

**Bill No. XXXIX of 2024**

**THE BHARATIYA NYAYA SANHITA (AMENDMENT) BILL, 2024**

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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.

5 (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

45 of 2023. 2. In section 63 of the Bharatiya Nyaya Sanhita 2023, for Exception 2, the following shall be substituted, namely:—

Amendment of section 63.

10 "Exception 2.—The fact of a subsisting marriage of the accused and the victim shall not be treated as a mitigating factor for the offence under this section."

## STATEMENT OF OBJECTS AND REASONS

Under section 63 of the Bharatiya Nyaya Sanhita 2023, the offence of rape provides for an exception—'Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape'. The 42<sup>nd</sup> Report of the Law Commission (1971) suggested the removal of this exception. The Indian Penal Code, 1860 was amended in the year 1983 to criminalise spousal rape during the period of judicial separation, as suggested by the 84<sup>th</sup> Law Commission Report. However, the exception of marital rape still remained.

Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape unequivocally in the definition of violence against women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee also suggested that India should 'widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape'. Inspired by this, the Justice Verma Committee recommended deleting the exception. Apart from being a moral obligation, incorporation of such international treaties is prescribed in Article 253 of the Constitution of India. In addition, article 51 requires that the State should endeavour to promote international peace and security, maintain good relations with other nations, and respect international law. Under both these articles, it is a mandate that the Legislature removes this exception.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) did not criminalise marital rape but recognised it as a form of domestic violence, providing a first step towards criminalisation. The marital rape exception is antithetical to the Right to Life and Personal Liberty provided under article 21 of the Indian Constitution, which states that 'No person shall be deprived of his life and personal liberty except according to the procedure established by law'. Through the course of time, the Supreme Court has expanded the Right to Life beyond a mere literal protection of life and liberty. It includes a dignified life, safe living conditions, a woman's right to her reproductive choices, and privacy. Thus, there is a need to remove the exception of marital rape from the offence of rape.

The Bill seeks to achieve the above objectives.

DEREK O' BRIEN

*ANNEXURE*

EXTRACTS FROM THE BHARATIYA NYAYA SANHITA, 2023  
(45 OF 2023)

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63. \* \* \* \* \*  
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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RAJYA SABHA

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*(Shri Derek O' Brien, M.P.)*