

CASE LAW UPDATES

Hrishikesh Sahoo Case: Supreme Court to Decide the Future of India's Marital Rape Exception

Julie Nigam · 16 Oct 2026

The Supreme Court recently addressed the constitutional challenge to the marital rape exception in *Hrishikesh Sahoo v. State of Karnataka*, SLP (Criminal) Nos. 4063-4064 of 2022. The case asks whether a husband can be prosecuted for rape when the law continues to exclude sexual intercourse by a man with his adult wife from the definition of rape.

The Supreme Court has not yet finally decided whether the exception is constitutional. During the **September 2026** hearing, it questioned whether prosecution can continue when the statute says that the act is not rape. It will examine what follows if the exception is upheld or declared unconstitutional. The matter is listed for final hearing on 18 November 2026.

The case is important as it balances a woman's rights to equality, dignity, privacy and bodily autonomy with the accused husband's right to fair notice.

Facts of the case

- In 2017, the wife of Hrishikesh Sahoo filed a complaint alleging rape, cruelty, threats and other offences. The complaint further alleged that their daughter was sexually abused, which led to proceedings under the [Protection of Children from Sexual Offences Act, 2012](#) (POCSO Act).
- Police investigation and charge-sheet filed. The Sessions Court has framed charges under provisions of the [POCSO Act](#) and Sections [376](#), [498A](#) and [506](#) of the Indian Penal Code, 1860 (IPC).
- Sahoo went to the Karnataka High Court arguing that the exception for marital rape protected him from prosecution. He sought quashing of the proceedings or removal of the rape charge.
- On 23 March 2022, the Karnataka High Court rejected his challenge. Sahoo then approached the Supreme Court through a Special Leave Petition.

- On 19 July 2022, a three-judge Bench granted an interim stay of the Karnataka High Court judgment. This means the High Court's reasoning is under challenge and cannot be treated as the final law on the constitutional validity of the exception.

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CORE ISSUE

- Does the marital rape exception violate a married woman's equality, dignity, privacy, bodily autonomy and sexual choice?
- Can a husband be prosecuted for rape while the exception remains in the law?



2

LEGAL POSITION

- BNS Section 63, Exception 2 continues the exception for a wife aged 18 or above.
- Sexual intercourse with a wife below 18 remains an offence.



3

KARNATAKA HIGH COURT

- Marriage does not give a husband unlimited control over his wife's body.
- The High Court allowed the rape prosecution and rejected absolute marital immunity.



4

SUPREME COURT QUESTIONS

- Does the exception violate Articles 14 and 21?
- Can prosecution continue when the statute excludes the act from rape?
- Does Article 20(1) require clear legal notice before criminal liability?



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PRESENT STATUS

- No final Supreme Court decision has been given on the constitutional validity of the exception.
- The matter is listed for final hearing on 18 November 2026.



What did the Karnataka High Court hold?

- The High Court held that marriage cannot give a husband unrestricted control over his wife's body. It described the exception as regressive because it treats a wife as subordinate.
- The Court reasoned that the Constitution guarantees women equality and protection. A man who commits rape may ordinarily be prosecuted under [Section 376](#) IPC. Being the woman's husband cannot create an absolute licence for sexual violence.
- The High Court relied on constitutional values under [Articles 14](#), [15](#) and [21](#). It also referred to the Justice J.S. Verma Committee's recommendation that the marital rape exception should be removed. The Court famously observed, in substance, that no legal exception should become a licence to commit a crime against society.
- The High Court dismissed Sahoo's petition. In connected proceedings, it directed the Sessions Court to frame a charge under [Section 377](#) IPC. It clarified that its observations should not influence the trial court's decision on evidence.

Issues before the Supreme Court

The Supreme Court will consider, among other questions:

1. Whether the marital rape exception violates a married woman's right to equality under [Article 14](#).
2. Whether it discriminates against married women by denying them the same criminal-law protection available to unmarried women.
3. Whether the exception violates [Article 21](#), including dignity, privacy, bodily autonomy and sexual choice.
4. Whether a court can permit prosecution for rape when the statute presently says that the act is not rape.
5. If the exception is unconstitutional, whether prosecution can continue and what framework should apply.
6. If it is upheld, whether the pending rape prosecution can survive.

The Court must also consider [Article 20\(1\)](#) i.e. a person cannot be convicted for an act that was not an offence when committed. This raises whether courts can expand a penal offence through interpretation without clear legislative notice.

Relevant Legal Provisions

[Section 375](#), IPC defined rape and marital rape contained Exception 2. It stated that sexual intercourse or sexual acts by a man with his own wife, when the wife was not under 15 years of age, did not amount to rape. The IPC was replaced by the [Bharatiya Nyaya Sanhita, 2023 \(BNS\)](#).

[Section 63](#), BNS now defines rape. Exception 2 continues the marital exception, but the age threshold is 18 years. Therefore, sexual intercourse or sexual acts by a man with his own wife, if she is not under 18, are excluded from the definition of rape under the BNS.

The BNS also makes sexual intercourse with a woman below 18 an offence regardless of marriage. This change is relevant to the constitutional examination.

[Article 14](#) guarantees equality before law and equal protection of laws. The petitioners argue the exception creates an unjustified distinction between married and unmarried women.

[Article 21](#) guaranties protection of life and personal liberty. The Supreme Court has interpreted it to include dignity, privacy, bodily integrity and decisional autonomy.

[Article 20\(1\)](#) protects a person against retrospective criminal liability. The Union has relied on this principle while arguing that criminal law must provide fair notice before a person can be prosecuted.

Other protections, such as [Section 498A](#) IPC and the [Protection of Women from Domestic Violence Act, 2005](#) may apply to abuse within marriage. The question is, are they enough for forced sexual intercourse by a husband?

What will the Supreme Court consider next?

During the hearing in September 2026, a Bench of Chief Justice **Surya Kant** and Justices **Joymalya Bagchi** and **V. Mohana** had asked how can a husband be prosecuted for rape when the exception is still there?

Justice Bagchi noted that a woman subjected to involuntary sexual intercourse is a victim. The legal question is whether the State has defined that conduct as “rape” for the purpose of criminal prosecution. The Court also considered the tension between a wife’s [Article 21](#) rights and the accused’s [Article 20](#) safeguards.

Karnataka supported prosecution and argued that the law could be interpreted to permit the case. The Union opposed removing the exception. It stated that marriage does not extinguish consent, but argued that Parliament should assess the consequences of defining every non-consensual sexual act within marriage as rape.

No final declaration has been made. The Court may uphold, narrowly interpret or strike down the exception.

Other Important Cases Referred

In [Independent Thought v. Union of India](#) (2017), the Supreme Court read down the marital exception to protect a wife below 18 years of age. The case confirmed that marriage cannot justify sexual intercourse with a child.

In [Joseph Shine v. Union of India](#), the Supreme Court struck down the adultery offence and rejected ideas that treat a woman as the property of her husband. The decision is relevant to the arguments on dignity, equality and marital autonomy.

In [K.S. Puttaswamy v. Union of India](#), the Court recognized the right to privacy as a fundamental right. Privacy is about bodily integrity, and personal choice.

The Karnataka High Court also cited [R v. R](#), the 1991 decision of the House of Lords that overturned the common-law idea that a husband could not rape his wife. It relied on the Justice J.S. Verma Committee Report, which recommended removing the marital rape exception after the 2012 Delhi gang-rape case.

The Delhi High Court’s 2022 split decision is also part of the background. Justice Rajiv Shakdher held that the exception was unconstitutional while Justice C. Hari Shankar upheld the exception. The confrontation points to the need for a final decision from the Supreme Court.

Directions Issued and Importance of the case

The Supreme Court's 2022 direction stayed the Karnataka High Court judgment. It has directed that the connected petitions and appeals be heard together and listed them for final hearing on 18 November 2026. No final direction on prosecution or validity has been issued.

The case asks whether marriage can change the meaning of consent and tests judicial interpretation in criminal law. Striking down the exception could expand criminal protection for married women, while upholding it could leave Parliament to decide whether and how to criminalise marital rape.

Conclusion

Hrishikesh Sahoo v. State of Karnataka remains a pending constitutional challenge, not a final Supreme Court ruling. The Karnataka High Court allowed prosecution and rejected absolute marital immunity. The Supreme Court will decide whether that approach is sustainable under the IPC and BNS. It is important to remember that the core debate is between equality, dignity and bodily autonomy, and legality, fair notice and separation of powers.