

Bill No. 263 of 2024

THE BHARATIYA NYAYA SANHITA (AMENDMENT) BILL, 2024

BY

DR. SHASHI THAROOR, M.P.

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BILL

to amend the Bharatiya Nyaya Sanhita, 2023.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:-

1. (1) This Act may be called the Bharatiya Nyaya Sanhita (Amendment) Act, 2024. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 63 of the Bharatiya Nyaya Sanhita, 2023,—

Amendment of
section 63.

(a) for description (iv), the following description shall be substituted,
namely-

(iv) "with her consent, when the man knows that he is not the person she believes she has given consent to engage in sexual intercourse or sexual acts and that her consent is given because she believes that he is another man with whom she wants to engage in sexual intercourse or sexual acts.";

(b) in Explanation 2, after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that the ethnicity, religion, caste, education, profession, clothing preference, entertainment preference, social circle, personal opinion, past sexual conduct or any other related grounds of a woman shall not be a reason to presume her consent to the sexual activity.; and

(c) Exception 2 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The criminalisation of marital rape is an urgent necessity in India's legal framework. Currently, Section 63 of the Bharatiya Nyaya Sanhita, 2023, excludes marital rape from being a punishable offense, allowing men to engage in non-consensual sex with their wives, provided the wife is not under 18 years of age. This outdated legal exception is rooted in patriarchal notions that view wives as property—a remnant of colonial-era mindsets.

This failure to criminalise marital rape has left married women legally defenceless, distinguishing them from unmarried women and perpetuating the misconception that marriage voids the necessity of consent. This undermines women's fundamental rights to dignity, safety, and bodily autonomy. The alarming prevalence of marital rape is evident from the National Family Health Survey-5 (NFHS-5), which reports that 83% of women aged 18 to 49 who faced sexual violence named their current husband as the perpetrator, reflecting the pervasive nature of sexual violence within marriages.

The Justice Verma Committee Report (2013) strongly recommended the removal of the marital rape exception, citing it as contradictory to women's rights and justice. Additionally, international treaties like CEDAW, to which India is a signatory, have called for broader definitions of rape to include marital rape, acknowledging the reality of marital sexual abuse.

Under the Indian Constitution, Article 21 guarantees every individual the Right to Life and Personal Liberty, interpreted by the Supreme Court to include dignity, privacy, and bodily autonomy—rights that marital rape violates by denying married women control over their own bodies. Furthermore, Article 253 empowers Parliament to legislate in alignment with international conventions, and Article 51 enjoins the State to respect international law and uphold equality and justice. These constitutional provisions clearly mandate the removal of the marital rape exception to uphold both domestic and international commitments to human rights.

Marriage should be a partnership grounded in mutual respect, consent, and equality. Criminalising marital rape affirms that consent is a fundamental human right, regardless of marital status. Allowing a husband to force sex upon his wife disregards her autonomy and perpetuates a culture of control and gender-based violence. In moving toward equality, it's essential to restore women's agency over their sexual rights within marriage and ensure dignity for all individuals. only entrenches gender-based inequality in India's society.

Similarly, factors unrelated to a woman's autonomy—such as her caste, profession, clothing choices, personal beliefs, or past sexual conduct—should never be used to presume her consent. Such assumptions not only perpetuate gender-based inequality but also violate her fundamental rights and dignity; they must be unequivocally rejected.

Hence this Bill.

NEW DELHI;

SHASHI THAROOR

November 13, 2024.

ANNEXURE

[EXTRACT FROM THE BHARATIYA NYAYA SANHITA, 2023

(ACT NO. 45 OF 2023)

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63. A man is said to commit “rape” if he— Rape

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

(i) against her will;

(ii) without her consent;

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

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.

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to amend the Bharatiya Nyaya Sanhita, 2023.

(Dr. Shashi Tharoor, M.P.)