolescent relationships and their mutual attraction towards each other.
36. Arhant Janardan Sunatkari v State of Maharashtra (Bombay HC, 4 February 2021). In this case the court accepted a consensual relationship between a twenty-one-year-old cousin brother and his fifteen-year-old girl on the victim's claim of the sexual act being consented by her voluntarily by her free will and hence, the preparator was awarded bail.
37. Suman Dass @ Rahul v State (Delhi HC, 7 March 2022). The case involved a question regarding penetrative sexual violence between a twenty-one year-old male and his fifteen-year-old wife in which court determined that if the rules of the POCSO are to be followed word-by-word that would entail that every human being under the eighteen-year-old threshold does not have a right upon their own body as it belong to the state and they are not eligible to enjoy freely the pleasures of human body as such. In State v Rupesh Banti Bajirao Mokal, the court exonerated the alleged offender on the grounds that the girl was well aware of the consequences of her actions owing to her maturity level.

further raises the question of whether the Age of Consent is being used as an element to validate sexual activity?

### 3. Need of Age of Consent as An Element to Validate Sexual Activity

The very question that purports in the mind of any citizen as to why is it necessary to determine and correctly fixate an appropriate 'Age of Consent' and why is it absolutely necessary to establish any kind of validity behind sexual activities that arise as a natural consequence of an interaction between two individuals regardless of their age? This question has been asked by many including adolescents and their parents over a course of time. To answer the first parameter of this question one must understand that there are various elements as to why the Union Government over the years have debated and pressed on fixating on appropriating a particular Age of Consent amongst these adolescents.

To begin with this was firstly, done with a legislative intent to protect the sexual orientation of adolescents from abuse or any form of sexual exploitation being implored on them. Not only that the aim was to ensure that they are protected from the consequences of their own acts that they may not be fully aware of while engaging in sexual activities of any nature. However, what constitutes as sexual abuse can be determined by the fact that when a person who is under age i.e., under the age of providing sexual consent engages sexually with another it falls under the pretense of sexual activity amounting to sexual abuse according to the provisions of the Penal Code of India and the accused stands criminally liable.

Subsequently, adolescents as established earlier are driven by their desires and thrust for life which often leads to them being curious and experimental as well as ignorant or

not fully conversant with information especially about the reverberations of their sexual altercation with another gender[38] which may result into sexually transmittable diseases with no scientific cure such as Human Immunodeficiency Virus (HIV) or Acquired Immunodeficiency Syndrome (AIDS).

Moreover, according to the National Family Health Survey Report[39] at least 7% of woman between the ages of 15-19 years were found to be pregnant in 2019-2021. The findings of this survey report are conclusive to establish that when adolescents are engaged in early sexual activities there exists a higher possibility of early pregnancy amongst adolescents which is often regarded as counterproductive to their respective mental, physical or emotional health altogether.

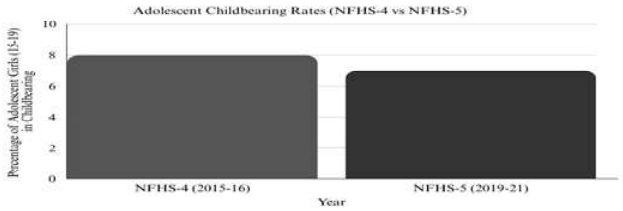


*Figure 1: Adolescent Childbearing Rates[40] (NFHS-4 vs NFHS-5).*

38. John Franklin Shylla v State of Meghalaya and Another (Meghalaya HC, 24 March 2023). Upon the persistent insistence of the victim that the couple were in a consensual relationship, the Meghalaya HC acquitted the accused by overturning the Special court's decision. This is an indication towards the Judiciary still being between two minds regarding the competency of minors consenting to sexual acts.
39. Ministry of Health and Family Welfare, International Institute for Population Sciences and ICF, National Family Health Survey(NFHS-5) 2019-21, (IIPS, 2022) 116.
40. This bar graph figure presents a contrast for the percentage of women falling in the age group between 15-19 who have embarked on the journey of childbearing in India, showcasing a trivial decline from 2015-2016 as compared to 2019-2021. As outlined by the National Family Health Survey Data, it was reported that about 8% of the

Lastly, young adolescent girls either have no access or might have limited access to information related to their carnal or reproductive health or might even fail to have any recourse to approach any services required to educate them on how to use contraceptive methods with precision while engaging in sexual activities of any kind. Now, this may be the result of lack of any social acceptance by the Indian society of adolescents being sexually active or scarcity of sex education amongst the adolescents or even the taboo associated with the concept of sex altogether.

Due to the above stated reasons, it becomes quite apparent as to why the Union Government is inclined towards fixing an appropriate Age of Consent as well as why is it a necessity to validate sexual activity which is a consequence of natural interaction amongst adolescents.

**4. Issues Surrounding Age of Consent**

There are several reasons as to why 'Age of Consent' has remained a debatable topic over the decades due to which the answer to what could be the most appropriate Age of Consent around the globe may be subjective and would differ and depend upon the social, political situations of each country. However, in India issues relating to the concept of 'Age of

adolescent girls had already begin childbearing since 2015-2016, plummeting to 7 % by 2019-2021. The chart highlights that a substantial minority of adolescents were found to be sexually active and embracing motherhood while still being below the age of 18, in defiance of the legal age of consent being 18. This graphic sustains the arguments presented in this paper by exhibiting the verity and confirming the adolescent sexual activity. It confronts any conjecture that increasing the adolescent age of consent has exterminated underage sexual coitus, and furnishes evidence-based-framework to answer as to why close-in-age exemptions are up for an academic debate (i.e. the reason behind this is because many adolescents are engaging in consensual relationships which are leading to pregnancy).

Consent' can be bifurcated into two categories one being purely legal and the other being its resulting social, scientific and cultural issues. The author has tried to identify and isolate them into two sub-sections namely Legal Issues Surrounding Age of Consent and Other Socio-Cultural Issues Surrounding Age of Consent while divulging into each aspect individually and providing an analysis on this sensitive issue.

### 4.1 Legal Issues Surrounding Age of Consent

The subject of sexual activity among adolescents engaging in coitus or even the concept of premarital sex is still considered a taboo that does not fit within the standard of a succulent topic fit for the appetite of our Indian Society. The subject is still concealed in absolute silence or in denial. However, the existing data of NFHS-5 (2019-2021)[41] records that adolescents in the Indian society were found to be sexually engaged during legal minority. The data collected highlights that 10% of women were found to be sexually active before the age of 15 and 39% were sexually engaged during legal minority. According to the global data of 2021 by UNICEF[42], it was estimated that about 14% cases of childbirth among females below the legally recognised age of adulthood. The data provided above not only highlights but also substantiates the ground reality of frequent sexual activities amongst the youngsters being recorded on a national as well as international level. Hence, one must not play blind so as to overlook the pretense of youngsters being sexually active.

In India, Section 375 Clause 2[43] of the Indian Penal Code stipulates that carnal activity with a girl below the age of 18

41. Ibid 193.
42. United Nations Children's Fund, Adolescent Health (1946) https://data.unicef.org/topic/child-health/adolescent-health/ accessed 1 March 7, 2025.
43. Indian Penal Code 1860, s 375 (2).

years is criminalized and subject to stringent penal liability the onus of which completely falls upon the male who was a party to the crime. This means that even if the parties to the act had consensually agreed to be sexually involved with one another the law still frowns upon such consent and negates its validity altogether considering the consent of minors as incapable and inadmissible on record. Thus, criminalizing any form of sexual activity amongst youngsters below the age of 18 years. These stringent provisions were indeed brought forth to protect the youth from any form of exploitation or sexual abuse but has now created a new problem of over-criminalization of sexual behaviour amongst the youth of the Indian society.

Recently, in a judgment by Madras High Court[44] The court was found to have an opinion that criminalizing sexual activity amongst youngsters between the age group of 16-18 years would only lead to overly criminalizing adolescent behavior. Therefore, the first and foremost legal issue that purports before the legislature is to recognise that over criminalization and monitoring of sexual activity especially between the youth age group of 16-18 would be harmful and would only lead to treacherous litigations being brought before the Courts.

Moreover, the legislation pertaining to adolescents' sexual activity and the process of criminalization in India is considered to be a non- gender-neutral law instead the scales of justice fall on the gender- biased side of law wherein between the parties involved in the sexual activity only the males involved are being penalized and are subjected to prosecution whereas the females caught in the act are not subjected to any punishment under the wheels of justice.

44. Above n 25.

Furthermore, The Hindu Marriage Act, 1955 stipulates that Child Marriages are punishable under the provisions of law. But nowhere it stipulates that the Marriage stands void between the parties. Hence, the Hindu Marriage Act does not invalidate Child Marriages; it only makes them subject to punishment. This means that there exists a grave gap and conflict between the customary laws and the codified laws of the land. A recent example of this would be a judgment by the Punjab & Haryana Court[45] whereby the court ruled in favour of a minor Muslim girl who was slightly above the age of 15 and was declared free to exercise her right of choice while marrying and such marriage would not be considered void under the provisions of the Prohibition of Child Marriage Act. Hence, due to this a new question purports before the legislature which is in case the recognised age of legal sexual capacity in India is reduced then which law should prevail to govern the legislation on Consent and Statutory Rape, in another words which law should be given priority the customary law or the codified law of the land?

In addition, as noted by the recent decisions of the court on the issue of Age of Consent the obiter dicta seem to be quite transparent. The judges are of the opinion that the recognised age of legal sexual capacity law should be reconsidered lowering the age from eighteen to sixteen. This amendment is suggested with a view to facilitate and avoid the rapid increase in the number of teenage pregnancies resulting from engaging in sexual activities around that age. There is also sufficient data[46] to conclude that these teenage pregnancies are shrouded

45. Criminal Writ Petition No 7426 of 2022 (Punjab and Haryana HC, 30 September 2022).

46. Madhu Mehra and Amrita Nandy, Why Girls Run Away to Marry: Adolescent Realities and Socio- Legal Responses in India (Partners for Law in Development 2019) 23.

by the parents and the confluence between the recognised age of legal sexual capacity and recognised age for matrimonial alliance laws are often used by them to target and use these laws as a fuel to not approve the inter-caste relationships of their children. This ultimately leads to cases of false litigations which in turns lead to the problem of over burdening of the courts with frivolous cases.

Also, according to the latest round of NFHS-5 around 7%[47] women reported teenage pregnancies amongst the age group of 15-19 years. This raises concern around teenage girls' reproductive, mental as well as physical health during the period of gestation. But, Section 3 of the Medical Termination of Pregnancy Act, 1971 is fully equipped to accommodate the necessities within a teenage pregnancy when it is dangerous to the health of the mother.

However, by a recent judgment of the Supreme Court[48] In the Abortion laws, India for the first time has recognised and included unmarried women with the right and discretion of abortion bringing them in par with the rights equivalent to that of a married woman. Although considered a bold move by the Indian Judiciary yet the undeniable reality stands at that the current structure of both the Medical Termination of Pregnancy Act as well as the Amended Abortion legislation are not fully well accoutered to accommodate the changes in case if the sexual maturity threshold under law is lowered from eighteen to sixteen years as recommended by the Courts. Moreover, lowering the Age of Consent to 16 without making any amendments in the Age of Marriage would only lead to the implication that a 16-year-old in India is considered to be mature enough to form consent for a sexual relationship but

47. Aboven 26.
48. Civil Appeal No 502 of 2022 (arising out of SLP (C) No 12612 of 2022) (SC, 21 July 2022).

an 18-year-old is not considered mature enough to marry as per their own freedom of choice.

Another point to consider, that the concept of Consent seems to be absent under the provisions of the statute on Protection of Children against Sexual Abuse. The act aims to secure children from any form of sexual maltreatment and to introduce child-friendly provisions during the stages of investigation and trial. However, the act frowns upon and does not recognise the validity of any sexual activity between adolescents under the age of 18 years. This means that any consensual relationship between two teenagers under the age of 18 years is prohibited and subject to penalization under the legislation. The consequence of this could cause irreversible damage[49] to the dignity and life of the youth especially males whose only fault was a reaction to his biological infatuation towards a female. This blindfold towards the recognition of consensual sexual activities amongst the teenagers has only resulted in over automatic criminalization, increase in teenage unwanted pregnancies, frivolous litigations, which is nothing but a result of normative sexual behavior common amongst teenagers between the ages of 16-18. This also hinders and breaches their right to dignity, liberty, right to life and privacy, health etc.[50]. A study on the same parameters by the National Law School of India University, Bengaluru[51] concluded that the teenagers between the age of 16-18 who were accused of engaging in sexual activities have refused to testify against their respective partners and instead agree to the formation

49. Criminal Opposition No 232 of 2021 (Madras HC, 27 January 2021).
50. Raha & Ramakrishnan, Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief (Enfold Proactive Health Trust, UNFPA and UNICEF 2022) 9.
51. Swagata Raha, Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi (Centre for Child and the Law, National Law School of India University 2016) 14.

of consensus before initiation of the act thus, forming consensual sexual relationship.

Lastly, the POCSO Act[52] does not provide for mandatory reporting of any sexual activity between teenagers but Section 21 of the said Act, postulates the mandatory nature behind the obligation of reporting[53] which in response penalizes for failure to report the commencement of any activity punishable within the Act. This mandate can sever the relationship of teenagers with their families and instill in them fear of approaching and availing the appropriate health services when considered necessary, which in turn increases the risk of teenage pregnancies, increase in mortality rate amongst teenagers, increase in the rates of unsafe abortions etc.

### 4.2 Other Socio-Cultural Issues Surrounding Age of Consent

India is a land with a huge diverse population resulting into diverse cultures and their resulting pluralistic social, political interactions with each other. The above legal issues stem as a consequence of these pluralistic interactions amongst these various different groups. As a result of which the dilemma regarding recognised age of legal sexual capacity and teenage sexual relationships can be further identified into social, biological, behavioral and cultural issues.

Primarily, the prevalent law in the country barring any sexual offenses committed against minors can be found in the provisions laid down under the statute on Protection of Children against Sexual Abuse.[54] The statutory measures of this act were introduced with a view to protect minors from any form of sexual abuse against them but the act fails to take into consideration the practicality of normative sexual behaviour

52. Protection of Children from Sexual Offences Act 2012.
53. Above n 15.
54. Above n 38.

amongst minors as a consequence of their interaction with each other and penalise them with strictest of punishment possible. Now indeed the legislation aimed at a positive outcome from the execution of such blanket ban but in reality, the legislation fails to overlook the aspect of consent and the resulting consensual sexual relationships of minors especially between the ages of 16-18 years. This in turn has contributed towards the production of more hardened criminals who are more dangerous to cohabit within a conducive environment.

Subsequently, due to the over-criminalization of sexual activity amongst teenagers aged from 16-18 has resulted in an alarming influx in the crime rate. According to the NCRB data by NGO Child Rights & You (CRY) reported that 99%[55] of the girls were found victims of crime under the POCSO Act.

Additionally, the overcriminalization of sexual activities amongst teenagers results in unsafe sex which further results in unwarranted pregnancies which ultimately result in a population influx.

Furthermore, Children being born out of these consensual or non-consensual relationships are often abandoned by their parents due to a variety of reasons such as due to societal or family pressure to avoid any shred of shame that would be brought upon their respective families, lack of any means of livelihood due to lack or insufficient education or experiences in life, lack of any means of finances to meet the needs of the newborn child, lack of any recourse or knowledge of any pre or post-natal pregnancy health needs/services, etc.

Moreover, a state of imbalance is created in the society

55. A Gayatri, '99% Crimes Reported in 2020 under POCSO Act Were Against Girls, Reveals NCRB Data' True Scoop (10 November 2021) https://www.hindustantimes.com/india-news/ncrb-says-over-99-crimes-registered-in-2020-under-pocso-act-were-against-girls-101633941706256.html accessed 2 March, 2025.

and within its norms due to the scales of justice favoring the female over the male during the stages of prosecution which leads to the conclusion of legislation being gender-biased.

In addition, the fear of impromptu criminalization if found or reported the parties involved in the act are often found to resort to the dangerous trend of solemnization in order to evade punishment which further raises the chances of increase of divorce rates in the country.

Next, another concerning issue that surfaces around this concept is that it is often recorded that females over the years have developed an understanding that sex is equivalent to marriage especially in the context of 'Consent' and are often found to give in this unnecessary pressure from their respective partners and believe that once they engage in the sexual acts the male counterparts are more unlikely to leave and walk out of the relationship showcasing immature and irresponsible behaviour on their part.

Lastly, In India for centuries woman is often accorded as a property of the father upon birth and after marriage that of her husband. And, hence her Consent seems to play a really limited role while playing her part in both those roles. And since young girls in rural India are still raised this way and are being married off before attaining the age of 18, they are still unaccustomed with the idea of Consent while forming sexual relationships with their respective partners. Hence, fixating of an appropriate Age of Consent remains a pressing issue before the legislature as well as the judiciary.

## 5. Evolution of Laws Post BNS[56] and BNSS[57] in India: Legal Recalibration of Age of Consent

The enactment of BNS[58] and BNSS[59] marked a

56. Hereinafter, 'Bharatiya Nyaya Sanhita' would be used as an acronym for 'BNS'.
57. Hereinafter, 'Bharatiya Nagarik Suraksha Sanhita'' would be used as an acronym for 'BNSS'.
58. Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023).
59. Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023).

fundamental reform in the existing Indian criminal justice system which symbolizes a landmark transition in the statutory framework pertaining to sexual offences and the age of consent. From a historical perspective, traditionally, the Penal Code of India fixated the sexual maturity threshold under law at 16 years which later was increased to 18 years[60] integrating it to match with the international standards while augmenting the preservation and security of minors.

There are several significant reforms that have been introduced by BNS, one of which is reconceptualizing marital rape exceptions. Formerly, according to the Section 375 Exception 2[61] provision under the Indian Penal Code stated that any act of carnal engagement *a viro cum uxore sua*[62] (if the wife was over the 15-year threshold) will not be considered as an act of committing 'rape'. This particular provision was contested upon in the seminal case of *Independent Thought vs. Union of India*[63], wherein the apex court narrowly interpreted the exception by upholding that any sexual engagement with a wife below the 18-year threshold, will now be constituted as an offence of 'rape'. This resulted in an integration of age of consent legislation with child protection laws thereby aligning these provisions in the perfect harmony that would prove to be beneficial for the women of the society in the long haul. The BNS standardized and legislated this *interpretatio*

60. Criminal Law (Amendment) Act 2013 (India) https://www.indiacode.nic.in accessed 10 March 2025.
61. Previously provided under Indian Penal Code 1860, s. 375 Exception of the Indian Penal Code (as amended by the Legislative Reform of Criminal Law 1983, however, now to be referred as per, Bharatiya Nyaya Sanhita 2023, s. 63.
62. The term "a viro cum uxore sua" contextually translates to "by a man with his own wife".
63. Independent Thought v Union of India (2017) 10 SCC 800, [2017] 14 SCALE 12, para 16.

*juris*[64], categorically fixating the marital age of consent at 18 years, thereby expunging any uncertainties and bolstering the legal framework in order to safeguard minors.

Additionally, the BNS enacted new terminology incorporating more 'gender-neutral' tones while addressing sexual offences. For example, inserting the term "importation of a girl 'or boy' from foreign country[65]" in contrast to the previous provision prescribing punishment for only "importation of a girl from foreign country[66]". This shift reflects and acknowledges a wider interpretation for sexual and intimate crimes whereby the notion of 'males' being recognised and accepted as 'victims' of sexual exploitation is no more an alien concept while simultaneously reassuring irrespective of the gender, equal protection under the law to all.

Furthermore, the BNS stipulates more aggravated penalties for sexual crimes especially against minors, thereby sentencing the offender involved with such offences according to the proportion of victim's age. For instance, the Indian Penal Code mandated a rigorous punishment of not less than 20-year threshold which could extend to life imprisonment, or a fine, if the accused is found guilty of being involved with gang rape of a woman under the 18 years of age[67] which has now been amended and stipulates that the punishment of gang rape on a woman under the age of 18 would be either life imprisonment

64. The term 'Interpretation Juris' is a Latin word which translated to 'Interpretation of the Law' in English. Though, herein it is inserted to mean 'Interpretation of the Judgement.

65. Provided under Bharatiya Nyaya Sanhita 2023, s. 141.

66. Previously provided under Indian Penal Code 1860, s. 366 B, however, now to be referred as per, Bharatiya Nyaya Sanhita 2023, s. 141.

67. Previously provided under Indian Penal Code 1860, s. 376 D, however, now to be referred as per, Bharatiya Nyaya Sanhita 2023, s. 70(2).

or capital punishment, establishing a benchmark in consonance with the brutality of such crimes. This stringent approach is implemented with a view to deter potential offenders by instilling in them fear from committing such heinous crimes and to uphold justice proportionate with the gravity of the crime.

By recognizing and penalizing offences such as an act of sexual engagement between a male and a female under the false pretense of marriage, employment, or other benefits[68] reflects a proactive transformative initiative in comprehending and criminalising duplicitous means of attaining consent. This in consequence expands the spectrum of legal protection against exploitation of victims in sexual offences.

By attuning some provisions of BNS with the POCSO Act, a more comprehensive legal framework is ensured in order to safeguard and protect the minors from any form of sexual abuse or exploitation. This alignment will help curbing any future potential legal ambiguities and in turn would prove beneficial by strengthening the execution of laws protecting minors.

Conclusively, these amendments represent a cohesive and a strong dedication towards upgrading and bolstering India's traditional legal framework especially around the area concerning sexual offences, by establishing more robust protection measures for minors while simultaneously promoting more 'gender-neutral' tones spread throughout the statutory provisions provided in the BNS and lastly, by identifying gaps in the implementation of consent-related legislations.[69]

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68. Bharatiya Nyaya Sanhita 2023, s. 69.

69. Antim Bala, 'Why Should The Age Of Consent Need To Be Reduced To 16 Years From 18 Years In India?: A Critical Analysis Of Laws And Judicial Pronouncement' (2024) 8(1) International Journal of Law Management & Humanities 1860-1869.

## 6. A Comparative Analysis in Age of Consent Between an Oriental and An Occidental Nation

Section 13 of the Indian Contract, 1872 defines 'Consent' as "*Two or more persons are said to consent when they agree upon the same thing in the same sense.*"[70] This means consent is formed between two individuals as soon as they both agree about something in the same sense. The idea of consent seems to be quite clear from this definition yet the understanding behind it is much more complex. Consent has many dimensions to it, one of them being Age of Consent. The pattern of Age of Consent is different globally. The approach of every nation in relation to implementation of the Age of Consent legislation is unique to their own diverse populations, cultures, customs, traditions, social-political structures etc. Each of these parameters influence the legislations of their respective countries. The researcher has cited the references taken from three countries i.e., India, United Kingdom and Bahrain and has tried to come up with an understanding behind the rationale of adopting different Age of Consent by each country.

### 6.1 Position in India

The idea behind Age of Consent in India as established earlier has been a debatable tangent in the history of Indian legislation. The law on the Age of Consent stands quite clear that the minimum legal age for consensual sex between two people can be established only when they cross the threshold of 18 years.[71] Thus, any person engaging in any sexual activity before 18 is accounted as Statutory Rape and would be penalized according to the provisions prescribed under the POCSO Act and the Indian Penal Code (Currently, under the BNS) . The rationale behind fixing Age of Consent at 18 years

70. Indian Contract Act 1872, s 13.
71. Protection of Children from Sexual Offences Act 2012, s 2(d).

is that the children are understood as immature and incapable beings in regards to decision making and often fail to weigh the pros and cons of their actions and are not fully prepared for consequences behind their irrational acts. However, the current regime has started to witness a shift in the minds of Judiciary and a more practical approach is being demanded by the youth of the nation. Recently through a series of judgments[72]. It has been observed that the judiciary is of the view that the law on the age of consent should be reconsidered by lowering the age from 18-16 years.[73] This is being done to protect the children from over criminalization and its allied consequences. India should reconsider the legislation in the light of Close-in-age exemption clauses[74] that are associated with the concept of Age of Consent. Countries like the USA, South Africa, Canada, Australia are examples of successful implementation of this concept.

### 6.2 Position in United Kingdom

According the Sexual Offences Act, 2003[75], the Age of Consent i.e., the minimum legal age of sexual consent in England and Wales is fixed at 16 years. This means that any form of sexual activity between two individuals under the age of 16 is absolutely deemed unlawful even if one of them is under the age of 16. This has been implemented with a view to protect the youth of children from any kind of sexual abuse or exploitation by the adult members of the society rather than turning them into immediate criminals for no apparent reason

72. Above nn 3,25,31 and 34.
73. Above n 25.
74. It is a law that legalizes the consensual sexual activity taking place between partners where one is below the age of consent and the other has crossed the threshold of the age of consent or is comparatively older to the other one in the relationship.
75. Sexual Offences Act 2003, c 42, s 9.

or justifiable cause. Teenagers are expected to be driven by their desires which makes them more susceptible to fall prey to unwarranted pregnancies, lack of any finances or experiences to become underage parents, etc. Hence, the law has been established to keep a system of check and balance in place to ensure the safety of the adolescents from both the actions of the other members co-habituating in the society and also from the consequences of their own actions which are a result of irrational, uninformed decisions. Moreover, the bar for deciding the culpability of the accused in such cases are very high and prosecutors are often required to substantiate their arguments based on factors such as the proximity between two individuals in terms of their age and levels of maturity, the dynamics of their relationship, whether the person who is underage consented to the sexual act or not, whether the underage person was under the age of 12 or above, etc. The last listed factor is crucial while determining the culpability of the accused because children under the age of 12 in England and Wales are deemed incapable of forming or understanding consent and expecting a rational decision out of them at that age would be detrimental to their interests and welfare.

### 6.3 Position in Bahrain

According to the Bahrain Penal Code[76] the Age of Consent is fixed at 21 years. The penalty for engaging in sexual acts with any person under the age of 16 years is death sentence or life imprisonment and the threshold of presumption of non-consent of victim is fixed at 14 years or less. Additionally, imprisonment of not less than 10 years is fixed in cases where any person who was found guilty of engaging in any sexual act with a woman who is more than 16 years but less than 21 years of age even with her consent being obtained before the

[76.] Bahrain Penal Code 1976, ss 344-345.

commission of the act. Such stringent legislation has been laid down to safeguard the sexual autonomy of adolescents especially females as they are considered to be the most vulnerable section of the society incapable of protecting their own rights. In Bahrain the threshold on age of consent is the highest compared to other countries and the reason behind that seems to be firstly, women are not considered to have fully matured emotionally or mentally to take decisions related to their own sexuality secondly, men in East India still consider women as their property wherein before marriage she seems to be the property of her father and after marriage that of her husband thirdly, women are considered pious and fit for marriage only when they have not been sexually active before marriage fourthly, to safeguard the interest and welfare of women against sexual predators.

Although, the Age of Consent of each nation is totally different from each other and the rationale behind them vary according to the socio-political, cultural conditions of those nations yet one thing seems to be common the threshold of age is fixed to ensure and protect the youth of adolescents against the sexual predators of the society and against the consequences produced by the acts of the adolescents themselves.

## 7. Recommendations

The concept of Age of Consent even though has been explored by various scholars with a different angle and vision from time to time yet the outcome to their deliberations and carefully articulated thoughts have not been heard. Even though the Indian Judiciary has started to acknowledge the requirement of replication of a new legislation in place of old due to the current shifts in trends and patterns. As the youth/adolescent of today is mostly influenced by technology, social media and is much more aware than the youth of earlier years when this

legislation was enforced. Hence, the dynamic nature of law cannot be overlooked as law is often regarded as an instrument of social change.

There are few recommendations that the researcher has identified through a critical analysis of the shift in trend of the judgments recently delivered by the Indian judiciary and by a thorough study of legislations across different nations.

### 7.1 Restricted Focus on 'overcriminalization' of Sexuality Amongst Adolescents

The current legal regime focuses on adolescents being incapable of making responsible decisions due to them being driven by their zeal and zest for life. Moreover, their inquisitive nature is often regarded as irresponsible and negligent hence law disregards their evolving growth into normative sexual behavior. The legal minimum sexual maturity threshold under law as accorded by the Indian Government is 18 and anyone found engaging in any sexual activity below that age would be subject to punishment according to the laws of the Country. However, an amendment in the POCSO Act as well as the Bharatiya Nyaya Sanhita has become the need of the hour to combat situations such as overcriminalization of adolescents especially between the age of 16-18, increase in frivolous litigations by parents of females as a means to punish the males and save face in the society. This should be done keeping in mind the interest of teenagers between 16-18 that their sexual engagements with each other should be decriminalized while ensuring that they are being protected against non-consensual sexual activity at the same time under the statutory measures of the statute on Protection of Children against Sexual Abuse (POCSO Act). Till such change is brought forth in the form of amendments to the present legislation the Juvenile Justice Boards or the Child Welfare Committees should be given the discretion to exercise their right and control over such cases and decide them in the best interest of both the parties involved.

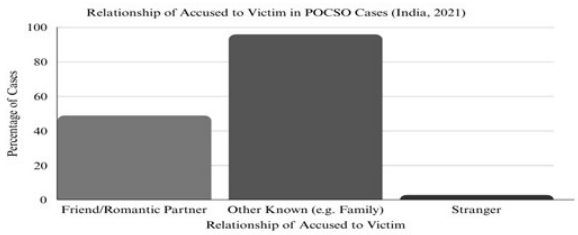


***Figure 2: Relationship of Accused to Victim in POCSO Cases[77] (India,2021).***

## 7.2 Introduction of close-in- age exemption clauses or commonly known as 'Romeo and Juliet Laws'

The next step could be introduction of the concept of close-in- age exemption clauses or commonly known as 'Romeo and Juliet Laws' which provides for a proximate age

77. This bar graph demonstrates NCRB statistics in relation to the nature of relationships in registered POCSO cases, highlighting the actual figures of how many reported incidents involve consensual adolescent relationships. The data represents that in about 96% of reported cases involving child sexual offences the accused was found to be an acquaintance in some form to the minor victim, and in about 49% of such cases it was found that the person involved with the victim was either a friend or a romantic partner. It is also noteworthy that the report indicated that only a small fraction of about ~4% involved cases where the accused was a stranger to the victim. This visual paints a clear picture and verifies the section discussion by pointing towards the prevalence of a 'friend/romantic partner cases' highlighting that a large chunk of that data suggests that a significant ratio of POCSO prosecutions is originating from consensual adolescent relationships rather than relationships with complete strangers. It reiterates the fact that the existing laws are unduly stringent even without a close-in-age exemption, creating a pattern of excessive and unnecessary criminalization of adolescents embracing love, while it negates the possibility of any narrative that POCSO is singling out only those cases involving sexual predators.

gap with which consent is appreciated should be recognised by the Indian legal system. The legal minimum age for sexual consent should be reconsidered and fixed neither too high nor too low and should take into account the minimum age difference between the two partners. For example, 2-3 years maximum. The pros of this move would likely include age-related litigation, decrease in the frivolous cases of litigations, period of incarceration of accused to be decided according to the gravity of the crime and condition of the victim which would serve the purpose of the accused being rightly punished for his sins with a taste of harsh critique, humiliation and reality at the same time. The Close-in age- exemption clauses are already incorporated in the legislations of countries like USA, Canada[78], Australia[79], Sweden[80], South-Africa[81], etc. and India can certainly take some inspiration from them to improve the current circumstances.

78. BB Miller, DN Cox, and EM Saewyc, 'Age of Sexual Consent Law in Canada: Population-Based Evidence for Law and Policy' (2010) 19(3) Canadian Journal of Human Sexuality 105-117.

79. Australian Institute of Family Studies, 'Age of consent laws in Australia, CFCA Resource Sheet' (2021) 4 https://aifs.gov.au/sites/default/files/publication-documents/2104_age_of_consent_resource_sheet_0.pdf accessed 4 March, 2025.

80. Lexpeeps, 'Close-in-age Exemptions in India' (18 October 2022) https://lexpeeps.in/close-in-age-exemptions-in-india/ accessed 4 March, 2025.

81. United Nations Population Fund, 'Technical Brief on Criminalization' (1969) https://esaro.unfpa.org/sites/default/files/pub-pdf/technical_brief_criminalization_0.pdf accessed 6 March, 2025.

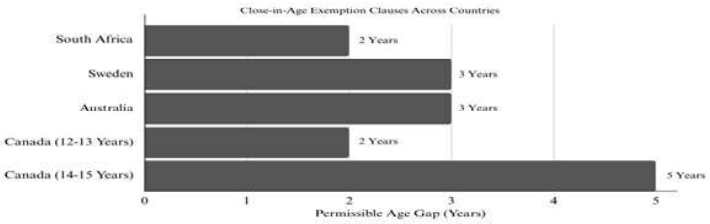


*Figure 3: This graph is a reference for Close-in-age-exemption clauses in different parts of the world.*

| COUNTRY | AGE OF CONSENT | CLOSE IN AGE EXEMPTION CLAUSE |
|---|---|---|
| CANADA | 16 YEARS | 14-15 Years old is legally permitted to consent to someone <5 years older.<br><br>12- 13 Years old is legally permitted to consent to someone who is two years older to them. |
| AUSTRALIA | 17 YEARS | Depending on the territory, the age varies. |
| SWEDEN | 15 YEARS | Not more than three years older than the underage partner the person is involved with. |
| SOUTH AFRICA | 16 YEARS | Defense of two years is available. |

***Table 1: This table is a reference for Close-in-age-exemption clauses in different parts of the world.***

## 7.3 Making of Robust Health Care System Compatible with The POCSO Act

The POCSO Act mandates for obligation in regards to reporting by the schools, parents, hospital, medical practitioners of any sexual activity between adolescents below the age of 18 years. This in turn leads to hasty, unsafe and uninformed decision making by adolescents in order to avoid any consequences resulting from their acts. In order to avoid such unplanned pregnancies, the government should take initiative

by adopting provisions that make relevant information/services related to safe sex, contraceptive methods or any emergency contraception easily accessible by the adolescents. Provisions regarding adolescent pregnancy confidentiality should be safeguarded with more stringent legislation in place as well as any restriction on any stakeholder of the society so as to withhold or hinder helping an adolescent in the time of their needs should be avoided.

### 7.4 Comprehensive and Inclusive Sex Education in Schools

According to the data of National Family Health Survey (NFHS-5), 2019-21 it was reported that 23 % of women and 11% of men in the age group of 15-49 have no schooling. This goes to show the ground reality of school education in India. Hence, an automatic apprehension in regards to adolescents having poor decision-making skill or incapable of appropriate decision-making skills is raised. This apprehension can be mitigated if schools in India design an inclusive structure of education wherein age-appropriate, practical-evidence based, comprehensive sex education can be imparted amongst adolescents. This comprehensive approach can bring about positive shifts in the attitude of adolescents towards safe sex, would increase their knowledge and fill the gaps wherever necessary to approach with discernment and navigate their personal relationships in a positive and healthy manner both emotionally as well as physically. This would also in turn the feeling of respect towards social and sexual relationships and would also develop a positive and healthy outlook on them. There is ample data[82] to disprove the contradiction of the belief

[82] Dolores Ramírez-Villalobos and others, 'Delaying Sexual Onset: Outcome of a Comprehensive Sexuality Education Initiative for Adolescents in Public Schools' (2021) 21 BMC Public Health art 1439. Laura Duberstein Lindberg and Isaac Maddow-Zimet, 'Consequences of Sex Education on Teen and Young Adult Sexual Behaviors and Outcomes' (2012) 51, Journal of Adolescent Health, 332–338.

that sex education tends to trigger sexual behavior amongst adolescents instead it is found to delay the urge of sexual activity and instill responsible sexual behavior in them. Australia can be used as a role model in this regard as the Australian Government has proposed a bill whereby, they have proposed to include sex education classes with the annual school curriculum.

## 8. Conclusion

The legal system is disproportionately maintained when it comes to striking a balance between safeguarding the rights of adolescents and their advancing sexual autonomy. The current legal framework unjustly amalgamates the normative sexual desire and behaviour with sexual abuse and exploitation amongst adolescents. Instead of being a guardian to oversee and regulate adolescents' behavior while they exercise their rights freely in a safe and healthy manner[83] the legal system has shifted its entire focus on penalizing the consensual and non-exploitative sexual relationships to be exposed to unnecessary prosecution that only is bound to create more problems than it attempts to solve. There have been time and

[83] In Satish Alias Chand v State of Uttar Pradesh and 3 Others (Allahabad HC, 3 July 2024). In this case court made an observation concerning the interest of adolescent boys while stating that the object of enacting the POCSO act was to protect minors from getting sexually exploited or abused and not to punish them for engaging in consensual sexual activities. In Rahul Chandel Jatev v State of Madhya Pradesh (2021) 7134 (MP).
The court in this case made progressive revelations stating that due to the early internet access and social media awareness the adolescents tend to hit puberty earlier than usual. They get mutually attracted towards each other and tend to form physical relationships with consent. Thus, it cannot always be concluded about such consensual relationships that males are always the 'criminals ' in this scenario. Hence, the court acquitted the petitioner on account of being young.

again conclusively through verifiable data established that adolescents especially between the age group of 16-18 engage in consensual romantic relationships and often those relationships fall prey to criminal prosecution due to the overcriminalization of sexual activity which has been legally criminalized by the provisions of the POCSO Act. This ultimately leads to frivolous litigations being brought forth for justice on the already overburdened judiciary.

Hence, an amendment under the current legislation is being recommended wherein the consensual sexual acts between adolescents aged 16-18 to be decriminalized while also safeguarding the right of children under the age of 18 from any form of sexual offence, abuse or exploitation under the POCSO Act. The concept of Close-in-age exemption clause should be examined and incorporated by the legislature so as to make the current legal system more robust while functioning in this dynamic economy. Moreover, inclusive comprehensive evidence-based sex education should be imparted in schools which would help raise a generation which is much more ready and prepared to face any consequences that might arise in the future in a more safe, healthy and educative manner. This would help the economy and the adolescents by tipping the scales in favour of protecting them from any sexual abuse or exploitation while upholding their right to privacy, dignity, liberty and more importantly for their holistic development.

These steps would ensure that a generation of more responsible and sound adolescents are being raised who are practically being groomed to handle and mold any counter-productive situation in favor of their own welfare and interests.

6

# Forensic Analysis In Ndps Cases: Study Of Recent Trends In Judicial Reliance On Incriminatory Evidence

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## ABSTRACT

This paper is an attempt to examine the recent judicial trends in reliance on forensic analysis specific to NDPS cases. Use of scientific techniques to gather precise and credible facts in furtherance of justice needs coherent and due appreciation of forensic evidence by the courts, as rights and liabilities of the stakeholders: accused, victim and even the society at large are largely dependent on it. Thus, timely review of judicial reliance is vital. Present paper attempts critical analysis of how the status quo of crime, investigation and conviction rates among others reflects the broken links between intention and execution in practice. In furtherance of the same, paper studies the approach taken by various courts across the country and highlights the key concerns taken up by the judiciary with regards to forensic examination in drug related cases. With enactment of new criminal laws and increase in interplay between science and law across sectors, it becomes imperative to delve into the area of law where strictness through special law has to be balanced with constitutional liberties in application.

**Keywords:** Forensic Science, NDPS, Relevancy, Appreciation of Evidence, New Criminal Laws

## I. INTRODUCTION

Control and regulation of narcotics is often met with the slippery slope of balancing its dual considerations: (a) limiting the use of narcotics and psychotropic substances/drugs for medical and scientific purposes, and (b) preventing its abuse. Article 47 of the Constitution of India shifts onus on the State "to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health"[1]. In conformity to India's international imperative, the legislative and policy framework has been shaped to counter drug consumption and regulate its aspects including possession, consumption, trade, distribution, manufacture and production of drugs to medical and scientific purposes only.

While stringent provisions are in place, spurt in drug abuse and related cases from past many years has been a constant concern. Judiciary in India are privy to the fact that "money generated from this trade, finds its use in financing the subversive activities and the acts inimical to the security and stability of the nation"[2], thus attempts corrections in the irregularities and gap in legislative and administrative realization through extensive guidelines, directions and observation through detailed pronouncements. One of such considerations involve appreciation of forensic evidence in NDPS cases, where various narcotics laboratories across the nation identify drugs and its purity along with other components in suspected samples, possible origin/genesis and other drug-related research. Mannerism of such forensic analysis across

1. Article 47 of the Constitution of India.
2. UT of J&K Vs Pradeep Singh, Crl LP(D) No. 20/2023 (SC)

all stages from collection to presentation as evidence before a court of law is crucial for effective realization of the mandate of the NDPS Act and reports so produced, often contour the primary and clinching evidence for the parties involved. Defects and irregularities committed by the prosecution have proved to be fatal in NDPS cases[3]. The liability to gatekeep relevant facts and coherent reliance based on fundamentals falls heavily on the courts. Thus, it becomes paramount to address the question: Whether the judicial approach pertaining to appreciation of forensic analysis in NDPS cases is adequate and cogitate?

## II. REGULATION OF NARCOTICS IN INDIA: ON PAPER AND IN PRACTICE

In conformity to country's international obligations[4], frame work of legislation[5] and policy[6] has been moulded in India.

NDPS Act, the relevant law enacted with the aim "to consolidate and amend the law relating to narcotic drugs, attempts to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs

3. Sarda, M., 2011. Expert Opinion in NDPS Case- A Study. Andhra Law Times.
4. In form of being a signatory the United Nations Single Convention on Narcotics Drugs in 1961; followed by the Convention on Psychotropic Substances in 1971 and finally the Convention on Illicit traffic in Narcotic Drugs & Psychotropic Substances in 1988
5. In form the Drugs & Cosmetics Act, 1940; the Narcotics Drugs & Psychotropic Substances Act, 1985; the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and related Rules & Regulations
6. National Policy on Narcotic Drugs and Psychotropic Substances, 2012

and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith"[7], thus making way for rigid control and regulations on illicit activities. Allocation of activities by clear listing towards appropriate government under Section 9 & 10 of the Act, marks pragmatic separation of functions. The object of the Act is to proceed against the unscrupulous persons putting the substances to illicit use.[8]

At administrative front, intent of legislative measures to entrench rigorous control and supervision on narcotics and related activities, is attended to by various enforcement agencies under the Ministry of Finance, Ministry of Home Affairs and State Governments addressing drug supply reduction. Correspondingly, the Ministry of Social Justice & Empowerment work towards reducing drug demand reduction, while rehabilitation and treatment of addicts falls under the domain of the Ministry of Health.[9]

In furthering the legislative intent, coherent and consistent judiciary is essential. Courts of law attempts to strike equilibrium on two aspects: (a) right to liberty, to be balanced against (b) public interest[10], founded on likelihood guilt of the accused and odds of commission of any offence post-release. Subsequently, while pertaining to stringent provisions, the

7. Preamble to the NDPS Act, 1985

8. Gopal, S., 2022. Filing of a Charge Sheet under the NDPS Act, 1958 read with Section 177 ofthe CrPC without FSL Report- An Analysis. International Journal of Law Management & Humanities, 5(3).

9. National Policy on Narcotic Drugs and Psychotropic Substances, available at https://dor.gov.in/sites/default/files/National% 20Policy% 20on%20NDPS%20published.pdf

10. Mohd. Muslim v. State (NCT of Delhi), Special Leave Petition (Criminal) No. 915 of 2023

courts have been cautious enough to put up a caveat to avert misuse of statutory powers by the officials, whereby safeguards prescribed under the law are to be strictly abide by[11].

Ground reality however, portrays a different picture owing to complexities in execution and changing mode and manner of commission of crime in this technology driven new-age. Statics reflect more than a 25% increase in registration NDPS cases during 2017 & 2018 as against previous years. Continuous constant surge in total cases registered under NDPS Act, 1985, can be observed from 72721 cases in year 2019, 59806 in year 2020 to 78331 in the year 2021[12]. The only time a downfall was observed in the year 2020, where the number of cases registered reduced to around sixty thousand in 2020, with crime rate dipping per lakh to 4. Nous behind the dip in trade and consumption of the drugs is attributed to the lockdowns and movement restrictions owing to COVID-19[13]. In terms of volume, drug seizures too have shown upward trend. With an average of 1.2 lakh kilograms of narcotics apprehended in India annually during 1992 to 2015 to sharp increase of staggering average of 5.1 lakh kilograms during 2016 to 2022, clearly indicates the severity of the problem[14].

On the other side of the equilibrium of the rise in drug-related crimes, stunted conviction rates despite stringent provisions, render unsettling reality. Reviewing data for NDPS Act across years 2017-2021 on number of cases registered and conviction rate in various portray worrisome status quo. Few

11. Bherulal Vs. State of Rajasthan, S.B. Criminal Appeal No. 659 of 2002
12. DRUGS CASES IN THE COUNTRY, Posted On: 26 JUL 2023 5:04PM by PIB Delhi at https://pib.gov.in/Press Release IframePage.aspx?PRID=1942884 (Accessed on 14.08.2025)
13. https://factly.in/data-pendency-rate-of-ndps-cases-in-courts-crosses-90-in-2020/ (Accessed on 14.06.2025)
14. Ibid

instances include, Goa State Government securing convictions in only 3.4% of narcotics cases in the past five years. 96% cases related to narcotics end with no conviction, when in Tamil Nadu[15]. From 2020 till June 2023, Tripura disposed of a total of 428 cases were accused persons were convicted only in 30 matters.[16]

Though numerous factors may be accounted for constant dip in conviction rates, non-receipt of forensic report from the concerned labs in timely manner evidence, remains one of the prominent factors contributing to the acquittal.[17] Currently, around 22,000 cases are pending before the FSL, Delhi[18] and numbers of cases yet to be received from the state and regional labs amounts to 28,272[19]. Speedy trials take a hit when it comes to delayed reports. Thus, it becomes imperative to dig deep in the issue of forensic analysis in NDPS cases.

15. https://www.thehindu.com/news/national/tamil-nadu/96-of-drug-cases-end-with-no-conviction-anbumani/article65765609.ece (Accessed on 14.06.2025)
16. https://indianexpress.com/article/north-east-india/tripura/conviction-rate-in-drug-trafficking-cases-in-tripura-not-up-to-mark-cm-manik-saha-8867858/ (Accessed on 14.06.2025)
17. Valsan, B., 2016. While druggies are on a perpetual high, convictions are abys Read more at: https://bangaloremirror.indiatimes.com/bangalore/crime/while-druggies-are-on-a-perpetual-high-convictions-are-abysmally-low/articleshow/55655192.cms?utm_source=contentofinterest (Accessed on 21.08.2025)
18. https://timesofindia.indiatimes.com/city/delhi/reports-pending-fsl-justice-delayed/articleshow/105505774.cms (Accessed on 21.08.2025)
19. https://www.newindianexpress.com/states/kerala/2024/Mar/13/forensic-reports-delayed-by-years-undertrials-forced-to-languish-in-jails-in-kerala (Accessed on 21.08.2025)

## III. BHARATIYA NAGARIK SURAKSHA SANHITA 2023 (BNSS)

The new criminal laws enacted with the intent of replacing the colonial era statutes, effective from July 1, 2024[20]. One of the key changes incorporated and pressed upon is inclusion of forensics in the criminal justice system through statutory mandates. Reference to general laws become necessary even in NDPS cases as it is settled proposition of law that wherever special law is silent; the provisions of general law will hold field and would be applicable.[21]

While providing a five-year window for implementation, Section 176(3)[22] mandates collection of forensic evidence by a forensic expert from a crime scene for an offence punishable for seven years or more. Proviso to the same puts on a caveat allowing use of forensic facility of another state in case of non-availability in one to ensure compliance of the mandate. Section 329[23] lays down the categories of specified and certified scientific experts to present evidence before a court of law. Further, Section 330[24] specifies that no expert can be called before the Court unless the expert's report is disputed by the parties.

On perusal of the concerned statues and its regulation, the intent of the legislature strikes clearly to be to provide for stringent law to regulate the abuse of drugs through elaborative provisions for search and seizure. As a special legislation, balance is need to be drawn in maintaining public good while respecting freedom to personal liberty. Another clear substance

21. Bureau, T. H., 2024. Three criminal laws to be effective from July 1, s.l.: The Hindu .
22. Tejram Nagrachi Juvenile v. State of Chhattisgarh, MCRC No. 8523 of 2016 (CG HC)
23. Section 176(3) in Bharatiya Nagarik Suraksha Sanhita, 2023
24. Bharatiya Nagarik Suraksha Sanhita, 2023

that letters in black hold strongly is maintaining unbroken chain of custody throughout to ensure that the evidence collected be effectively appreciated and relied on by the courts of law, thus, contributing in convictions rather than failed justice owing to lacks in evidence collection and handling.

## IV. RECENT JUDICIAL TRENDS IN NDPS CASES

Few of the focal issues in NDPS cases vis-à-vis forensic analysis, that are paramount in the judicial considerations, ranging from the crime scene to the courtroom, are identified and analysed in lines of the recent judicial developments:

### *Safe Custody: From Crime Scene to the Courtroom*

*"We must emphasize that in a prosecution relating to the Act the question as to how and where the samples had been stored or as to when they had dispatched or received in the laboratory is a matter of great importance on account of the huge penalty involved in these matters."*[25]

Chain of custody during forensic examination in any case, tracks the movement of evidence through its collection, safeguarding, and analysis through chronological documentation or paper trail. It is considered essential to determine authenticity of the evidence by increasing transparency, and allowing to take action on the personnel held accountable. Lack of appropriate realization of methods of collection, preservation and storage backed by an airtight chain of custody, casts a shadow of doubt and uncertainty on treatment of forensic evidence when presented as evidence before a court of law. Discrepancies in chain of custody result in inadmissibility of scientific developments thus hampering its potency to achieve justice. Courts in NDPS cases being given stringent legal provision to appreciate, needs to ensure sound chain of custody to admit guilt.

25. State of Rajasthan v. Tara Singh, 2011 (3) SCR 1112

Hon'ble Punjab High Court in a matter noted that "although the prosecution claimed that the seized powder was placed in the Malkhana on a specific date, the Malkhana register was not presented as evidence to support this claim. The absence of documentary evidence thus weakens the prosecution's case. The trial court could not have verified the authenticity and timing of the placement of the seized substance in the malkhana". Court explained that unsatisfactory nature of the link evidence reflects "deficiencies and inconsistencies in the evidence presented by the prosecution and do not inspire confidence". In the matter, due to gaps in evidence, the prosecution failed to convince the court of originality of seal on the samples as were during seizure.[26]

Even if forensic report is present to assist the guilt, the courts have taken an approach to not to solely rely on the report if the uninterrupted chain of custody is not established. In a case before High Court of Chhattisgarh, court opined that "neither delay in delivering the sample at FSL has been explained nor the Malkhana Register was produced in evidence. The prosecution did not examine the officer-in-charge of Malkhana, Station House Officer and Constable Shyam Sunder Chandrakar. Therefore, the report of FSl cannot form basis of conviction of the appellant under Section 20B of the Act, 1985."[27]

Courts have time and again laid importance on the procedural laws to be followed in spirit in sensitive cases of likes of NDPS Act. Observation of Section 55, right from recovery of a contraband from the accused, followed by forwarding to police station; where the sample is sealed in a safe custody prior to sending to Maalkhana. This extends further to permission given to the Investigating Officer to take sample

26. Gurpreet Singh v. State of Punjab, CRA-S-2278-SB-2015
27. Ganga Bhai v. State of M.P, 2013 AIR SCW 4570

in the presence of in charge to ensure sound chain of custody.[28]

Further, Punjab & Haryana High Court sanctioned an acquitted on the ground that the chemical examiner, after examination, "failed to re-enclose it inside the cloth parcels and emboss the seals of the FSL on it". The above mandatorily in lines of "unbroken links in the chain of incriminatory evidence, commencing from the seizure being made from the crime site.....and, lasting upto the production of the case property in Court, thereby thus would become convincingly proven, rather to remain unsnapped or unbroken."[29]

While declaring samples collected during an investigation as "case property" and not the property of the labs, court held that firstly, it is "obviously required to be returned, by the FSL concerned, to the police malkhana concerned, for thereafter its becoming produced in Court, as, only upon its production in Court the factum of its provenly becoming linked with the road certificate, and, also its apposite link, with the report of the FSL, would become established". Secondly, the Court clarified that to ensure non-tampering during transmission to FSL as well as on examination, both bulk contraband parcels as well as samples collected and forwarded to the lab, must be presented before the Court. "These formalities, the court noted, are not merely perfunctory nor are mechanical, rather work towards unflinchingly proving the charge drawn against the accused. Failure to follow this procedure, the Court said, would lead to an inevitable effect that the bulk parcels concerned would not be concluded to be also containing the prohibited substance."[30] Thirdly, Court noted that "the stuff inside the sample parcels, is the primary

28. Prem Shahi v. State of Uttrakhand, (2013) Supreme(UK)162
29. Gurjinder Singh @ Ginda v. State of Punjab, CRA-S-2808-2019 (O&M)
30. Buta Khan V. State of Punjab, CRA-S-262-SB-2018 (O&M)

evidence, and, report of the FSL is secondary evidence, and, unless primary evidence is adduced before the Court, the secondary evidence does not acquire any evidentiary worth"[31].

In a Allahabad case[32], a truck driver was apprehended with total of 91 packets of 201 kg ganja under the concerned provisions. The defence relied on the contention that recovery memo did not specify drawing of sample from every 91 packets and procedure adopted by the police authorities in drawing sample of alleged contraband and sending it for chemical examination was in violation of instructions under Section 52A. Court while deciding on issue of bail, was cautious of the twofold requisite of Section 37, along with sampling done contrary to the Standing Order that are mandatory in nature[33], thus stating chances of applicant conviction weak and his entitlement to be released on bail in lines that "failure to comply with the provisions made for doing a particular act renders the action nonest"[34].

Another issue that requires caution is collection of samples before appropriate forum. The Bombay High Court[35] granted bail as the authorities failed to send samples collected in front of the Magistrate to the Chemical Analyzer in lines of guidelines[36]. Similarly, the apex court set aside a conviction while refusing to accept analysis done on the basis of the samples taken at the spot.[37]

In ***Mohanlal***[38], certain guidelines regarding seizure,

31. Ibid
32. Wali Hassan v. State of UP, Bail Appl. No. 18303 of 2020 (Allahabad HC)
33. Noor Aga Vs. State of Punjab (2008) 3 JIC 640
34. Shivcharan Sharma Vs. Union of India and Others 1981 A.L.J. 641
35. Santosh Parte v. Amar Maurya, Bail Application No. 4125 of 2021 (Bom HC)
36. Union of India v Mohanlal and Another, (2016) 3 SCC 379
37. Simarnjit Singh s. State of Punjab, Criminal Appeal No. 1443 of 2023
38. Supra 36

sampling, storage and disposal were laid down for narcotics samples, including forwarding of the seized sample to the nearest police station and filling an application to the Magistrate, under whose supervision sampling is mandated to be done under the statute and the Standing Order. Another guideline addresses that storage facilities to be "duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs", to each of which an officer to be designated. Samples shall be drawn in duplicate in presence of witness while keeping the samples and its containers serially marked in lots.

**Status of Forensic Report: Recognizing Science Before Court of Law**

Expert opinion is a relevant fact under the evidence law. However reliability varies[39]. With reference to the special legislation, relevancy of a forensic report sustains. The reports of the FSL, by the apex court, were held to "qualify as a document in terms of Section 293 of Cr.P.C., which can be used as evidence and signatory to such report is not required to be examined as a matter of course"[40].

In a maturing jurisprudence surrounding narcotics analysis, forensic reports have gained importance to the extent of being considered as an extension of charge sheet filed in a matter. In NDPS cases, "FSL report goes to the root of the case and hence a charge sheet filed without it cannot be treated as a complete chargesheet"[41]. Courts have gone to extent to state a challan filed without a FSL report to be an 'incomplete challan' and would bail to the accused.[42]

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39. Kunhiraman vs Manoj, II (1991) DMC 499 (Kerela HC)
40. Thana Singh vs. Central Bureau of Narcotics [(2013) 2 SCC 590]
41. Rohtash @ Raju v. State of Haryana, CRR-933 of 2022(O&M)
42. Ajaib Singh Vs. State of Haryana, CRR-40-2022 (P&H HC);

Realizing relevance of authencity of such reports, the courts have observed that "the reports prepared by the FSL could have serious consequences – both for the victim and the accused. A false report in favour of the accused would lead to grave miscarriage of justice for the victim and for the society at large, as the rule of law would stand subverted with the acquittal of an offender, who deserves to be brought to justice. On the other hand, a false report against the accused can lead to an even more grave miscarriage of justice, as an innocent person may get falsely implicated"[43].

**Conditions of FSLs: Authenticating Science**

Role of narcotics laboratories in the effective realization of NDPS Act is indispensable as scientific reports generally form primary and clinching evidence for the parties involved, making duly evaluation by forensic labs a crucial determinant.

Attempting to balance the need for stringent provisions under special legislations on one hand and liberty to be protected on the other, observed that "it has been repeatedly stressed that NDPS cases should be tried as early as possible because in such cases normally accused are not released on bail"[44]. Adequately empowered forensic labs becomes non-negotiable in this regard.

In a landmark case[45], the Supreme Court observed that "a qualitative and quantitative overhaul of these laboratories is necessary for ameliorating the present state of affairs" and for the same, issued certain directions:

- "The Centre must ensure equal access to CFSL's from different parts of the country. The current four CFSL's only cater to the needs of northern and some areas of

43. State Government of NCT Deldi v Khursheed, CRL.A. 510/2018
44. Achint Navinbhai Patel v. State of Gujarat, (2001) 10 JT 545 (SC)
45. Thana Singh v. Central Bureau of Narcotics [(2013) 2 SCC 590],

western and eastern parts of the country. Therefore, besides the three in the pipeline, more CFSL's must be established, especially to cater to the needs of southern and eastern parts of the country.

- Analogous directions are issued to the states. Several states do not possess any existing infrastructure to facilitate analysis of samples and are hence, compelled to send them to laboratories in other parts of the country for scrutiny. Therefore, each state is required to establish state level and regional level forensic science laboratories. However, the decision as to the numbers of such laboratories would depend on the backlog of cases in the state.
- The above mentioned authorities must ensure adequate employment of technical staff and provision of facilities and resources for the purposes of proper, smooth and efficient running of the facilities of Forensic Science Laboratories under them and the Laboratories should furnish their reports expeditiously to the concerned agencies.
- The Directorate of Forensic Science Services, Ministry of Home Affairs, must take special steps to ensure standardization of equipment across the various forensic laboratories to prevent vacillating results and disallow a litigant an opportunity to challenge test results on that basis.
- Shortage of staff is bound to hamper with the smooth functioning of these laboratories, and hence, we direct the Directorate of Forensic Science Services, Ministry of Home Affairs to address the same on an urgent basis."[46]

46. Ibid

**Addressing Delay from FSL: Ensuring Swift Analysis**

*"...a three-year action plan has been drawn up by the Directorate of Forensic Science Laboratory (2021- 2024) to bring about a turnaround time of below one month for all samples....It is rather shocking that a period of one year is taken for chemical analysis*."[47]

While stating the above concern, the court have considered it to be high time to address the delay in investigation that is resulted from delay in forensic analysis of the sample sent to the concerned labs. In a case related to identification of a contraband article 'Methamphetamine', where there was inordinate delay in submitting scientific examination report, the court opined, "On account of such delay on the part of the authorities concerned to get the contraband article identified, through a proper scientific examination, the accused persons are being faced with prosecution, for more severe offences and consequential incarceration. This is causing difficulties to the court as well as the persons involved in the same"[48].

While pointing out that shortage of staff cannot be used as a casual justifications by the forensic labs for the delay in submission of report, Special Judge Santosh Snehi Mann pointed that delay of more than of two years cannot be passed over as an excuse for report pendency.. "It is a matter of concern that out of the total 302 cases pending expert opinion, some are pending … since 2015. Shortage of staff is no justification for delay in giving the expert opinion reports, which have a direct bearing on the trial of serious and heinous offences….this cannot be taken as a ready-made excuse or justification,

47. High Court of Karnataka v. State of Karnataka, W.P. No. 2739 OF 2021 (GM-RES) (Kar HC)
48. Anuraj v. State of Kerala; Kerela HC Bail Appl. No. 5549 OF 2023

whenever called upon by the courts to show cause for enormous delay on its part."[49]

***Re-testing: Addressing the Dilemma***

"*The report of the FSL concerned, has a rebuttable presumption of truth, and, the accused for can ask for re-examination by the FSL*."[50]

No NDPS provision prescribes resampling or retesting of samples. Yet, as observed by the apex court[51], in practice, there has been an incline to the contrary[52]; NDPS courts are consistently met with applications for re-testing and re-sampling at advanced stages of trial, that ultimately add to delays. "While re-testing may be an important right of an accused, the haphazard manner in which the right is imported from other legislations without its accompanying restrictions, however, is impermissible. Under the NDPS Act, re-testing and re-sampling is rampant at every stage of the trial contrary to other legislations which define a specific time-frame within which the right may be available."[53]

Court favoured caveat in allowing re-test, that such permission may be granted only "in extremely exceptional circumstances, for compelling reasons to be recorded by the Presiding Judge", and not as a matter of course, considering it "prohibited" under the Act in absence of any compelling circumstances. Strict time prescription for allowing application for re-testing is required. As a guidance, court stated that "in rare cases, applications must be made within 15 days of receipt of the test report and no further applications for re-testing/re-sampling shall be entertained thereafter"[54].

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49. Special Judge Santosh Snehi Mann
50. Supra 30
51. Supra 45
52. Nihal Khan Vs. The State, 2007 CRILJ 2074 (Delhi HC)
53. Anuraj v. State of Kerala; Kerela HC Bail Appl. No. 5549 OF 2023
54. Ibid

Similarly, MP High Court opined: "Opinion of an expert is useful for the Court to make opinion regarding the seized contraband, therefore, in the circumstances of the case, it appears that there are extremely exceptional circumstances, in which re-testing of the sample is quite necessary"[55].

**Impact on Reliability: The Question of Trust**

At the end, it is the courts that play the part of being the gatekeepers while considering scientific evidence submitted[56]. Appropriate and adequate appreciation of such evidence becomes paramount to ensure delivery of justice in its truest sense. Where excessive dependence oral testimony results in miscarriage of justice by acquitting the guilty and convicting the innocent[57], reliance on forensics is encouraged but not without caution.

Court held "it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored." [58]

Courts have been cautious while treating defective evidence stating: "in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."[59]

55. UOI v Govind, W.P. No.19473/2012 (MP HC)
56. Walia, D. G. & Goyal, D. S., 2023. Perfect Justice through Use of Forensic Science: A Myth or Reality. NFSU Journal of Forensic Science, 2(1).
57. Goswami, D. G. & Goswami, A., 2024. Sprading Wings of Forensic Science. SCC Online Times.
58. Sathi Prasad v. State of U.P (1972) 3 SCC 613
59. Dhanraj Singh v. State of Punjab, (2004) 3 SCC 654

On complete reliance on forensic reports, the court has been cautious enough to put a caveat as: "the possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution".[60]

## V. KEY FINDINGS & CONCLUSION

In relation to the central issue of the current research, analysis of judicial pronouncements in the recent past unveils radical jurisprudential developments, marking landmarks in the path of use of forensics in drug related cases. Key aspects detected include:

- Judiciary in India is aware and mindful about the reality that drug related cases have shown concerning uprise in past years. Thus, the orientation, approach and comprehension of drug related cases by the courts have been observed to be cautious yet firm.
- Judiciary has been strongly attempting to ensure the factors affecting the reliability the forensic evidence in NDPS cases meet the satisfactory mark in proving a relevant fact under the law, while negligent and uninhibited approach in every stage from collection, sampling, disposal to appreciation as evidence does not

60. Ram Bali v. State of U.P, (2004) 10 SCC 598

render the technological advancement meaningless.

- Great importance have been allotted to the sound chain of custody while relying on forensic evidence ensuring authenticity and confidence. As pointed in ***Gurjinder***[61], a fact before the courts would be convincingly proven by unbroken or unsnapped links in the chain be it at the stage of commencing of seizure at the crime scene or production of case property before it. To seal the judicial stand, guidelines in ***Mohanlal***[62] marked a major landmark in reliance placed on forensic evidence in NDPS cases.
- While appreciating the relevance of FSL reports that could have serious consequences for the parties involved a case[63], unaccounted delays and casual justifications for the same have been discouraged by the courts in the recent past. Similarly caution have been observed when it comes to re-testing by allowing it only in extremely exceptional circumstances where courts are satisfied with the compelling reasons while putting another safeguard of time limitations. Restrictive approach reflects the attempts of the courts to cast down misuse of provisions and tightening the casual approach of authorities in furtherance of smooth administration.
- Courts have accepted their role of being the ultimate gatekeeper while appreciation of forensic evidence. As observed in[64], even when the bench showed acceptability to expert evidence, it cannot blindly follow along as the

61. Supra 29.
62. Supra 36
63. Meher, S., 2022. Forensic Evidence and Discretion of the Court in India. IUP Law Review, 12(2).
64. Ram Bali v. State of U.P, (2004) 10 SCC 598

expert may fall victim to 'human error'[65], thus requiring substantive corroboration. It is its duty to critically evaluate it to ensure reliability in lines of standard of proof required.

- The pronouncements reflect honest efforts poising public interest and individual liberty in shadows of practical challenges to be met in ground realization of legal and procedural requirements in the sphere of a special legislation.

To answer the key research question, it appears that judicial approach pertaining to appreciation forensic analysis in NDPS cases seems adequate and cogitate, though what is required is realization of the systematic changes, guidelines and observations made across courts, not only in letter but in spirit. In absence of the adequate execution, the regulatory framework striving on stringent provisions, aid of scientific developments and coherent judicial precedents would remain fatuous.

65. Dhiman, D. A. & Bhamra, M. P., 2023. Evidentiary Value of Forensic Reports and Legal Implications. NFSU Journal of Forensic Justice, 2(1).

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# Beyond the Institution of Marriage: Legal Recognition of Sexual Violence Within Wedlock

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## ABSTRACT

Historically, legal systems operated under the presumption that marriage constitutes an irrevocable consent to sexual relations. It was not until the late-20th century many nations began to recognise non-consensual intercourse within marriage as a criminal offence. by the early 2000s, over a hundred countries had explicitly criminalised marital rape through statutes or judicial decisions, marking substantial progress toward gender equality and the protection of sexual autonomy within a marriage.

However, debates persist regarding the implications of criminalising marital rape. Radical supporters argue that such legal reforms affirm women's autonomy and promote gender justice. In contrast, traditionalists combat with the ideologies that criminalising marital rape may undermine the institution of marriage, risk misuse, and create social resistance or legal complications. The lasting influence of Sir Matthew Hale's doctrine, which asserts that a wife cannot retract consent once married, continues to shape both public and legal attitudes toward reform.

This research paper explores a comparative and socio-legal analysis of marital rape, examining relevant statutes, case laws, and interdisciplinary resources across various jurisdictions. Reports and authoritative sources provide evidence regarding the current situation amongst different countries, pointing to a strong link between marital rape and severe psychological and physical consequences for victims. Overall, this paper aims to discover that abolishing the marital rape exemption, supplemented by public education and adequate support for survivors, is essential for advancing gender justice, even as it confronts deeply entrenched social norms.

**Key words:** *Consent, Gender Justice, Marriage, Marital Rape, Sexual Autonomy.*

## I. INTRODUCTION

Marriage has historically been considered as a sacrament, a sacred institution; rooted as the foundation of family. Within the framework of marriage, the concept of consent has been concealed by the presumption that entering into a wedlock automatically approves wife's permanent and irrevocable consent to sexual relations with her husband.[1] Marriage has often been shielded from scrutiny regarding the dynamics of power and consent within its boundaries. This presumption deeply rooted in patriarchal traditions, has long ago legitimised what is not recognised as a grave injustice: Marital rape or forced sexual intercourse within marriage. In India, the concept of marital rape is the prime example of what we express as an "implied consent".

For decades, the legal system has treated sexual violence within marriage as a private and personal matter of the spouses shielded from the legal accountability. The marital rape exemption in common law doctrine, and codified into various statutes allows husband to claim security from prosecution,

rejecting women recognition as an autonomous individuals capable of refusing consent in spousal relationships.[2] Whereas rape outside marriage is universally-recognised and criminalised worldwide, treating it as a violation of bodily integrity and human dignity. However, the same act done by the husband to the wife is recognised as a conjugal right. This depicts a drawback in the legal system for violating rights of the female within their spousal relationships.

In recent times, however, global human rights disclosure has challenged this obsolete exemption, international conventions like, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), feminist scholarship, and judicial interpretation have reframed marital rape not as a private issue but as a fundamental human right violation, especially rights to equality, dignity, personal liberty and bodily autonomy.[3] In today's times with the growing recognition of physical and psychological trauma inflicted on the survivors emphasise the urgency of confronting this form of sexual violence [4].

## II. HISTORICAL BACKGROUND

The idea that husband could not be guilty of raping, his wife finds its way from English common law, where Sir Matthew Hale, in his 1736 work '*The History of the Pleas of the Crown'* wrote that*, "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 herself up in this kind unto her husband, which she cannot retract."*[5]

1. Sir Mathew Hale, Historia Pictorum Coronae, 301-302, E. Rider, London, Vol. 1, 1800).
2. Independent thought v. Union of India, AIR 2017 SC 4904.
3. Government of India, Reports of the Committee on Amendments to Criminal Law (2013).
4. Ministry of Health and Family Welfare, Government of India, National Family Health Survey (NFHS-5, 2019–21).
5. Supra Note 1 at 2

He also mentioned doctrine of irrevocable consent, which states that a wife's consent is irrevocable and a husband gets a legal immunity from rape within a marriage.

Overtime, this marital rate exemption began to break down. in United Kingdom, the landmark decision in *R v. R*[6] abolished this marital rape exemption with the house of lots, holding that marriage does not mean irrevocable consent, thereby criminalising, marital rape. Furthermore, in South Africa, through the Prevention of Family Violence Act, 1993,[7] criminalised marital rate in South Africa recognising it as part of the broader fight against gender-based violence. Today, most democratic nations including United States, Canada, and Australia recognise marital rape as a criminal offence, stating that consent must be ongoing and cannot be presumed by marriage.

## III. EVOLUTION OF MARITAL RAPE IN INDIA

India's position in marital rape depicts its colonial legacy. The original Indian Penal Code (1860), inherited from British law and drafted under the chairmanship of Lord Thomas Babington Macaulay, defined rape in terms of non-consensual sex but added an *"Exception 2"* that explicitly exempted a husband from prosecution for rape of his wife (so long as the wife was not under 15 years old) (now section 63 Bharatiya Nyaya Sanhita, 2203) as , "*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."*[8] This exception was based on colonial-era beliefs, particularly taken up from the English *coverture doctrine* that marriage conferred upon men a right to marital sex and that wives were in essence inferior property. For decades, the law assumed a wife's implied consent upon

6. [1991] UKHL 12.
7. No. 133 of 1993: Prevention of Family Violence Act, 1993 (South Africa).
8. Indian Penal Code, 1860, section 375, Exception 2.

marriage. The 1983 Criminal Law (Amendment) Act, enacted because of the outrage caused by the Mathura rape case[9], broadened the definition of rape and introduced stricter punishments, but it did not repeal the marital rape exemption. Instead, the age restriction of which was changed to 18 years which provides that sexual intercourse by a man with his wife being over 18 years of age, is not rape. But the court intentionally restricted its jurisdiction to the victims aged below 18 years, leaving the larger question of marital rape of adult women's untouched and unresolved.

But the subsequent reforms have been gradually slow. The Criminal Law (Amendment) Act, 2013, also known as the "Nirbhaya Act", enacted after the Nirbhaya case[10], elaborated the definition of rape and introduced stricter penalties for rape and sexual abuse but explicitly exempts marital rape.[11] The Protection of Women from Domestic Violence Act, 2005 gives remedies to women against "sexual abuse" in marriage but does not criminalise marital rape.[12]

Repeated recommendations from various expert bodies have also gone unheard. The Justice Verma Committee (2013) explicitly recommended the removal of marital rape exemption observing that "marriage cannot be a license for sexual violence".[13] Yet parliament refuses to accept these recommendations, quoting fears of misuse and disruption of marital institutions.

Thus, unlike many countries where marital rape has been criminalised, India continues to conserve the exemption. This

9. Tuka Ram and Anr. Vs. State of Maharashtra,1979 AIR 185.
10. Mukesh and Another Vs. the State of NCT of Delhi and others, SLP (CRL.) NO. 3119-3120/2014
11. Criminal Law (Amendment) Act, 2013, No. 13 of 2013.
12. Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005.
13. Government of India, Reports of the Committee on Amendments to Criminal Law (2013).

perseverance demonstrates how institution of marriage is prioritised over a women's dignity and bodily autonomy.

## IV. PROS AND CONS OF CRIMINALISING MARITAL RAPE

The question of criminalising marital rape has always sparked an intense legal, political and social debates amongst the masses. On one hand, supporters argue that criminalising marital rape is essential to uphold women's autonomy, dignity and equality before law while on the other hand, opponents argue that such drastic change in laws would lead to evidential difficulties, misuse and will disrupt marital harmony. This dilemma depicts a brutally serious conflict between women's personal rights and societal perception of marriage as a private institution. A detailed and well-defined evaluation of both the perspectives is paramount to know whether the criminalisation of marital rape would achieve justice without undermining the legitimate concerns about privacy and misuse.

### Pros:

1. *Protection of autonomy and bodily integrity:* Recognising marital rape as a criminal offence will provide us with a simple, but essential truth: consent is never permanent. Even within a marital relationship, a woman has a right to say "no "to her husband and her decision would be respected. treating marital rape as an offence would lead to the rejection of the outdated idea that the husband has unlimited sexual rights over his wife and it would instead affirm bodily autonomy and dignity of the woman.[14]
2. *Equality Before the Law:* Continuing a marital rape exemption, creates an arbitrary classification between married and unmarried woman as well as women above

14. Catherine A. MacKinnon, Toward a Feminist Theory of the State, Harvard University Press, Cambridge, Massachusetts, 1991.

the age of 18 years and below the age of 18 years. The removal of this exemption aligns with article 14 and 21 of the Indian constitution, ensuring equal protection and recognition of bodily autonomy and dignity of all women, regardless of their marital status or age.[15]

3. *Access to Justice for Victims:* Legal recognition of marital rape as a crime would ensure that justice is accessible to all the victims of sexual violence and would provide them criminal remedies, which would complement the civil remedies under Protection of Women from Domestic Violence Act, 2005[16], without the exceptions based on marital status. This highlights a historical gap in the legal system where marriage is seen as an institution which implies permanent consent. The recognition of marital rape is a crime would promote accountability and will deter perpetrators. Without the criminalisation, woman are forced to rely on the limited provisions such as cruelty[17] which does not address sexual violence adequately.
4. *Alignment with Global and International Standards*: India's responsibility under CEDAW[18] and other international conventions require it to eliminate gender-based violence not only in marital institutions but also in all contexts. Criminalising marital rape as a crime would bring India one step closer to global human rights

15. Sarthak Makkar, "Marital Rape: A Non-criminalized Crime in India", 38 (2025), Harvard Law Review, available at: https://journals.law.harvard.edu/hrj/2019/01/marital-rape-a-non-criminalized-crime-in-india/
16. Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005.
17. The Bharatiya Nyaya Sanhita, 2023 (No. 45 of 2023), s. 86.
18. Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979.

norms where other comparative nations have already recognised it as a crime.[19]

5. *Symbolic and Social Impact*: Criminalising marital rape as a crime would give a strong message to the society that marriage does not justify sexual violence by the husband. It would strongly challenge society's patriarchal norms and would contribute to building a positive societal attitude towards a women's consent. At a symbolic level, it would announce that simply marrying someone does not change a women's body into an "all-you-can-use" marital entitlement and will declare that consent within marriage must be continuous, communicable and revocable.

**Cons:**

1. *Fear of False and Malicious Cases*: Critics argue that criminalising marital rape would lead to the misuse of the laws. Concerns have been raised that women's might weaponize marital rape laws for their personal benefit for matrimonial disputes to harass their husband, raising concerns about difficulties in identifying genuine complaints. However it us equally important to note that mere possibility of misuse should not be treated as a sufficient ground to deny any legal harm of a genuine harm. The justice Verma committee (2013), recommended the removal of marital rape exemption in the codified laws but explicitly denies the "misuse" argument of the said law and states that security exist in the procedural laws and the risk of false cases and misuse of laws is not unique to this kind of offences.[20]

19. CEDAW, art. 16; UNGA, Declaration on the Elimination of Violence against Women, A/RES/48/104 (1993).

20. Government of India, Reports of the Committee on Amendments to Criminal Law (2013). Part II, at 113–114 (rejecting "misuse" as a valid basis for retaining the marital rape exception).

2. *Invasion of Marital Privacy:* The marital relationship is considered as a private topic within the Indian society. Many critics argue that criminalising marital rape would invade the privacy of the spouses in their personal matter. Sexual relationship between the spouses is considered a very private topic between the spouses and the Indian society considers it their "private issue" and suggests that these issues should be resolved privately by the husband and wife. They also contend to argue that removing marital rape exemption would disrupt matrimonial harmony and would conflict with the constitutional right of right to privacy.
3. *Evidentiary Challenges:* Unlike the common stranger rape, marital rape cases are harder to prove due to their already ongoing intimate relationship, absence of physical evidence and issues of consent. This raises the concern that even after criminalising marital rape would it really be effective or not and raises questions about the practicality of the prosecution.
4. *Cultural and Social Backlash:* As India is deeply engulfed in the cultural notion that marriage automatically applies consent and criminalising marital rape would lead to social as well as cultural resistance. Criminalising marital rape in India would create a chaos within the society, which finds its deep roots in its culture and traditions. Critics argue that getting rid of the marital rape exemption would weaken the Indian traditional family structure or it can be seen as accepting "Western" concepts.[21]
5. *Availability of Civil Remedies:* Critics assert that Protection of Women from Domestic Violence Act, 2005

[21] Law Commission of India, Consultation Paper on Reform of Family Law (2018).

already provide civil remedies under the act for specific offences and criminalisation may not be necessary.[22]

Marital rape criminalisation in India is very important with both strong pros and cons. It is argued that it's crucial for safeguarding a woman's autonomy and dignity, allowing her to say "no" even in marriage. Also, they say that it ensures equality before the law and aligns India with global human rights obligations.

Meanwhile, critics are concerned that it can be used for abuse of the law on false and malicious grounds and that it will intrude into marital privacy. They also reference the difficulty of producing evidence since the relationship is private and argue that current civil remedies are adequate. In the end, the controversy accentuates a dilemma between safeguarding civil liberties and satisfying fears about operationality, cultural values, and abuse of the law.

Although the Justice Verma Committee in 2013 explicitly rejected the "misuse" argument and strongly recommended removal of the marital rape exception.[23] The Law Commission of India in 2018 acknowledged that the exemption undermines women's constitutional rights under Articles 14 and 21 of the Indian Constitution.[24] It is only fair to ask whether the Indian legal system should continue to privilege an outdated idea of irrevocable consent or it should reform the laws and affirm that marriage cannot remove a women's right to choose.

## V. Marital Rape Laws In Different Nations

The global perception of marital rape legislation has undergone a gradual shift, recognizing that marriage does not

22. The Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005), ss. 20, 21, 22.
23. Supra Note 20 at 6.
24. Law Commission of India, Consultation Paper on Reform of Family Law (2018).

deny a woman's right to bodily autonomy and dignity. While several nations have already taken the step to criminalise sexual violence within marriage, the extent of social acceptance and enforcement varies significantly based on political, cultural, and historical context.

**The United Kingdom**

The marital rape legislation took a drastic turn in *R. v R.* where United Kingdom abolished, marital rape, exemptions from its statutes, The house of lords held that a husband could indeed be guilty of raping his wife.[25] This decision of the house of Lord was later codified under the Sexual Offences Act, 2003, which explicitly treats marital rape identically to non-marital rape, with punishments extending to life imprisonment.[26] The foundation of this reform is the recognition that consent is revocable and not constant, even within marital institutions. Despite resistance in the initial stages of the reform, Institutional support and sustained awareness campaigns have reduced social stigma, which led to improvement of enforcement and reporting.

**South Africa**

South Africa criminalised marital rape through its Family Violence act of 1993 which was the first law to acknowledge marital rape. Later, which was fully criminalised by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.[27] The statute provide penalties for spousal rape, still, the enforcement remains inconsistent as it is entrenched in patriarchal values, especially in rural communities sustain weak prosecution and underreporting.

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25. R. v R., [1991] UKHL 12.
26. Sexual Offences Act, 2003 (2003 Ch 42), s. 1 (UK).
27. Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (South Africa).

This provides a conflict between statutory reforms and customary practices.[28] while the statute provides a step forward, The efficiency of protection depends upon social context and willingness to act.

**The United States of America**

Marital rape is criminalised in all 50 states of the US, but the legal framework is fragmented. Some states still require additional proof or force, threats, or physical violence to secure a conviction, somehow weakening the protection available to survivors.[29] Moreover, there is no federal law explicitly prohibiting marital rape, resulting in uneven access to justice nationwide.

**Afghanistan**

Afghanistan represents one of the sharpest examples of state authorised denial of women's sexual autonomy. The Shi'a Personal Status Law codifies a husband's right to sexual access, effectively legitimising marital rape[30]. This framework is strengthened by traditional and religious interpretations. With explicit statutory provisions and enforcement mechanisms, Afghanistan promotes male dominance within marriage. With Taliban influence, woman's rights have reduced further, collapsing, even the limited protection is previously available.[31] In this context, marriage works, not as a partnership, but as a legitimised institution of subjugation.

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28. Lilian Artz; Dee Smythe, "SHOULD WE CONSENT? Rape Law Reform in South Africa", Juta & Co. Ltd., Cape Town, South Africa (2008).
29. Michelle J. Anderson, "Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates", UC Law Journal 54 (2003).
30. Shi'a Personal Status Law, 2009 (Afghanistan).
31. Human Rights Watch (2022). Afghanistan: Taliban Curtail Women's Rights.

## Pakistan

Pakistan has witnessed a more recent change, criminalising marital rape through amendments to the Pakistan Penal Code[32] in 2021.[33] The first conviction in 2024, under this provision affirmed a symbolic shift in countries, legal reforms in spousal violence. However cultural stigma, lack of awareness, and weak institutional support remain to hinder prosecution and effective reporting.[34] This legislative change is a vital step, but for the transformation of the legislative system depend on dismantling patriarchal norms, and enabling survivor centric support system.

## VI. Conclusion

The discussion around making marital rape a punishable offence reflects a deep conflict between individual rights and long-standing societal ideas about marriage. Opponents often highlight the possibility of false allegations, the difficulty of proving such offences, and the social resistance to change. However, these arguments cannot override the constitutional promise of equality, personal liberty, and dignity guaranteed under Articles 14, 19, and 21.By continuing to uphold the marital rape exception, the law reinforces patriarchal beliefs of automatic consent within marriage and ultimately denies women the equal protection they are entitled to.[35]

As expressed by Mahatma Gandhi, a woman is the companion of man, endowed with equal mental capacities. She has a right to share in the smallest details in man's pursuits, and she is equally entitled to a right of freedom and liberty by

32. Pakistan Penal Code (Act XLV of 1860).

33. Pakistan Penal Code (Amendment), 2021.

34. Sahar Bandial ,Marital Rape, Dawn, Feb. 12, 2024.

35. Independent Thought v. Union of India, (2017) 10 SCC 800 (holding that marriage does not justify sexual violence against minors).

his side. She is also entitled to a supreme position in her own area of activity as man is in his. This should be the natural order of things and not as a consequence only of learning to read and write. By sheer strength of a cruel habit, even the most stupid and worthless men have been possessing a superiority over woman they do not deserve and should not enjoy. Many of our movements are thwarted half way owing to the state of our women.[36]

Going forward, making marital rape a criminal offense in India is an important step towards gender equality and human rights but depends on a thorough and multi-level reform. It is not about imposing a new legislation; it is about radically changing legal and social standards around marriage. While criminalising marital rape is essential, it should be accompanied by procedural safeguards such as high evidentiary thresholds and strict consequences for false complaints to reduce fears of abuse of the law.[37] Equally important is specialised training for police officers, prosecutors, and judges so that cases are dealt with sensitively and effectively. Linking criminal provisions with existing civil remedies, like those under the Protection of Women from Domestic Violence Act, 2005, would help create a more complete system that addresses both the civil and criminal aspects of spousal abuse.[38] At the same time, public awareness campaigns are needed to dismantle the entrenched idea of permanent consent in marriage and to reinforce the principle that marriage is a relationship of partnership, not ownership. A comprehensive national policy on sexual violence within marriage designed in line with India's

36. M. K. Gandhi, Speeches and Writings, G. A. Natesan & Company, Madras (1933).

37. Justice J.S. Verma Committee Report, 2013, p. 113–114.

38. Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005), s.3.

obligations under CEDAW and informed by global practices should also be put in place to ensure that survivors have access to medical care, psychological support, and legal assistance.

At last, criminalising rape in marriage is a recognition of a woman possessing sole authority over her body. To fully reinforce this rule, public information campaigns at local levels all the way to national awareness programs are necessary to break the deep-seated notion of irrevocable consent in marriage. Such campaigns must advocate the rule that marriage is a relationship of mutual support and not ownership. For effective change, the legal system must implement protective policies and widespread social education. Only then can India bridge the tension between the idea of marital harmony and the demands of constitutional morality and human rights. These reforms will affirm that marriage is built on equality, dignity, and mutual respect.

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