
CONSENT WITHIN MARRIAGE: VISITING RELATED LAW, EXCEPTION, ROLE OF CINEMATOGRAPHY AND AWARENESS THROUGH CHIRAIYA

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ABSTRACT

The question of consent for any sexual act in marriage is currently most debatable issue in modern day Indian Society. The question of consent is central for sexual acts but the Indian law still continuous to keep the exception for the same in case of marital relations under section 63 of the Bharatiya Nyaya Sanhita, 2023. This legal provision has raised a number of ethical, constitutional and human rights issue such as right to equality, dignity and personal liberty enshrined and given by the Indian Constitution to every citizen.

This Research Paper critically reviews the ongoing views related to marital rapes and the exception number 2 under section 63 of the Bharatiya Nyaya Sanhita, 2023. The study in this paper looks at the patriarchal foundations along with the complications that might occur if the marital rapes are criminalized and enforced in India. The paper explores how Cinematography, media and entertainment help for the awareness related to “marital rapes” glancing through the narrative lens of “Chiraiya” which was a recent series released on one of the OTT Platform regarding “marital rapes” as its central topic.

This Paper also includes the survey results to know the general public opinion, awareness regarding “marital rapes” and viewpoint whether there is need for legal reform and criminalization of “marital rapes”. The paper together brings legal analysis, general viewpoint and Cinematography playing important role to support rethinking of the marital rape exception in India based on the Constitutional rights perspective.

Keywords: Marital Rape, Consent, Chiraiya, Cinematography, Bharatiya Nyaya Sanhita, Women Rights, Criminal law, constitutional rights and societal awareness

❖ INTRODUCTION: -

Marital rape simply means any sexual activity without consent within the marital relation. Marital rape can be said to be committed if the husband does any sexual act forcefully with his wife without her consent. This type of rape is very different from normal rape; it is a crime that is often shrouded by historical, cultural, and societal rules and norms. This is because traditionally, and even today in many places, people believe and have the mindset that “it is the duty of the woman to obey any sexual act that the husband wants to do with her” and that “sexual activity of a wife with her husband, even without consent, is not wrong because that person is the husband and not a stranger.”

Exception 2 of Section 63 of the Bharatiya Nyaya Sanhita, 2023 (BNS) states that “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.” According to this exception, a man's sexual relations with his own wife are not considered rape as long as the woman is at least eighteen years old. For decades, this legal gap has been the focus of heated discussion, criticism, and legal challenges. Proponents of criminalization contend that this exclusion infringes upon fundamental human rights, such as the guarantees of equality, dignity, and bodily autonomy under the Indian Constitution. They emphasize that consent is essential regardless of marital status and that marriage should not become a license for sexual assault.

Cinematography in today's modern world plays a very important role in spreading awareness through movies and series. In today's time, everyone from children to youngsters, married men and women to elderly people uses the internet, social media, OTT platforms, and YouTube. Recently, a series named “Chiraiya” was released. The series had a major impact not only on women but on society as a whole, as it initiated conversations about consent, dignity, and marital relationships. Many women realized for the first time that consent is important even within marriage, while many men and families also became more aware of the emotional and psychological consequences of forced sexual relations. The series also highlighted the existence of many unaware victims who had suffered in silence for years without recognizing that what they experienced could amount to abuse. On the other hand, there were also people who criticized the series, claiming that it was spreading propaganda and negatively influencing societal values.

❖ CURRENT LEGAL FRAMEWORK: -

Presently under Bharatiya Nyaya Sanhita 2023 under section 63 rape is defined in detail. Under section 63 itself there are 2 exceptions also that are provided. Exception 2 of section 63 of Bharatiya Nyaya Sanhita 2023 is that **“Sexual intercourse by a man with his own wife, the wife not being under eighteen years is not rape”¹**.

❖ SOCIAL ATTITUDES AND CHALLENGES FACED BY VICTIMS OF MARITAL RAPE IN INDIA: -

In lot of areas of Indian society, traditional gendered norms still exist and influence attitudes towards marriage and gender roles. These precepts often position women in a subordinate position and men in a superior position. For this reason, some people think that the husband of a married woman has an automatic and uninhibited right to have sex with his wife. This attitude makes it difficult for society to accept that sexual relations in marriage can be an element of disrespect for a woman's consent and abuse. Consequently, marital rape is often ignored, rationalized, or considered as a matter for the family. This means that marital rape is often ignored, rationalized or seen as a personal family matter rather than as a serious issue which undermines a woman's rights and dignity.

But marital rape victims face a host of personal and social problems as well. Numerous women are afraid of being judged, shamed, or blamed for their own experiences when talking about them. To maintain the marriage or safeguard the family's reputation, family members might dissuade them from reporting the abuse. Secondly, the victim receives little support from the community, law police and other organizations. Women face significant challenges in addressing issues and seeking justice or support due to ignorance, lack of acceptance and support. This means that marital rape is not fully recognized in society and many cases are unreported.

❖ CONSTITUTIONAL AND HUMAN RIGHTS IMPLICATIONS OF MARITAL RAPE: -

Marital rape is often considered as a private issue between the husband and wife, yet it brings forth the questions regarding the values of Indian constitution and human rights. Many

¹<https://www.indiacode.nic.in> – BNS, 2023 Bare Act – Pg. No. 37

countries have recognized that a man can be a rapist of his wife and have made it illegal for him to be. While in India, a husband's sexual contact with his wife who is more than eighteen years old is not considered rape in Exception 2 of Section 63 of Bharatiya Nyaya Sanhita, 2023. Discussions over married women's rights and protection have continued as a result of this exception.

This exception is considered to be unconstitutional because it runs counter to Article 14, Article 15 and Article 21. Married women aren't afforded the same legal rights against non-consensual sexual acts as single women. This type of distinction may be regarded as discriminatory as it is based on marital status alone. Article 21 also protects the rights to life, personal liberty, dignity, privacy and control over one's body. In a marriage, as in other relationships, a woman's fundamental right to sexual self-determination and enjoyment of sex is the first to be denied when she is forced into sexual activity against her will.

❖ JUDICIAL RESPONSES: -

1) X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, (2023) 9 SCC 433² –

In *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, the Supreme Court made an important observation regarding marital rape while interpreting the Medical Termination of Pregnancy Act, 1971. The Court held that the word "rape" under **Rule 3B of the MTP Rules** should also include **"non-consensual sexual intercourse committed by a husband against his wife"**. Although the Court did not strike down the marital rape exception under criminal law or declare marital rape to be an offence under the then Indian Penal Code, it recognized that **"forced sexual intercourse within marriage can cause the same physical and psychological trauma as rape committed by any other person"**. The Court stated that a **"married woman has the same right to bodily integrity, reproductive autonomy, and decisional freedom as an unmarried woman"**. Therefore, if a woman becomes pregnant because of forced sexual intercourse by her husband, she cannot be denied the benefit of a legal abortion merely because she is married. The judgment emphasized that marriage does not take away a woman's right to make decisions regarding her own body and reproductive health. It **reaffirmed the constitutional values of**

² <https://www.sconline.com>

dignity, equality, privacy, and personal liberty under Article 21, while clarifying that these observations were made only for the purpose of interpreting the MTP Act and not for determining the criminal liability of a husband for marital rape.

2) *Independent Thought v. Union of India, (2017) 10 SCC 800*³ –

In *Independent Thought v. Union of India*, the Supreme Court dealt with the **conflict between the marital rape exception under Section 375 of the Indian Penal Code and the laws protecting children from sexual abuse**. At that time, Exception 2 to Section 375 IPC provided that sexual intercourse by a man with his own wife was not rape if the wife was above fifteen years of age, even though the legal age of marriage and the definition of a child under other laws was eighteen years. The **Court found this distinction to be arbitrary and discriminatory because it treated married girls between fifteen and eighteen years differently from unmarried girls of the same age**. The Court therefore **read down the exception by replacing the age of fifteen with eighteen years**. As a result, any sexual intercourse by a husband with his wife who is below eighteen years of age would amount to rape, irrespective of the marital relationship. The **Court observed that marriage cannot be used as a defense to justify sexual intercourse with a minor wife because every child has the right to bodily integrity, dignity, and protection from sexual exploitation**. It also held that the exception violated Articles 14, 15, and 21 of the Constitution and was inconsistent with the Protection of Children from Sexual Offences Act, 2012, which recognizes every person below eighteen years as a child. However, the Supreme Court expressly clarified that it was not deciding the issue of marital rape involving adult wives, and therefore the **judgment does not criminalize marital rape between spouses where the wife is eighteen years or older**.

3) *Society for Enlightenment and Voluntary Action v. Union of India, 2024 SCC OnLine SC 2922*⁴ –

The Supreme Court in *Society for Enlightenment and Voluntary Action v. Union of India*, primarily examined the harmful effects of child marriage and directed governments to take stronger measures to eliminate the practice. **Although the case was not directly about marital rape, the Court made several important observations regarding forced sexual relations**

³ <https://www.scconline.com>

⁴ <https://www.scconline.com>

within child marriages. It explained the historical development of the marital rape exception by referring to the famous *Phulmoni Dasi* case and the Age of Consent Act, 1891, which increased the age below which sexual intercourse would amount to rape regardless of marriage. The Court recognized that child marriage often results in forced sexual intercourse because a child bride is neither physically nor emotionally capable of giving free and informed consent. It observed that all child marriages are effectively forced marriages and expose young girls to repeated sexual violence, early pregnancy, health complications, and denial of education. The Court stated that forced sexual engagement within child marriage violates the constitutional rights to dignity, bodily autonomy, health, and equality. However, while acknowledging the serious consequences of non-consensual sexual relations within marriage, the Court did not decide whether forced sexual intercourse by a husband with his adult wife should be recognized as rape under criminal law. Thus, the judgment contributes to the broader constitutional understanding of consent and bodily autonomy but does not alter the existing marital rape exception for adult married women.

4) *Supriyo @ Supriya Chakraborty v. Union of India, 2023 SCC OnLine SC 1348*⁵ –

The principal issue in *Supriyo @ Supriya Chakraborty v. Union of India*, was whether same-sex couples have a constitutional right to marry. However, while discussing the nature of marriage and constitutional rights, Chief Justice D.Y. Chandrachud, in his minority opinion, made important observations regarding consent and sexual autonomy within marriage. He emphasized that marriage does not mean that a spouse gives permanent or irrevocable consent to sexual intercourse. According to the judgment, every individual continues to enjoy bodily autonomy, privacy, dignity, and decisional freedom even after marriage. The Chief Justice D.Y. Chandrachud rejected the traditional patriarchal assumption that a wife becomes the property of her husband after marriage or that she is under a legal obligation to satisfy his sexual demands. He observed that a married person has the right to refuse sexual intercourse and that consent must exist for every sexual act, irrespective of the marital relationship. The judgment also recognized that forced sexual intercourse within marriage can amount to cruelty and domestic violence and can have serious civil consequences, including relief under family and domestic violence laws. Nevertheless, the Court did not examine the constitutional validity of the marital rape

⁵ <https://www.scconline.com>

exception under criminal law because that issue was not before the Constitution Bench. Therefore, these observations are persuasive rather than binding, but they strengthen the constitutional argument that marriage cannot extinguish a person's bodily integrity, dignity, or sexual autonomy.

❖ ANALYSIS OF SURVEY FINDINGS: -

A questionnaire was circulated through Google Forms to understand public awareness regarding marital consent, the marital rape exception under Indian law, and the influence of the web series "Chiraiya" in creating awareness. A total of 165 responses were received, though the number of responses varied slightly for individual questions because some respondents skipped certain questions.

1. Gender Distribution

- Female – 57.8%
- Male – 41.6%
- Prefer not to say – 0.6%

Interpretation – The respondents of the survey consisted of almost balanced representation of both genders, with females forming the majority. This provides meaningful perspectives, particularly since women are more directly affected by issues surrounding marital consent and marital rape. The negligible percentage of respondents choosing not to disclose their gender has little impact on the overall findings.

2. Age Distribution

- 18–29 years – 70.1%
- 30–50 years – 25.3%
- Above 51 years – 4.6%

Interpretation – The majority of respondents belonged to the younger age group of 18–29 years. This indicates that the survey primarily reflects the opinions of young adults, who are

generally more exposed to digital media, legal awareness campaigns, and contemporary discussions concerning gender justice and women's rights.

3. Marital Status

- Unmarried – 67.2%
- Married – 32.1%
- Divorced – 0.7%

Interpretation – Most respondents were unmarried, although nearly one-third were married. The participation of married individuals enriches the study by providing perspectives from those directly experiencing marital relationships, thereby strengthening the relevance of responses concerning consent within marriage.

4. Awareness about Marital Rape Exception

Question: Are you aware of the marital rape exception under Indian law?

- Yes – 82.9%
- No – 17.1%

Interpretation – A significant majority of respondents were aware that Indian criminal law continues to recognize the marital rape exception. This reflects increasing public awareness, likely influenced by judicial debates, media coverage, educational initiatives, and social awareness campaigns.

5. Necessity of Consent within Marriage

Question: Do you believe that consent is necessary within marriage for any sexual relationship?

- Yes – 87.2%
- No – 7.3%

- Maybe – 5.5%

Interpretation – An overwhelming majority of respondents believe that consent remains essential even within marriage. This demonstrates an evolving understanding that marriage does not negate an individual's bodily autonomy or personal dignity, reinforcing the principle that consent is fundamental to every sexual relationship.

6. Awareness about the Series “Chiraiya”

- Watched the series – 36.6%
- Heard about it but not watched – 39.0%
- Not aware – 24.4%

Interpretation – Although only about one-third of respondents had watched Chiraiya, nearly three-fourths were at least aware of the series. This indicates that the series has achieved considerable public visibility and has contributed to discussions surrounding marital consent and women's rights.

7. Agreement with the Content of “Chiraiya”

- Yes – 61.0%
- No – 8.2%
- Maybe – 30.8%

Interpretation – A majority of respondents agreed with the portrayal of marital consent and marital rape issues in Chiraiya. Nearly one-third selected "Maybe," suggesting that while the series has been positively received, it also encourages reflection and discussion on this socially and legally sensitive issue.

8. Impact of “Chiraiya” on Victims of Marital Rape

Question: Do you believe that the series "Chiraiya" had an impact on women who have been victims of marital rape?

- Yes – 61.1%
- No – 3.3% (approximately)
- Maybe – 35.6%

Interpretation – Most respondents believed that Chiraiya could positively influence women who have experienced marital rape by promoting awareness, validating survivors' experiences, encouraging dialogue, and reducing the stigma surrounding marital sexual violence.

9. Criminalization of Marital Rape in India

Question: Do you believe that the series "Chiraiya" had an impact on women who have been victims of marital rape?

- Yes – 82.3%
- No – 5.5% (approximately)
- Maybe – 12.2%

Interpretation – More than four-fifths of respondents supported criminalizing marital rape in India. This demonstrates strong public support for legal reform aimed at recognizing consent within marriage and protecting the bodily autonomy and dignity of married women.

Overall Findings from the Survey –

The survey demonstrates several significant trends:

- 1) High awareness (82.9%) of the marital rape exception under Indian law among respondents.
- 2) Strong public support (87.2%) for the principle that consent remains necessary within marriage.
- 3) Substantial support (82.3%) for criminalizing marital rape in India, reflecting growing demand for legal reform.

- 4) Significant awareness of the web series "Chiraiya" (75.6%), either through viewing it or hearing about it, indicating its broad public reach.
- 5) Positive public perception of the educational role of cinema, with 61% agreeing that Chiraiya effectively portrayed issues of marital consent and 61.1% believing that it could positively impact victims of marital rape.
- 6) The findings suggest that cinematographic works can serve as powerful tools for enhancing legal literacy, encouraging social dialogue, and making complex legal issues more accessible to the general public.

Conclusion of the Survey –

The empirical findings continue to reinforce the central hypothesis of this research that consent remains an indispensable component of every sexual relationship, including within marriage. Although Indian law continues to retain the marital rape exception, public opinion reflected in this updated survey overwhelmingly supports recognizing marital rape as a criminal offence and emphasizes respect for bodily autonomy and individual dignity.

Furthermore, the findings demonstrate that socially relevant cinema, particularly "Chiraiya", plays a meaningful role in educating audiences, fostering informed discussions, and increasing awareness regarding marital consent and gender-based violence. The majority of respondents acknowledged both the educational value of the series and its potential to positively influence victims by encouraging awareness and reducing social stigma.

Taken together, these findings strengthen the argument that legal reform should be complemented by sustained public awareness initiatives, with cinematography serving as an effective medium for promoting legal literacy, challenging harmful social norms, and advancing meaningful social change. The updated responses, collected from a larger sample of 165 participants, further reinforce the consistency and reliability of these conclusions.

❖ CONCLUSION: -

Consent is a key component of sexual relationships, even in marriage. Marriage should not be a deprivation of dignity, bodily autonomy and personal liberty. While the marital rape exception remains a feature of Bharatiya Nyaya Sanhita, 2023, this study reveals that public

opinion is growing in favor of consent in marriage. The results of the survey indicate that most respondents acknowledge that consent is required in marriage, and agree with the criminalization of marital rape.

The study also highlights the important role of cinematography in creating awareness about sensitive social issues. Many people have come to understand the need for marital consent and women rights through the web series “Chiraiya”. Thus, apart from the needed amendments in the law, it is essential to continuously sensitize the public through education, media, movies etc. to promote equality, respect and dignity within the marriage and to make the society more informed and sensitive.

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