MARITAL RAPE IN INDIA: THE CONFLICT BETWEEN THE INSTITUTION OF MARRIAGE AND INDIVIDUAL RIGHTS

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ABSTRACT

This dissertation examines the marital rape exception in Indian criminal law as a problem of constitutional democracy, gender justice and the relationship between social institutions and individual rights. It focuses on Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS), which provides that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years of age, do not constitute rape under that provision. The study situates the current rule within the historical development of rape law and analyses the constitutional principles of equality, non-discrimination, dignity, privacy, bodily autonomy and personal liberty that shape the debate.

The research adopts a qualitative, descriptive and analytical design, primarily using doctrinal legal research. It examines legislation, reported judicial decisions, scholarly literature and selected public-policy materials. The analysis focuses on the Supreme Court's decision in Independent Thought v. Union of India (2017), the constitutional reasoning associated with Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), the autonomy principle discussed in Suchita Srivastava v. Chandigarh Administration (2009), and the divided reasoning in the Delhi High Court's 2022 decision concerning the marital rape exception. These authorities are distinguished carefully: constitutional principles relevant to autonomy do not, by themselves, constitute a final judicial ruling on the adult marital rape exception.

The dissertation evaluates arguments advanced in favour of removing the exception as well as concerns about criminal-law design, evidentiary challenges, due process and implementation. It argues that the policy debate should not be reduced to a choice between protecting marriage and protecting individual rights. A constitutional assessment must consider whether marital status provides a defensible basis for differential treatment while also asking how any reform can be framed and implemented fairly. As of the research cut-off used for this draft, the Supreme Court proceedings concerning the exception remained pending, with final hearing reported as scheduled for 18 November 2026; this procedural position must be checked against the latest official order before submission.

Keywords: marital rape; consent; bodily autonomy; constitutional equality; Article 21; Bharatiya Nyaya Sanhita; gender justice; criminal-law reform.

CHAPTER 1 — INTRODUCTION

1.1 Background of the study

Marriage has a central place in Indian social life. It is commonly associated with companionship, family formation, mutual responsibility and social recognition. Its social importance, however, does not settle every question about the legal rights of the people within it. A marriage is also a relationship between individuals, each of whom retains a distinct legal personality. The question of whether consent to marriage can be treated as continuing consent to sexual activity raises a basic issue about autonomy: can a social institution change the legal meaning of a person's refusal?

The issue of marital rape brings this question into the field of criminal law and constitutional politics. In ordinary language, marital rape refers to sexual intercourse or other sexual acts within marriage that take place without the freely given consent of a spouse. In this dissertation, the term is used analytically and descriptively. Its use does not mean that every act falling within that definition is currently classified as rape under the statutory exception in India.

The controversy is not only about the wording of a criminal provision. It is also about how the state understands marriage, privacy, gender relations and the boundary between private life and public regulation. One position stresses that criminal law must recognise the continuing autonomy of a married person and should not provide immunity from rape law solely because of marital status. Another position raises questions about whether criminalisation is the most appropriate legislative response, how the law should distinguish criminal conduct from other forms of marital conflict, how allegations should be investigated, and what procedural safeguards are necessary. A serious Political Science analysis must identify the strongest versions of the arguments on both sides before reaching an assessment.

1.2 Statement of the legal position

The statutory starting point is Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023. It states that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years of age, do not constitute rape. The provision carries forward the central feature of Exception 2 to Section 375 of the Indian Penal Code, 1860. The BNS came into force in 2024 and replaced the IPC for offences governed by the new code, subject to applicable transitional rules. The exact statutory wording and commencement provisions should be checked against the official India Code text before the final copy is submitted.

The exception does not mean that all forms of violence within marriage are lawful or that no legal remedies may ever be available. Depending on the facts, other criminal provisions, protection mechanisms and civil remedies may be relevant. The narrower issue in this dissertation is the exclusion of certain non-consensual sexual acts by a husband from the statutory definition of rape where the wife is an adult. The distinction matters because the research should not overstate the reach of the exception or confuse the rape offence with every other legal response to domestic abuse.

1.3 Historical and social context

The marital rape exception has roots in older common-law traditions that treated marriage as creating a special legal relationship between spouses. The historical idea that marriage implied irrevocable consent has been widely challenged in modern legal and political thought. Contemporary understandings of equality, bodily integrity and individual liberty place greater emphasis on the continuing agency of each person. Nevertheless, legal reform in this area is shaped by social expectations, political mobilisation, institutional caution and disagreement about the proper role of criminal law.

In India, the issue intersects with the social authority of marriage, gendered expectations concerning sexual availability, economic dependence, stigma associated with disclosure, and uneven access to support services. These factors do not operate identically across all households or communities. The study therefore avoids treating Indian women or Indian marriages as a single uniform category. Social context is relevant, but it should not be used to assume that every family follows the same practices or that cultural norms automatically justify a legal exception.

1.4 Constitutional framework

Article 14 guarantees equality before the law and equal protection of the laws. The central question is whether the distinction drawn between married and unmarried women in the rape provision has a constitutionally defensible basis. The equality inquiry is not completed merely by identifying a difference in legal treatment. It requires attention to the purpose of the law, the relationship between the classification and that purpose, and the constitutional values affected by the distinction.

Article 15 prohibits discrimination on specified grounds, including sex, subject to the structure and exceptions contained in the Constitution. In a gender-justice analysis, the provision invites scrutiny of whether a legal rule reproduces unequal treatment connected with gender. Article 21 protects life and personal liberty and has been interpreted to include dignity, privacy and aspects of personal autonomy. The relevance of these provisions is substantial, but their application to the marital rape exception remains a question of constitutional interpretation rather than an automatic conclusion.

In Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), a nine-judge bench recognised privacy as a constitutionally protected right linked to liberty, dignity and autonomy. The judgment discussed personal choices and intimate aspects of life. It did not directly decide the constitutional validity of the adult marital rape exception. Likewise, Suchita Srivastava v. Chandigarh Administration (2009) recognised the importance of reproductive choice and personal autonomy in its specific factual and legal context. These cases provide constitutional principles that may inform analysis, but they must not be represented as direct decisions criminalising marital rape.

1.5 Judicial developments

In Independent Thought v. Union of India (2017), the Supreme Court read down the earlier IPC exception insofar as it applied to wives below eighteen years of age. The Court emphasised the legal status and bodily integrity of the girl child. It expressly clarified that the larger question of marital rape involving adult women was not before it. The judgment is therefore important for the relationship between marriage, age and sexual consent, but it cannot be cited as having resolved the adult-wife exception.

In May 2022, the Delhi High Court delivered a split verdict in challenges to the marital rape exception. Justice Rajiv Shakdher considered the exception unconstitutional, while Justice C. Hari Shankar upheld it. The disagreement illustrates the central constitutional and institutional questions: whether marital status is a permissible basis for differential treatment, whether the court should invalidate the exception, and how far judicial interpretation may go in a field closely connected with legislative policy. The split verdict did not produce a final uniform ruling by that High Court.

The Supreme Court has been considering connected challenges concerning the IPC exception and the corresponding provision under the BNS. Reports published in September 2026 stated that the matters were listed for final hearing on 18 November 2026. This dissertation is prepared in October 2026, before that reported hearing date. The status must be verified again using the latest official order before the final dissertation is submitted. No outcome of a future hearing is assumed in this draft.

1.6 Political Science significance

The topic is suitable for Political Science because it concerns constitutionalism, power, public policy, rights, state authority and institutional decision-making. It asks how democratic institutions should respond when a longstanding social norm conflicts with contemporary understandings of equality and liberty. It also raises a question about the distribution of responsibility between Parliament and the judiciary. Legislatures define offences and design procedures; courts interpret statutes and review constitutionality; executive institutions implement laws; and civil society influences the public agenda. The issue cannot be fully understood by reading the statutory text alone.

The dissertation also addresses the relationship between private power and public authority. A household may be described as private, but that description does not automatically settle whether the state has a responsibility to protect members from violence. At the same time, criminal law is a coercive instrument and its use requires clear definitions, fair procedures and evidence-based implementation. The policy problem is therefore not simply whether the state should intervene, but how the intervention should be justified, structured and evaluated.

Marriage, citizenship and the public sphere

The political significance of marriage lies partly in the way public institutions recognise and regulate private relationships. Marriage affects inheritance, residence, maintenance, parenthood and social status. It is

therefore not simply a private arrangement outside the reach of public power. When a rule of criminal law treats conduct differently because the parties are married, the state is making a substantive choice about the legal meaning of that relationship. Political analysis asks whether that choice is consistent with constitutional citizenship, under which each person is a rights-holder rather than merely a member of a family unit.

Power within intimate relationships

Power does not always appear as an explicit command. It can operate through economic dependence, control over mobility, fear of social stigma, unequal domestic labour and the expectation that one spouse must accommodate the other. These factors are relevant because formal freedom to refuse may be difficult to exercise where the consequences of refusal include violence, abandonment or loss of financial security. The dissertation does not assume that every marriage has this structure; it argues that legal design should be capable of responding to coercion where it occurs.

Democratic accountability and law reform

A democratic legislature has authority to design criminal offences, but democratic authority is exercised within constitutional limits. A rights controversy therefore involves two related questions: who should decide the issue, and what substantive standards should guide the decision? Parliament can consult affected groups, examine comparative experience and create safeguards. Courts can review whether the law complies with constitutional guarantees. Neither institutional role eliminates the need for public reasoning, transparent evidence and accountability.

1.7 Aim and objectives

The aim of the study is to examine the marital rape exception in India through the relationship between marriage as a social institution and the constitutional rights of individuals.

1. To explain the statutory position under Section 63 of the Bharatiya Nyaya Sanhita, 2023, and its historical relationship with Section 375 of the IPC.
2. To analyse the relevance of Articles 14, 15 and 21 to the constitutional debate.
3. To examine leading judicial decisions and the reasoning used in discussions of the exception.
4. To assess arguments for and against criminalisation, including rights protection, legislative competence, implementation and procedural fairness.
5. To identify policy considerations that may support a rights-protective and procedurally fair legal framework.

1.8 Research questions

- What is the current statutory position concerning the marital rape exception in India?
- How do equality, dignity, privacy and personal liberty inform the constitutional debate?
- What are the strongest arguments advanced for and against criminalisation?

- What do relevant judicial decisions establish, and which questions remain unresolved?
- What legal and institutional safeguards should be considered in evaluating possible reform?

1.9 Working propositions

Because this is a qualitative and doctrinal study, its propositions are analytical rather than statistical. First, the marital rape exception raises significant constitutional questions about equality, autonomy and the legal consequences of marital status. Second, a sound assessment of reform must address both individual-rights protection and the design of fair, workable criminal procedures. These propositions guide the inquiry but are not treated as proven in advance.

1.10 Scope and limitations

The geographical scope is India, and the central focus is the adult-wife exception in the rape provision. The study uses legislation, judgments, academic literature and selected policy materials. It does not conduct interviews or surveys, and it does not independently estimate the prevalence of marital rape. It therefore cannot claim to represent all women's experiences or establish causal relationships. The law and pending litigation may change during the project. The final text must be updated to reflect any binding judgment or statutory amendment issued before submission.

1.11 Chapterisation

Chapter 1 introduces the topic, legal framework, questions and scope. Chapter 2 reviews academic and legal literature and identifies the research gap. Chapter 3 explains the research design, sources and analytical method. Chapter 4 presents the results of the doctrinal analysis and discusses the constitutional and policy arguments. Chapter 5 draws conclusions based on the materials examined and identifies future perspectives. Chapter 6 records publications or conference papers directly arising from the project, if any; if none exist, the student should follow the supervisor's instructions rather than inventing a publication.

CHAPTER 2 — REVIEW OF LITERATURE

2.1 Purpose and approach

A literature review should do more than list sources. It should identify what scholars have argued, the methods and materials on which they rely, points of agreement and disagreement, and the questions that remain insufficiently examined. This chapter draws on the sources already identified in the submitted synopsis and adds primary judicial and statutory materials. The accessible abstracts and bibliographic records of some articles provide only partial information about their methods and evidence. Where the full text has not been independently reviewed, the discussion is limited to what can be supported by the available record. Before submission, the student should read the full articles through the LPU library or a lawful publisher access route and add details required by the University's guidelines.

2.2 Swarati Sabhapandit (2023)

The submitted synopsis identifies Swarati Sabhapandit's work, "Criminalising Marital Rape in India," as a source addressing bodily autonomy, dignity and freedom of choice. This line of scholarship places the marital rape exception within a wider debate about whether a person's rights change because sexual conduct takes place within marriage. Its value for Political Science lies in connecting individual rights with social hierarchy and the public role of law.

The central contribution of this approach is to question whether privacy and the social importance of marriage should shield coercive conduct from legal scrutiny. A limitation to keep in view is that a rights-based argument alone does not answer every question about criminal-law design. A complete policy analysis must also consider definitions, evidentiary standards, support for complainants, fair-trial rights and the practical capacity of institutions. The full bibliographic details and the article's precise claims should be checked against the original publication before final submission.

2.3 Vijay P. Singh (2022)

Vijay P. Singh's article "Judicial Approaches to the Criminalisation of Marital Rape" appeared in the Indian Journal of Gender Studies, volume 29, issue 1, pages 10–32, and was first published online in December 2021. The publisher record identifies the article's purpose as analysing Indian rape law and judicial approaches, and it argues that the exemption is inconsistent with principles of justice and equality. Singh advocates removal of the exception and criminalisation.

This article is especially relevant because it focuses on judicial reasoning rather than only on social attitudes. It offers a basis for examining how courts understand equality, the purpose of rape law and the institutional limits of judicial intervention. For the present dissertation, the article's normative position should be distinguished from the judicial holdings it analyses. A scholarly recommendation to repeal the exception is

not itself a binding legal rule. The student should read the full article and identify the cases, interpretive methods and constitutional principles on which Singh's conclusion rests.

2.4 Kalyani Abhyankar and Anushka Datta (2022)

Kalyani Abhyankar and Anushka Datta's "Marital Rape: Legal Status and Development" was published in the Journal of Victimology and Victim Justice, volume 5, issue 1, pages 71–79. The article's focus on legal status and development makes it relevant to the descriptive account of the exception and the broader debate over reform. It can help situate legal rules within their social and institutional context.

A key methodological caution is necessary when using empirical claims from secondary articles. Statistics from local studies, service-based samples or selected populations cannot automatically be treated as national prevalence estimates. Every figure should be traced to its original source, and the dissertation should report the sample, period and limitations accurately. Where the original data cannot be verified, the figure should be omitted rather than repeated without qualification.

2.5 The 2025 scoping review

The submitted synopsis also refers to a 2025 scoping review titled "A scoping review on exploring the urgency of criminalising marital rape in India," published in Social Sciences & Humanities Open. A scoping review can be useful because it maps the range of research, identifies recurring themes and points the reader toward further sources. It is not necessarily equivalent to a systematic review of the quality or effect of every study it includes.

Before this reference is used in the final dissertation, the full author list, article title, journal details, volume or article number, publication date and DOI must be checked against the publisher's record. The synopsis currently uses the title in place of an author in the in-text citation. APA style normally requires the author or authors in the text where they are available. This is a bibliographic correction, not a reason to assume that the article is unreliable.

2.6 Independent Thought v. Union of India (2017)

The Supreme Court's judgment in Independent Thought v. Union of India concerned the application of the marital rape exception to girls between fifteen and eighteen years of age. The Court read down the exception so that sexual intercourse with a wife below eighteen years of age would be treated as rape under the statutory framework. The Court explained that it was not deciding the larger issue of marital rape involving adult women.

The judgment is important for two reasons. First, it shows that marital status cannot automatically displace every other legal protection, particularly protections directed at children. Second, its express limitation illustrates why judgments must be cited precisely. The case supports analysis of age, bodily integrity and

statutory harmonisation; it does not establish that the adult marital rape exception has already been struck down.

2.7 Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

In Puttaswamy, a nine-judge bench recognised privacy as a constitutionally protected right, associated with dignity, liberty and autonomy. The decision discussed personal choice and the importance of intimate aspects of life. It is relevant to the present study because it provides a constitutional vocabulary for discussing control over one's body and personal decisions.

However, Puttaswamy was not a case about marital rape. It cannot be presented as a direct ruling on the validity of Exception 2 to Section 375 IPC or Exception 2 to Section 63 BNS. The proper analytical use of the case is to ask how its general principles may bear on the constitutional challenge, while recognising that the final application of those principles requires judicial analysis of the specific statute and arguments.

2.8 Suchita Srivastava v. Chandigarh Administration (2009)

Suchita Srivastava concerned reproductive choice in a specific factual context. The Supreme Court recognised the significance of personal autonomy in reproductive decisions under Article 21. The case provides an example of the Court's treatment of bodily decision-making, but it should not be overstated as a decision about marital rape or consent to sexual intercourse within marriage.

The case helps frame a wider constitutional question: how does the law recognise individual decision-making in intimate matters? The analogy is relevant at the level of principle, but the factual and legal differences must remain visible. Good doctrinal research uses cases by identifying both what they establish and what they leave unresolved.

2.9 RIT Foundation v. Union of India and the Delhi High Court split verdict (2022)

The 2022 Delhi High Court decision concerning challenges to the marital rape exception produced two different opinions. Justice Rajiv Shakdher concluded that the exception was unconstitutional, while Justice C. Hari Shankar upheld it. The split reveals competing views about equality, the meaning of marriage, the relationship between statutory classification and constitutional rights, and the proper role of courts in criminal-law reform.

The disagreement also exposes a broader institutional issue. One approach views judicial review as necessary where a statutory exception is inconsistent with constitutional guarantees. The other gives weight to legislative choice and the possible consequences of removing the exception through judicial decision. The present dissertation should analyse the reasoning of both opinions, not merely report which judge reached which conclusion. The primary judgment should be read directly, and paragraph references should be added to the final version.

2.10 Arguments against criminalisation and policy concerns

A balanced literature review must engage with concerns raised by opponents or critics of criminalisation. These may include the argument that criminal law is a blunt instrument for addressing complex marital relationships; concern about the evidentiary difficulty of offences occurring in private; the possibility of misuse; and the view that legal reform should be accompanied by broader social and institutional changes. These arguments differ in strength and should not be grouped together as though they were identical.

The claim that an offence may be difficult to prove is not, by itself, proof that the conduct should be excluded from criminal law. Many offences occur without independent witnesses, and legal systems respond through rules of evidence and procedure. Conversely, recognising a rights violation does not eliminate the need for fair investigation, reliable evidence and due process. The policy question is how to protect rights while preserving safeguards against arbitrary prosecution and wrongful conviction.

The debate about misuse should also be handled carefully. Any criminal law may be misused, but a general possibility is not a substitute for evidence about frequency or institutional patterns. The dissertation should avoid unsupported claims about the scale of false allegations. If reliable data are located, their definitions, time periods and limitations should be discussed. In the absence of suitable data, the issue should be treated as a policy concern rather than a proven empirical conclusion.

2.11 Research gap

The sources identified in the synopsis discuss constitutional equality, judicial reasoning, bodily autonomy and the legal status of the exception. The research gap for this dissertation is not that no one has studied marital rape in India. Rather, the proposed contribution is a focused Political Science synthesis of three linked dimensions: the constitutional treatment of individual rights, the institutional roles of courts and legislatures, and the public-policy requirements of any legal reform.

This synthesis can help clarify why the dispute cannot be resolved solely by invoking either the sanctity of marriage or the abstract importance of autonomy. It asks what reasons can justify differential legal treatment, how constitutional review should be applied to a contested social institution, and what implementation questions must accompany reform. The gap should be finalised only after the student has completed a broader database search and read the full texts of the key sources.

2.12 Summary of literature

The literature and cases provide several recurring themes: the continuing importance of consent, the relationship between equality and marital status, the relevance of privacy and autonomy, the contested role of judicial review, and the need to consider criminal-law implementation. There is broad disagreement about the proper legal response, and the final dissertation should represent that disagreement accurately. The chapter's central conclusion is that the debate requires a combined analysis of rights, institutional competence and policy design rather than a purely symbolic argument.

Thematic synthesis: equality and autonomy

A first theme across the literature is the difference between formal equality and substantive equality. Formal equality asks whether the same rule applies to people in comparable situations. Substantive equality also considers whether the rule preserves an entrenched disadvantage or denies meaningful protection to a group. In the marital rape debate, the exception is criticised because it gives marital status a decisive role in defining a sexual offence. The counterargument is that marriage creates a distinct context in which criminal law must be drafted with attention to family relationships and the risk of misuse. The literature therefore identifies a conflict between equal protection and context-sensitive legal design.

Thematic synthesis: privacy and the family

A second theme concerns the boundary between privacy and protection. Privacy safeguards intimate choices from unnecessary state interference. It can protect consenting adults from intrusive regulation, but it may also be invoked to resist intervention where coercion occurs inside the household. The analytical challenge is to distinguish privacy as a right held by individuals from privacy as a blanket immunity for relationships. The literature supports closer attention to the person whose bodily autonomy is affected, rather than assuming that family privacy always speaks with one voice.

Thematic synthesis: evidence and implementation

A third theme is the difficulty of translating a normative claim into an effective legal remedy. Sexual violence often occurs without independent witnesses, and survivors may delay disclosure for reasons including fear, dependency and concern for children. These circumstances create evidentiary challenges, but difficulty of proof is not unique to offences occurring within marriage. A balanced review must consider corroboration myths, trauma-informed interviewing, independent medical evidence where relevant, digital evidence, and the right of the accused to a fair trial. The literature indicates that criminalisation and implementation must be assessed together.

CHAPTER 3 — WORK PLAN AND RESEARCH METHODOLOGY

3.1 Research design

The study uses a qualitative, descriptive and analytical design. Its principal method is doctrinal legal research, which examines the text of legislation, constitutional provisions, judicial decisions and authoritative commentary. The Political Science orientation is maintained by analysing institutions, power, public policy, constitutional governance and the relationship between state authority and social norms.

The study does not use a quantitative survey or a representative sample of individuals. It therefore does not make statistical claims about prevalence, public opinion or the rate of false allegations. Secondary empirical research may be discussed where it is relevant and methodologically transparent, but it will not be treated as data collected by the researcher.

3.2 Sources of information

Primary sources include the Constitution of India, the Bharatiya Nyaya Sanhita, 2023, relevant provisions of the former Indian Penal Code, Supreme Court and High Court judgments, and official parliamentary or government documents where relevant. Primary sources are given priority when establishing the current legal position.

Secondary sources include peer-reviewed journal articles, academic books, law reviews, research reports and credible policy analysis. News reporting may help identify recent procedural developments, but legal conclusions should be checked against judgments, official court orders or statutory texts. Where a publisher abstract is the only source available, the dissertation must not claim to have evaluated methods or findings that are not visible in that abstract.

3.3 Selection criteria

Sources are selected purposively according to relevance to the research questions, legal authority, credibility, publication date and availability of sufficient information. Priority is given to binding decisions and the statutory text for propositions of law. Academic sources are used to explain competing interpretations and policy arguments. Sources that repeat unsupported figures or make claims without traceable evidence are not relied upon for factual conclusions.

3.4 Method of analysis

The materials are organised into four themes. The first is the statutory framework and historical development of the exception. The second is the constitutional framework, particularly equality, non-discrimination, dignity, privacy and personal liberty. The third is judicial reasoning and the allocation of responsibility between courts and legislatures. The fourth is the practical design of possible legal reform, including investigation, evidentiary questions, survivor support and due process.

For each major judgment, the analysis should identify the issue before the court, the legal provision considered, the reasoning adopted, the holding, and the limits of the decision. For each academic source, the analysis should identify the author's central argument, the material or method used where available, the source's contribution, and its limitations. This approach prevents the literature review from becoming a list of summaries.

3.5 Ethical considerations

The topic involves sexual violence and may be distressing to readers. The dissertation should use respectful, non-sensational language and avoid victim-blaming assumptions. No personal testimony is collected for this project. The research uses public legal and academic materials. Any quotations must be accurately reproduced, clearly identified and cited. Borrowed ideas must be acknowledged even when paraphrased.

3.6 Limitations

The study relies on publicly available materials and does not conduct interviews, fieldwork or a survey. It cannot establish the prevalence of marital rape or make claims about the experiences of all married women in India. Some academic articles may be available only through abstracts or limited access; the student must obtain and read the full texts before making detailed claims about their methodology or findings. The legal position may change as the Supreme Court considers the pending challenges.

3.7 Work plan

1. Stage 1: Confirm the approved title, objectives and chapter structure with the supervisor.
2. Stage 2: Collect the statutory text, primary judgments and official case-status material.
3. Stage 3: Retrieve and read full texts of the academic literature, recording complete bibliographic details.
4. Stage 4: Analyse the material under the four themes described above.
5. Stage 5: Draft and revise the chapters, checking that conclusions follow from the evidence.
6. Stage 6: Verify all citations, update the legal position, obtain the required originality report and incorporate supervisor feedback.
7. Stage 7: Complete the declaration, supervisor certificate, summary and other LPU-required annexures before submission.

3.8 Chapter conclusion

The methodology is designed to answer the research questions through a transparent analysis of authoritative legal texts and academic literature. Its limitations are explicit: it does not produce new empirical prevalence data, and it cannot anticipate the outcome of pending litigation. The strength of the study will depend on accurate source verification, clear distinctions between law and opinion, and a reasoned comparison of competing arguments.

Operationalising the method

For each major legal source, the analysis records the rule or principle stated, the issue before the court or legislature, the reasoning relevant to consent and marital status, and the limits of what can safely be inferred. This approach reduces the risk of treating an observation in a judgment as if it were a binding holding. It also makes it possible to distinguish the legal position under the former IPC from the current framework under the BNS. Where secondary sources differ or a citation is incomplete, the dissertation treats the point as requiring verification rather than presenting it as settled fact.

Research integrity and transparency

The study relies on publicly available legal and academic materials and does not present invented interviews, fieldwork, or statistical findings. The findings are interpretive conclusions from the sources reviewed. A final submission should include complete bibliographic details, consistent citation style, and an originality report generated through the university's authorised process. These steps are part of research integrity and cannot be replaced by a claim that a draft has been checked by an automated detector.

CHAPTER 4 — RESULTS AND DISCUSSION

4.1 Introduction

In a doctrinal dissertation, "results" are the conclusions that emerge from a structured examination of legal texts and scholarship, rather than the output of a survey or laboratory experiment. This chapter reports the principal findings from the materials reviewed and discusses their significance for constitutional democracy. The analysis is provisional until the student has verified the full texts of all cited cases and academic sources and updated the legal status immediately before submission.

4.2 Finding one: marital status remains a statutory distinction

The first finding is that the statutory exception expressly treats certain sexual acts by a husband with his adult wife differently from comparable conduct outside the exception. This is not a conclusion inferred from social commentary; it follows from the wording of Exception 2 to Section 63 BNS. The policy debate must therefore address the legal significance of marital status rather than treating the controversy as only a dispute about social attitudes.

The existence of a statutory distinction does not by itself determine constitutionality. Legislatures may make classifications for legitimate reasons, but a classification remains open to constitutional scrutiny. The central question is whether the distinction is consistent with the equality guarantee and the rights implicated by the law. A proper analysis must consider the objective claimed for the exception, the connection between the classification and that objective, and the effect of the rule on the individuals it governs.

4.3 Finding two: constitutional principles are relevant but not self-executing

The second finding is that Articles 14, 15 and 21, together with case law on privacy and autonomy, provide a substantial framework for evaluating the exception. Equality asks whether different legal treatment can be justified. Article 21 directs attention to liberty and dignity. Puttaswamy recognises the constitutional significance of privacy and intimate personal choice. Suchita Srivastava demonstrates the importance of autonomy in a specific reproductive-rights context.

However, the relevance of these principles must be distinguished from a final ruling on the exception. Neither Puttaswamy nor Suchita Srivastava directly decided the adult marital rape question. Independent Thought dealt with the position of wives below eighteen years of age and expressly left the adult question open. The dissertation's analysis should therefore be framed as a constitutional evaluation of the exception, not as a statement that existing Supreme Court precedent has already invalidated it.

4.4 Finding three: the judicial record reflects genuine institutional disagreement

The Delhi High Court's split verdict in 2022 shows that the issue has generated disagreement about both substantive rights and institutional roles. The position favouring invalidation places weight on constitutional equality and the autonomy of the individual. The position upholding the exception gives greater weight to

legislative choice, the distinct legal status of marriage and the consequences of judicially removing a criminal-law exception.

This disagreement illustrates a core Political Science problem: how should constitutional courts respond when a legislative rule is challenged as inconsistent with fundamental rights? Judicial review protects constitutional limits, but criminal law also involves policy choices about definitions, penalties and implementation. The debate should not be reduced to the assertion that either courts or legislatures always have the final moral answer. The relevant question is how their respective constitutional responsibilities interact in this specific context.

4.5 Finding four: the arguments for reform centre on consent and equal legal personhood

The principal rights-based argument for reform is that marriage should not operate as continuing or irrevocable consent to sexual activity. Consent is act-specific and may change over time. If the law excludes conduct from the rape offence because of marital status, critics argue that it gives marriage a legal effect that would not be accepted in other intimate relationships. From this perspective, the exception risks treating the wife's sexual autonomy as subordinate to the institution of marriage.

The equality argument is closely related. A legal distinction between married and unmarried women may be questioned if it results in materially different protection against non-consensual sexual conduct. The question is not whether marriage is socially important, but whether that importance justifies this particular difference in criminal-law treatment. A constitutionally sound argument must engage with the actual purposes advanced for the exception and explain why they do or do not justify the resulting differential treatment.

4.6 Finding five: objections require more than a general appeal to privacy

One objection to criminalisation is that the state should avoid unnecessary intrusion into private marital life. Yet privacy has more than one dimension. It can protect individuals from unjustified state intrusion, but it can also protect intimate autonomy and personal decision-making. Puttaswamy treats privacy as connected with dignity and autonomy, while also recognising that rights may be subject to lawful and proportionate limitations. Accordingly, "privacy" does not automatically settle the debate in favour of non-intervention.

A careful policy assessment should ask whose privacy is being protected and what interests are affected. The privacy of a household cannot simply be equated with the freedom of one spouse to exercise control over the other. Equally, state intervention should not be unlimited. The legal framework must define offences clearly, protect confidentiality where appropriate, provide fair procedures, and ensure that the investigation and trial process do not create avoidable harm.

4.7 Finding six: implementation and due process are essential

A further finding is that recognition of a legal wrong and the design of an effective criminal process are separate but connected tasks. Critics of criminalisation raise concerns about proof, false allegations,

relationship conflict and the risk of misuse. Those concerns warrant serious consideration, but they must be supported by evidence rather than generalisations. The same evidentiary difficulty may be present in other offences committed in private; difficulty of proof does not automatically justify a categorical exemption.

Any reform would require clear statutory drafting, rules governing consent and evidence, appropriate training for police and prosecutors, access to legal assistance, privacy-sensitive procedures and support services. Due process protections are not concessions opposed to survivor protection. They are part of a legitimate criminal-justice system. The challenge is to design a framework that takes allegations seriously while requiring fair investigation and proof according to the applicable standard.

4.8 Finding seven: criminal law cannot operate alone

The literature and policy debate indicate that criminal-law reform, by itself, cannot eliminate the social conditions that may make disclosure difficult or access to justice uneven. Support services, legal aid, counselling where desired, accessible reporting mechanisms, professional training and public education may all be relevant. These measures should not be treated as substitutes for legal protection; rather, they address different parts of the problem.

Policy design should also recognise that people face different economic and social constraints. Dependence on a spouse, concern about children, stigma, housing insecurity and fear of retaliation may affect a person's ability to seek assistance. The dissertation does not independently measure these experiences, but they are relevant implementation issues that should be explored through credible research rather than assumed to be identical in every case.

4.9 The role of Parliament and the judiciary

Parliament has the institutional role of enacting and amending criminal statutes. It can consider definitions, penalties, safeguards, support mechanisms and the resources needed for implementation. Courts interpret legislation and determine whether it complies with constitutional limits. The marital rape debate asks whether the exception falls within the permissible range of legislative choice or whether it violates rights in a way that requires judicial intervention.

A legislative response may allow more detailed consideration of offence design and implementation, but legislative competence does not remove constitutional limits. Judicial invalidation may protect rights against a constitutionally impermissible classification, but courts must also consider the implications of their remedy and the text of the statute. These institutional questions are central to the dissertation's Political Science approach.

4.10 Comparative perspectives: limited and contextual use

Comparative law can provide examples of different approaches to marital rape, including jurisdictions that have removed marital exemptions and jurisdictions that have retained different forms of exception. However,

comparisons must be made carefully. Legal systems differ in criminal procedure, definitions of consent, evidentiary rules, social services and the relationship between constitutional review and legislation. A rule adopted elsewhere cannot simply be copied without examining these differences.

If the final dissertation includes a comparative section, it should select a small number of jurisdictions for a clear reason and use primary legislation or authoritative legal sources. It should identify the specific reform, the safeguards adopted and the available evidence about implementation. The present draft does not assert a comparative empirical conclusion because that would require a separately verified set of jurisdiction-specific sources.

4.11 Current legal status and research cut-off

As of the date of this draft, 28 October 2026, public reports indicate that the Supreme Court's connected challenges to the marital rape exception remained pending, with final hearing reported as scheduled for 18 November 2026. The reported date is prospective. The dissertation must not state that the Court has decided the constitutional issue unless a subsequent official judgment confirms that result. Before submission, check the Supreme Court's case-status system and latest order, then update this section, the abstract and the conclusion consistently.

4.12 Overall discussion

The findings suggest that the issue involves at least four connected questions: whether marital status provides a defensible basis for different criminal-law treatment; how constitutional rights apply to intimate relationships; which institution should resolve the dispute; and how a rights-protective legal framework can operate fairly in practice. These questions should be considered together. A purely symbolic account may overlook implementation, while an account focused only on implementation may fail to address the constitutional significance of the exception.

The strongest conclusion supported by the materials is that the exception raises substantial questions requiring transparent constitutional and policy reasoning. The sources reviewed do not permit a claim that all practical objections have been answered, nor do they establish that the legal status has already changed. The dissertation should maintain this distinction between a reasoned normative assessment and a statement of binding law.

4.13 Chapter conclusion

This chapter has identified a clear statutory distinction, relevant constitutional principles, genuine judicial disagreement and practical concerns that any reform must address. The analysis supports the view that marriage cannot, by itself, end the constitutional relevance of individual dignity and autonomy. It also shows that effective reform requires attention to fair procedures and institutional capacity. The final legal position remains subject to the latest Supreme Court developments and must be updated before submission.

4.14 Deeper constitutional analysis: equality and classification

An equality analysis should begin with the precise legal distinction rather than a general statement that men and women should be treated equally. The exception is framed around the relationship between the accused and the complainant and the complainant's age. The constitutional question is whether the relationship-based distinction is rationally connected to a legitimate objective and whether it is compatible with the broader requirements of equal protection. A complete analysis must identify the purpose attributed to the exception and examine whether that purpose can justify excluding a category of non-consensual sexual acts from the rape offence.

One possible argument in favour of the exception is that marriage is a distinctive legal and social relationship that involves reciprocal obligations and that criminal law should take this context into account. Yet recognition of a distinctive relationship does not automatically justify treating consent differently. The question remains whether the distinction is necessary and proportionate to the objective advanced. If the underlying concern is that criminal law should not intrude unnecessarily into marital life, the analysis must also consider the consequences for a spouse whose refusal is ignored. The constitutional inquiry therefore requires attention to both the asserted purpose and the actual distribution of legal protection.

Equality analysis should also avoid treating married women as a homogeneous group. The practical consequences of the exception may vary according to income, access to legal assistance, family support, disability, age, location and other circumstances. This dissertation does not generate original empirical evidence about those differences. It can nevertheless recognise them as questions for policy design and future empirical research, while avoiding unsupported claims about their frequency or magnitude.

The equality issue is also connected to substantive rather than merely formal equality. A formally neutral reference to marriage may have gendered consequences where the provision describes the husband as the actor and the wife as the person whose consent is at issue. The analysis should ask whether the legal rule reinforces a view that marriage creates a special entitlement to sexual access. That question is not answered simply by noting that the exception has historical origins; it requires an evaluation of whether the historical rationale remains defensible under contemporary constitutional principles.

4.15 Article 21: dignity, liberty and bodily autonomy

Article 21 has developed into a central source of protection for life and personal liberty. Judicial decisions have associated it with dignity and important aspects of personal autonomy. In this context, bodily autonomy means the ability of a person to make decisions about their body without coercion. The concept is relevant to sexual consent because consent must remain a voluntary choice, rather than an assumption derived from a person's status or relationship.

The use of Article 21 in this dissertation should be precise. It is appropriate to say that dignity and autonomy principles inform the constitutional debate. It would be inaccurate to say that Article 21 has already produced a binding Supreme Court ruling invalidating the adult marital rape exception. The constitutional argument

must be developed by connecting the principles in existing cases to the specific wording, purpose and effects of the exception, while acknowledging that the final determination belongs to the competent court or legislature acting within constitutional limits.

Privacy is sometimes invoked to argue that the state should avoid intervention in marriage. However, privacy also protects personal choice and the integrity of intimate life. This means that privacy cannot be understood only as a shield around a household. It may also support the autonomy of the individual within the household. A sound analysis must distinguish privacy from secrecy and must ask whether the state's intervention is directed at protecting an individual from coercion or at regulating consensual private conduct.

The relationship between dignity and criminal law is not straightforward. A criminal offence can express public condemnation of a serious violation, but criminalisation alone does not guarantee dignity or safety. The way a complaint is received, the conduct of an investigation, the handling of sensitive information and the availability of legal support can all affect the practical protection of dignity. This supports a policy approach in which substantive legal recognition is considered alongside institutional procedures.

4.16 Article 15 and gender justice

Article 15 forms part of the constitutional framework governing discrimination and equality. In a gender-justice analysis, the provision raises the question of whether the marital exception is consistent with the Constitution's commitment to prohibit specified forms of discrimination. The precise legal test and the application of Article 15 must be grounded in the relevant case law rather than assumed from the general purpose of the provision.

Gender justice is broader than the formal wording of a statute. It includes attention to whether legal rules recognise women as independent rights-holders and whether institutions respond effectively to violence and coercion. However, the dissertation should not substitute a broad political aspiration for legal analysis. It must identify the constitutional provision, the legal distinction under review, the authorities that support each interpretation and the limitations of the argument.

The question also involves the relationship between equality and social norms. Social acceptance of a practice does not by itself establish that the practice is constitutionally permissible. At the same time, legal reform may be more effective when accompanied by public education, access to services and institutional training. These considerations support the Political Science view that rights are shaped both by formal rules and by the institutions through which those rules are implemented.

4.17 Consent as a legal and political concept

Consent is central to the dispute because it marks the difference between voluntary sexual activity and conduct imposed on another person. For analytical purposes, consent should be understood as specific to the act in question and capable of being withheld or withdrawn. Marriage may establish a relationship, but it

does not provide a factual basis for assuming that consent has been given to every future act. The legal question is how this principle should be expressed in criminal legislation and applied through fair procedures.

A distinction must be maintained between a normative understanding of consent and the exact elements of a criminal offence. The dissertation uses consent as a key concept in evaluating the exception, but it does not draft a complete statutory definition. Any legislative proposal would need to consider the language of the offence, the relationship between consent and other elements, the applicable evidentiary rules and how the provision interacts with existing offences.

Consent also has a political dimension. It reflects the extent to which a person is recognised as an agent who can make decisions in intimate life. If legal rules treat a person's marital status as overriding refusal, the law may be seen as giving institutional status priority over individual agency. Conversely, criminal-law design must be clear enough that the state's coercive power is exercised on the basis of defined legal elements rather than moral disapproval of a relationship. These two concerns can be addressed together through precise drafting and due process.

4.18 Criminalisation, proportionality and the limits of criminal law

The question whether to criminalise conduct should not be answered solely by asking whether the conduct is harmful. Criminal law imposes serious consequences, so policy makers must consider the seriousness of the harm, the need for legal recognition, the clarity of the offence, the availability of alternatives and the capacity of enforcement institutions. These considerations are especially important where conduct occurs within a relationship and where complainants may face practical barriers to reporting.

The argument that criminal law may be misused requires careful treatment. A risk of misuse is relevant to safeguards, investigation standards and monitoring. It does not, without further evidence, establish that a category of conduct should be excluded from criminal law. Equally, the importance of protecting survivors does not remove the requirement that an accused person receive a fair process. The task is to design institutions that can investigate allegations properly and determine cases on evidence.

A proportionality-based policy assessment would ask whether the proposed legal measure pursues a legitimate aim, whether it is capable of advancing that aim, whether less restrictive measures would be adequate, and whether the benefits justify the burdens imposed. This framework is offered here as an analytical tool, not as a claim that a particular court has adopted it as the controlling test for the marital rape exception. The final dissertation should link any legal test to the authorities that establish it.

Criminalisation should also be distinguished from conviction. Defining an offence makes prosecution legally possible; it does not establish guilt in an individual case. The quality of investigation, evidentiary assessment, legal representation and judicial reasoning remains important. A public debate that treats every complaint as proof or every allegation as inherently false fails to respect the purpose of a fair criminal-justice system.

4.19 Access to justice and survivor-centred implementation

Formal recognition of a right is only one part of access to justice. A person may be uncertain about the law, fear social stigma, lack financial resources or lack confidence that institutions will respond sensitively. These barriers are not unique to marital rape, but they are important considerations in evaluating the practical operation of any legal remedy. This dissertation does not quantify these barriers; it identifies them as implementation issues that should be supported by further research.

A survivor-centred approach means that institutions should communicate respectfully, avoid blaming language, protect sensitive information where legally possible and provide information about available support. It does not mean abandoning the requirements of evidence or fair trial. Rather, it recognises that a lawful process can be both procedurally fair and attentive to the needs of a person reporting sexual violence.

Training for police, prosecutors, legal-aid providers and health professionals may improve the consistency of institutional responses. Referral systems can help connect people to legal assistance, medical services, counselling where desired and safe accommodation where needed. The design and availability of such services vary by location, so the dissertation should avoid assuming that a service exists or is equally accessible everywhere. Any concrete recommendation should be linked to verified policy sources.

Confidentiality and privacy also require careful handling. Public disclosure of personal information can expose complainants to stigma or retaliation. At the same time, procedural transparency and the rights of the accused remain important. Legal rules and institutional practice must balance these interests in accordance with the governing law rather than rely on a blanket assertion that every detail should be public or private.

4.20 Evidentiary questions and fair-trial safeguards

Sexual offences often occur in settings where there may be no independent eyewitness. This can make the assessment of evidence complex, but it is not unique to marital relationships. Investigators and courts must consider the available evidence, the consistency and context of accounts, relevant corroborating material where it exists, and the legal standards that apply. The absence of a witness should not automatically determine the outcome in either direction.

A fair process requires that allegations be investigated without prejudgment, that evidence be assessed under the applicable rules, and that the accused have the procedural rights guaranteed by law. It also requires that complainants are not subjected to irrelevant or degrading assumptions about how a person in a marriage should behave. The precise legal rules about admissibility, corroboration and examination must be drawn from primary legislation and binding judgments; this dissertation should not state a universal evidentiary rule without authority.

Claims about false allegations should be handled with similar care. Administrative categories used in police records may not always correspond neatly to a judicial finding that an allegation was deliberately false. A case that is closed, withdrawn, unproven or results in acquittal is not automatically evidence of malicious

fabrication. Any empirical claim about false allegations must define the category being measured and use reliable data. Without such data, the dissertation should discuss the need for safeguards without asserting a rate.

These safeguards are not an argument against recognising non-consensual conduct as a serious harm. They are part of the design of a legitimate criminal-justice response. The policy question is whether fair procedures can be developed to protect individual rights while preventing arbitrary or discriminatory use of state power.

4.21 Social attitudes, stigma and the public sphere

Public attitudes influence how legal issues are understood and whether people believe that a complaint will be taken seriously. Expectations about marital duty, family honour and the preservation of a household may affect public discussion. Yet attitudes are diverse and may change over time; the dissertation should not claim that all members of Indian society hold the same view. Any assertion about public opinion should be based on a suitable survey or credible study, not on anecdote.

The issue also demonstrates how private experiences can become matters of public debate. Advocacy groups, lawyers, researchers, journalists and political representatives help shape which harms receive legislative attention. Courts may be asked to resolve constitutional disputes that legislatures have not addressed, while public debate may influence the perceived legitimacy of judicial or legislative action. This process is relevant to agenda-setting and the role of civil society in a democracy.

Public discussion can become polarised when the issue is framed as a simple choice between the sanctity of marriage and the rights of women. That framing obscures the possibility that a stable and respectful marriage is compatible with the recognition of consent, and that a legal response can be designed with due-process protections. Academic analysis should clarify the assumptions behind public arguments and avoid using emotive language as a substitute for evidence.

The political significance of the issue lies partly in the question of whose experience is treated as legally visible. When a category of harm is excluded from a particular offence, the law may communicate that the conduct is less worthy of public recognition. Whether that effect is constitutionally decisive is a separate legal question, but the expressive role of law is a legitimate subject of political analysis.

4.22 Legislative design options

Several broad legislative paths can be identified without assuming which one a court or Parliament must choose. One option is to remove the marital exception and apply the general rape provision to spouses, subject to the ordinary legal elements and procedures. Another is to amend the statutory framework through a specifically drafted offence or related provisions. A third approach might combine changes to criminal law with additional procedural and support measures. Each option would require detailed drafting and careful assessment of how it interacts with existing law.

A reform proposal should clarify the conduct covered, the role of consent, the relationship between the offence and other criminal provisions, the relevant age thresholds and the applicable procedures. It should also consider whether the proposed language creates unintended gaps or inconsistent treatment. The objective should be clarity and constitutional coherence, not merely symbolic change.

Any proposal must be assessed in the institutional context of Indian criminal law. Definitions, investigative powers, evidentiary rules, sentencing and support services are connected parts of a system. A change to one section may have consequences for other provisions and for cases already pending. This is why the final dissertation should avoid presenting a short policy preference as a complete legislative solution.

The dissertation's contribution is analytical rather than legislative. It identifies criteria by which proposed reforms can be assessed: constitutional compatibility, clarity, consistency with related law, enforceability, due process, accessibility of support and the availability of reliable evaluation. These criteria can guide future research without pretending that the present study has resolved every drafting question.

4.23 Monitoring and evaluating reform

If legal reform is adopted, its effectiveness should be evaluated rather than assumed. Possible indicators may include awareness of the law, access to legal assistance, institutional training, time taken to process cases, quality of survivor support and consistency of investigation. The number of complaints alone would not provide a complete measure of success or failure, because reporting rates can be influenced by trust, awareness and social pressures.

Evaluation would need safeguards for privacy and careful interpretation of data. An increase in reports after a legal change could reflect greater awareness or willingness to report rather than an increase in the underlying incidence of harm. A decrease could reflect deterrence, but it could also reflect barriers to reporting. Data should therefore be interpreted with context and, where possible, supplemented by qualitative research.

The present dissertation does not have the data necessary to perform such an evaluation. It identifies monitoring as a future policy requirement. A later study could compare institutional practices over time, examine the availability of support services or analyse how courts interpret any amended provision. Such work would benefit from clearly defined indicators and transparent methods.

4.24 Expanded synthesis of the literature

The rights-based scholarship places consent, dignity and equal legal protection at the centre of the debate. Its strongest contribution is to challenge the assumption that marital status should reduce the legal significance of refusal. The limitation of a purely normative argument is that it may not fully specify how a criminal provision should be implemented. This does not undermine the rights-based position; it identifies the need to connect constitutional principles to institutional design.

Judicial scholarship contributes by showing how courts interpret the exception and how legal arguments are framed. The Delhi High Court split verdict illustrates that the disagreement is not merely between advocates and opponents of reform; it also involves competing interpretations of constitutional rights and the role of the judiciary. However, academic analysis of a judgment should not be confused with the binding status of the judgment itself.

The constitutional cases on privacy and autonomy provide important principles but differ in subject matter from the marital rape challenge. Their use requires careful analogy: a researcher may explain why a principle is relevant while acknowledging that the precedent does not directly decide the issue. Independent Thought is similarly important but limited to the under-eighteen context. The overall literature therefore supports a focused question about the interaction of rights, marital status and institutional authority, while leaving the final legal resolution dependent on the competent institutions.

The resulting research gap is a need for a structured Political Science analysis that combines the doctrinal question with questions of governance and policy. This study contributes by organising the material around constitutional equality, personal autonomy, institutional responsibility and implementation. It does not claim to be the first or only study on marital rape in India, and it should not make that claim without a systematic literature search.

4.25 Chapter conclusion: consolidated findings

The expanded analysis reinforces five conclusions. First, the statutory exception creates a clear distinction that must be justified through constitutional and policy reasoning. Second, equality, dignity and autonomy are relevant principles, but the cases discussed do not amount to a final ruling on the adult exception. Third, the judicial disagreement reflects questions of institutional competence as well as rights. Fourth, concerns about implementation and misuse require evidence and careful safeguards, not unsupported generalisations. Fifth, any effective policy response must connect legal recognition with fair procedure, support services and evaluation. These conclusions provide the basis for the final chapter, while remaining subject to source verification and any change in the law before submission.

4.26 Institutional capacity and the implementation gap

A legal reform is effective only when institutions are able to translate formal rights into accessible remedies. In the context of sexual violence within marriage, the implementation question is especially important because the alleged perpetrator may share a home, finances, children, family networks and social standing with the complainant. A complaint may therefore involve immediate questions of safety, housing, income, child care and continued contact. The law must be assessed not only by the wording of an offence but also by the practical conditions under which a person can report, obtain protection, participate in proceedings and rebuild daily life.

Institutional capacity includes trained police personnel, sensitive medical services, accessible legal aid, functioning protection mechanisms, interpreters where required, safe waiting areas and clear referral pathways. Training should explain that marriage is not a substitute for consent and that the absence of visible injury does not, by itself, determine whether an allegation is true or false. At the same time, training should reinforce impartial investigation, accurate recording of statements and the presumption of innocence. Survivor-sensitive practice and fair-trial standards are not mutually exclusive; both are necessary for legitimate criminal justice.

The implementation gap can also be geographic. A person living in a rural area may have fewer confidential services and may depend on the same local networks as the person against whom a complaint is made. Travel costs, lost wages, stigma and fear of disclosure can deter participation. A policy response should therefore be evaluated for availability outside major cities and for the extent to which services are reachable without prohibitive expense. Legal aid must be meaningful rather than merely formal, with clear information about procedure, likely timelines and available protection.

For political science, this is a question of state capacity and citizenship. A right written in legislation may remain unevenly distributed if access depends on income, location, education or family support. The state's duty is not exhausted by declaring a norm; it must build institutions that allow the norm to be used. Any proposal for reform should accordingly identify responsible agencies, training requirements, funding, monitoring arrangements and routes for complaints about institutional misconduct.

4.27 Marriage, privacy and the limits of family autonomy

The idea of family privacy has a legitimate place in constitutional democracy. Families need space for intimate association, personal choices and ordinary disagreements without unnecessary state interference. However, privacy cannot be treated as a blanket exemption from general legal duties. The key distinction is between protecting consensual private life and immunising coercion or violence from public scrutiny. A state that refuses to respond to serious harm merely because it occurs inside a home risks converting privacy from a protection for individuals into a shield for the more powerful member of a household.

Marriage is both a personal relationship and a legal institution. It can create mutual responsibilities, but it does not erase the independent legal personality of either spouse. A democratic constitutional order must ask whether a rule gives one person a power that would be unacceptable if exercised by a stranger. This comparison does not mean that every sexual offence in every setting must be investigated identically. It does mean that the existence of a marital relationship requires a reasoned justification when it changes the criminal-law consequences of the same non-consensual conduct.

The privacy argument should therefore be examined through its purpose and effects. If privacy is invoked to protect the couple from intrusive state regulation, the question remains whether the person experiencing coercion has an equal ability to invoke that protection. If the law recognises only the household's collective privacy and not the individual's bodily autonomy, it may silence the person whose interests are most directly

affected. The proper constitutional inquiry is not whether the state should enter private life without limits, but when serious harm justifies a carefully designed legal response.

This distinction also guards against an overly simple opposition between family preservation and criminalisation. A legal response to violence does not require the state to prescribe a single model of marriage or to treat all marital conflict as criminal. It requires a principled threshold for serious non-consensual conduct, procedural safeguards, and non-criminal support for circumstances that do not meet that threshold. The policy challenge is to protect intimate autonomy without allowing the language of family unity to negate individual rights.

4.28 Federalism, legislative competence and democratic responsibility

The debate also raises questions about institutional responsibility. Criminal law and criminal procedure operate within India's constitutional distribution of legislative powers, while policing and public order have important state-level dimensions. A reform proposal must therefore be drafted with attention to the constitutional allocation of authority, the relationship between central legislation and state implementation, and the administrative consequences for police, prosecution, courts and support services. These matters are not reasons to avoid reform; they are part of designing a workable and constitutionally sound framework.

Parliament has a central role in defining offences and ensuring that statutory distinctions are justified. Courts interpret legislation, test constitutional validity and provide remedies in individual cases, but adjudication is constrained by the pleadings, record and interpretive methods available in a particular proceeding. Where a legal rule involves broad questions of offence definition, sentencing, evidence and institutional resources, legislative deliberation can provide a forum for detailed policy design. Judicial review remains important because legislative choices must conform to constitutional guarantees, but the two institutions perform different functions.

Democratic responsibility requires more than a vote on whether an exception should be retained or removed. Legislators should consider how the offence is defined, what mental element is required, how consent is assessed, how false or malicious allegations are handled without deterring genuine complainants, and what protections are available during investigation and trial. Committee scrutiny, consultation with survivor groups, legal practitioners, researchers, medical professionals and civil-liberties organisations can improve the evidentiary basis of reform. Consultation should be transparent about disagreements rather than claiming a false consensus.

A federal implementation plan should set minimum standards while permitting local adaptation in service delivery. Training modules, standard operating procedures, data definitions and referral protocols can reduce inconsistent treatment. States should report on implementation using privacy-protective and carefully defined indicators. Public reporting must avoid identifying survivors or exposing intimate case details. In this way, federalism can be understood not simply as a division of power but as a structure for accountability and learning.

4.29 Data, measurement and responsible public policy

Reliable data are necessary for assessing the scale of a problem and the effect of legal change. Yet data concerning sexual violence are difficult to interpret. Police-recorded cases measure reporting and registration as well as underlying incidence; a rise in recorded complaints after reform may indicate increased trust or awareness rather than a rise in the prevalence of violence. Conversely, low recorded numbers cannot establish that harm is rare. Surveys, administrative data, court records and qualitative research each illuminate different aspects and should not be treated as interchangeable.

A responsible evaluation framework should distinguish inputs, processes, outputs and outcomes. Inputs include budgets, trained personnel and service availability. Processes include whether complaints are recorded promptly, whether risk assessments occur and whether legal aid is accessible. Outputs may include cases investigated, protection measures granted and cases reaching trial. Outcomes are harder to measure and may include survivor-reported safety, confidence in institutions, timeliness, and the extent to which people can access services without discrimination. No single indicator can establish success on its own.

Data collection must also avoid perverse incentives. A target based only on conviction rates can pressure officials to discourage complaints, while a target based only on registration can reward quantity without improving investigation quality. The objective should be lawful, fair and accessible process rather than a predetermined result in every case. Independent evaluation, clear definitions and periodic review can help identify whether procedures are working as intended and whether unintended harms are emerging.

Privacy and research ethics are central. Data should be aggregated where possible, identifying details should be protected, and public reports should not expose complainants to stigma or retaliation. Researchers should acknowledge under-reporting, selection bias and the limits of official data. These safeguards strengthen rather than weaken public accountability: credible policy depends on information that is both useful and collected without creating further harm.

4.30 A balanced framework for reform assessment

A balanced framework for assessing reform can be organised around five questions. First, is the legal distinction supported by a constitutionally legitimate purpose and a reasoned connection between that purpose and the classification? Second, does the framework recognise the agency and bodily autonomy of each spouse? Third, are definitions clear enough to guide citizens and officials while avoiding unnecessary ambiguity? Fourth, are procedural safeguards available to both complainants and accused persons? Fifth, have implementation requirements and support services been identified rather than left as an afterthought? These questions turn a polarised debate into a structured policy assessment.

The first two questions concern substantive justice. A distinction that rests on an assumed permanent consent within marriage requires a strong justification because consent is ordinarily understood as specific and capable of being withheld. At the same time, the analysis should identify the precise legal rule under examination and avoid implying that all aspects of marital intimacy are matters for criminal prosecution. A

carefully defined offence can distinguish serious non-consensual conduct from conduct that does not meet the legal threshold.

The third and fourth questions concern legality and procedural fairness. Criminal offences should be sufficiently clear, investigations should be impartial, evidence should be tested in court and decisions should be reasoned. Neither a survivor-centred approach nor the presumption of innocence should be reduced to a slogan. A fair system must take allegations seriously while avoiding prejudgment. Support and protection can be provided where appropriate without deciding criminal guilt before trial.

The fifth question concerns institutional realism. Legislation without training, legal aid, protection and monitoring may produce symbolic rather than effective equality. Conversely, implementation challenges should prompt investment and careful design, not an assumption that a rights problem should remain legally invisible. The most defensible policy is therefore one that links the principle of equal protection with a precise offence definition, fair procedure, support infrastructure and transparent evaluation.

A practical evaluation matrix

A proposed reform should be evaluated against at least six criteria: rights protection, clarity of the offence, proportionality of punishment, procedural fairness, institutional capacity and accessibility of remedies. Rights protection asks whether the law recognises the complainant as an autonomous person. Clarity asks whether the prohibited conduct and relevant mental element are stated precisely. Proportionality asks whether the available penalties reflect the seriousness and circumstances of the offence. Procedural fairness considers both the complainant's access to a meaningful process and the accused person's protection against arbitrary action. Institutional capacity examines whether police, prosecutors, courts and support services can implement the framework. Accessibility asks whether remedies are realistically available across differences of income, language, location and social position.

Why the criteria must be considered together

A rule may be strong in principle but weak in implementation if reporting systems are inaccessible. Conversely, procedural safeguards may be carefully designed yet fail to protect rights if the offence itself excludes a class of victims. A policy evaluation should therefore avoid treating any single criterion as decisive. The six criteria can be used by legislators, parliamentary committees, researchers and civil society organisations to compare alternative models without assuming in advance that one institutional solution will resolve every problem.

Consultation and public reasoning

Consultation should include survivors and support organisations, legal practitioners, academics, police and prosecution officials, medical professionals, child and family welfare bodies, and groups concerned with civil liberties and fair-trial rights. Consultation does not mean that every submission has equal evidentiary value; it means that the decision-maker should explain how competing concerns were considered. Published

reasons, impact assessment and periodic review can improve legitimacy and allow the policy to be revised in light of implementation experience.

5.7 Practical recommendations for future policy and research

Future policy should begin with an explicit statement that marriage does not create an irrebuttable presumption of sexual consent. If the legislature defines a specific criminal offence, the provision should identify the prohibited conduct, relevant mental element and applicable defences with sufficient clarity. Drafting should be informed by constitutional principles and by the practical operation of related offences, protection measures and family-law remedies. It should also explain how the new or revised provision interacts with existing criminal statutes to avoid gaps and contradictory procedures.

Second, implementation should be accompanied by a funded training programme for police, prosecutors, judicial officers, medical professionals and legal-aid providers. Training should be developed with relevant expertise and evaluated periodically. Third, complainants should be able to obtain confidential information, safety planning and legal advice at an early stage. Service design should take account of rural access, disability, language, economic dependence and the possibility of coercive control within the household.

Fourth, procedural safeguards should be clearly stated and consistently applied. Investigators should collect relevant evidence without relying on stereotypes about how a ‘real’ survivor behaves. Courts should assess credibility on the evidence and applicable legal principles, not on assumptions about marriage, sexual history or delayed reporting. Accused persons must have a meaningful opportunity to know and answer the case against them. Fair procedure is essential to legitimacy and public confidence.

Fifth, the government should publish periodic, privacy-protective data on registration, investigation, case duration, legal-aid access and service availability, accompanied by methodological notes. Independent research should examine not only conviction outcomes but also the experience of navigating institutions and the reasons people may not report. Any evaluation should be cautious about causal claims, because changes in awareness, reporting practices and social conditions can affect recorded data independently of legal reform.

Finally, future academic research should include carefully designed empirical studies, regional comparisons and interviews conducted only under appropriate ethical safeguards. This dissertation is primarily doctrinal and analytical; it cannot substitute for representative survey research or establish the prevalence of marital sexual violence. Subsequent work could examine how survivors understand available remedies, how police and legal-aid institutions interpret consent, and how statutory change affects access to justice over time.

4.31 The meaning of consent in an ongoing relationship

Consent is best understood as a decision about a particular act at a particular time. It is not a permanent status conferred by a past decision, including the decision to marry. This principle is familiar in discussions of medical treatment, bodily integrity and personal liberty: agreement to one intervention does not automatically

authorise another. In intimate relationships, consent may be communicated verbally or non-verbally, but the central question remains whether participation is voluntary. The law must avoid equating silence, lack of physical resistance or the existence of a relationship with agreement. At the same time, a criminal trial must assess the evidence in the individual case and apply the required standard of proof. A sound legal framework can recognise the continuing nature of consent while preserving the presumption of innocence and the requirement that the prosecution establish the offence.

4.32 The limits of the implied-consent argument

The implied-consent argument assumes that entry into marriage includes an ongoing agreement to sexual relations. This assumption is difficult to reconcile with the idea that consent is personal and revocable. Marriage creates mutual duties and responsibilities, but it does not follow that one spouse can exercise physical control over the other. The existence of a duty of care or fidelity does not ordinarily authorise coercion. If the law treats marriage as a continuing substitute for consent, it risks creating a status-based exception that is not available in other intimate relationships. Critics of reform may respond that marriage is a distinctive institution with expectations of intimacy. Those expectations can be recognised socially without treating them as irrevocable legal permission.

4.33 The difference between moral wrong and legal offence

Not every morally objectionable act should be criminalised. Criminal law carries stigma, investigation powers and potential imprisonment, so lawmakers should define offences carefully and consider whether less coercive remedies can address the harm. However, the fact that a relationship is intimate does not itself establish that criminal law is inappropriate. The relevant inquiry is whether the conduct involves sufficiently serious harm, whether criminalisation is a proportionate response, and whether the offence can be framed with adequate clarity. In the marital rape debate, the issue is not simply whether conduct is immoral; it is whether a person should be excluded from the protection of rape law because of marital status. This distinction helps avoid both over-criminalisation and the assumption that private conduct must remain beyond public protection.

4.34 Marriage, dependency and practical choice

The formal ability to leave a relationship does not always amount to a realistic option. A person may lack independent income, housing, access to transport, childcare or family support. Social stigma and concerns about children can also affect decision-making. These factors do not mean that married women lack agency; rather, they show that agency is exercised within material and social conditions. Public policy should therefore avoid judging a complainant's credibility solely by whether she remained in the relationship, delayed disclosure or continued contact with the accused. Such behaviour may have many explanations and must be evaluated in context. Accessible legal aid, safe accommodation, counselling and financial support can make the protection offered by law more meaningful.

4.35 Intersectional differences in access to justice

The experience of legal protection is not uniform. Caste, class, disability, language, geography, age, migration status and access to digital services may shape whether a person can report abuse and navigate institutions. A survivor living in a remote area may face transport costs and limited access to specialist services. A person with a disability may need communication support or accessible facilities. Economic disadvantage may make repeated court appearances especially difficult. These differences are relevant to the design and delivery of remedies. They should not be used to make unsupported assumptions about the prevalence of marital rape in any particular community. Instead, they support an inclusive approach to legal aid, accessible reporting, interpretation services and confidential support.

4.36 Institutional training and survivor treatment

The quality of implementation depends partly on the conduct of frontline officials. Police officers, medical professionals, prosecutors and court staff need a clear understanding of consent, trauma, confidentiality and the limits of stereotypes. Training should explain that a delayed complaint does not automatically establish fabrication and that a complainant's marital status does not resolve the question of consent. Training must also reinforce the need to investigate fairly, record evidence accurately and avoid prejudging the accused. One-time sensitisation sessions may be insufficient; institutions need protocols, supervision, complaint mechanisms and periodic evaluation. Training outcomes should be assessed through case-file audits, user feedback and other lawful indicators, while protecting personal data.

4.37 Confidentiality and privacy in proceedings

Cases involving sexual violence raise serious privacy concerns. Unnecessary disclosure of identifying information can expose complainants to stigma, retaliation or pressure from family and community members. Confidentiality protections should be applied consistently with law and the requirements of a fair trial. Digital records, messaging applications and medical documents may contain highly sensitive information, so access and retention practices require clear safeguards. Privacy should not be interpreted as secrecy that prevents accountability, but neither should public interest be used as a reason for indiscriminate exposure of intimate details. A careful balance can protect dignity while allowing the evidence necessary for adjudication to be tested.

4.38 False allegations and the design of safeguards

Concerns about false allegations are frequently raised in debates on sexual offences. A fair policy response should neither dismiss the concern nor assume that it justifies a categorical exclusion from legal protection. The same principles of evidence, investigation and proof apply: allegations must be investigated impartially, the prosecution must establish guilt beyond reasonable doubt, and deliberate fabrication can be addressed under applicable law where proved. At the same time, an acquittal does not by itself establish that a complaint was knowingly false. Safeguards should target arbitrary action and unreliable evidence without creating a

presumption that complainants in a particular category are untrustworthy. Clear offence definitions, recorded procedures and judicial oversight are more defensible than broad claims about inevitable misuse.

4.39 The role of legal aid and support services

Criminal law is only one part of the justice pathway. A person considering a complaint may need confidential advice about protection orders, maintenance, residence, child-related matters, medical care and safe housing. Legal aid can help explain options without pressuring a person to pursue a particular course. Support services should respect the survivor's autonomy and should not make reconciliation a condition of assistance. In some situations, a complainant may choose to remain in the relationship; in others, separation may be necessary for safety. A rights-based service system should respond to the person's circumstances rather than treating one outcome as universally appropriate.

4.40 Policy monitoring and measurable outcomes

Any reform should include a plan for monitoring implementation. Possible indicators include the number of complaints registered, time taken to complete investigations, access to legal aid, availability of support services, case outcomes and complainant experiences. These figures require careful interpretation. An increase in reported cases may reflect greater trust and awareness rather than an increase in incidence; a low number of cases may indicate under-reporting rather than absence of harm. Data should be disaggregated only where lawful, ethically justified and safe for individuals. Independent evaluation can identify bottlenecks and recommend adjustments, but it should not reduce justice to a single numerical target.

4.41 Legislative clarity under the Bharatiya Nyaya Sanhita

The shift from the IPC to the BNS makes precise statutory analysis essential. Earlier case law remains relevant for constitutional principles and historical development, but provisions must be cited using the correct statute and legal context. Section 63 of the BNS defines rape and retains an exception for sexual intercourse or sexual acts by a man with his own wife where she is not under eighteen. The exception's constitutional validity and its implications for prosecution have been contested. As at the research cut-off used here, reports indicate that the Supreme Court had scheduled a final hearing for 18 November 2026; that date is future-facing and must be checked again immediately before submission. No outcome should be assumed in advance.

4.42 Judicial restraint and constitutional review

Judicial restraint is often defended on the ground that criminal offences and punishments are primarily matters for the legislature. The argument has institutional force because criminal law requires clear drafting, consultation and consideration of consequences. Yet constitutional review exists to ensure that legislation remains within constitutional limits. The challenge is to identify the proper remedy where a statutory exception is alleged to violate equality or liberty. A court may consider whether a provision can be interpreted

consistently with the Constitution, whether it must be read down, or whether legislative action is required. The available options depend on the text, precedent and constitutional doctrine. Political analysis should recognise both the legitimacy of institutional boundaries and the role of courts in protecting fundamental rights.

4.43 Parliament, consultation and democratic legitimacy

A legislative response can benefit from transparent consultation with affected communities, legal experts, civil society, law-enforcement agencies and organisations concerned with due process. Consultation should be structured so that competing arguments are assessed on their merits and the resulting policy choices are explained. A parliamentary committee can consider definitions, evidentiary issues, sentencing ranges, the interaction with domestic-violence law and the resources required for implementation. Democratic legitimacy is strengthened when reasons are public and the law can be evaluated after enactment. It is weakened when complex questions are reduced to general claims about culture or the assumed fragility of marriage without considering the rights of individuals within it.

4.44 Comparative law: lessons and cautions

Comparative experience can illuminate possible legal models, but it should not be used as a shortcut to a conclusion. Countries differ in their definitions of sexual offences, rules of evidence, prosecutorial discretion, family-law remedies and support infrastructure. The removal of a marital exemption may occur alongside broader reforms to consent law, police procedure and victim support. A meaningful comparison should identify what was changed, how it was implemented and what evidence exists about its effects. It should also distinguish formal criminalisation from effective access to justice. The relevant lesson for India is not to copy a foreign provision word for word, but to examine how legal recognition, procedural safeguards and social support can operate together.

4.45 Summary of additional policy findings

The additional analysis reinforces four conclusions. First, consent should be understood as specific and ongoing, not as an automatic consequence of marital status. Second, a criminal-law response requires clarity, proportionality and fair-trial safeguards. Third, effective access to justice depends on services and institutional capacity as well as the wording of the offence. Fourth, policy evaluation must use evidence carefully and should be transparent about the limits of available data. These findings do not predetermine the final constitutional decision; they identify the principles that should inform a responsible legal and political assessment.

4.46 Constitutional morality and social morality

The distinction between constitutional morality and prevailing social morality is important in a plural democracy. Social norms may provide belonging, continuity and shared expectations, but they can also

preserve unequal distributions of authority. Constitutional morality requires public institutions to justify legal distinctions through constitutional principles rather than relying only on the fact that a practice is traditional or widely accepted. In the present debate, the social importance of marriage is relevant context, but it does not independently answer whether the state may distinguish between sexual violence committed within and outside marriage. A constitutional analysis asks whether the distinction protects a legitimate interest, whether it is rationally connected to that interest, and whether it imposes a disproportionate burden on individual rights. These questions should be addressed through legal reasoning and evidence rather than through assumptions that Indian families are uniform or that reform necessarily destroys marriage. Respect for constitutional morality also requires sensitivity to institutional competence. Legislatures are able to consult widely and design detailed procedures, while courts can review constitutionality and ensure that fundamental rights are not displaced by social convention. The two roles can complement each other when the legal framework is grounded in clear reasons and open to democratic scrutiny.

4.47 The meaning of protection under law

Legal protection has both expressive and practical dimensions. Expressively, the law identifies which harms the state considers serious and which individuals are entitled to invoke public protection. Practically, protection requires accessible procedures, competent institutions and remedies that can be used without unreasonable barriers. A person may have formal access to a complaint mechanism but remain unable to use it because of financial dependence, fear of retaliation, lack of transport or uncertainty about legal consequences. Conversely, legal recognition alone cannot guarantee conviction or prevent all future harm. The state must balance a complainant's right to seek protection with the accused person's right to a fair process. These aims are not inherently incompatible. Reliable investigation, prompt access to legal advice, confidential handling of sensitive information and reasoned judicial decisions can strengthen both rights. The central policy question is therefore not simply whether a legal label should be changed, but how a legal framework can make protection meaningful while preventing arbitrary exercise of state power.

4.48 Family preservation and individual rights

Arguments about preserving the family often treat criminalisation as a threat to marital stability. This position deserves careful examination because criminal proceedings can have serious consequences for both spouses and children. However, the stability of a relationship cannot be measured only by whether the parties remain legally married. A relationship maintained through fear, coercion or lack of alternatives may appear stable while the individuals within it experience substantial harm. The law should not presume that every allegation will lead to prosecution or that every prosecution will result in conviction. Nor should it assume that the possibility of prosecution is sufficient reason to withhold legal protection. The appropriate response is to design clear thresholds, fair investigation procedures and complementary support services. The decision whether to continue or leave a marriage should remain a matter for the individuals concerned, subject to

lawful protections and responsibilities. Family policy and individual rights are better understood as related considerations than as necessarily opposing objectives.

4.49 Evidence-based policy in a contested field

Public debate on marital rape often relies on broad prevalence claims, anecdotes or predictions about the consequences of legal change. Each type of evidence has strengths and limitations. Personal accounts can reveal experiences that aggregate statistics do not capture, but they cannot by themselves establish national prevalence. Surveys may provide broader patterns, yet estimates depend on sampling, question wording, privacy and willingness to disclose. Administrative case counts measure recorded interactions with institutions rather than the full incidence of conduct. Predictions about misuse or family breakdown should likewise be tested rather than repeated as certainties. A careful policy process should identify the source, date, method and limits of each statistic; distinguish correlation from causation; and avoid treating an absence of recorded complaints as proof that no problem exists. Where robust data are unavailable, the honest conclusion is that uncertainty remains. Such uncertainty can support better research and monitoring, but it should not automatically determine the legal answer.

4.50 Implementation across urban and rural settings

Implementation conditions vary across India. Urban areas may have more specialist services but can still present barriers involving cost, delay, anonymity and social pressure. Rural areas may face longer distances to police stations, courts, hospitals and legal-aid offices, as well as closer community networks that make confidentiality difficult. These differences caution against assuming that a single reporting pathway will work equally well everywhere. Possible measures include confidential access to legal aid, trained staff at local institutions, referral arrangements with health and support services, accessible information in regional languages and clear procedures for urgent safety concerns. Any new mechanism should be designed in consultation with local service providers and evaluated after implementation. The purpose is not to create different standards of legal protection by location, but to make a common standard practically accessible in varied circumstances.

4.51 Final synthesis of the constitutional and policy debate

The constitutional and policy debate can be understood as a sequence of connected questions. The first is whether marital status should determine the legal classification of non-consensual sexual conduct. The second is how equality, dignity, privacy and personal liberty apply to the statutory distinction. The third is which institution should decide the question and through what process. The fourth is how any reform should be drafted, investigated and adjudicated fairly. The fifth is how the state should support people who seek protection and assess the real-world effects of the law. Treating these questions separately helps avoid false choices. A commitment to individual autonomy does not eliminate the need for fair-trial safeguards; concern for due process does not establish that a categorical marital exception is necessary; and respect for marriage

does not mean that consent can be assumed permanently. A defensible public policy must explain how it protects individuals while maintaining clarity, fairness and institutional accountability.

4.52 Standards for reviewing legal exceptions

A legal exception should be evaluated by examining its text, purpose, effects and constitutional context. The stated purpose may be to recognise the distinctive nature of marriage or to avoid unintended consequences of criminal proceedings. The next question is whether the exception is appropriately connected to that purpose and whether less restrictive alternatives are available. A categorical exception may be administratively simple, but simplicity alone does not establish that it is fair or necessary. More tailored rules, procedural safeguards and clear evidentiary standards may address some concerns without excluding an entire category of complainants from the definition of an offence. The assessment must also consider who bears the cost of the rule. Where an exception limits protection based on marital status, the burden falls on the person whose complaint cannot be treated under the ordinary rape provision. This distribution of benefits and burdens is central to a substantive equality analysis. A reasoned review should state the objective of the exception, the evidence supporting it, the constitutional principles engaged and the practical alternatives considered.

4.53 The importance of clear and accessible legal information

Legal reform is difficult to use if people do not understand what protection is available. Public information should explain the applicable law, the distinction between criminal and civil remedies, the availability of legal aid, and the role of emergency services where immediate danger exists. Information should be accessible to people with different literacy levels and should not presume that a person can safely use a shared phone or online account. Service providers must also avoid giving misleading assurances about the outcome of a complaint. In a changing legal environment, information materials should be reviewed when legislation, judgments or procedures change. Clear information supports autonomy because it enables people to make informed choices about seeking help. It also supports institutional legitimacy by reducing confusion and unrealistic expectations. Legal awareness programmes should be designed as part of a wider support system, not as a substitute for accessible remedies, trained officials and effective investigation.

4.54 Limits of the present study and responsible interpretation

This dissertation is a qualitative, doctrinal and policy-oriented study. It analyses legal texts, judgments and secondary literature but does not include interviews, original survey data or a systematic empirical evaluation of implementation. Its conclusions therefore concern legal reasoning, institutional design and the implications of the sources reviewed. They should not be presented as estimates of prevalence or as proof that a particular reform will produce a specific numerical outcome. Some secondary references identified during drafting require full bibliographic verification, and the legal status of pending proceedings must be checked again immediately before submission. These limitations do not make the study valueless; they define

what it can responsibly claim. A transparent account of method and limits is a strength of academic work because it allows readers to assess the reasoning and identify questions for future research. The final submitted version should include complete citations, the university-required originality report and any supervisor-approved changes to scope or structure.

CHAPTER 5 — CONCLUSION AND FUTURE PERSPECTIVES

5.1 Conclusion

This dissertation examined the marital rape exception in India through the relationship between marriage as a social institution and the rights of individuals. The analysis began with the statutory position under Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023, and considered its relationship with the earlier exception in Section 375 of the IPC. It then examined the relevance of constitutional equality, non-discrimination, dignity, privacy and personal liberty, along with judicial decisions that shape the debate.

The first conclusion is descriptive: the BNS retains a specific exception for sexual intercourse or sexual acts by a man with his own wife where she is not under eighteen years of age. This is the starting point for the legal and constitutional debate. It is important to distinguish the exception from the broader legal framework addressing domestic violence and other forms of abuse, and to avoid implying that no legal remedy of any kind can apply in a marital context.

The second conclusion is that constitutional principles of equality and autonomy are directly relevant to evaluating the exception. Article 14 raises the question of whether the difference in legal treatment is justified. Article 21 provides a framework for considering dignity, liberty and bodily autonomy. Puttaswamy and Suchita Srivastava contribute important principles, but neither directly decides the adult marital rape exception. Independent Thought is important for the position of wives below eighteen and expressly leaves the adult question open.

The third conclusion is institutional. The split verdict of the Delhi High Court in 2022 demonstrates that the dispute concerns not only the content of rights but also the proper relationship between judicial review and legislative decision-making. The pending Supreme Court proceedings make it essential to distinguish current law from arguments about what the law should become. This dissertation does not predict the outcome of those proceedings.

The fourth conclusion concerns policy. A rights-based approach should not dismiss the practical questions surrounding criminal-law reform. Clear statutory language, fair investigation, evidentiary integrity, privacy-sensitive procedures, access to legal support and institutional training are important. These requirements do not negate the importance of individual autonomy; they concern how the legal system can protect rights while preserving due process.

5.2 Response to the research questions

On the first research question, the statutory position is that Exception 2 to Section 63 BNS excludes specified sexual acts by a husband with his adult wife from the definition of rape under that provision. The exact wording should be verified against the official text in the final copy.

On the second question, Articles 14, 15 and 21 supply the central constitutional framework. Equality and non-discrimination concern the justification for different treatment, while dignity, privacy and liberty inform

the assessment of bodily autonomy. The relevant cases provide principles, but the final constitutional application remains contested.

On the third question, arguments for criminalisation focus on consent, equal legal personhood and protection against sexual violence. Arguments against or concerns about reform focus on legislative choice, the structure of marriage, proof, possible misuse and the consequences of criminal-law intervention. The analysis finds that these objections should be examined specifically and empirically, not accepted or rejected through general assertions.

On the fourth question, the judicial record shows a limited ruling in Independent Thought and a divided High Court approach in 2022. These decisions identify important legal principles and disagreements but do not, on their own, establish that the adult exception has been finally invalidated.

On the fifth question, a policy response should consider precise legal definitions, due process, survivor support, privacy and confidentiality, training for institutions, legal aid and monitoring of implementation. The specific design would require further legal and policy work and should not be presented as a complete legislative draft in this dissertation.

5.3 Evaluation of working propositions

The first working proposition—that the exception raises significant constitutional questions—is supported by the statutory distinction, the rights principles discussed in the judgments, and the existence of judicial challenges. This is a conclusion about the seriousness of the constitutional question, not a claim that a court has already ruled on its merits.

The second proposition—that policy assessment must consider both individual rights and fair criminal procedures—is also supported. The literature and judicial debate show that questions of rights and implementation cannot be treated as mutually exclusive. A coherent policy must identify the protected interest, define the prohibited conduct and establish a fair process for determining whether the law has been violated.

5.4 Limitations of the study

The study is doctrinal and qualitative. It does not gather first-hand accounts, conduct interviews or measure prevalence. Its findings depend on the accuracy and completeness of publicly available legal and academic sources. The full texts of all articles referenced in the synopsis must be checked before final submission, particularly where the accessible record is an abstract rather than the complete article. The current procedural position of the Supreme Court proceedings may change, and the dissertation must be updated if a relevant order or judgment is issued.

5.5 Future perspectives

Future research could extend this study in several directions. First, a comparative legal project could examine a small number of jurisdictions and assess how statutory definitions and procedural safeguards operate in practice. Second, empirical research could explore the experiences of survivors and service providers, subject

to ethical approval, informed consent and appropriate safeguards. Third, policy research could examine police training, legal-aid access, health services and referral systems. Fourth, a later doctrinal study could analyse the Supreme Court's final decision once delivered and assess its constitutional reasoning and practical consequences.

A further direction is to examine how criminal-law reform interacts with existing civil protection mechanisms and support services. Such a study should distinguish formal legal rights from the practical ability to access them. It should also avoid assuming that any single reform will resolve broader problems of gender inequality or social dependence.

5.6 Final conclusion

The central issue in the marital rape debate is whether marriage should alter the legal significance of a person's refusal to engage in sexual activity. The social importance of marriage is relevant to public policy, but it does not remove the need to examine the rights and legal personality of each spouse. At the same time, the legitimacy and effectiveness of criminal-law reform depend on careful drafting and fair implementation. The most defensible approach is therefore to assess the exception through constitutional principles, institutional responsibilities and practical safeguards together.

The central question is not whether marriage has social value. It plainly has legal, personal and social significance for many people. The question is whether that significance should determine the legal meaning of consent and the availability of protection against sexual violence. A constitutional democracy can recognise marriage while also recognising that each spouse retains individual legal personhood. The challenge for public institutions is to create a framework that takes coercion seriously, respects constitutional limits, and is implemented fairly.

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