



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE MARITAL RAPE EXCEPTION: WHY CONSENT CANNOT HAVE AN EXPIRY DATE

~ *Vaishnavi Upadhyay*

INTRODUCTION

It's well said 'for once you can take out patriarchy from society but never the society from patriarchy'

We have come far from adapting various habits, different culture, technology however the one thing that left in pace is a society where patriarchy is glorified and women are always seen as submissive to men. Where marriage is seen as a contract for consent. For women the right to say 'no' disappears after her marriage, as if her consent has an expiry date. For over hundred years women have fought for their rights but still at the

Our legislature and judiciary have significantly made laws regarding women protection, however certain areas remain unhindered, from which one of them is Marital rape of women, the marital rape stands for a non-consensual sexual intercourse done by one spouse to other. When a woman is raped by a stranger it is considered as an offence however when if she is raped by her husband the law forgives him.

SECTION 63 BHARATIYA NYAYA SANHITA¹, 2023

In Indian Constitution, Section 375 of IPC addresses Rape. Which is now addressed under Section-63 of Bharatiya Nyaya Sanhita, 2023. A man said to commit rape if any kind of non-consensual forceful intercourse or penetration is done with any women or girl is considered rape. However Section-63 exception 2² clearly states "sexual intercourse or sexual act by a man with his own wife, the wife not being under eighteen years of age, is not considered as rape."

¹ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 63.

² The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023, § 63, exc. 2.

LEADING JUDGEMENTS

This law does not protect the consent of married women. Numerous Judicial precedent has been established till this day, however none has given protection from marital rape to women.

1. **In Madhya Pradesh High Court (2024)**,³ the court has ruled that an unnatural sexual intercourse with wife does not constitute as rape. The bench held that the law provides statutory protection given to a husband under Indian criminal law making the wife's active consent legally irrelevant.
2. **Further in Chaman Lal v State of Chhattisgarh (2025)**, the High Court ruled that a husband cannot be legally prosecuted for rape against his wife under Indian law. The held that because she was an adult, the absence of her consent hold no legal value due to statutory framework provided to husband, under section 63 exception 2.
3. **Moreover, In Hrishikesh Shoo v State of Karnataka**⁴, the Supreme court is dealing with the marital rape exception, however an interim order has been passed by the court, to not criminalise the marital rape and have agreed to the validity of exception 2 of section 63.

Today, Marital rape has been impeached in more than 100 countries however India stands among those 36 countries which has criminalised marital rape. The National Family Health Survey (NFHS) shows **that 1 in 3 Indian women aged 18-49 report experiencing marital abuse**, while 5%-6% report sexual assault. According to UN population Fund, **more than two-third of married women in India**, aged between 15 to 49, have been beaten, **forced, to provide sex**, regardless of their socio-economical position.

ANALYSIS OF LEGAL CLASHES

Article 14⁵, Article 15⁶ and Article 21⁷ stands as the most crucial fundamental rights guaranteed to each and every individual, the exception is definitive violation of these rights. The protection of individual is the basic function established in our constitution. When woman are treated differently it makes them vulnerable, the law is the only factor that can protect from these decriminalised offence.

³ A v. State of Madhya Pradesh, 2026 SCC OnLine MP 9922.

⁴ Hrishikesh Sahoo v. State of Karnataka, SLP (Crl.) Nos. 4063-4064 of 2022 (S.C.).

⁵ India Const. art. 14.

⁶ India Const. art. 15.

⁷ India Const. art. 21.

1. Article 14 stands for Equality before Law, providing equal status to each individual, however not giving equal treatment to married women section-63 exception 2 is violative of its function

2. Further Article 15 prohibits discrimination of every individual on the basis of religion, caste, sex, race or place of birth. However the exception violates this right by differentiating and providing more status to wedded husband.

3. Article 21 is foundational fundamental right that guarantees the protection of life and personal liberty. It establishes Right to Equality, Right to live with dignity, Right to Healthy Environment, however when a woman is forced to have sexual interrelation without her consent, the right to live in healthy environment is violated.

CONCLUSION

As per the International Men and Gender Equality Survey, 2011, one out of five men has forced his wife to have sex. We have come up in a society where basic freedom of consent has become a big question, where meaning to get equal status of women has become deliberate issue, shaping the future with this social problem will lead to significant issue, therefore the legislature and guardian of our constitution, needs to address this problem as soon as possible. From the heart of every woman that has been part of this insignificant incident the Criminalisation of Marital rape is not only necessary but equally important for the working of structured society.

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