

Reassessing Marital Rape Laws in India: A Study of Judicial Interpretations Legal Challenges and Medical Implications Under Bns, 2023

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Cite this paper as: Sheetal, Dr. Pratima Devi, (2025) Reassessing Marital Rape Laws in India: A Study of Judicial Interpretations Legal Challenges and Medical Implications Under Bns, 2023, *Journal of Neonatal Surgery*, 14 (27s), 701-710

ABSTRACT

The ongoing debate over the legal status of marital rape in India raises critical issues of gender equality, bodily autonomy, constitutional rights, and public health. India remains one of the few countries retaining the marital rape exception (MRE), even as numerous nations have criminalized non-consensual intercourse within marriage. The retention of this exception in the Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code (IPC), 1860, has reignited discussions about women's empowerment, legislative reform, and the broader societal and medical implications of marital rape. This article critically examines the evolution of marital rape laws in India, focusing on judicial interpretations and the legislative framework under the BNS, 2023. It conducts a comparative analysis of the rape provisions in the BNS and the IPC, evaluating their compliance with constitutional mandates, international human rights standards, and the urgent need to address the physical and psychological health impacts on survivors. Marital rape has significant medical consequences, including physical trauma, reproductive health issues, post-traumatic stress disorder (PTSD), depression, and other mental health conditions, which highlight the need for robust legal and medical interventions. The article further explores the challenges to criminalizing marital rape, such as concerns about the misuse of laws, societal resistance, and the potential implications for the institution of marriage. By incorporating judicial discourse, comparative legal analysis, and medical evidence, this research underscores the necessity of progressive reforms. Recognizing marital rape as a criminal offense is essential for achieving gender justice, protecting human rights, and ensuring holistic societal well-being.

Keywords: Marital Rape, Gender Justice, Medical implication, Legal Reform, Judicial Interpretation.

1. INTRODUCTION

Given the intricate web of relationships between gender rights, constitutional protections, social mores, and the law, the question of whether or not rape occurs within a marriage in India has long been hotly contested. In contrast to many other countries, India's marital rape exception (MRE) protects husbands from legal action in cases of non-consensual sexual relations between spouses. Discussions on this subject have been further increased by the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, which continues to preserve the legal exception for marital rape and so supersedes the Indian Penal Code (IPC), 1860. The autonomy, bodily integrity, and constitutional rights of women under Articles 14, 19, and 21 of the Indian Constitution are seriously jeopardized by this.

When it comes to criminalizing and constitutionalizing marital rape, Indian courts have reached conflicting conclusions. Conflicting legal viewpoints were on display in the 2022 split decision of the Delhi High Court in the RIT Foundation v. Union of India case, where Justice Rajiv Shukla ruled to invalidate the MRE and Justice C. Hari Shankar ruled to uphold it. *Hrishikesh Sahoo v. State of Karnataka* (2022) and similar petitions questioning the marital rape exception are presently being considered by the Supreme Court.

According to Exception 2 of Section 375 of the Indian Penal Code, sexual relations between a husband and wife who are 18 or older are not considered rape under the legal framework of BNS, 2023. This stands in sharp contrast to international law, which recognizes marital rape as a crime in more than 150 nations. Many human rights groups, feminists, and legal experts feel that this exemption undermines India's dedication to gender equality and basic human rights, and they are outraged that it would be maintained under BNS, 2023.

The purpose of this article is to reevaluate the Indian legal and judicial positions on marital rape by looking at how the laws have changed, what the legal framework is like under BNS, 2023, what the courts have said on the matter, and what obstacles have stood in the way of criminalizing it. This study aims to provide light on the legal contradictions and pressing need for reform in India's response to gender-based violence and marital rape by examining constitutional grounds, judicial

precedents, and comparative legal perspectives. Concerns regarding the abuse of laws, the effect on marriage as an institution, and the need to strike a balance between individual rights and constitutional protections are some of the socio-legal issues discussed in the article.

Ultimately, this study highlights the critical importance of immediate action from the judiciary and lawmakers to fill the loopholes in India's legal system and prevent sexual abuse from using marriage as an excuse. If the Supreme Court upholds women's rights to autonomy, equality, and dignity, or if it continues to exempt non-consensual intercourse in marriage from legal scrutiny, the impending decision on the marital rape exception will determine the future trajectory of gender justice in India

2. REVIEW OF RELATED STUDIES

Varnekar, Sunil & Chutia, Upankar. (2024). In India, marital rape—when one partner has sexual contact with another partner without their consent—has been an overlooked but pervasive issue for a long time. Despite some progressive legislation, the ban on marital rape remains a contentious and unsolved topic in Indian law. Considering the implications for gender equality, social justice, and human rights, this essay provides a critical analysis of the urgent need to criminalize marital rape in India. This research examines the historical, sociological, and legal factors that contribute to the persistence of marital rape in India by conducting a thorough literature review, legal legislation analysis, and case study evaluation. The essay concludes by stating that criminalizing marital rape is an important step in ending gender-based violence, empowering married women, and creating a more equitable society in India. Ending society's pervasive culture of impunity and holding married rapists accountable requires urgent legislative action, public discussions, and policy changes.

Kaur, Harmanpreet & Khanday, Farhat. (2023). The holy union of husband and wife and their families is symbolized by marriage. But it can become a source of argument if the marriage was not based on mutual consent or if one or both partners are unhappy. There has always been a strong correlation between males displaying signs of strength and the public's preference for a man-centric framework. The rule of law is an essential tool for social control and political direction all around the world. In India, conjugal assault is among the most heinous forms of violence. As a form of assault, conjugal assault is just as grave as the original assault crime. One of the biggest threats to orientation equity in India is this. In Indian culture, the concept of domestic violence has never been considered a problem. There are a variety of reasons why it is rarely opposed in Indian culture. This is also the case with the Indian legislative body. The Indian Constitution has entrusted the Indian Assembly with the weighty responsibility of approving laws that will contribute to the country's welfare, security, and development. Sadly, the legislative branch shows zero interest in doing anything to end the national tragedy of marital rape. The Indian legal executive shines a light of confidence in this way, but it is constrained in its actions since the council, not the legal executive, has the authority to make regulations. Considering all factors, India does not have any workable regulations. As horrible as conjugal assault is, no amount of legislation in India can prevent it. The issue of marital rape in India requires people to draw on their strengths as they confront mortality. This study examines the evolution of women's rights, focusing on the effects of marital rape and how it violates India's constitution.

Kadamb, Rajpreetkaur. (2022). An analysis of the Indian legal framework around marital rape and its guiding constitutional principles is presented in this article. Sexual relations between a married couple that do not involve the spouse's permission constitute marital rape. It is not necessary to resort to physical force in order to establish a lack of consent. One kind of sexual abuse and domestic violence is marital rape. A quick summary will be provided later on in the essay.

Chihnitha, Mayukha. (2021). The concept of "consent" has been evolving in the eyes of the Indian judiciary. Definitions and clarifications about consent in rape cases have been provided by the criminal court system, which has taken a liberal line. Looking at how the concept of consent has been defined and interpreted in different rulings from the Indian High Courts and the Supreme Court of India, this study explores the potential for extending these same interpretations to cases of marital rape. Some of the decisions, which interpreted consent differently, were also the target of criticism, which this article examines. In this analysis, I will attempt to deduce why the Indian legal system is dragging its feet on the discussion of criminalizing marital rape by relying on the same justification of consent used in rape cases.

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marital rape by relying on the same justification of consent used in rape cases.

Yadav, Chandra. (2017). The decency of a married woman is violated when she is the victim of marital rape. It goes against the wife's trust. Even in such case, it is not considered a crime in India. The question it begs is whether a married woman is treated as mere property or an object. Furthermore, it begs the question of whether a married woman has the right to protect her body from her husband's desires. Undoubtedly, the freedom to have sexual relations with one's spouse is a fundamental component of marriage. This study explores the question of whether the right to have sex can be conditioned on coercion or if it is exclusively dependent on the wife's will or permission. In the context of the right to procreate, the sole function of marriage should be to allow partners to fulfill their biological needs in a socially and legally sanctioned setting. It is true that women in Indian culture hold a certain place in society, but it is also true that men have historically held the majority of power in India. Our topic today is the empowerment of women. Women in India now have a great deal of legal protection. Would women really feel empowered in a male-dominated culture if marital rape was not criminalized? The primary goal of this study is to determine if sexual relations between a husband and wife that do not involve her consent constitute rape. In this study, we will use a doctrinal approach to our research.

3. EVOLUTION OF LEGAL AND SOCIAL PERSPECTIVES ON MARITAL RAPE IN INDIA

Definition

A hotly contested topic all around the globe, marital rape refers to sexual relations that occur within a marriage without the spouse's consent. It makes us wonder about gender equality, the breach of physical autonomy, and how criminal justice systems deal with these kinds of crimes. Considering India's diverse population and intricate social structure, finding a solution to this problem will be no easy feat. Some see the traditional view of marriage as an irrevocable contract allowing unrestricted sexual access to a spouse, and the fact that marital rape was not officially criminalized under Indian law, as an extension of this view.¹ But this view disregards the significance of marital autonomy and consent in relation to one's own body. It is concerning that India does not have particular legislation criminalizing marital rape. This raises issues about the nation's dedication to gender equality and justice. Legal recognition, societal attitudes, and the protection of people's physical autonomy are all greatly affected by marital rape, which is defined as non-consensual sexual intercourse within a marriage.

In order to combat this human rights violation and advance gender equality, it is essential to grasp the conceptual framework of marital rape. Sexual actions performed on one spouse by another without the other spouse's free and voluntary permission are known as marital rape.² Consent is a must in each sexual connection, even those that fall under the umbrella of marriage. Consent should be continuous, enthusiastic, and freely given to show that there is a clear agreement to have sexual relations. Since it disregards the autonomy, bodily integrity, and right to say "no." of an individual, marital rape breaches this concept.

During the British colonial administration in 1800, the Coverture Doctrine brought rape laws to India for the first time. Sexual relations that did not involve the victim's free will or that were coerced into submission by threats of violence or false pretenses were both criminalized as rape. Also included was the idea that rape will not be used to any sexual act—consensual or not—between a husband and wife. Section 375 of the Indian Penal Code, which was passed in 1860, defined rape and included an exception for marital rape. All types of sexual behavior, including penetrative intercourse, are covered under this section. Despite the lack of a definition in the Code for "marital rape," Exception 2 of Section 375 exempts sexual relations between spouses. Additionally, it is worth mentioning that Section 376B, which was inserted in 2013 in response to a suggestion from the 42nd Law Commission Report, does indeed criminalize a husband's engaging in sexual relations with his wife while they are physically separated.

An official body finally recognized the necessity to remove Exception 2 in 2012 after much investigation. After noting that the exclusion arises from an antiquated belief—that women lose their physical autonomy after marriage—the JS Verma Committee initially proposed criminalizing marital rape. Nevertheless, these recommendations were disregarded.

The problem has also not gone away from the courts. Various courts have reached varied conclusions on the matter, with some paving the way for criminalizing rape within marriage.

Case law from the case of *Independent Thought v. Union of India*³ The Supreme Court increased the minimum age to qualify for the exception for rapes committed within marriage. If the wife is more than fifteen years old, then sexual relations between a husband and wife do not constitute rape according to an exception in the Indian Penal Code. From fifteen years old to eighteen, the Supreme Court decided. It was a crucial matter to determine if the court was establishing a new crime by increasing the age. In its 1992 decision, the court reached the same conclusion as the House of Lords.

"The total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanized

¹ Indira Jaising, Marital Rape in India: An Exploration of Legislative and Judicial Initiatives, 12 J. Gender, Soc'y & L. 315, 322 (2004).

² Alok Prasanna Kumar, Marital Rape: A New Offense in the Indian Penal Code, 29 Nat'l L. Sch. India Rev. 51, 52 (2017).

³ (2017) 10 SCC 800



treatment of women will not be tolerated and that the marital rape is violent and an injustice that must be criminalized," the Gujarat High Court said in the case of Nimeshbhai Bharatbhai Desai vs State of Gujarat, which was decided on 2 April 2018.

Much more recently⁴, The accused were denied bail by the Gujarat High Court, which made the observation that "rape is a rape, be it performed by a man the 'husband' against his own 'wife.'" It acknowledged that rape within a marriage is unlawful in numerous nations, including fifty states in the United States and three in Australia, but it rejected the exemption for such crimes offered under Section 375 of the Indian Penal Code (Exception 2). The bench went on to say that the UK had itself repealed this exemption.

But that liberal stance has not been adopted by other courts. It was noted in a case before the Allahabad High Court that Section 375 of the IPC continues to provide an exception for marital rape. In the case of Khusboo Saifi v. The Union Of India & Anr., the Delhi High Court considered a request to remove Section 375's Exception 2 due to concerns that it was unconstitutional⁵, did not want to overturn the clause. Exception 2 to Section 375 is not in violation of the Constitution and is founded on an intelligible differentia, according to Justice C. Hari Shankar's split ruling. Courts still frequently apply Exception 2 of Section 375, even though public opinion on marital rape is shifting.

It should be mentioned that the new law that replaced the IPC, the Bharatiya Nyaya Sanhita, 2023, keeps everything similar. The revised law specifies in Section 63 Exception-2

‘Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.’

With the president's consent, this clause of the Nyaya Sanhita is expected to be put into action. The administration claims that the Code's antiquated and colonial character was the driving force behind the passage of the measure. The government failed to see the need for a reform and chose not to criminalize marital rape.

4. LEGAL FRAMEWORK OF MARITAL RAPE IN INDIA AS PER BNS, 2023

Marriage has always held a special place in Indian society and culture. Unfortunately, women's basic rights to bodily autonomy and freedom from sexual violence have frequently been sacrificed in the sake of preserving the integrity of this relationship. A problematic topic that has plagued the Indian legal system for decades, marital rape has sparked extensive debate and criticism regarding the proposed Bharatiya Nyaya Sanhita (BNS), which aims to replace the old Indian Penal Code (IPC).

A contentious exception remains in Clause 63 of the BNS, which defines rape as an offense; specifically, it does not include rape when a husband forces sexual relations on his adult wife who is beyond the age of 18. Similar to the long-standing exemption in the IPC, this provision has been heavily criticized by human rights groups, legal scholars, and a large section of Indian society. These groups contend that the provision upholds a type of sexual violence that is sanctioned by the state and undermines the basic concepts of consent and bodily integrity.

The Rationale Behind the Exception: A Legacy of Colonial Era Law

The colonial-era regulations and antiquated ideas about marital duties and a wife's lack of independence inside the marriage are the foundations of the BNS's and the IPC's marital rape exception. This caveat dates back to the British past, when spousal rape was practically unknown and women were seen as property by their husbands.

"By marriage, the wife gives implied consent for her husband to exercise a profligate use of marital rights." This was the guiding principle for British MPs as they drafted the IPC in the 19th century. The marital rape exception was based on this highly flawed and antiquated assumption, which continued the harmful tradition of seeing a wife's permission as superfluous when married and essentially denied women the choice to refuse sexual relations with their husbands.

A woman's right to physical integrity and the notion of consent, which is crucial to the definition of rape, are allegedly violated by the BNS's marital rape exception, according to critics. Legalizing coerced sexual relations between spouses reduces women to objects for their husbands' sexual pleasure and strips them of their autonomy and consent. Many women who endure the trauma of marital rape go unjustly punished because this exception upholds the idea that marriage is a permit for non-consensual sex, which is a type of domestic violence that is sanctioned by the state. It undermines a woman's human rights and dignity by implying that marriage itself nullifies her bodily autonomy and consent.

In addition, victims of marital rape are less likely to come forward because the exception helps normalize the crime. The psychological toll on victims is already high, and this culture of silence and shame makes it much worse by normalizing sexual violence against women within the context of marriage. The BNS does raise the age of consent within marriage from 15 (under the IPC) to 18, but it doesn't solve the fundamental problem of marital rape. The BNS now defines rape as any

⁴ 2023 LiveLaw (Guj) 176[5] W.P.(C)No. 5858/2017

⁵ Agarwal N, Abdalla SM, Cohen GH (2022) Marital rape and its impact on the mental health of women in India: A systematic review. PLOS Glob Public Health 2(6): e0000601. <https://doi.org/10.1371/journal.pgph.0000601>

sexual contact with a wife under the age of 18, irrespective of marital status.

This adjustment is in line with the overall legal framework in India, which acknowledges that permission for marriage and sexual intercourse, among other things, is required at the age of eighteen. Some feel this reform falls short since it doesn't do enough to protect married women's right to bodily autonomy and consent.

5. RAPE PROVISIONS UNDER BHARATIYA NYAYA SANHITA (BNS) COMPARED TO SECTION 376 IPC

The Bharatiya Nyaya Sanhita (BNS) is an updated version of the Indian Penal Code (IPC) that aims to tackle contemporary social problems more effectively. The legal framework is now more complete because of the redefinition and expansion of provisions pertaining to rape under sections 63 to 73 BNS, which were previously covered under Section 376 IPC.

Major Modifications

- 1. **Broadened Definition:** Additionally, the BNS broadens the definition of rape to encompass digital penetration, exploitation in positions of authority, and, in certain cases, non-consensual activities inside marital relationships.
- 2. **Consent Clarification:** The BNS stresses that consent must be explicit, unambiguous, and freely given; it stresses again that passive non-opposition does not constitute consent.

Punishments and Sentencing

- 1. **Stricter Penalties:** There are stronger sanctions under the BNS, including the death penalty, for extremely terrible crimes, such as the rape of children or for repeated offenses, as compared to the punishments outlined in Section 376 of the Indian Penal Code, which range from seven years to life in prison.
- 2. **Aggravated Circumstances:** Gang rape, custodial rape, and communal violent rape are some of the specific aggravating conditions listed in the BNS that carry obligatory minimum terms.

Provisions of Marital Rape

The BNS's partial acceptance of marital rape is one of the most striking improvements. The BNS permits prosecution in instances where the wife is living separately pursuant to an order of separation, in contrast to Section 376 IPC, which granted husbands full immunity.

Procedural Reforms

- 1. **Speedy Trials:** To make sure that people get justice quickly, the BNS requires that rape cases be finished within a certain amount of time.
- 2. **Victim Protection:** Additional safeguards to ensure the safety of victims during the investigation and trial, such as the use of secret proceedings and strict confidentiality protocols.

Comparison with Section 376 IPC

Aspect	Section 376 IPC	Bharatiya Nyaya Sanhita (BNS)
Definition of Rape	Limited to physical penetration	Includes digital penetration, authority abuse
Consent	Less detailed	Clear emphasis on voluntary consent
Marital Rape	Broad immunity for husbands	Recognized under specific conditions
Punishments	7 years to life imprisonment	Harsher penalties, including the death penalty
Speedy Trials	Not specifically mandated	Mandated within a set timeframe
Victim Protection	Basic provisions	Enhanced protection measures

An important development in the fight against sexual crimes in India is the Bharatiya Nyaya Sanhita. In an effort to establish a legal framework that prioritizes victims, the BNS is working to broaden the definition of rape, recognize it in particular contexts, and implement harsher penalties. To guarantee that these legislative changes successfully advance justice and gender equality, however, constant surveillance and public awareness are necessary.

6. JUDICIAL DEBATES ON THE MARITAL RAPE EXCEPTION UNDER BNS, 2023

The Delhi HC's "marital rape exception" (or "MRE") is a hotly debated topic in the legal community. New criminal laws,

which were introduced on July 1st, have added fuel to the fire of controversy. As the current administration asserts, the Bhartiya Nyaya Sanhita is designed to eradicate any remnants of the colonial era that are embedded in the Indian Penal Code (IPC). Opponents of the country's criminal code reform have pointed out that the new statute still includes marital rape as an exception to the rape charge. While arguing passionately for the removal of the MRE as a means to preserve individual liberty, this paper seeks to assess legal perspectives on the subject.

When it comes to this issue, the opinions of the judiciary are all over the map. This prompted an appeal to the highest court in the land. Cases like *Hrishikesh Sahoo v. State of Karnataka*, published not long ago,⁶ DY Chandrachud, CJ, Justices J.B. Pardiwala and Manoj Mishra will be hearing a case challenging the MRE soon. In light of constitutionally guaranteed rights, this section of the article seeks to analyze the soundness of legal rulings on the MRE by looking at the prior arguments that have been addressed by the courts.

In spite of a chance to resolve the question of the MRE's constitutionality in the case of *Independent Thought v. Union of India and Anr.*, the Supreme Court has so far declined to do so⁷. Only the question of whether sexual relations between a male and a female spouse who is between the ages of fifteen and eighteen was considered by the Supreme Court in this case. The answer is no, according to Exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC). Sexual contact with a girl under the age of eighteen, regardless of her marital status, is deemed rape by the Supreme Court. Having sexual relations with one's wife (who must be at least 18 years old) without her consent is not considered marital rape, nevertheless.

After hearing four petitions contesting the MRE's constitutionality on the grounds that it violates articles 14, 19(1)(a), and 21, the Delhi High Court (2022) issued a divided ruling in a recent case. In this case, the court aimed to overturn the IPC's MRE provision, which differs from its equivalent BNS provision with respect to the age of the wife. Here, Justice Rajiv Shakdher sided with the petitioners seeking to invalidate Exception 2 of Section 375 of the IPC, whereas Justice Hari Shankar rejected the petitioners' request to invalidate MRE. Justice Shakdher made numerous grounds in support of his decision to declare MRE unlawful. One of his points was that married women do not have the legal right to say "no" to sex workers. This case is currently being reviewed by the highest court in the land.

The petition's two main arguments also apply to the BNS's MRE provision. By treating married and unmarried women differently in relation to the crime of rape, the MRE violates article 14. As a second point, the MRE goes against article 21, which deals with the right to life, by violating a woman's autonomy over her own body. Furthermore, as the right to freedom of expression includes the ability of a woman to establish her sexual autonomy, the MRE violates this right. The decision was made in the petitioners' favor by Justice Rajiv Shakdher.

7. LEGALITY OF MARITAL RAPE AS PER JUDICIAL INTERPRETATION

Independent Thought v. Union of India (2017)⁸

The legitimacy of rape in marriages with minor wives was the subject of this historic decision by the Supreme Court. The Supreme Court ruled that the exception permitting sexual relations with a wife between the ages of fifteen and eighteen was unlawful. According to Justice Madan B. Lokur, a minor's basic rights, such as the right to physical autonomy and dignity, cannot be violated through child marriage. Despite its narrow emphasis on juveniles, this ruling has ignited debates over the expansion of the exemption to cover rape in marriage.

Joseph Shine v. Union of India (2018)⁹

Section 497 of the Indian Penal Code, which criminalizes adultery, was the main focus of the Joseph Shine case. But the reasoning of the Court has major consequences for the discussion of rape in marriage. The Court's decision to strike down Section 497 reflects its commitment to equality, autonomy, and dignity, stating that marriage should not include one partner being subservient to the other. The discussion of marital rape, which also centers on married women's autonomy and consent, is highly pertinent to these ideas.

Justice K.S. Puttaswamy v. Union of India (2017)¹⁰

The right to privacy, as guaranteed by Article 21, was upheld in this ruling. The right to one's own body, sexual autonomy, and the capacity to choose one's own romantic partners were all considered part of the right to privacy. The exception for marital rape, which undermines a woman's agency within the context of her marriage, is in direct opposition to these values.

RIT Foundation v. Union of India (Delhi HC, 2022)

⁶ Case no. SLP(Cr.) 4063-4064 of 2022

⁷ AIR 2017 SC 4904

⁸ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁹ *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

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

The criminalization of rape within a marriage was the subject of a divided decision by the Delhi High Court. Justice C. Hari Shankar dissented with Justice Rajiv Shukdhher's ruling that rape within a marriage should be criminalized. A major change to the status of marital rape under BNS, 2023 will result from the Supreme Court's ruling on the case, which is now pending.

8. CHALLENGES TO THE CRIMINALIZATION OF MARITAL RAPE

A three-judge panel consisting of Chief Justice D.Y. Chandrachud, Justices J.B. Pardiwala and Manoj Misra began hearing a number of petitions today that challenge the regulations in Indian law that absolve a husband of the crime of rape if he commits the crime against his wife. More than fifteen months have passed since the initial batch of petitions made it to the highest court. Among these are multiple appeals from rulings made by the High Courts of Karnataka and Delhi, as well as two writ petitions filed under Article 32. For the petitioners, today's arguments were presented by Senior Advocates Karuna Nundy and Colin Gonsalves. Their argument was that Articles 14, 15, 19, and 21 of the Constitution are violated by the "marital rape exception" mentioned in Section 375 of the Indian Penal Code, 1860 and Section 63 of the Bharatiya Nyaya Sanhita, 2023¹¹.

The scope of the exception is too broad

Today, the petitioner-appellants were represented by Nundy, who presided over three separate petitions. Before anything else, she made it clear that the BNS's Section 63 and the Indian Penal Code's Section 375 both dealt with the crime of rape. The age requirement for women is the sole distinction between the two clauses. If a male has sexual relations with a girl under the age of fifteen, with or without her agreement, he is committing the crime of rape, according to the Indian Penal Code. The BNS has raised the minimum age to 18 years. According to her, this clause encompassed both anal rape and aiding and abetting rape.

She argued that the husband's exemption under Section 375 of the IPC and 63 of the BNS was applied too broadly. She cited Section 63(d), which states that a man is guilty of rape if he "applies his mouth to the vagina, anus, urethra of a woman or makes her do so with him or any other person."

"Any other person" is a crucial term to use here. According to Nundy, rape usually occurs when a guy coerces a woman into having sexual relations with another man. There is an exception to the general rule that states a man is not to be punished for rape if the victim is his wife. She implied that a husband is also somewhat shielded from the crime of gang rape under the exception.

Striking down the marital rape exception does not create a new offence

Sexual relations between husbands and wives were not intended to be considered rape when the law was being drafted, according to the Chief's query after lunch. Does striking this down go against the provision's substantive right and establish a new crime? Is it anything the Court can do?

According to Nundy, a criminal "offence" might be either an act or a failure to act. The crime of rape was already criminal. It would not be possible to establish a new crime by partially invalidating the "marital rape exception" due to its unconstitutionality. Nundy stated that the Union would ask the Court to show "judicial restraint" by removing the exception, arguing that doing so would be the same as making a new crime. Nonetheless, that was not the situation.

She emphasized that the act or omission itself is the offense, rather than the perpetrator. Since this was the case, the fact that a man was the spouse of the rape victim did not absolve him of responsibility for the crime.

She further noted that rape within the context of marriage is already recognized by the law, as Section 67 of BNS penalises sexual actions by a husband who is separated from his wife.

Nundy argued that eliminating the exception would be the same as eradicating a legal fiction rather than creating a new crime.

The presumption of a lack of consent in marriage is antithetical to constitutional values

After that, Nundy went on to stress that a marriage isn't complete without freedom, independence, and consent. She argued that it is patriarchal and unlawful to claim that sexual activities committed within a marriage or coerced sexual relations do not constitute rape.

According to her, the 'marital rape exemption' stems from the English jurisprudence idea known as Hale's Law, which states that a husband cannot be held criminally liable for the rape of his wife because she voluntarily submits to him when they are married. The UK courts have long since forgotten about this. The Chief brought up the fact that the Union had made it clear in their affidavit that they did not support Hale's law.

Joseph Shine v. Union of India (2018), a decision of the Supreme Court, was cited to support her position¹², which held that

¹¹ <https://www.thehindu.com/news/national/supreme-court-on-marital-rape-exception-hearing-oct-23/article168781795.ece>

¹² *Joseph Shine v Union of India*

the language used in the IPC was sexist and retrograde, leading to the decriminalization of adultery.

Nundy recited a number of passages from the decision. The right to privacy is contingent upon people being able to make their own decisions and act independently. When people are unable to practice these fundamental rights, the courts must intervene to guarantee full respect for human dignity. Private locations where constitutional rights are violated cannot include familial structures.

Joseph Shine's court also looked to the *Puttawamy v. Union of India* privacy ruling (2017)¹³ as well as the decriminalization of homosexuality in the case of *Navtej Singh Johar v. Union of India* (2018)¹⁴, to highlight the significance of human agency and free will in the domestic domain of marriage. The patriarchal family was acknowledged by the Court as the "basis for the secondary status of women in society" in Nivedita Menon's book *Seeing like a Feminist*.

At the end of her speech, Nundy said that the real enemy here was patriarchy, not men and women.

9. MEDICAL IMPLICATIONS OF MARITAL RAPE LAWS UNDER BNS, 2023

Physical Health Consequences

Survivors of marital rape frequently sustain physical injuries, including vaginal and anal tears, perineal bruising, and fractures. These injuries constitute critical evidence of assault in legal proceedings. Reproductive health consequences, such as unintended pregnancies and exposure to sexually transmitted infections (STIs), including HIV, are significant outcomes of forced unprotected intercourse. Additionally, complications during pregnancy, such as miscarriage or preterm labor, are well-documented, arising from the physical and emotional stress caused by marital rape. These physical consequences underscore the necessity of a robust legal framework to address such harm¹⁵.

Psychological and Mental Health Effects

Marital rape often results in profound psychological injuries, including post-traumatic stress disorder (PTSD), characterized by flashbacks, nightmares, severe anxiety, and emotional detachment. These conditions directly affect a survivor's ability to function and are legally recognized as evidence of psychological harm. Depression and anxiety disorders, marked by persistent feelings of hopelessness and worthlessness, are additional consequences. Survivors may also experience suicidal ideation or attempts, often linked to prolonged abuse and lack of access to protective mechanisms. The disruption of trust and intimacy caused by marital rape further emphasizes the psychological toll, forming a basis for legal intervention and reparative measures.

Socio-Medical Consequences

Societal stigma and fear of retribution often result in the underreporting of marital rape, leading to untreated injuries and unaddressed harm. This undermines the legal framework's capacity to hold perpetrators accountable. The lack of standard operating procedures in healthcare facilities for handling marital rape cases results in inadequate medical care and challenges in producing admissible evidence. Additionally, financial dependence exacerbates the medical and psychological burden on survivors, restricting their ability to seek legal remedies and access support services, thereby perpetuating cycles of abuse and harm.

Impact on Child Health and Development

Children exposed to marital rape face psychological trauma that manifests as emotional distress, behavioral problems, and developmental delays. These outcomes may be introduced as evidence of harm in custody disputes or family court proceedings. Furthermore, the intergenerational transmission of trauma linked to marital rape necessitates targeted interventions to break cycles of violence and protect future generations¹⁶.

Challenges in Medical and Legal Integration

The absence of standardized forensic protocols for marital rape complicates the collection of evidence, undermining the prosecution's ability to prove culpability beyond a reasonable doubt. Medical testimony, which is often pivotal in establishing the extent of physical and psychological harm, requires healthcare professionals to be adequately trained in both medical and legal standards. Comprehensive rehabilitation programs that integrate medical, psychological, and legal services are essential to ensure restorative justice under BNS, 2023. These programs must address the survivor's holistic needs and promote their reintegration into society.

¹³ *Justice K.S. Puttaswamy v Union of India*, (2018) 2 SCC 189.

¹⁴ *Navtej Singh Johar v UOI; Akkai Padmashali v UOI*

¹⁵ Ranjan, Radha. (2024). Safeguarding Women: The Role of Bhartiya Nyaya Sanhita 2023 in Preventing Sexual Offences.

¹⁶ Ghose, Anuttama & Ali, S.. (2025). Criminalisation of marital rape in India: a medico-legal analysis. *International Journal of Public Law and Policy*. 11. 10.1504/IJPLAP.2025.10065642.

10. CONCLUSION

There are long-standing cultural mores, constitutional questions, and developing gender rights at play in the Indian legal and judicial discussions of marital rape. The Bharatiya Nyaya Sanhita (BNS), 2023, maintains the marital rape exception (MRE), which exempts non-consensual intercourse within marriage from being recognized as a criminal offense, despite increasing requests for reform. With this legal stance, India stands in stark contrast to international human rights norms, where rape inside marriage is often considered a crime, as well as to its own constitutional protections of equality (Article 14), personal autonomy (Article 21), and freedom of expression (Article 19(1)(a)).

The split decision of the Delhi High Court in 2022 demonstrated the judicial difference on this matter and brought attention to the constitutional tension between individual freedom and conventional marriage norms. Contrary to Justice Rajiv Shukdhakar's decision to strike down the MRE on the grounds that it violated gender equality and bodily autonomy, Justice C. Hari Shankar defended the exemption on the grounds that implied consent is an intrinsic part of marriage. For the future of marital rape laws in India, the outcome of cases like *Hrishikesh Sahoo v. State of Karnataka* (2022), which are currently pending in the Supreme Court, would be pivotal.

Social opposition, worries about the abuse of laws, and apprehensions about the demise of marriage are the main obstacles to criminalizing marital rape. Nevertheless, in order to preserve women's dignity, rights, and bodily autonomy, it is crucial to legally acknowledge consent inside marriage. Make sure that marriage isn't a cover for sexual violence by putting individual freedoms ahead of outdated social norms in a progressive legal framework.

Legislators, judges, and policymakers must reevaluate the MRE and bring India's legal system in line with constitutional requirements and global human rights norms if the country is to progress. To achieve gender equality and justice in India's legal system, it is morally and ethically imperative to criminalize marital rape. To guarantee that every person's dignity and bodily autonomy are preserved, it is essential to acknowledge that permission is required in all sexual relationships, including marriage.

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