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Criminalization of Matrimonial Conflict and Procedural Attrition in India

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ABSTRACT

The increasing use of criminal law in matrimonial disputes has become one of the most debated developments in contemporary Indian criminal jurisprudence. Matrimonial conflicts, which were traditionally treated as private or civil disputes, are now frequently addressed through criminal law provisions relating to cruelty, domestic violence, dowry harassment, and breach of trust.

While these provisions were enacted to provide urgent protection to women facing abuse and violence within marriage, concerns have simultaneously emerged regarding procedural over-expansion and the large-scale attrition of cases during the criminal process.

This paper examines the phenomenon of criminalization of matrimonial conflict through the lens of procedural attrition. Rather than approaching the issue through the binary debate of “genuine cases” versus “false cases,” the paper analyses how matrimonial disputes enter the criminal justice system and why a significant number of cases fail to survive through the stages of investigation and prosecution. The study adopts a socio-legal and empirical perspective and focuses on the gap between FIR registration and charge-sheet filing.

This paper argues that the problem is not merely one of misuse or abuse of law, but of systemic processing, investigative filtering, evidentiary weakness, social compromise, and the expanding reliance on criminal law to resolve family conflict. The paper further suggests that procedural attrition in matrimonial offence cases reflects a broader tension between gender justice, criminalization, and the practical limitations of the criminal justice system.

Keywords: *Criminalization; Matrimonial Conflict; Procedural Attrition; Investigative Filtering; Section 85 BNS; Domestic Violence; Criminal Justice System.*

I. INTRODUCTION

The relationship between criminal law and family disputes has undergone a major transformation in India over the past few decades. Matrimonial conflict, which was once primarily addressed through family negotiations, civil remedies, or community intervention, is now increasingly processed through criminal law mechanisms. This shift reflects changing

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social realities, growing recognition of domestic violence, and the need to provide legal protection to women facing cruelty within marriage.

The introduction of Section 498A of the Indian Penal Code in 1983 marked a turning point in the legal treatment of matrimonial cruelty.¹ The provision recognized cruelty by the husband or his relatives as a criminal offence and aimed to address dowry-related violence and harassment against married women. With the enactment of the Bharatiya Nyaya Sanhita, 2023, the corresponding provision now exists under Section 85 BNS.²

Over time, criminal law remedies in matrimonial disputes expanded beyond physical violence to include mental cruelty, economic abuse, emotional harassment, and coercive conduct.

Simultaneously, the Protection of Women from Domestic Violence Act, 2005 introduced civil remedies aimed at providing immediate protection and relief to women within domestic relationships.³

However, alongside this expansion of legal protection, courts, scholars, and law enforcement agencies began expressing concerns regarding the increasing criminalization of matrimonial disputes. Judicial observations in several cases referred to the possibility of exaggerated allegations, indiscriminate implication of family members, unnecessary arrests, and the strategic invocation of criminal law during marital breakdown.

Despite the intensity of public and judicial debate, the issue has often been framed in simplistic moral terms, reducing the discussion to whether matrimonial laws are “misused” or not. Such framing overlooks a more important institutional question: how does the criminal justice system actually process matrimonial conflict?

A significant number of matrimonial offence cases registered through FIRs do not ultimately proceed to prosecution or conviction. Many cases experience procedural attrition at different stages of the criminal process, including investigation, charge-sheet filing, framing of charges, or trial. This pattern raises important questions about investigative filtering, evidentiary sustainability, institutional discretion, and the role of criminal law in family disputes.

This paper seeks to move beyond the binary discourse of “true versus false complaints” and instead focuses on procedural attrition within matrimonial offence cases. It examines why a substantial number of such cases fail to survive through the criminal process and what this reveals about the criminalization of matrimonial conflict in India.

¹ LAW COMM'N OF INDIA, REPORT NO. 243, SECTION 498A IPC (2012).

² The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 85 (India).

³ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

II. CRIMINALIZATION OF MATRIMONIAL CONFLICT

Criminalization refers to the process by which certain forms of behaviour are transformed into matters of criminal liability through legal intervention.⁴ In the context of matrimonial disputes, criminalization involves the use of criminal law to regulate and punish conduct arising within marital and domestic relationships.

Historically, family disputes were largely considered private matters beyond the direct involvement of criminal law. Patriarchal social structures often normalized domestic violence, emotional abuse, and coercive control within marriage. Women facing cruelty frequently lacked access to effective remedies due to social stigma, economic dependency, and institutional indifference.

The emergence of feminist legal movements in India significantly influenced the recognition of domestic violence and dowry-related abuse as public and legal concerns.⁵ The enactment of Section 498A IPC reflected an attempt to shift domestic cruelty from the private sphere into the realm of criminal accountability.⁶ Criminal law was viewed as an instrument of deterrence and protection against systemic violence within marriage.

However, the expansion of criminal law into matrimonial disputes also produced new tensions. Matrimonial conflict is often emotionally complex, involving interpersonal relationships, financial dependency, family pressure, social expectations, and ongoing negotiations between spouses. Criminal law, by its nature, operates through accusation, investigation, coercion, arrest, and prosecution. Consequently, when criminal law enters matrimonial disputes, it fundamentally alters the dynamics of the conflict.

The criminalization of matrimonial disputes can therefore be understood in two dimensions. First, it reflects a progressive legal recognition of domestic violence and gender-based abuse. Second, it represents the increasing dependence on punitive legal mechanisms to manage family conflict.

This expansion of criminal law has generated concerns regarding over-criminalization. Over-criminalization refers to situations where criminal law extends into areas that may not always be suitable for punitive intervention. In matrimonial disputes, criminal law may sometimes function not only as a mechanism of justice but also as a tool of pressure, negotiation, settlement, or strategic bargaining.

⁴ UPENDRA BAXI, *THE CRISIS OF THE INDIAN LEGAL SYSTEM* (Vikas Publ'g House 1982).

⁵ KIRTI SINGH, *SEIZING THE WINDOW OF OPPORTUNITY: WOMEN'S RIGHTS, LAW AND POLICY IN INDIA*.

⁶ LAW COMM'N OF INDIA, *supra* note 1.

At the same time, it would be inaccurate to assume that all procedural attrition indicates false complaints or intentional misuse. Matrimonial conflicts frequently involve evidentiary difficulties, emotional reconciliation, social pressure, and compromise between parties. Therefore, procedural attrition may emerge from multiple institutional and social factors rather than from deliberate abuse of law alone.

The challenge lies in understanding how criminal law processes matrimonial conflict and why the criminal justice system experiences high levels of attrition in such cases.

III. LEGAL FRAMEWORK GOVERNING MATRIMONIAL OFFENCES

The legal regulation of matrimonial cruelty in India primarily operates through criminal law provisions and domestic violence legislation.

Section 85 of the Bharatiya Nyaya Sanhita, 2023 criminalizes cruelty by the husband or his relatives toward a married woman. The provision broadly covers conduct likely to drive a woman to suicide, cause grave injury, or subject her to harassment connected with unlawful demands for property or valuable security.

The provision continues the legislative intent underlying Section 498A IPC by recognizing domestic cruelty as a serious criminal offence. The offence is cognizable and non-bailable, reflecting the legislature's attempt to provide immediate legal intervention in situations involving domestic abuse.

In addition to criminal liability under the BNS, the Protection of Women from Domestic Violence Act, 2005 provides civil remedies including protection orders, residence orders, maintenance, and compensation. The Act recognizes physical, emotional, verbal, sexual, and economic abuse within domestic relationships.

The legal framework governing matrimonial disputes also intersects with provisions relating to criminal breach of trust, dowry prohibition, maintenance, divorce, child custody, and family law proceedings. Consequently, matrimonial conflict often becomes multi-dimensional litigation involving both civil and criminal forums.

The judiciary has played a significant role in shaping the interpretation and implementation of matrimonial offence provisions. In *Arnesh Kumar v. State of Bihar*,⁷ the Supreme Court expressed concern regarding unnecessary arrests in Section 498A cases and issued guidelines

⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

aimed at preventing automatic arrests. The Court emphasized the need for police officers to apply their minds before exercising arrest powers.

Similarly, in *Rajesh Sharma v. State of Uttar Pradesh*,⁸ the Supreme Court discussed allegations regarding misuse of matrimonial criminal laws and proposed institutional safeguards. Although some aspects of these directions were later reconsidered,⁹ the judgments reflected judicial concern regarding the expanding use of criminal law in matrimonial disputes.

The legal discourse surrounding matrimonial offences therefore reflects two competing concerns. On one hand lies the need to ensure effective protection against domestic violence and cruelty. On the other lies concern regarding procedural excess, over-criminalization, and institutional misuse.

The tension between these concerns forms the broader context within which procedural attrition in matrimonial offence cases must be understood.

IV. THE CONCEPT OF PROCEDURAL ATTRITION

Procedural attrition refers to the gradual reduction or drop-out of cases as they move through different stages of the criminal justice process.¹⁰ In criminal law, not every complaint registered through an FIR ultimately results in prosecution or conviction. Cases may be filtered out at various stages including investigation, charge-sheet filing, framing of charges, trial, or appeal.¹¹

Procedural attrition is not unique to matrimonial offences. It exists throughout the criminal justice system due to evidentiary weakness, lack of witnesses, investigative failure, hostile testimony, settlement, delay, and institutional limitations. However, the level and nature of attrition in matrimonial offence cases appear particularly significant.

In matrimonial disputes, procedural attrition may occur due to several reasons, including reconciliation between parties; social or familial pressure to settle disputes; insufficient evidence; weak investigation; strategic filing of criminal complaints during marital negotiations; withdrawal of cooperation by complainants; and delays in investigation and prosecution.

The concept of procedural attrition shifts the focus from moral judgments regarding complainants to institutional analysis of how the criminal justice system operates. A stage-wise understanding of attrition is particularly important.

⁸ *Rajesh Sharma v. State of Uttar Pradesh*, (2017) 8 S.C.C. 746 (India).

⁹ *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 S.C.C. 443 (India).

¹⁰ NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA (various years).

¹¹ K.I. VIBHUTE, P.S.A. PILLAI'S CRIMINAL LAW (14th ed., LexisNexis 2019).

FIR Stage. The FIR stage represents the formal entry of matrimonial conflict into the criminal justice system. Registration of an FIR indicates that the complaint discloses a cognizable offence requiring investigation. In matrimonial disputes, FIRs may be registered after prolonged domestic conflict, dowry-related allegations, violence, emotional breakdown, or family intervention. The FIR stage is often emotionally charged and may reflect immediate distress, social pressure, or strategic legal escalation.

Investigation Stage. The investigation stage acts as the first major institutional filter. Police authorities examine evidence, record statements, verify allegations, and determine whether sufficient material exists to proceed further. This stage is crucial because many matrimonial cases experience attrition during investigation. Investigative agencies may conclude that evidence is insufficient, allegations are exaggerated, parties have reconciled, or prosecution is unlikely to succeed. The investigation stage therefore reflects the interaction between legal standards and social realities.

Charge-Sheet Stage. Filing of a charge-sheet indicates that the investigating agency believes sufficient evidence exists to proceed toward prosecution. The gap between FIR registration and charge-sheet filing can reveal important patterns regarding procedural sustainability. A high number of FIRs combined with comparatively lower charge-sheet rates may indicate systemic filtering within the criminal process. However, such attrition cannot automatically be equated with false complaints. Attrition may result from compromise, evidentiary challenges, procedural limitations, or investigative discretion.

Trial and Conviction Stages. Even after charge-sheet filing, many matrimonial offence cases fail to result in conviction. Witness hostility, settlement between parties, prolonged delay, and evidentiary inconsistency often weaken prosecution. Therefore, procedural attrition must be understood as a multi-stage process rather than a single event.

A. Empirical Perspective on Matrimonial Offence Cases

Empirical analysis plays an important role in understanding the practical functioning of criminal law. Much of the debate surrounding matrimonial offences is driven by perception, media narratives, and judicial observations. However, empirical analysis allows examination of how cases are actually processed within the criminal justice system. Statistical data relating to matrimonial offences demonstrates that a large number of FIRs are registered every year under provisions relating to cruelty against married women. Reports of the National Crime Records

Bureau consistently indicate substantial registration of such cases across different states.¹² At the same time, available data also reveals a considerable gap between the number of FIRs registered and the number of cases resulting in successful prosecution or conviction.¹³

This pattern raises several important institutional questions: why do many matrimonial offence cases fail to survive through the criminal process; is investigative filtering functioning as an institutional corrective mechanism; do social compromise and familial pressure influence procedural outcomes; and is criminal law increasingly being used as a negotiation mechanism within matrimonial disputes? Empirical analysis suggests that procedural attrition in matrimonial offences may result from multiple overlapping factors rather than a single explanation.

B. Settlement and Compromise

Matrimonial disputes differ from many conventional criminal offences because the parties often remain socially and emotionally connected even after initiation of criminal proceedings. Family intervention, social pressure, economic dependency, and concerns regarding children frequently encourage compromise. In many cases, parties may attempt reconciliation after FIR registration. Such compromise may reduce complainant participation during investigation or trial, ultimately weakening prosecution.

C. Evidentiary Difficulties

Domestic cruelty often occurs within private spaces lacking independent witnesses. Emotional abuse, verbal harassment, and psychological cruelty are difficult to prove through conventional evidentiary standards. Consequently, investigative agencies may struggle to collect material sufficient for successful prosecution.

D. Strategic Invocation of Criminal Law

Some matrimonial disputes involve parallel litigation concerning maintenance, divorce, custody, or property. In such contexts, criminal proceedings may occasionally function as instruments of legal pressure or bargaining. However, strategic invocation of criminal law does not necessarily imply fabricated allegations. Rather, it reflects the expanding role of criminal law within matrimonial negotiation processes.

E. Institutional Constraints

¹² NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA (latest available ed.).

¹³ *Id.*

Police agencies handling matrimonial offences often face heavy workloads, inadequate training in gender-sensitive investigation, and pressure to encourage settlement rather than prosecution. In some situations, investigators may informally prioritise reconciliation over evidence-based prosecution. Such practices may contribute to procedural attrition.

F. Social Stigma and Withdrawal

Complainants in matrimonial cases frequently encounter pressure from family members, community networks, and social expectations encouraging withdrawal or compromise. Fear of social isolation, financial insecurity, and emotional stress may reduce willingness to pursue prosecution. Therefore, attrition in matrimonial offence cases reflects not only legal factors but also broader social realities.

G. Investigative Filtering and Institutional Discretion

One of the central features of procedural attrition in matrimonial offence cases is investigative filtering. Investigative filtering refers to the process through which police agencies selectively determine which cases proceed toward prosecution.¹⁴ The investigation stage acts as a critical point of institutional discretion. Police officers assess allegations, collect evidence, record witness statements, and evaluate the likelihood of successful prosecution.

In matrimonial disputes, investigative filtering may be influenced by several factors, including the nature of allegations, the availability of evidence, the presence of physical injury, the possibility of compromise, familial pressure, and judicial guidelines discouraging unnecessary arrest.

The Supreme Court's directions in *Arnesh Kumar*¹⁵ significantly altered police practices in matrimonial offence cases. Greater emphasis on scrutiny before arrest and prosecution encouraged more cautious investigative approaches. While such safeguards aim to prevent procedural excess, they may also contribute to higher levels of attrition during investigation.

Investigative filtering therefore occupies an ambiguous position. On one hand, it may prevent unnecessary criminal prosecution in weak cases. On the other hand, excessive filtering may undermine protection for genuine victims of domestic abuse. This tension highlights the complexity of criminal law intervention within family relationships.

H. Over-Criminalization and the Limits of Criminal Law

The criminal justice system is designed primarily to address conduct that threatens public order,

¹⁴ K.D. GAUR, TEXTBOOK ON THE INDIAN PENAL CODE (8th ed., LexisNexis 2023).

¹⁵ *Arnesh Kumar*, *supra* note 7.

bodily integrity, and social security. Matrimonial disputes, however, often involve emotional relationships, ongoing negotiations, and interpersonal complexity. The increasing use of criminal law in matrimonial conflict raises broader concerns regarding over-criminalization.¹⁶ Over-criminalization does not necessarily mean that the law itself is illegitimate. Rather, it refers to the expansion of criminal law into areas where punitive intervention may not always provide effective resolution.

Several factors contribute to over-criminalization in matrimonial disputes, including weak civil enforcement mechanisms; delay in family court proceedings; limited access to effective social support systems; dependence on criminal law for immediate leverage; and societal demand for punitive responses.

In many cases, criminal law becomes the most accessible and immediate legal remedy available to women facing matrimonial conflict. Consequently, criminal complaints may perform functions beyond punishment, including negotiation, protection, emotional assertion, and strategic pressure.

However, criminal law is often poorly equipped to manage emotionally complex domestic relationships. The adversarial structure of criminal prosecution may intensify conflict rather than resolve it. High levels of procedural attrition may therefore indicate deeper structural limitations within the criminal justice system itself.

V. REFRAMING THE DEBATE BEYOND “MISUSE”

Public discussions surrounding matrimonial offences frequently rely on the language of “misuse” or “false cases.” Such framing oversimplifies the institutional and social complexity of matrimonial litigation.

The term “misuse” carries moral and gendered implications that may obscure deeper structural questions. It creates a binary distinction between genuine victims and dishonest complainants while ignoring the procedural realities of criminal litigation.

Procedural attrition should not automatically be equated with fabricated allegations. A case may fail during investigation or prosecution due to compromise, evidentiary difficulty, investigative weakness, social pressure, or institutional limitation.

Therefore, the more meaningful question is not simply whether matrimonial laws are misused, but how criminal law processes matrimonial conflict and why large-scale attrition occurs within

¹⁶ BAXI, *supra* note 4.

the system. This reframing allows a more balanced and institutionally grounded understanding of matrimonial offence litigation.

VI. SUGGESTIONS AND REFORM MEASURES

The issue of procedural attrition in matrimonial offence cases requires balanced and institutionally sensitive reform rather than simplistic moral conclusions.

A. Strengthening Investigation

Police investigation in matrimonial offences should become more evidence-oriented and professionally specialized. Investigators handling domestic violence and matrimonial cruelty cases require training in gender-sensitive evidence collection, psychological abuse assessment, and victim interaction.¹⁷

B. Early Screening Mechanisms

Structured preliminary assessment mechanisms may help identify cases requiring immediate criminal intervention and those suitable for mediation or civil resolution. However, such mechanisms must not undermine access to justice for victims of genuine domestic abuse.

C. Coordination Between Civil and Criminal Remedies

Family courts, mediation centres, and criminal courts often operate independently despite dealing with overlapping disputes. Greater institutional coordination may reduce procedural duplication and conflicting outcomes.

D. Reducing Delay

Prolonged litigation contributes significantly to attrition. Delays increase emotional exhaustion, encourage compromise, and weaken witness participation. Fast-track procedural mechanisms for matrimonial offences may improve institutional efficiency.

E. Data-Based Policy Reform

Criminal justice policy regarding matrimonial offences should rely more heavily on empirical research rather than perception-driven discourse. Stage-wise analysis of FIR registration, charge-sheet filing, and prosecution outcomes can provide more accurate insight into systemic functioning.¹⁸

¹⁷ LAW COMM'N OF INDIA, *supra* note 1.

¹⁸ NAT'L CRIME RECORDS BUREAU, *supra* note 12.

VII. CONCLUSION

The criminalization of matrimonial conflict represents one of the most significant developments in contemporary Indian criminal law. The expansion of criminal law into domestic relationships reflects both the legitimate need to address gender-based violence and the increasing reliance on punitive legal mechanisms to manage family disputes.

At the same time, matrimonial offence cases exhibit significant procedural attrition within the criminal justice system. A substantial number of cases fail to survive through investigation, charge-sheet filing, prosecution, or conviction. This pattern cannot be understood solely through the simplistic language of “misuse” or “false cases.” Procedural attrition in matrimonial offences emerges from a complex interaction of evidentiary weakness, social compromise, investigative filtering, institutional discretion, emotional relationships, and structural limitations within the criminal justice system.

The study of procedural attrition therefore offers a more nuanced understanding of matrimonial litigation. It shifts attention away from moral accusations toward institutional analysis of how criminal law processes domestic conflict.

Ultimately, the challenge lies in developing a balanced legal framework that simultaneously protects victims of domestic abuse, prevents unnecessary procedural excess, and recognises the complex social realities of matrimonial conflict.

A more empirical and process-oriented approach to matrimonial offences may contribute toward more informed criminal justice reform and a more balanced understanding of the relationship between criminal law and family disputes.

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