



RIT FOUNDATION V. UNION OF INDIA

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INTRODUCTION

Marital rape, so to speak, has never been something that India's criminal justice system generally considered or addressed. Section 375 of the Indian Penal Code (IPC), 1860-the section defining rape-exempts sexual intercourse between a husband and wife (provided she is not under 15 years of age)¹ under Exception 2, hence S.375 is commonly referred to as the "marital rape exception" or MRE. Here is a situation where a married woman is denied equal bodily autonomy and equal protection against sexual violence under the law idea born from colonial and patriarchal notions.

In 2022, the Delhi High Court was given the onerous task of revisiting the constitutionality of the MRE in the case of the **RIT Foundation v. Union of India**.² The provision was challenged by a coalition of NGOs and women's organisations on the grounds of violation of Articles 14, 15, 19(1)(a), and 21 of the Constitution of India.³ The challenger organisations wanted the recognition of a married woman's right to sexual autonomy and freedom from violence regardless of her marital status. The resultant split verdict very much put the fight between constitutional gender.

BRIEF SUMMARY OF THE CASE — RATIO AND OBITER

Procedural Trajectory: A series of writ petitions initiated by the RIT Foundation and allied organisations were heard by a two-judge bench of the Delhi High Court comprising Justices Rajiv Shakhder and C Hari Shankar. Over several months, the bench considered extensive

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¹ Indian Penal Code 1860, s 375 Exception 2.

² RIT Foundation v Union of India 2022 DHC 1825 (Del HC) (Split Verdict).

³ Constitution of India 1950, arts 14, 15, 19(1)(a), 21.

arguments and amicus submissions, examining both constitutional and comparative law materials.

ISSUES CONSIDERED

1. Does the marital rape exception under Section 375 IPC violate the constitutional guarantees of equality, dignity, and non-discrimination?
2. Is there a reasonable or intelligible distinction between married and unmarried women for rape law?
3. Should the judiciary strike down Exception 2 as unconstitutional, or is legislative reform the only appropriate route?

SPLIT OUTCOME

Justice Shakti Chaudhary: Held that MRE is unconstitutional, violating Articles 14 (equality), 15 (non-discrimination), 19(1)(a) (expression/autonomy), and 21 (life/dignity). He emphasised that marriage does not amount to blanket and irrevocable consent, and that the exception arbitrarily disadvantages married women, perpetuating patriarchy and denying bodily autonomy.⁴ He urged that criminal law cannot sanction sexual violence in the home.

Justice Hari Shankar: Upheld the MRE, citing preservation of the “institution of marriage” as a legitimate legislative purpose.⁵ He asserted the judiciary must exercise restraint, as the classification between married and unmarried women was not manifestly arbitrary, given India’s social context. Repeal or modification, he concluded, was a legislative prerogative.

Obiter Dicta: Both judges acknowledged the complex social questions raised, with Justice Shakti Chaudhary noting the global trend towards criminalisation of marital rape and the importance of constitutional morality. Justice Shankar cautioned against judicial “legislation from the bench” in matters involving fundamental changes to societal structure.

Being a split verdict, the issue was referred to the Supreme Court for final resolution, making the High Court’s analysis highly influential but not (yet) authoritative.

⁴ RIT Foundation (n 2) per Rajiv Shakti Chaudhary J [108]– [114].

⁵ RIT Foundation (n 2) per C Hari Shankar J [253]– [262].

MAIN ARGUMENTS OF THE PARTIES

Petitioners' Submissions

Violation of Equality and Dignity: The MRE creates arbitrary and irrational discrimination between married and unmarried women,⁶ breaching the equality guarantee of Article 14. It denies married women full control over their bodies and sexuality, violating Article 21.

Consent is Fundamental: Marriage does not erase or override the requirement of consent. Laws should recognise continuing, revocable autonomy over one's body.⁷

International Human Rights Law: India is a party to CEDAW and associated human rights norms,⁸ which call for the elimination of gender-based violence and legal exceptions that enable it.

Global Legal Trends: Many countries, including the UK, Canada, and South Africa, have criminalised marital rape, recognising women's equal rights and autonomy regardless of marital status.

Doctrine of Constitutional Morality: The State cannot use social or religious norms as a shield to justify discrimination, especially when those norms contradict constitutional values.

Respondents' Submissions

Legislative Domain: Matters implicating deep social reform and family structure should be addressed by Parliament, which is better placed to balance competing interests.

Implied Conjugal Consent: The government asserted that marriage carries certain mutual obligations, including sexual relations; to criminalise marital rape would destabilise this institution.

⁶ Joseph Shine v Union of India (2018) 2 SCC 189 (SC) [42]– [49], [76]– [80].

⁷ Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1 (SC) [22]– [24].

⁸ UN Committee on the Elimination of Discrimination against Women, General Recommendation No 35 (14 July 2017) [20]– [24].

Safeguards Already Exist: Cited provisions under civil law and the Domestic Violence Act, and pointed out that “cruelty” is a ground for divorce and protection orders, arguing that criminalisation was unnecessary and susceptible to misuse.⁹

Burden of Proof and Misuse: Raised concern that repealing the MRE would expose men to false allegations in the context of matrimonial disputes.

LAWS, CASE LAWS, AND PRINCIPLES

Statutory Provisions

Section 375, IPC (Exception 2): Excludes sexual intercourse by a husband with his own wife, unless she is below a specified age, from the definition of rape.

Section 198B, CrPC: Regulates prosecution for marital rape cases, adding a procedural handicap to prosecution.¹⁰

Related Laws: The Protection of Women from Domestic Violence Act, 2005, provides civil remedies but not specific criminal liability for non-consensual intercourse in marriage.¹¹

Constitutional Provisions

Article 14: Equality before law and prohibition of arbitrary classification.

Article 15: No discrimination based on sex.

Article 19(1)(a): Freedom of expression (includes bodily autonomy and decisional privacy).

Article 21: Protection of life and personal liberty (interpreted to include dignity and privacy).¹²

KEY JUDICIAL PRECEDENT

Independent Thought v Union of India (2017) 10 SCC 800: Supreme Court read down the marital rape exception for minor wives, invoking dignity and autonomy for children within marriage.

⁹ Protection of Women from Domestic Violence Act 2005, s 3.

¹⁰ Code of Criminal Procedure 1973, s 198B (as inserted by the Criminal Law (Amendment) Act 2013).

¹¹ Protection of Women from Domestic Violence Act 2005, s 3.

¹² Constitution of India 1950, arts 14, 15, 19(1)(a), 21.

Joseph Shine v Union of India (2018) 2 SCC 189: Decriminalized adultery, striking down the colonial logic of wife as chattel.

Navtej Singh Johar v Union of India (2018) 10 SCC 1: Decriminalised same-sex conduct, affirming dignity and autonomy above social prejudice.

Comparable Foreign Judgments: Cited authorities from the UK, Canada, and the European Court of Human Rights recognising bodily autonomy within marriage and criminalising marital rape.

PRINCIPLES APPLIED

Doctrine of Reasonable Classification: Discrimination without a sound rationale is impermissible; law must serve a legitimate state interest and not be arbitrary.

Constitutional Morality vs. Social Morality: The Constitution takes precedence when there is a conflict between societal norms and fundamental rights.

Dignity and Privacy: Rights to dignity and sexual autonomy survive marriage and cannot be overridden for the sake of maintaining “sacred” social institutions.

ANALYSIS, OBSERVATIONS, AND LEARNING

Constitutional Transformative Approach: The High Court's divided verdict brought together two currents of interpretation: judicial activism for gender justice (Shakdher, J.) and restraint in deference to legislative intent (Shankar, J.). Justice Shakdher strongly espoused constitutional morality, which he argued should exclude legal exceptions for marital rape by being anachronistic, continuing gender-based subordination, and offending the essential guarantees of autonomy, dignity, and equality. Justice Shankar insisted that there should be no overruling by the courts against legislative choices other than where there is clear evidence of arbitrariness and in acknowledgement of the fact that society has a context and complexity, especially in the area of marriage and family law.

Comparative Law and Policy: The petitioners and Justice Shakdher extensively referenced the international movement towards criminalisation of marital rape. Nations like the UK (R v R UKHL 12), Canada, and the post-Apartheid South African Constitutional Court have all struck down legal immunities for spousal rape. India remains an outlier by continuing to offer

legal shelter for sexual violence within marriage, despite being party to CEDAW and other international instruments.

Socio-Legal and Legislative Implications: The case highlights the immense social and practical challenges of eradicating marital rape. Even if the law changes, social stigma, evidentiary difficulties, and patriarchal biases in enforcement may persist. Yet, retention of the MRE serves as a legal endorsement of non-consensual sex within marriage, contradicting the spirit of constitutional guarantees.

Doctrine of Constitutional Morality: Crucially, *RIT Foundation v. Union of India* situates the marital rape debate at the interface between the text and principles of the Constitution, insisting that personal law, custom, or tradition cannot serve as defences to gender-based violence. The judgment recognises that Indian constitutionalism, evolving as it is, must adapt to transform deep-seated social inequities.

Pending Resolution: Now, because of the division, the question currently stands awaiting final determination by the Supreme Court. It serves, therefore, as not only a judicial call to action but also a warning against half-measures, as it connotes the important role of the judiciary as the sentinel of rights in cases where the legislature is inert or hesitant.

CONCLUSION

The scrutiny of the marital rape exception by the Delhi High Court in *RIT Foundation v. Union of India* is a watershed moment for Indian gender and constitutional jurisprudence. In rejecting a view of marriage as extra-jurisdictional, immune from constitutional challenge, Justice Shabdher's opinion positions Indian law with progressive, rights-based legal systems across the world. Justice Shankar's dissent, by contrast, speaks of the perils of judicial overreach and emphasises how challenging statutory change is. Win or lose, the case forces Parliament and society more broadly to contend with uncomfortable questions about bodily autonomy, marital duties and gender justice. It is, after all, a lesson that the institution of marriage cannot be part and parcel with the denial of basic human rights. As the Supreme Court plods through its deliberations, the case continues to serve as a touchstone for advocates of gender rights and as an acid test of constitutional faithfulness in a changing India.