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Beyond Modesty: New Dimensions of the Offence of Rape in India

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Abstract

Indian rape law now speaks the language of consent, yet its architecture still carries the residue of an older legal imagination in which the protected object was female chastity, honour or 'modesty'. This paper argues that rape is more coherently understood as an offence against sexual autonomy, bodily integrity, dignity and equal citizenship. It examines the transition from section 375 of the Indian Penal Code 1860 to section 63 of the Bharatiya Nyaya Sanhita 2023, the new offence of sexual intercourse by deceitful means under section 69, the constitutional controversy surrounding the marital rape exception, gender inclusivity, and the evidentiary and procedural rules intended to reduce secondary victimisation. It also considers emerging forms of coercion, including conditional consent, non-consensual condom removal, digital blackmail, intoxication and reproductive control. Official registered-crime data are used cautiously: they describe police recording, not the prevalence of sexual violence. The paper concludes that the criminal law can function as a shield only where its substantive definition is autonomy-centred, its proof rules reject sexual stereotypes, and its institutions make reporting and adjudication practically safe. Greater punishment without greater certainty, capacity and fairness is a weak kind of protection.

Keywords: Rape; Consent; Sexual Autonomy; Bodily Integrity; Modesty; Bharatiya Nyaya Sanhita; Marital Rape; Deceit; Gender Justice

1. INTRODUCTION

Rape is frequently described as an offence against the body of a woman, but that description is incomplete. The body is the site of the invasion; the juridical injury is the arrogation of authority over another person's sexual decision. A person is treated not as an author of choices but as an object available to force, fear, manipulation or institutional power. Feminist legal theory exposed why a narrow focus on physical resistance, chastity or stranger violence obscures the ordinary structures through which sexual domination operates.¹

The constitutional vocabulary of privacy and dignity supplies a stronger account. Decisional privacy protects intimate choices, while dignity insists that each individual possesses an irreducible status that neither State nor spouse may appropriate. Sexual autonomy is therefore not a fashionable supplement to rape law. It is the principle that explains why identical physical contact may be lawful when chosen and a grave wrong when imposed.²

The title '*a shield towards protecting the modesty of women*' captures a legitimate concern with protection, but 'modesty' is too fragile and paternalistic to bear the full normative weight. It may suggest that the wrong varies with a woman's sexual history, dress, social respectability or compliance with conventional morality. Modern law must protect the woman who is sexually experienced, married, a sex worker, in an intimate relationship, intoxicated, disabled, queer, or otherwise outside the old image of an ideal victim. Her right is not earned by virtue. It inheres in personhood.³

This paper accordingly develops two connected claims. First, the protected interest should be expressed as sexual autonomy, bodily integrity and equality rather than modesty. Secondly, an autonomy-centred definition must be translated into evidence, procedure and institutional practice; otherwise the shift remains largely verbal. Criminal law is a shield, but also a coercive public power. Its legitimacy depends upon protecting complainants without abandoning legality, proof and fair-trial guarantees. That balance is difficult. It is not optional.

2. RESEARCH PROBLEM, QUESTIONS AND METHOD

The central research problem is the disjunction between the rights-oriented language of contemporary rape law and the persistence of status-based exclusions and stereotypes. Section 63 of the Bharatiya Nyaya Sanhita 2023 ('BNS') defines rape through specified penetrative acts and seven vitiating circumstances, including absence of consent, fear, incapacity and minority. Yet it remains gender-specific and preserves an exception for sexual acts by a man with his wife where she is not under eighteen. The paper asks whether that structure adequately protects sexual self-determination, how deception should affect consent, and what reforms are needed to meet newer modes of coercion.⁴

The study is doctrinal and critical. It reads legislation, constitutional decisions and leading criminal cases alongside law-reform reports and feminist scholarship. A limited comparative method is used to test concepts of communicative consent and gender-neutral drafting, not to transplant foreign provisions mechanically. Official statistics are used only to illuminate the scale of recorded state activity and the distribution of registered offences. The hypothesis is that India has completed a substantial expansion of the actus reus of rape but only a partial transformation of its protected interest.

3. FROM MODESTY TO SEXUAL AUTONOMY

The vocabulary of modesty belongs to a broader history in which women's sexuality was organised around family honour and social reputation. In *Major Singh*, the Supreme Court treated modesty as an attribute associated with female sex, an approach that enabled protection even for a child but also tied the legal concept to assumptions about femininity. Modesty offences continue to serve a distinct role in criminal law. The difficulty arises when modesty is used as the foundational explanation of rape, because it directs attention to the victim's supposed moral condition rather than to the accused's usurpation of choice.⁵

The autonomy account reverses that gaze. It asks whether a person voluntarily authorised the particular sexual act in the circumstances in which it occurred.

¹ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 171-183; Susan Estrich, *Real Rape* (Harvard University Press 1987) 4-7.

² *K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1, paras 297-298, 323.

³ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1, paras 22-23.

⁴ Bharatiya Nyaya Sanhita 2023, s 63.

⁵ *State of Punjab v Major Singh* AIR 1967 SC 63.

Prior intimacy does not answer the question. Nor does occupation, reputation, silence in an earlier encounter, or willingness to engage in a different act. The Supreme Court's insistence in *Madhukar Narayan Mardikar* that even a woman described in degrading terms retained privacy and could not be treated as sexually available was an early repudiation of character-based entitlement.⁶

The Mathura case became a defining illustration of the older paradigm. The absence of visible injury and the complainant's alleged habituation to sex were treated as reasons to infer consent. Public criticism showed that submission in a police environment can be produced by authority without dramatic physical struggle. The reforms that followed introduced special rules for custodial settings and shifted part of the evidentiary burden. More importantly, they changed the jurisprudential question from '*why did she not resist enough?*' to '*what made the encounter voluntary, if anything?*'.⁷

Trial practices, however, do not transform at the same speed as statutes. Rape adjudication has historically converted the courtroom into an inquiry about the complainant's biography, sexual respectability and post-assault conduct. Baxi's account of Indian rape trials demonstrates how public legal process can produce a second violation through narration, medicalisation and disbelief. The autonomy model is thus not only a rule of substantive liability; it is a discipline imposed on legal fact-finding.⁸

Later decisions rejected any universal demand for corroboration and recognised that a credible prosecutrix may sustain conviction without independent confirmation. That principle is vital, but it should not become a slogan that predetermines credibility. The correct position is evidentiary equality: testimony must be assessed seriously, without the special suspicion once attached to rape allegations and without a reverse stereotype that bypasses ordinary criminal proof. Autonomy and due process are not adversaries here. Both resist categorical assumptions.⁹

4. STATUTORY EVOLUTION: FROM THE IPC TO THE BNS

The Justice J S Verma Committee supplied the intellectual foundation for the post-2012 transformation. It recommended a broad, consent-based sexual assault framework, greater accountability for public authorities, rejection of invasive medical practices and removal of the marital exception. Parliament adopted important parts of that programme through the Criminal Law (Amendment) Act 2013, although it retained a gender-specific offence and marital immunity. The result was a significant but selective reform.¹⁰

The 2013 amendment expanded rape beyond penile-vaginal penetration. It included penetration by objects or other body parts, manipulation causing penetration and oral application, while providing an express definition of consent as an unequivocal voluntary agreement communicated through words, gestures or verbal or non-verbal communication to participate in the specific sexual act. It also stated that absence of physical resistance alone does not constitute consent. This was a decisive legislative move away from a resistance model.¹¹

Section 63 BNS substantially carries forward that structure. Its breadth matters because the legal wrong is no longer confined to one anatomy or one mechanical form of penetration. The provision also recognises fear of death or hurt, mistaken identity as husband, unsoundness of mind or intoxication, minority and inability to communicate consent. Nonetheless, the statutory grammar remains binary: the perpetrator is a man and the victim a woman. The law therefore expands acts while narrowing subjects.¹²

The BNS retains severe graded punishments, including enhanced sentences for aggravated rape, rape of children, gang rape and repeat offending. Severity expresses condemnation and may incapacitate dangerous offenders. It does not, by itself, produce reporting, careful investigation or accurate adjudication. A system in which cases fail because evidence is badly collected or witnesses are

⁶ State of Maharashtra v Madhukar Narayan Mardikar (1991) 1 SCC 57, para 8.

⁷ Tukaram v State of Maharashtra (1979) 2 SCC 143; Law Commission of India, Rape and Allied Offences: Some Questions of Substantive Law, Procedure and Evidence (84th Report, 1980) paras 1.2-1.7.

⁸ Pratiksha Baxi, Public Secrets of Law: Rape Trials in India (Oxford University Press 2014) 1-20.

⁹ Bharwada Bhoginbhai Hirjibhai v State of Gujarat (1983) 3 SCC 217, paras 9-11; State of Punjab v Gurmit Singh (1996) 2 SCC 384, para 8.

¹⁰ Committee on Amendments to Criminal Law, Report (Government of India, 23 January 2013) 82-115.

¹¹ Criminal Law (Amendment) Act 2013, ss 9-10.

¹² Bharatiya Nyaya Sanhita 2023, s 63.

unsupported cannot repair legitimacy merely by increasing the maximum sentence.¹³

Sections 67 and 68 address sexual intercourse by a husband during separation and by persons in authority, while section 69 creates a new offence where sexual intercourse, not amounting to rape, is procured by deceitful means or by a promise to marry made without intention to fulfil it. This cluster reveals a legislative attempt to map coercion beyond the core offence. Yet the distinctions are conceptually unstable: conduct may fall outside rape because consent legally survives, but inside section 69 because the choice was improperly influenced. The boundary requires careful judicial explanation.¹⁴

The continuity between the IPC and BNS should therefore be stated plainly. The BNS reorganises and renumbers, and section 69 adds a new offence, but section 63 is not a wholly new theory of rape. Several structural questions identified by the Law Commission and the Verma Committee remain. The offence is consent-centred in language, status-limited in coverage, and partially moralised in its treatment of deception. This mix is the new dimension: progress, inheritance and contradiction at once.¹⁵

5. CONSENT, DECEPTION AND EMERGING FORMS OF SEXUAL COERCION

Consent is not the absence of a 'no' mechanically searched for after the event. It is a communicative and contextual authorisation of a particular act. *Kaini Rajan* described consent as an act of reason accompanied by deliberation and distinguished it from passive submission. The statutory explanation now strengthens this view by requiring an unequivocal voluntary agreement. Still, the legal test cannot demand a scripted verbal formula. People communicate through words, conduct and circumstances; the inquiry is whether the accused had a reasonable basis to understand participation as voluntary, not whether the complainant performed an idealised refusal.¹⁶

A communicative model also rejects temporally inflated consent. Agreement yesterday is not a licence

today. Consent to kissing is not consent to penetration; consent to one form of penetration is not consent to another; and the consent may be withdrawn during activity. These statements seem elementary, but old adjudicative habits frequently treat a relationship as blanket permission. The relationship is relevant evidence. It is not a legal substitute for choice on the occasion.¹⁷

The hardest disputes arise where outward participation coexists with pressure that is not conventionally violent. Fear may be generated by employment, housing, immigration position, academic authority, family control or the threatened disclosure of intimate material. Some pressures fall within statutory fear or abuse-of-authority offences; others remain fragmented across criminal intimidation, voyeurism, stalking or information-technology offences. An autonomy analysis asks whether the person retained a meaningful capacity to choose, but criminal legality also demands boundaries precise enough for advance notice. Vague moral discomfort is not enough. Coercive power, however, can be real without a weapon.¹⁸

Conditional consent exposes the same issue. Where intercourse is agreed only on the use of a condom, intentional removal or sabotage changes the physical act, health risk and reproductive consequence that was authorised. Treating the condition as incidental would allow one party to redefine the transaction unilaterally. Indian rape provisions do not expressly name 'stealth', and judicial treatment is not yet settled in a comprehensive way. A principled reading should distinguish deliberate violation of an agreed material condition from accident, misunderstanding or later regret. That distinction is important.¹⁹

Intoxication requires equally disciplined reasoning. Section 63 addresses situations in which intoxication prevents comprehension of the nature and consequences of the act, but real cases lie on a spectrum. Drinking is not an advance waiver of sexual rights. Nor does every degree of intoxication eliminate capacity. Courts should examine cognition, communication, memory, coordination, vulnerability

¹³ Bharatiya Nyaya Sanhita 2023, ss 64-66, 70-71.

¹⁴ Bharatiya Nyaya Sanhita 2023, ss 67-69.

¹⁵ Law Commission of India, Review of Rape Laws (172nd Report, March 2000) paras 2.1-2.3, 3.1-3.3.

¹⁶ *Kaini Rajan v State of Kerala* (2013) 9 SCC 113, paras 12-13.

¹⁷ Jennifer Temkin, *Rape and the Legal Process* (2nd edn, Oxford University Press 2002) 94-122.

¹⁸ Stephen J Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Harvard University Press 1998) 254-283.

¹⁹ Alan Wertheimer, *Consent to Sexual Relations* (Cambridge University Press 2003) 119-145.

and what the accused knew or deliberately ignored. The inquiry is factual. It should not become a morality

trial about why a woman consumed alcohol.²⁰

Deception presents a different problem because the complainant may intentionally participate in the physical act while being mistaken about a fact. The Supreme Court's promise-to-marry cases require proof that the promise was false from inception and bore a direct nexus to the sexual decision. That test prevents every failed relationship from being converted into rape. It also recognises that calculated fraud may corrupt deliberation. The line between false promise and subsequent breach is evidentially difficult, sometimes painfully so.²¹

Recent Supreme Court reasoning continues to stress that prolonged intimacy, changed circumstances or failure to marry cannot alone establish an initial fraudulent intention. This caution is sound. Criminal law should not enforce romantic expectations or restore chastity through prosecution. But the caution should not harden into disbelief where contemporaneous messages, parallel marriages, fabricated identity or demonstrable planning show that deceit was the method used to secure access. Context matters. A lot.²²

Section 69 BNS complicates the terrain by criminalising deceitful sexual intercourse even where the conduct does not amount to rape. 'Deceitful means' includes false promises of employment or promotion and marriage by suppressing identity. The provision

may capture serious exploitative conduct that falls short of vitiated consent under section 63. Yet its breadth risks merging moral disapproval, breach of trust and sexual crime. The prosecution should prove a material deception, intentional inducement, causal reliance and absence of a good-faith explanation. Otherwise the offence becomes a loose penalty for relationships that end badly.²³

Comparative law offers two useful, though not complete, reference points. The United Kingdom defines consent through agreement by choice with freedom and capacity to make that choice, while Canadian law expressly addresses voluntary agreement to the sexual activity in question and limits reliance on mistaken belief where reasonable steps were not taken. Neither formula solves factual ambiguity. They do, however, move attention from the complainant's resistance toward communication, capacity and the accused's basis for belief.²⁴

Digital environments create a newer architecture of pressure. Threats to release intimate images, impersonation, location tracking, grooming and deepfake sexual material may be used to obtain physical sexual access. Official data show an increase in registered cyber-crime cases classified under crimes against women from 2,597 in 2021 to 3,678 in 2023. These counts do not reveal how many involved sexual coercion, and the categories cannot be read as prevalence. Still, the rise shows why rape law cannot be analysed as though coercion occurs only in a room, at one moment, through physical force.²⁵

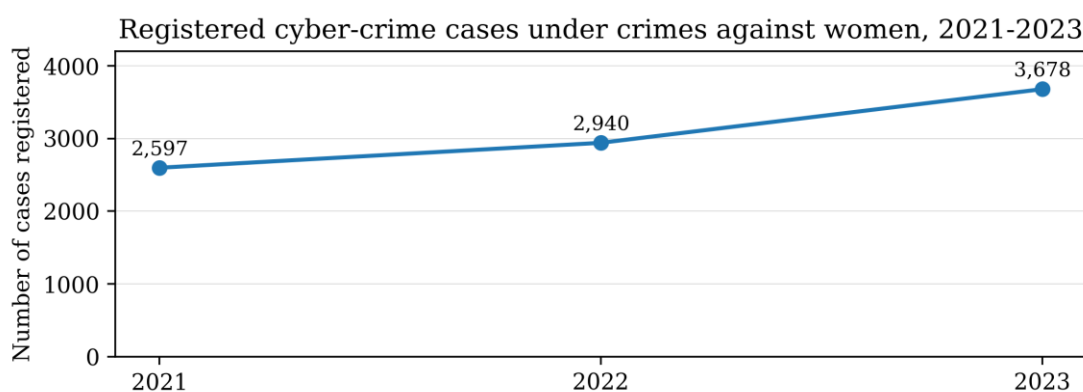


Figure 1. Registered cyber-crime cases under crimes against women, 2021-2023.

Source: Ministry of Home Affairs, based on NCRB data. Figures represent registered cases, not victimisation prevalence.

²⁰ Bharatiya Nyaya Sanhita 2023, s 63.

²¹ Pramod Suryabhan Pawar v State of Maharashtra (2019) 9 SCC 608, paras 14-18.

²² Mahesh Damu Khare v State of Maharashtra 2024 INSC 897, paras 21-24.

²³ Bharatiya Nyaya Sanhita 2023, s 69.

²⁴ Sexual Offences Act 2003, ss 1, 74-76 (UK).

²⁵ Ministry of Home Affairs, 'Crimes against Women and Children' Rajya Sabha Unstarred Question No 390 (3 December 2025) 2
<<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/RS03122025/390.pdf>> accessed 16 July 2026.

Reproductive coercion is another under-theorised dimension. Contraceptive sabotage, forced pregnancy, threats tied to abortion, and pressure to continue or terminate a pregnancy may accompany or follow sexual assault. Not all reproductive abuse is rape, but it can establish the meaning of a sexual condition, the presence of coercion, or the seriousness of stealing. An **autonomy-based law** sees reproductive consequence as part of the choice that was taken away, not as collateral private trouble. The doctrinal categories should talk to each other. At present, they often do not.²⁶

6. THE MARITAL RAPE EXCEPTION AND GENDER INCLUSIVITY

The marital exception is the sharpest contradiction in the autonomy model. Section 63 states that non-consensual penetration is rape and then removes from the offence sexual acts by a man with his own wife, provided she is not under eighteen. *Independent Thought* removed the former age anomaly for child wives, but it did not abolish the adult exception. The law thus makes marital status alter the criminal meaning of non-consent.²⁷

The constitutional challenge produced a split decision in *RIT Foundation*. One opinion regarded the distinction as incompatible with equality, dignity and sexual agency; the other treated legislative choice and the perceived uniqueness of marriage as sufficient reasons for restraint. The disagreement is valuable because it exposes the core issue: whether marriage changes the ontology of consent or merely supplies a factual context in which consent must still be assessed.²⁸

Contemporary constitutional doctrine strongly resists the idea that a married woman transfers control of her sexuality. *Joseph Shine* rejected a proprietary account of marriage, and *Puttaswamy* located intimate decision-making within privacy and dignity. In the abortion context, the Supreme Court has expressly observed that marriage does not transform the contours of consent and has included marital rape within ‘rape’ for the limited purposes of the Medical Termination of

Pregnancy framework. That holding does not itself invalidate the criminal exception, but its reasoning makes the exception increasingly hard to justify.²⁹

Arguments about false complaints, proof in private spaces and disruption of marriage deserve institutional answers, not an immunity. Proof difficulties exist in acquaintance and domestic offences generally; they are managed by ordinary evidentiary standards. A carefully drafted repeal need not presume guilt, create retrospective liability or criminalise consensual marital intimacy. It would simply remove the rule that marriage conclusively defeats the rape charge. Marriage may be evidence. It should not be a defence to absence of consent.³⁰

Gender specificity presents another tension. Women experience rape within structures of pervasive gender inequality, and the law should not erase that reality in pursuit of abstract neutrality. At the same time, male, transgender, intersex and non-binary persons can suffer penetrative sexual violence. A rights-based legal order should provide an equally serious offence for them. Constitutional recognition of sexual orientation, gender identity and equal personhood makes complete exclusion increasingly untenable.³¹

One reform option is a gender-inclusive core offence accompanied by aggravated provisions that recognise gendered, custodial and discriminatory contexts. Another is to retain section 63 for violence against women while enacting an equivalent inclusive penetrative sexual-assault offence. The first offers symmetry; the second may preserve explicit recognition of structural violence but risks hierarchy between victims. POCSO already demonstrates that a gender-neutral protective statute can operate for children, though adult offences raise different social and evidentiary questions.³²

7. EVIDENCE, PROCEDURE AND JUDICIAL STEREOTYPES

A substantive right to refuse sex is ineffective if proof rules invite inquiry into supposed promiscuity. Section 48 of the Bharatiya Sakshya Adhiniyam 2023

²⁶ Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1, paras 22-23.

²⁷ Independent Thought v Union of India (2017) 10 SCC 800, paras 95-105.

²⁸ RIT Foundation v Union of India 2022 SCC OnLine Del 1404.

²⁹ X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi 2022 SCC OnLine SC 1321, paras 73-75.

³⁰ Joseph Shine v Union of India (2019) 3 SCC 39, paras 192-194, 277.

³¹ Navtej Singh Johar v Union of India (2018) 10 SCC 1, paras 245-248, 391-394.

³² Protection of Children from Sexual Offences Act 2012, ss 3-6.

(‘BSA’) makes the victim’s character or previous sexual experience irrelevant to consent or the quality of consent in specified prosecutions. This rule embodies a precise autonomy proposition: consent is act-specific. A prior sexual history cannot authorise the act charged.³³

Section 120 BSA directs a presumption of absence of consent in specified aggravated rape prosecutions where sexual intercourse is proved and the woman states that she did not consent. The presumption responds to the informational imbalance of private violence and the history of special suspicion. Its use must remain confined to its statutory conditions; it is not a general presumption of guilt. The prosecution must still prove the foundational facts and the accused retains the right to rebut according to law.³⁴

Medical evidence has been another site of secondary harm. The so-called two-finger test purported to infer sexual habituation and thereby smuggled character reasoning into clinical examination. *Lillu* held that the practice violates dignity and privacy; *Shailendra Kumar Rai* later condemned it as scientifically baseless and re-traumatising. The absence of genital injury likewise cannot establish consent, because many assaults produce no visible injury and many victims do not resist physically.³⁵

Judicial stereotypes appear not only at trial but also in bail conditions and courtroom language. *Aparna Bhat* rejected directions that encouraged compromise, marriage, fraternal gestures or other narratives in which the survivor is expected to repair social harmony with the accused. Courts must avoid assumptions about how a ‘real’ victim reports, grieves, dresses, speaks or maintains contact. Trauma has no single script. Neither does deception.³⁶

Compromise is particularly problematic in rape cases because it treats prosecution as a negotiable injury to family honour. The Supreme Court has repeatedly stated that marriage or settlement is not an

appropriate basis for reducing the seriousness of rape. This does not deny a survivor’s agency in seeking closure; it recognises that criminal adjudication cannot purchase social respectability by tying her future to the accused. The law should not cure sexual violence through another compelled relationship.³⁷

Procedural protection includes confidential handling of identity, accessible reporting, recording by trained officials, prompt medical care, legal assistance, interpretation and support for disability, and protection against intimidation. *Nipun Saxena* reinforced anonymity obligations. The BNSS also contains special rules for information, statements, medical examination and time-sensitive investigation in sexual offences. Implementation is uneven, however, and procedural rights are often experienced by survivors as requests rather than entitlements.³⁸

The correct adjudicative posture is neither reflexive disbelief nor reflexive conviction. Courts should identify the precise sexual act alleged, the communication surrounding it, the source of fear or misconception, the complainant’s capacity, the accused’s conduct, contemporaneous evidence and post-event behaviour without prescribing how trauma must appear. Reasons must explain why facts support or fail to support voluntariness. This is slower than stereotype. It is also law.

8. REGISTERED DATA, ENFORCEMENT AND THE PROTECTIVE DEFICIT

Official data record 31,677 rape cases in 2021, 31,516 in 2022 and 29,670 in 2023. The apparent decline should not be equated with a decline in incidence. Police statistics are affected by reporting, registration practices, legal classification, investigation and administrative capacity. Sexual violence is also under-reported because of fear, stigma, dependence and distrust. The figures are therefore best treated as a measure of cases entering the formal system, not of the complete social phenomenon.³⁹

³³ Bharatiya Sakshya Adhiniyam 2023, s 48.

³⁴ Bharatiya Sakshya Adhiniyam 2023, s 120.

³⁵ *Lillu alias Rajesh v State of Haryana* (2013) 14 SCC 643, paras 12-14.

³⁶ *Aparna Bhat v State of Madhya Pradesh* (2021) 3 SCC 247, paras 31-44.

³⁷ *Shimbhu v State of Haryana* (2014) 13 SCC 318, para 20; *State of Madhya Pradesh v Madanlal* (2015) 7 SCC 681, paras 18-19.

³⁸ *Nipun Saxena v Union of India* (2019) 2 SCC 703, paras 31-50.

³⁹ Ministry of Home Affairs, ‘Crimes against Women and Children’ Rajya Sabha Unstarred Question No 390 (3 December 2025) 2 <<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/RS03122025/390.pdf>> accessed 16 July 2026.

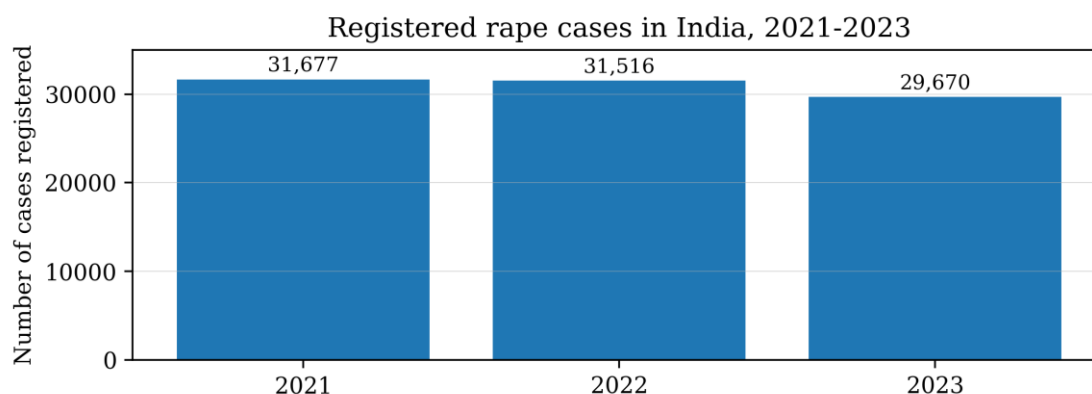


Figure 2. Registered rape cases in India, 2021-2023.

Source: Ministry of Home Affairs, based on NCRB data. Registered-case totals must not be read as prevalence estimates.

The same official table records 448,211 crimes against women in 2023, including 133,676 cases of cruelty by husband or relatives, 88,605 kidnappings or abductions of women, and 83,891 assaults with intent to outrage modesty. Categories differ in elements, seriousness and counting practices, so direct comparison is limited. Their distribution nevertheless shows that sexual autonomy is situated within a broader ecology of domestic control, public harassment, abduction and digital abuse. Rape policy cannot be isolated from those conditions.⁴⁰

A protective criminal law must therefore be assessed by more than the sentence printed in the statute. Relevant measures include the proportion of complaints registered, time to medical examination, forensic turnaround, quality of statements, survivor attrition, witness support, duration of trial, reasoned acquittal and conviction, compensation and post-trial safety. India publishes substantial crime data, but a more integrated justice-pathway dataset would reveal where cases disappear and why. Without it, policy often reacts to headline events rather than institutional patterns.

The emphasis on extreme punishment can also generate perverse effects. Where the accused is a family member, a very high mandatory minimum may make relatives less willing to report or may encourage informal pressure to retract. Severe sanctions can be justified for grave offences, but proportionality and

certainty remain central. Sentencing scholarship in India shows how discretion, stereotypes and social status can produce unequal outcomes even within formally stringent ranges.⁴¹

9. REFORM AGENDA: MAKING THE SHIELD REAL

First, the protected interest should be stated explicitly in policy, training and judicial reasoning as sexual autonomy, bodily integrity and dignity. The word '*modesty*' may remain relevant to separately defined offences, but it should not organise rape doctrine. This conceptual correction affects evidence: a court asks what was authorised, not whether the complainant fits a moral image of womanhood. It also aligns domestic law with the international understanding of gender-based violence as discrimination impairing equal enjoyment of rights.⁴²

Secondly, Parliament should remove the marital rape exception and apply ordinary criminal safeguards. A spouse should neither receive immunity nor face a special presumption of guilt. Existing provisions for separated spouses can be rationalised within the general offence, with aggravation where domestic dependence, repeated abuse or serious harm is proved. Civil domestic-violence remedies and criminal liability serve different functions; the existence of one cannot justify the absence of the other.

⁴⁰ Ministry of Home Affairs, 'Crimes against Women and Children' Rajya Sabha Unstarred Question No 390 (3 December 2025) 2 <<https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/RS03122025/390.pdf>> accessed 16 July 2026.

⁴¹ Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* (Cambridge University Press 2016) 1-17, 219-240.

⁴² Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 1-2; CEDAW Committee, General Recommendation No 35 on gender-based violence against women, updating General Recommendation No 19, UN Doc CEDAW/C/GC/35 (26 July 2017) paras 14-18.

Thirdly, consent doctrine should expressly recognise withdrawal and material conditions. Statutory or authoritative guidance should address condom removal, intoxication, disability, communication through assistive means and abuse of digital threats. The aim is not to produce an exhaustive code of intimacy, which is impossible, but to identify recurring errors and direct courts toward freedom, capacity, communication and reasonable steps. Comparative formulations in Canada, the United Kingdom and South Africa may assist, provided they are adapted to Indian constitutional and social conditions.⁴³

Fourthly, section 69 requires narrowing interpretation or legislative clarification. *'Deceitful means'* should demand intentional material misrepresentation, causal inducement and proof beyond reasonable doubt that the accused possessed the prohibited intention when the representation was made. Mere non-fulfilment, incompatibility, family opposition or a changed decision should not suffice. The law should punish exploitation, not act as a criminal court of broken promises.

Fifthly, adults of every gender should have access to a serious penetrative sexual-offence framework. Drafting can preserve recognition that women are disproportionately subjected to gendered violence while eliminating remedial invisibility for other victims. Police forms, medical protocols, shelters and compensation schemes must be redesigned alongside the offence; formal inclusion without services is decorative equality.

Finally, implementation must be treated as substantive reform. Investigators need training in digital evidence, trauma-informed interviewing and disability access; prosecutors need early case review; courts need enforceable controls on stereotypes and adjournments; survivors need independent support and information. These measures cost money and administrative attention. They are less dramatic than a new maximum sentence. They protect more. Feminist engagement with law has long warned that legal reform can reproduce hierarchy when institutions and social power are ignored.⁴⁴

10. CONCLUSION

The new dimension of rape law is not simply a longer statutory definition. It is the relocation of the legal wrong from damaged modesty to denied authorship over the sexual self. Section 63 BNS captures much of that shift through an expanded actus reus and an express communicative definition of consent. The BSA rejects sexual-history reasoning, and procedural rules seek to make the justice process less hostile. These are substantial achievements.

Yet the transformation is incomplete. The marital exception declares that the same absence of consent changes legal meaning at marriage; gender-specific drafting leaves other victims outside the central offence; section 69 risks moralising failed relationships; and institutional practices can still turn dignity into a paper promise. Emerging coercion through digital threats, reproductive control, conditional consent and authority relations further demonstrates that force is only one method by which sexual choice is defeated.

Rape law can be a shield for women only when protection is not confused with paternalism. A woman does not need criminal law because she is modest; she needs it because she is equal. The law must therefore protect her decision whether she conforms to social expectations or rejects them. It must also judge the accused through precise offences and proof rather than public fury. A rights-based law is demanding in both directions. That is its strength.

The ultimate test is practical: can a person say no, withdraw a yes, attach a material condition, report a violation without humiliation, and receive a reasoned decision within a system capable of finding facts? When the answer is yes, criminal law performs a protective function. When the answer is no, severe words remain severe words. The jurisprudence has moved beyond modesty. The institutions must now catch up.⁴⁵

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