
CRIMINALISATION OF MARITAL RAPE IN INDIA

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ABSTRACT

Marriage is considered a sacrosanct institution with profound obligations for both partners, but this sacredness is challenged by the reality of marital rape, which is a crime of sexual violence within a marriage. India is one of the nations where marital rape is still impervious to criminal prosecution because it is one of the most neglected areas of criminal law in the country. Exception 2 to section 63 of Bharatiya Nyaya Sanhita, 2023, which states that “sexual intercourse by a man with his own wife is not rape if the wife is not being under eighteen years of age”, is the main debatable issue. While Indian law has made strides in expanding the definition of sexual assault, the legal immunity granted to husbands remain a glaring lacuna. This exception contradicts the principles of bodily autonomy and equality enshrined in the constitution. This paper analyzes the constitutional validity of this exception through the lens of Article 14 (Right to equality), Article 19 (Right to freedom) and Article 21 (Right to Life and Dignity). The Supreme Court and several High Courts in a catena of cases have recognized that marital rape undermines the dignity of a woman. By reviewing recent conflicting judgment from Delhi High Court and the pending proceedings in the

Supreme Court, the study argues that the doctrine of “implied consent” is a colonial relic that contradicts the contemporary legal understanding of bodily autonomy. As per National Family Health Survey, 6% of ever-married women in India, aged 18-49, reported having experienced spousal sexual violence. The Consent is not inferred by marriage and elimination of Exception is not merely a statutory necessity but a constitutional mandate to ensure gender justice.

Keywords: Marital rape, marriage, non-consensual, spousal violence, violence, sexual intercourse, criminalizing marital rape, marital rape exception, consent

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INTRODUCTION

Marriage is not just a social bond but a sacred bond between the two souls. Marriage is a god inspired union of self-sacrifice. Most of the people today believe in the sanctity of marriage but some of them ill-treat it, they abuse this sacred bond and misbehave with their spouse.

The patriarchal rhetoric in society has given rise to the basis for “marital immunity” in rape prosecutions. It states that a husband cannot be found guilty of raping his wife as by entering into marriage, she was seen as giving a permanent, irrevocable consent to sexual intimacy which she cannot retract. Rape is defined as “an act committed by a man without the consent of a woman.”² Marital rape refers to “non-consensual sexual intercourse upon the other spouse within the context of marriage.”³ Although many societies have historically viewed the establishment of a sexual relationship between married couple as inherent “right”, modern perspective emphasize that consent becomes just as significant between spouses as it is for unmarried couples. International conventions and voices opposing sexual and intimate partner violence in marriages have grown since the 20th century (more specifically, sexual violence against women).⁴

EXCEPTION 2 TO SECTION 63

Forceful sexual intercourse with a female against her will is an offence punishable in India under section 64, BNS (earlier under section 376, Indian Penal Code) but when it comes to husband and wife, marital rape is not an offence under Indian criminal legal system due to exception attached to section 63, BNS.⁵

Exception 2 attached to section 63 gives protection only to wives under the age of 18 years. This exception 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.⁶

This legal framework have historically been rooted in patriarchal ideologies that treat woman as her husband’s property and there is “implied and irrevocable consent to sexual intercourse

² PSA Pillai, Criminal law, 832 (KL Vibhuti Ed., LexisNexis, 14th ed., 2019)

³ Bhagyashikha saptarshi, Marital Rape and Law, articles on Manupatra (4th October 2025), <https://articles.manupatra.com>

⁴ Hasday JE. Contest and consent: a legal history of marital rape. Calif L Rev. 2000;88:1373

⁵ Bharatiya Nyaya Sanhita, 2023, No. 45, Act of Parliament, 2023.

⁶ *Ibid*

by women” in marital relationships.⁷

CONSTITUTIONAL VALIDITY

In its 2013 report, **Justice Verma Committee** after the Nirbhaya Rape case suggested criminalizing of marital rape. It recommended that law ought to be amended to delete the marital rape exception⁸. But the idea to criminalize marital rape was rejected on three grounds:

1. Criminalizing marital rape will destabilize the institution of marriage.
2. Marriage is considered to be an implied consent by a woman for sexual acts with her husband.
3. Burden of proof; the reason for not criminalizing marital rape was its difficulty to be proven innocent and possible misuse of law.
4. The entire family will be under great stress.⁹

In 2000, the law commission rejected the idea of criminalizing marital rape. The reason given was that other instances (such as cruelty) of violence by husband towards a wife are criminalized.

Currently, there are no criminal penalties for marital rape in India where wife is over 18 years. This specific legal immunity for husbands remains a subject of ongoing debate and legal challenge in India. However, Supreme Courts and various High Courts in a catina of cases emphasized the fundamental rights and dignity of women.

The Supreme Court in the case of **Saroj Rani v. Sudarshan Kumar**¹⁰ upheld the validity of section 9 of the Hindu Marriage Act, highlighting that the provision serves an important purpose in protecting and preserving marital bonds. On the other hand, the court stressed that the decree does not force an unwilling wife to engage in sexual relationship with her husband.

⁷ Gupta B, Gupta M.. Marital rape: current legal framework in India and the need for change,1,GJLS,1(1)(2013)

⁸ Justice J.S. Verma committee, “Report of committee on Amendments to criminal law” (Jan.23, 2013)

⁹ Parliamentary Standing Committee on Home Affairs, “ 167th report on Criminal Law Amendment Bill, 2012” (1st March 2013)

¹⁰ Saroj Rani v. Sudarshan Kumar Chadha, AIR 1984 SC 1562

In the case of *Nimeshbhai Bharat Bhai Desai v. The State of Gujarat*¹¹, the Gujarat High Court asserted that the concept of “implied consent” within a marriage must be rejected. The court held that the has an obligation to guarantee the bodily autonomy of every woman, regardless of her marital status (married or unmarried), thereby ensuring her protection.

In **Harvinder Kaur v. Harmander Singh**¹², the Delhi High Court examined whether the legal provision for restitution of conjugal rights violated constitutional principles. The court upheld the constitutionality of Section 9 of the Hindu Marriage Act. The court’s rationale focused on the sanctity of the union, arguing that the primary objective of the law is to uphold and protect the institution of marriage rather than to coerce one partner to stay with their spouse.

The Supreme Court ruled in **Shri Bodhisattwa Gautam v. Ms. Subha Chakraborty**¹³, that the act of rape violates Article 21 of the Constitution of India since it infringes upon the victim’s right to life and dignity, thereby violating their fundamental human rights.

In the case of **Anuja Kapur v. Union of India**¹⁴ through secretary, a PIL was initiated in 2019 by Anuja Kapur seeking a court mandate for the Indian Government to establish specific guidelines and laws concerning marital rape. However, a Supreme Court’s bench, led by justices SA Bobde and BR Gavai, dismissed the plea, asserting that the legislature, not the judiciary, is responsible for the formulation of laws and that the court is more involved in their interpretation than in their drafting.

In 2017, a woman accused her husband, Hrishikesh Sahoo, of several offences under the Indian Penal code, 1860 (IPC) including rape, cruelty, and criminal intimidation.¹⁵ While the case was pending, Sahoo filed a writ petition at the Karnataka High Court to dismiss the rape charges by invoking the “marital rape exception.”¹⁶ On February 23, 2022, Justice M. Nagaprasanna rejected the petitioner’s plea, labeling the exception regressive and violation of wife’s right to equality. The court supported its conclusion by referencing the 2013 Justice J.S. Verma Committee report, which had recommended abolishing the exception. The court

¹¹ *Nimeshbhai Bharat Bhai Desai v. State of Gujarat*, 2018, Guj 732

¹² *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66

¹³ *Shri Bodhisattwa Gautam v. Ms. Subha Chakraborty*, (1996) AIR 922

¹⁴ Articles.manupatra.com <https://articles.manupatra.com/article-details/Marital-Rape-and-Law> (last visited on Nov. 07, 2025)

¹⁵ scobserver.in <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception-hrishikeshsahoo-v-state-of-karnataka/> (last visited November 8, 2025) (scobserver)

¹⁶ *Hrishikesh Sahoo v. state of Karnataka & Ors.* 2022 SCC 371

concluded by stating that “no exception under the law can be so absolute that it becomes a license for the commission of crime against society.”¹⁷

After the Karnataka High Court dismissed his plea, Sahoo approached the Hon^{ble} Supreme court of India with Special Leave Petition on May 10, 2022. On July 19, 2022, a three-judge bench, comprising of former Chief justice N.V. Ramana and justices Krishna Murari and

Hima Kohli, issued an interim stay on the High Court’s decision. Meanwhile, the State of Karnataka filed an affidavit supporting the High Court’s decision.¹⁸

Meanwhile, an NGO RIT Foundation, along with other parties, filed petition at the Delhi High Court challenging the marital rape exception in the Indian Penal Code (IPC). The division bench of the Delhi High Court in the case of **RIT Foundation v. Union of India**¹⁹ consisting of Justice Rajiv Shakdher and Justice C. Hari Shankar held two different views regarding marital rape.

The petitioner (RIT Foundation, All India Democratic Women’s Association, and two individuals) argued that Exception 2 of section 375, IPC is unconstitutional. Their primary assertion was that the exception unlawfully prioritizes the institution of marriage over the individual rights and autonomy of the spouses within that marriage.

OBSERVATION OF THE COURT Justice Rajiv Shakdher

In the opinion of Justice Rajiv Shakdher “It is a moral right of a woman to refuse unwanted, forcible sexual intercourse. Exception 2 to section 375 of IPC²⁰ violates Article 14 and 15 of Indian Constitution²¹ since it triggers discrimination against women based on their marital status.” It is also violative of Article 19(1)(a)²² (Freedom of expression) as there is irrevocable non-consensual sexual act by a man with his wife.

In essence, Justice Shakdher believes that the exception permitting marital rape is discriminatory and infringes upon a woman’s fundamental right to equality and bodily

¹⁷ scobserver, Supra note 15

¹⁸ scobserver supra note 15

¹⁹ RIT Foundation and Ors. v. Union of India and Ors.(2022) SCC OnLine Del 1404

²⁰ The Indian Penal Code, 1860, Sec. 375

²¹ The Constitution of India, 1950, art. 14&15

²² The Constitution of India, 1950, art. 19 cl. 1 sub cl. a

autonomy.

Justice C. Hari Shankar

Justice C. Hari Shankar's opinion centers on the existence of an "intelligible differentia" between sexual acts within the confines of marriage and those committed by a stranger. This differential doesn't stand diluted merely because it is non-consensual. He added that while a husband forcing sex upon his wife after her refusal may be socially disapproved of, it can't be equated with act of ravishing by a stranger." His conclusion emphasizes a qualitative difference between marital and non-marital sexual relations, and therefore he argued that since the legislature in its wisdom has decided to treat the both distinctly, it cannot be said to be violative of Article 14 of the constitution. He observed that the marriage is a foundational institution to which the individual rights as such cannot always be made subservient, and challenging this legislative distinction on that ground is fundamentally erroneous. In essence, Justice Hari Shankar defended the legal distinction between marital rape and rape by stranger.

CONTENTIONS

Joseph shine v. Union of India²³, the Supreme Court held that the offence of adultery was unconstitutional because it was founded on the principle that a woman is her husband's property after marriage.

Article 21²⁴ of the constitution of India states that right to live with human dignity stands out among the most fundamental components of right to life which perceived independence of a person.

State of Maharashtra v. Madhukar narayan²⁵, the Supreme Court held that every woman is entitled to her sexual privacy and is not open to any and every person violating her privacy as and whenever he wishes.

K. S. Puttaswamy v. Union of India²⁶ settled that right to make sexual decisions that envisaged is in the right to privacy.

²³ Joseph Shine v. Union of India, AIR 2018 SC 4898.

²⁴ The constitution of India, 1950, art. 21

²⁵ State of Maharashtra v. Madhukar Narayan, AIR 1991 SC 207.

²⁶ K.S. Puttaswamy J. (Retd.) v. Union of India, AIR 2017 SC 4161 (K.S. Puttaswamy J.)

In **State (NCT of Delhi) v. Pankaj Chaudhary**²⁷ Supreme court held that even a sex worker has the right to refuse forced sexual intercourse.

The striking down of Exception to Marital Rape would not lead to the creation of a new offence, but rather a modification of existing law. This legal reasoning draws on the precedent established in **Independent thought v. Union of India**,²⁸ where court ruled that increasing the age of consent from 15 to 18 was treated as a change to an existing law rather than the creation of a new offence.

Both the judges granted permission to the parties to appeal their split decision at the Supreme Court of India.

This was further bolstered in late 2022 when Dalit activist Ms. Ruth Manorama filed a fresh petition at the Supreme Court challenging the marital rape exception.

On 4 October 2024, the Union government formally signaled its opposition to removing the exception through a detailed 49-page affidavit, marking its first official opposition to striking down of marital rape exception. While acknowledging the gravity of the act, the government argued that classifying non-consensual sexual act within the “institution of marriage” as “rape” might be considered excessively harsh and legally disproportionate.²⁹ The government maintains that the consequences of such transgressions within a marriage differ from those occurring outside of it. It was argued that other laws – specifically the Indian Penal Code (now Bharatiya Nyaya Sanhita) and the Protection of women from Domestic violence Act, 2005 – already provide sufficient legal framework and serious penal consequences for addressing such abuse.

THE DATA CORROBORATES THE DEPRESSING TRUTH

Estimates from **National Family Health Survey (NFHS)** conducted in 2005-2006 and 2015-16 revealed that the percentage of intimate partner violence against women ranges between **3% to 43%.**

²⁷ State (NCT of Delhi) v. Pankaj Chaudhary (2019) 11 SCC 575

²⁸ Independent thought v. Union of India, AIR 2017 SC 4904

²⁹ Scobserver supra note 15

Table: Men's attitude towards a husband's rights when his wife refuses to have sexual intercourse							
Percentage of men age 15-49 who consider that a husband has the right to certain behaviours when his wife refuses to have sex with him when he wants to, by background characteristics, India, 2005-06							
Background characteristics	Percentage who agree that when a wife refuses to have sex with her husband, he has the right to:						
	Get angry and reprimand her	Refuse to give her financial support	Use force to have sex	Have sex with another woman	Percentage who agree with the right to all four behaviours	Percentage who agree with right to none of the four behaviours	Number of men
Age							
15-19							
20-24							
25-29							
30-39							
40-49							
	20.1	6.3	5.8	4.6	1.2	76.1	13,008
	21.4	6.4	5.8	4.9	1.1	73.7	11,989
	20.0	6.0	6.1	4.1	1.1	75.9	10,854
	19.6	6.2	5.8	4.0	1.0	76.1	19,045
	18.5	5.1	5.1	3.7	0.9	78.2	14,855
Residence							
Urban	14.3	4.2	4.1	4.1	0.9	81.9	25,504
Rural	23.0	7.0	6.6	4.3	1.1	72.8	44,247
Household structure							
Nuclear	19.8	6.1	5.5	4.2	1.1	76.2	35,297
Non-nuclear	19.9	5.9	5.9	4.3	1.0	76.1	34,453
Education							
No education	26.1	8.0	8.1	5.5	1.0	68.5	12,571
<5 years complete	24.2	7.8	7.6	5.0	1.5	71.5	7,109
5-7 years complete	22.5	7.1	7.6	5.6	1.5	72.7	11,523
8-9 years complete	20.0	5.7	5.6	3.8	1.0	76.3	14,398
10-11 years complete	16.0	4.8	3.8	3.4	1.0	80.7	10,380
12 or more years complete	12.4	3.4	2.5	2.6	0.6	84.7	13,754

Marital status							
Never married	19.2	6.1	5.1	4.7	1.1	76.5	25,307
Currently married	20.1	5.8	6.0	3.9	1.0	76.0	43,501
Widowed/divorced/separated/deserted	24.3	9.4	9.4	8.2	2.3	71.8	942
Wealth index							
Lowest	24.4	7.9	8.0	4.3	0.8	70.5	11,031
Second	24.5	7.5	7.2	5.1	1.2	71.1	12,666
Middle	22.9	6.9	6.4	4.6	1.4	73.1	14,301
Fourth	17.8	5.3	5.0	4.0	1.1	78.3	15,493
Highest	12.3	3.3	3.0	3.4	0.7	84.4	16,260

SOURCE: Government of India, “report of National Family Health Survey (NFHS-3) 200506 volume-II on women’s empowerment and demographic and health outcomes- Men’s attitude toward a husband’s rights when his wife refuses to have sexual intercourse” (Ministry of Health and Family Welfare, September 2007)

PERCENTAGE OF WOMEN (15-49) EXPERIENCED SEXUAL VIOLENCE

PERCENTAGE OF WOMEN AGE 15-49 WHO HAVE EVER EXPERIENCED SEXUAL VIOLENCE, BY AGE, INDIA, 2005-06		
AGE	PERCENTAGE WHO HAVE EVER EXPERIENCED SEXUAL VIOLENCE	NUMBER OF WOMEN
15-19	4.5	16,617
20-24	8.6	15,427
25-29	10.2	13,832
30-39	10.2	22,542
40-49	8.5	15,286

SOURCE: Government of India, “Report of National Family Health Survey (NFHS-3) 200506 volume- II on domestic violence” (Ministry of Health and Family Welfare, October 2007)

The 5th round survey, held in 2019-21 which spanned all 28 states and 8 union territories revealed that 1 in every 3 woman in India aged 18-49 experience spousal violence, with at least 5% to 6% of women reporting sexual violence.³⁰ About 32% of ever-married women in India had experienced physical or sexual abuse at the hands of their spouse.³¹ Among married women (15-49 years of age) who were victims of sexual violence, the vast majority reported their husband as the perpetrator which accounted for over 83% as their current husband and 9% as the former husband as the perpetrator.³²

According to data from WHO and its partners, violence against women remains devastatingly pervasive and begins alarmingly early in life. 1 in 3 women, roughly 736 million women, experience physical or sexual abuse from either intimate partner or nonpartner. This statistic has remained largely stagnant over past decade.³³

Under-reporting hides true scale of the issue

The NFHS survey warns against “under-reporting” because anecdotal evidence from the study shows that about 9 out of every 10 victims of intimate partner violence refuse to report the violence they suffer for a variety of reasons, including fear of stigma, reprisals, dependence on the spouse, and retaliation. The NFHS data, collected up to 2021, shockingly revealed that 82% of married men and 13.7% of ex-husbands had engaged in sexual violence with their wives. Compounding this issue, 90% of the survivors of spousal sexual violence refrain from taking action or seeking assistance.³⁴

Notwithstanding the magnitude of the statistics, marital rape in India is still viewed as a domestic violence issue.

³⁰ · Government of India, “Report of National Family Health Survey (NFHS-5) 2019-20 on Gender based violence” (Ministry of Health and Family Welfare, December 2020)

³¹ · Government of India, “Report of National Family Health Survey (NFHS-5) 2019-21 on Domestic Violence” (Ministry of Health and Family Welfare, May 2022)

³² · Government of India, “Report of National Family Health Survey (NFHS-4) 2015-16 on Domestic Violence” (Ministry of Health and Family Welfare, December 2017)

³³ · World Health Org. Et all., Global, Regional and National Estimates for Intimate Partner Violence against women and Global and regional estimates for non- partner sexual violence against women (2021)

³⁴ · Equalitynow.org <https://equalitynow.org/news/news-and-insights/a-ruling-on-marital-rape-in-india-iscoming-up-heres-why-you-should-be-watching-closely/> (last visited Nov. 06, 2025).

INTERNATIONAL LOOK

Poland and **Soviet Union** are the first countries to criminalize marital rape.

77 countries out of 185 countries had criminalized marital rape,³⁵ including Britain which criminalized it in 1991. However, Marital Rape has yet to be outlawed in India.

Some countries such as Sweden, Canada, UK, have taken progressive steps to criminalize marital rape.

Other nations like India and Australia have partially criminalized marital rape.

In many western countries such as USA, Canada, UK marital rape is treated on par with nonmarital sexual assault.

International push for reforms

The Convention on Elimination of all forms of Discrimination against Women (CEDAW) is an important international agreement that not only clearly defines discrimination against women but also provides a comprehensive framework to actively combat the systemic forces that have created and maintained sex-based discrimination.³⁶ Essentially, it outlines the standard for national efforts to achieve women equality.

WHY MARITAL RAPE SHOULD BE CRIMINALIZED IN INDIA?

VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION

Article 14 of the Constitution of India states “The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.”³⁷ Despite the Constitution guarantees equal protection for all, the Bharatiya Nyaya Sanhita (BNS) discriminates against women who were sexually assaulted by their spouses.

When the IPC was being codified in the 1860’s, married women were not taken into consideration as a distinct legal entity. Rather she was considered her husband’s property. As

³⁵ · UN Women, Progress of the World’s Women, 2019-20; World Bank, Women, Business and the Law, 2018 (Marital rape data as of June 2017).

³⁶ · Convention on the Elimination of all forms of Discrimination against Women, 1979, 1249 U.N.T.S. 13.

³⁷ · The Constitution of India, 1950, art. 14

an outcome to this, she was denied several rights that are now granted to her as a separate legal person, such as the right to file a complaint against the accused under her own name.

The pre-existing theory of blending a woman's identity with her husband's is partly responsible for Exception 2 to section 375 IPC (now Exception 2 to section 63) which exempts sexual acts committed by husbands against their wives from being considered an act of „rape“. But with the passage of time, Indian laws today regard husbands and wives as distinct legal entities, and adequate justice in the modern era is unquestionably associated with women's protection. This entanglement is demonstrated by the numerous laws designed to protect women from “violence and harassment”, passed since the turn of an era, comprising “The protection of women from Domestic Violence Act”³⁸ and the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act”³⁹

The second Exception to section 63 BNS/375 IPC is discriminatory because it denies married women protection against sexual assault and rape, which goes against the right to Equality enshrined in Article 14 of the Indian Constitution. Essentially, the law criminalizes such acts against unmarried women but condones the exploitation of women within institution of marriage.

However, as the stratification has no plausible connection to the fundamental object of the Act, this differentiation between married and unmarried women ultra vires article 14. The

Supreme Court ruled in the cases of “**Budhan Choudhary v. State of Bihar**”⁴⁰ and “**State of West Bengal v. Anwar Ali Sarkar**”⁴¹ “Any stratification under Article 14 is contingent to a test of reasonableness which can be decreed only when the stratification has some reasonable relation to the object that the Act sought to achieve.” However Exception 2 undermines Section 375's objective of protecting women and punishing those who engage in the heinous crime of rape. It is completely at odds with that goal to exempt husbands from punishment. In simple words, whether a woman is married or not, the consequences of rape are the same. Additionally, married women may find it more challenging to leave the violent environment they are in at home since they are tied to their spouses. In reality, Exception 2 encourages

³⁸ · The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India)

³⁹ · Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India)

⁴⁰ · Budhan Choudhary v. State of Bihar, AIR (1955) SC 191

⁴¹ · State of West Bengal v. Anwar Ali Sarkar, AIR (1952) SC 75

husbands to have forceful sexual intercourse with their spouses since they know that their actions are not illegal or punishable by law.

The stratification created by Exception 2 does not meet the reasonableness test and is consequently in violation of Article 14 of the Indian Constitution since there is no plausible connection between it and the fundamental object of the Act.

VIOLATIVE OF ARTICLE 21 OF THE CONSTITUTION

Exception 2 to section 375, IPC, also violates Article 21 of the Constitution of India i.e., “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”⁴² The Supreme Court of India has consistently expanded the scope of Article 21 beyond its literal meaning in a number of its rulings to include essential aspects for a dignified life, such as right to privacy, health, dignity, safe environment, safe living circumstances and many more.

As part of this broad interpretation of the right to life and personal liberty, Indian courts are now acknowledging the right to sexual autonomy, which includes the right to refuse sexual activity and abstain from undesired sexual conduct.

In the case of “**State of Karnataka v. Krishnappa**”, the apex court said that “sexual violence except being a barbaric act is an unlawful intrusion with the right to privacy and sanctity of a woman.”⁴³ Additionally, it was determined that engaging in any sexual activity without consent constitutes both physical and sexual abuse. Subsequently, in the case of **Suchita Srivastava v. Chandigarh Administration**, the Supreme Court explicitly equated the right to choose alternatives related to sexual activity with that of right to personal liberty, dignity, and bodily integrity, all protected under Article 21 of India Constitution.⁴⁴ In its most recent ruling, “**K.S. Puttaswamy v. Union of India**” the Apex court explicitly recognized the Right to Privacy as a fundamental right under Article 21. The court concluded that this right includes “decisive privacy”, encompassing a person’s ability to make intimate decisions mainly comprising one’s sexual or reproducing nature and choices concerning intimate

⁴² · Shukla, V.N., Constitution of India, 201, (M.P. Singh Ed., Lucknow: Eastern Book Company, 13th Ed., 2017)

⁴³ · The state of Karnataka v. krishnappa, (2000) 4 SCC 75

⁴⁴ · Suchita Srivastava v. Chandigarh administration, AIR (2008) 14 SCR 989

relations.”⁴⁵

Living together in any kind of coercive sexual relationship is considered a violation of Fundamental Right under Article 21.⁴⁶

There is no conflicting ruling stating that an individual’s “right to privacy” is lost with marriage, and the aforesaid rulings do not distinguish between the rights of married and unmarried women. Therefore, the Apex Court has noted that Article 21 of the Indian Constitution grants all women the freedom to refrain from sexual conduct, regardless of their marital status.

Furthermore, Exception 2 violates the right to live with dignity guaranteed under Article 21 of Indian Constitution. As previously mentioned, it encompasses more than just the right to survive.

In this stratum, the courts have time and again adjudged, “right to life” encompasses the right to a dignified life.⁴⁷ Even so, the significant subsistence of Exception 2, falls short to dissuade men from engaging in the acts of forced sexual intimacy with their spouses, which in turn causes substantial physical and psychological damage and undermine their ability to live a dignified life.

VIOLATIVE OF ARTICLE 19

Marital rape is a violation of the Indian Constitution’s foundational principles, infringing upon a woman’s fundamental rights to Liberty, dignity and personal autonomy.

It violates a woman’s Right to Freedom of Expression guaranteed under Article 19⁴⁸ by:

- Denying the Right to say “NO”: It forcibly removes a woman’s ability to communicate dissent, turning her refusal into a meaningless expression.
- Silencing Bodily Autonomy: Consent is form of personal expression regarding

⁴⁵ · K.S. Puttaswamy J. *Supra* note 26

⁴⁶ · As Right to abstain from consummation is a long-established principle of the Constitutional Jurisprudence of India. “Govind v. State of M.P., AIR 1975 SC 1378; Kharak Singh v. State of U.P., AIR 1963 SC 1295”.

⁴⁷ · C.E.S.C. Ltd. V. Subhash Chandra, AIR (1992) 1 SCC 441.

⁴⁸ · The Constitution of India, art. 19 cl.1 sub. cl. (a).

one's body. By overriding this choice within marriage, the act silences a crucial part of her personal expression.

IMPORTANCE OF CONSENT

Consent is the core ingredient of the offence. No woman should be compelled to give her consent for any sexual act. Just as trust is vital in a relationship, so is consent. Absence of consent must be taken under the purview of definition of rape irrespective of whether it occurs within or outside marriage.

Despite being seen as a holy bond between a husband and wife, marriage now serves as a legal license to engage in sexual behavior, forcing a woman to do so. Then how is marriage considered sacred when a woman is suffering physically and emotionally and there is no cure?

The consent of woman must be valued as she also has right to personal liberty and individual freedom. The legislature must take progressive measures to criminalize non-consensual sexual intercourse within marriage.

CONCLUSION

In the **Sabarimala case**,⁴⁹ the Supreme Court ruled in 2018 that the temple's practice of excluding women of certain ages was unconstitutional, violating their fundamental Right to Equality. Sabarimala verdict reinforces that women's rights cannot be curtailed by discriminatory practices. The judgment stands as a powerful example that patriarchal notion cannot supersede women's bodily autonomy and dignity. Using this reasoning, retaining the marital rape exception becomes indefensible, as it violates equality and dignity and therefore, marriage cannot be a shield for violence. A woman's „NO“ is an absolute denial, and a woman's body is her own castle, even within the confines of matrimony. The law must affirm that marriage is not a license, but a vow to respect.

However, marital rape must be criminalized with great caution to prevent its misuse. Women who falsely accuse their spouses must face harsh repercussions. Additionally, the wife should compensate her husband heavily if he is falsely accused.

⁴⁹ · Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors. AIROnline 2018 SC 243.

REFERENCES

Bare Acts;

The Constitution of India

Bharatiya Nyaya Sanhita, 2023

India Penal Code, 1860

The Protection of women from Domestic Violence Act, 2005

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Text books;

The Constitution of India; Dr. J.N. Pandey

Criminal Law; PSA Pillai