

RADIAM LAW
Advocates
Supreme Court of India
New Delhi- 110001

DIARY No. 22030/2025

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the Petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.



(Radiam Law)

Date:- 08.05.2025

Advocate for Petitioner

IN THE SUPREME COURT OF INDIA

(CRIMINAL ORIGINAL JURISDICTION)

WRIT PETITION (CRL.) NO. OF 2025

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF

Aweksha Women's Charitable Trust

... Petitioner

Versus

Union of India & Ors.

... Respondents

WITH

CRL.M.P. No. ----- / 2025

**Application for exemption from filing
official translation.**

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ADVOCATES FOR THE PETITIONER : RADIAM LAW

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LISTING PROFORMA

The case pertains to [Please tick/check the correct box]		
.	Central Act: [Title]	N.A.
.	Section	N.A.
.	Central Rule	N/A
.	Rule No[s].	N/A
.	State Act [Title]	N/A
.	Section	N/A
.	State Rule [Title]	N/A
.	Rules No[s].	N/A
.	Impugned Interim Order [Date]	N/A
.	Impugned Final Order/ Decree	N.A
.	High Court : [Name]	N.A.
.	Name of Judge[s]	N.A.
.	Tribunal/Authority [Name]	N/A
1.	Nature of Matter	CRIMINAL
2(a)	Petitioner/Appellant No.	Aweksha Women's Charitable Trust
(b)	E-mail ID	N.A.
(c)	Mobile/Phone No[s].	N.A.
3(a)	Respondent No[s].	Union of India & Ors.
(b)	E-mail ID	N/A
(c)	Mobile/Phone Number	N/A
4(a)	Main Category classification	Matter
(b)	Sub-Classification	Others
5.	Not to be listed for	N/A
6(a)	Similar Disposed of matter with citation, if any, & case details:	No similar matter is disposed of.
(b)	Similar pending matter case details:	No similar Matter is pending
7.	Criminal Matters	YES
(a)	Whether Accused/ Convict has surrendered	N.A.
(b)	F.I.R. No. Date:-	N.A.
(c)	Police Station	N.A.
(d)	Sentence Awarded	N.A.
(e)	Period of sentence undergone including period of detention/ custody undergone	N.A.

(f)	Whether any earlier case between the same parties is filed	N/A
(g)	Particulars of the FIR and Case	N.A.
(h)	Whether any bail application was preferred earlier and decision thereupon	N.A.
8.	Land Acquisition Matters	N/A
(a)	Date of Section 4 Notification	N/A
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10.	Special Category [First Petitioner/Appellant only]	N/A
	Senior Citizen: years	N/A
	Disabled [] Legal Aid case SC/ST [] Woman/Child In custody	N/A
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(RADIAM LAW)

Advocates of the Petitioner

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B

SYNOPSIS

The present petition has been filed by the Petitioner Trust in public interest challenging the constitutionality of Exception 2 of Section 63 of Bhartiya Nyaya Sanhita (“BNS”) of 2023 being the exception to marital rape, as being violative of Articles 14, Article 15, Article 19(1)(a) and Article 21 of the Constitution of India, 1950 and ultra vires to the constitutional scheme as it makes an exception to rape or non-consensual sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, only on the ground of marriage.

It is a well-documented fact that women face serious forms of sexual violence within marriage. The National Family Health Survey – 5 (“NFHS-5”) found that between 2019-2021, 29.3% of married women experienced physical and sexual violence by their husbands. Thus, sexual violence at the hands of a spouse is a serious form of violence and abuse faced by women within marriage. Sexual violence faced by women is a serious breach of women’s sexual and reproductive autonomy, bodily and psychological integrity and, when it occurs in intimate relationships such as marriage, it is a breach of trust and a serious risk factor for other harms. Women who face sexual violence in marriage also are at risk for physical injury, emotional harm, unwanted pregnancy, and exacerbation of other

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health conditions. Poverty, social inequalities and the lack of available services may make it difficult for women to leave violent marriages, putting them at risk of further violence and harm. Therefore the marital rape exception which excludes rape as a criminal offence under section 63 amounts to a serious violation of women's right to life and personal liberty and bodily autonomy under Article 21 of the constitution and deserves to be set aside.

In the case of *Independent Thought v. Union of India*, (2017) 10 SCC 800, this Hon'ble Court categorically held that the Exception 2 to Section 375 IPC, 1860, insofar as it relates to a girl child below 18 years is liable to be struck down as it is arbitrary, capricious, whimsical and violative of the rights of the girl child and also violative of Articles 14, 15 and 21 of the Constitution of India. It did not address marital rape of adult women, as that was not before it, but did rely on the recommendations of the Justice Verma Committee report which stated that the marital rape exception should be removed. Thereafter even with the BNS was enacted, the marital rape exception in section 63 was not removed.

Presently almost 150 countries have repealed the marital rape exceptions in their criminal law. The continuation of this exception violates the fundamental rights of women under Articles 14, 15 (1) and 21

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of the constitution, affecting their right to equality, non-discrimination and their right to life and liberty and dignity only on the ground of marriage.

Besides the constitutional obligation to safeguard women's rights, India has also ratified several international instruments to promote gender equality and implement welfare policies for women, regardless of their marital status. India is signatory to Declaration on Elimination of Violence against Women of 1993 wherein it is obliged to adopt and reflect Article 1 and Article 2(a) of the said declaration in its letter and spirit. These articles expand and articulate the definition of the term “violence against women” to encompass marital rape and demands that States Parties should take steps to recognize marital rape as a form of serious violence against women.

It is therefore essential that this Hon'ble Court to declare the Exception 2 to section 63 of the BNS as unconstitutional and protect the fundamental rights of women within marriage.

E

LIST OF DATES AND EVENTS

Relevant Dates	Description of Events
837 & 1860	The Indian Penal Code (“IPC”) was enacted in 1860 by the Legislative Council of India and was based on a draft Penal Code prepared in 1837 by Lord Thomas B. Macaulay. Consequent to the deliberations after the draft came into existence, the IPC was enacted in 1860. Section 375, as originally enacted, read thus: <i>“375. Rape.— A man is said to commit ‘rape’, who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions :</i> <i>First.— Against her will.</i> <i>Secondly.— Without her consent, while she is insensible.</i> <i>Thirdly.— With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.</i> <i>Fourthly.— With her consent, when the man knows that her consent is given because she believes that he is a different man to whom she is or believes herself to be married.</i> <i>Fifthly.— With or without her consent, when she is under ten years of age.</i> <i>Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.</i> <u>Exception.— Sexual intercourse by a man with his own wife, the wife not being under 10 years of age, is in no case rape.”</u>

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1940	In 1940, the age of the wife under the marital rape exception i.e., Exception No.2 was enhanced from 10 years to 15 years under Section 375 of the IPC. The section then read as follows: <i>“375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—</i> <i>First.—Against her will.</i> <i>Secondly.—Without her consent.</i> <i>Thirdly.—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.</i> <i>Fourthly.—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.</i> <i>Fifthly.—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.</i> <i>Sixthly.—With or without her consent, when she is under sixteen years of age.</i> <i>Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.</i> <u>Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.</u>
03.09.1981	The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), as often

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	described as <u>International Bill of Rights of Women</u>, was adopted in 1979 by the UN General Assembly and came into force on 03.09.1981. Article 1 and Article 16 of CEDAW prohibited all forms of discrimination against women. Article 1 <i>For the purposes of the present Convention, <u>the term "discrimination against women" shall mean</u> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</i> Article 16 <i>1. States Parties shall take <u>all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations</u> and in particular shall ensure, on a basis of equality of men and women:</i> <i>(a) The same right to enter into marriage;</i> <i>(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;</i>
09.07.1993	India ratified CEDAW on 09.07.1993 and committed to a national agenda to end discrimination against women and formulate affirmative action in favour of women.

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1993	The Declaration on Elimination of Violence against Women (“DEVW”) was adopted by the United Nations General Assembly in 1993, ratified by India in the same year, as a first international instrument that explicitly addressed violence against women, and clearly mentioned marital rape within its understanding of “violence against women”. Under Article 1 and Article 2(a), the DEVW prohibited all forms of sexual violence including marital rape. <u>Article 1</u> <i>For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.</i> <u>Article 2(a)</u> <i>Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, <u>marital rape</u>, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;</i>
2005	The Protection of Women from Domestic Violence Act, 2005, was enacted by the Parliament of India in order to provide effective protection of the rights of women under

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	the Constitution who are victims of violence of any kind within the domestic relationship. The said Act of 2005 incorporates causing “sexual abuse” within the definition of Domestic Violence under Section 3, addressing rape even within the context of marriage.
23.01.2013	The Justice J.S. Verma (Retd.) Committee on Amendments to Criminal Law was set up by the Union Government following the Nirbhaya Gang Rape and Murder Case and the demands to review the criminal law on rape and sexual violence. The Justice J.S. Verma Committee submitted its Report dated 23.01.2013 and amongst its recommendations, specifically suggested that the exception to marital rape be removed. The following recommendations were made: - “79. We, therefore, recommend that: i. <u>The exception for marital rape be removed.</u> ii. <i>The law ought to specify that:</i> a) <i>A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation;</i> b) <i>The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;</i> c) <i>The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.”</i>

03.02.2013	Following the Justice Verma Committee Report, The Criminal Law (Amendment) Act (Act 13 of 2013) 2013 was enacted w.e.f. 03.02.2013 which amended Section 375 of the IPC as follows: 375. Rape.—<i>A man is said to commit “rape” if he—</i> <i>(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;</i> <i>or</i> <i>(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</i> <i>(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</i> <i>(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,</i> <i>under the circumstances falling under any of the following seven descriptions—</i> <i>First.—Against her will.</i> <i>Secondly.—Without her consent.</i> <i>Thirdly.—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.</i> <i>Fourthly.—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.</i> <i>Fifthly.—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.</i>

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	<i>Sixthly.—With or without her consent, when she is under eighteen years of age.</i> <i>Seventhly.—When she is unable to communicate consent.</i> <i>Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.</i> <i>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:</i> <i>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.</i> <i>Exception 1.—A medical procedure or intervention shall not constitute rape.</i> <u>[Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape].]</u>
11.10.2017	This Hon’ble Court in <i>Independent Thought v. Union of India (2017) 10 SCC 800</i>, while dealing with the substantial question of <i>whether Exception 2 to Section 375 of the IPC, in so far it relates to girls aged 15 to 18 years as being unconstitutional and whether it is liable to be struck down</i>, held that the Exception 2 to Section 375 shall be read down insofar as it relates to a girl child below 18 years. Hence, by virtue of this judgement, the marital rape exception would be read so as to mean that any sexual intercourse even within marriage would amount to rape if the wife was aged up to 18 years.

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	This Hon'ble Court did not adjudicate on the issue of marital rape of adult women since it held that the said issue was not part of the challenge.
11.5.2022	Thereafter in a batch of petitions filed before the Hon'ble Delhi High Court challenging the exception to marital rape in section 375 of the IPC (<i>RIT Foundation v. Union of India (W.P. (C) No.284 of 2015</i>), the Hon'ble High Court of Delhi passed a split verdict. Hon'ble Justice Rajiv Shakdher has held that the exemption to the husband from the offence of marital rape is unconstitutional. Exception 2 of 375, 376B IPC was therefore struck down by him as violative of Article 14. However, Hon'ble Justice C Hari Shankar said that he does not agree with Justice Shakdher and held that Exception 2 to Section 375 does not violate Constitution and that the exception is based on an intelligible differentia. <u>Relevant excerpts from the said judgment:</u> <i>(Justice Rajiv Shakdher)</i> <i>“Conclusion</i>

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419. *For the foregoing reasons, I declare and hold :*

(i) That the impugned provisions [i.e. Exception 2 to Section 375 (MRE) and Section 376-BIPC as also Section 198-B of the Code], insofar as they concern a husband/separated husband having sexual communion/intercourse with his wife (who is not under 18 years of age), albeit, without her consent, are violative of Articles 14, 15, 19(1)(a) and 21 of the Constitution and, hence, are struck down.

(ii) The aforesaid declaration would, however, operate from the date of the decision.

(iii) The offending husbands do not fall within the ambit of the expression “relative” contained in Section 376(2)(f)IPC and, consequently, the presumption created under Section 114-A of the Evidence Act will not apply to them.

(iv) Certificate of leave to appeal to the Supreme Court is granted under Article 134-A(a) read with Articles 133(1)(a) and (b) of the Constitution as the issue involved in this case raises a substantial question of law which, in my opinion, requires a decision by the Supreme Court.

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23.03.2022	The Hon'ble High Court of Karnataka, Bench at Bengaluru in <i>Hrishikesh Sahoo v. State of Karnataka W.P. No. 48367 of 2018</i> , while dealing with the petition for quashing the entire criminal proceedings against Petitioner – Hrishikesh Sahoo in Special C.C. No. 356 of 2017 pending before the Trial Court, Bangalore, dismissed the said writ petition and the Sessions Court was directed to frame an additional charge against the Petitioner/Husband under Section 377 of the IPC, 1860 for having carnal intercourse against the will of his wife.
10.05.2022	The Hon'ble 3 Judge Bench of the Supreme Court issued notice in <i>Hrishikesh Sahoo v. State of Karnataka (SLP (Crl.) No.4063-4064 of 2022)</i> , challenging the Final Common Judgment and Order dated 23.02.2022 passed by the Hon'ble Karnataka High Court in W.P. No.48367/2018 and W.P. No.50089/2018.
17.05.2022	Assailing the split verdict dated 11.05.2022 passed by the Hon'ble High Court of Delhi in <i>RIT Foundation v. Union of India (W.P. (C) No.284 of 2015)</i> and other connected matters, the Petitioner – Khushboo Saifi filed a Civil

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	Appeal bearing C.A. No.6787 of 2022 (Khushboo Saifi v. UoI) before this hon'ble Court and the same is pending for adjudication along with other batch petitions.
19.07.2022	The Hon'ble Supreme Court passed an interim order in <i>Hrishikesh Sahoo v. State of Karnataka (SLP (Crl.) No.4063-4064 of 2022</i> granting ad-interim stay of the Final Common Judgment and Order dated 23.02.2022 passed by the Hon'ble Karnataka High Court in W.P. No.48367/2018 and W.P. No.50089/2018 and further proceedings in relation to Special C.C. No. 356 of 2017 arising out of FIR bearing Crime No. 19/2017, pending before the Additional City and Sessions and Special Court for cases under the POCSO Act, Bangalore.
01.07.2024	The Bhartiya Nyaya Sanhita, 2023 [No.45 of 2023] came into force on 01.07.2024, replacing the erstwhile Indian Penal Code (IPC) 1860, wherein the marital rape exemption is still retained under Exception 2 of Section 63 of BNS of 2023. <i>Sec. 63. A man is said to commit "rape" if he—</i>

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(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:

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	<i>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.</i> <i>Exception 1.—A medical procedure or intervention shall not constitute rape.</i> <i>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.</i>
24.04.2025	Hence, the present Petition before this Hon'ble Court.

IN THE SUPREME COURT OF INDIA

WRIT ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. OF 2025

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF

AWEKSHA WOMEN'S CHARITABLE TRUST

REPRESENTED BY ITS PRESIDENT

MS. DONNA FERNANDES

5, 1ST FLOOR, MYRTLE LANE,

RICHMOND TOWN, BENGALURU-560025

REPRESENTED BY ITS PRESIDENT

MS. DONNA FERNANDED

..... PETITIONER

Vs.

1. UNION OF INDIA

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

SASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD

NEW DELHI -110001

THROUGH ITS SECRETARY

---- RESPONDENT NO. 1.

2. UNION OF INDIA

MINISTRY OF LAW AND JUSTICE

4TH FLOOR, A-WING, SHASTRI BHAWAN

NEW DELHI-110001

THROUGH ITS SECRETARY ...RESPONDENT NO.2

3. UNION OF INDIA

MINISTRY OF HOME AFFAIRS

NORTH BLOCK,

NEW DELHI-110001

THROUGH ITS SECRETARY ...RESPONDENT NO.3

(ALL ARE CONTESTING RESPONDENTS)

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA CHALLENGING THE
EXCEPTION 2 OF SECTION 63 OF BHARATIYA
NYAY SANHITA OF 2023 (ERSTWHILE EXCEPTION
2 OF SECTION 375 OF IPC, 1860) AS BEING
VIOLATIVE OF ARTICLES 14, 15(1), AND 21 OF THE
CONSTITUTION OF INDIA AS IT EXEMPTS
MARITAL RAPE AS A CRIMINAL OFFENCE,**

**SOLELY ON THE GROUND OF MARRIAGE AND
SEEKING AND APPROPRIATE WRIT, ORDER AND
DIRECTION DECLARING THE SAID EXCEPTION
AS BEING ULTRA VIRES TO THE FUNDAMENTAL
RIGHTS OF WOMEN.**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE HON'BLE

SUPREME COURT OF INDIA

MOST RESPECTFULLY SHOWETH

1. The Petitioner Trust, represented by its President Ms. Donna Fernandes, is a charitable trust registered in Bengaluru, Karnataka. The Petitioner Trust, was founded and established in 2021 and works to eliminate gender-based violence and discrimination nationwide by aiding in the enforcement of laws and providing support to victims and survivors. The Petitioner Trust has been striving towards creating a safe space for women and other marginalized gender minorities who were/are subjected to domestic violence.

(A true copy of the Petitioner Trust's Registration Certificate dated 27.10.2021 is annexed herewith and marked as **Annexure P1** Pages 39 to 51)

1A. Annexures in the present writ petition are numbered in the order in which they appear in the narration.

2. The Petitioner-Trust is committed to ending all forms of gender-based violence and discrimination by focusing and employing survivor-focused support systems, which encompasses an understanding that the abuse travels beyond the physical and psychological harm and can take the form of emotional, sexual, financial, social and cyber violence. The founder and the whole team of the Petitioner Trust comes with about extensive years of experience of working on the ground providing moral, legal, psychological, social and emotional support to women who are survivors of abuse and violence. The President of the Applicant Trust, Ms. Donna Fernandes, is a highly respected women's rights activist with over 45 years of experience in advocacy and grassroots activism. Throughout her career, she has played a pivotal role in organizing support groups for women, facilitating public consultations, and leading advocacy campaigns aimed at

strengthening legal protections and promoting gender equality. Her work has been instrumental in pushing for the implementation of more robust laws to safeguard women's rights and ensure their fair and equal treatment in society.

(A copy of an article titled "*Victims of Domestic Violence Narrate Tales of Abuse and Horror in Bengaluru*" dated 25.06.2023 published by Deccan Herald is annexed herewith and marked as **Annexure P2 Pages 52 to 55**)

(A copy of an article titled "*Victims of Domestic Violence break their silence, and shackles*" dated 27.01.2024 published by Deccan Herald is annexed herewith and marked as **Annexure P3 Pages 56 to 57**)

3. The Petitioner Trust is filing the present Public Interest Litigation under Article 32 of the Constitution of India for the larger interest of the community and does not possess any personal interest, private motive or oblique reason for filing the present petition.
4. There is no civil, criminal or revenue litigation involving the Petitioner Trust which could have a nexus with the issues involved in the present public interest petition.

5. The present Public Interest Litigation involves enforcement of important fundamental rights of married women, who are subjected to sexual violence in their matrimonial lives, and the exemption of marital rape is a violation of the rights to equality and non-discrimination enshrined under Article 14, Article 15 (1), and Article 21 of the Constitution of India. This petition and the issues involved affect women at large, and, hence, the Petitioner Trust is approaching this Court under the jurisdiction of Article 32 of the Constitution of India by filing the present Writ Petition in public interest.
6. The Petitioner Trust has not submitted any representation before any authority in relation to the issues involved in the present petition and as it is a constitutional challenge to legislation, no representation is required and hence this present Writ Petition in the nature of Public Interest Litigation under Article 32 of the Constitution of India.
7. The Petitioner Trust has not filed any petition/petitions before this Hon'ble Court or any other Court/Tribunal seeking same/similar reliefs as have been prayed for in this petition.

Brief Facts:

8. It is submitted that the present petition challenges Exception 2 of Section 63 of The Bharatiya Nyaya Sanhita, 2023 (“BNS”) which exempts rape in the context of marriage, or marital rape, (earlier Exception 2 of Section 375 of IPC, 1860) as being violative of Articles 14, 15 (1), and Article 21 of the Constitution of India.

Section 63 of BNS of 2023

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

(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.

9. At this juncture, it is of paramount importance to give an overview of the genesis of impugned provisions. The inception of Section 375 and its roots can be traced back to the Victorian era law propounded by Lord Macaulay in 1837. It is Macaulay’s Code that became the basis of the erstwhile Indian Penal Code, 1860 where a similar exception to marital rape was enacted. The contested exception to the rape provision was influenced by the laws in force across all countries where the British had established their presence. The said exception is founded on the understanding that, during marriage, the husband and the wife enter into a contract through which husband can exercise complete control and power on his wife. Following Macaulay’s Code, the Indian Penal Code was enacted in

1860 which included the offence of rape under section 375 but excluded it in the context of marriage. Section 375 of the IPC stated as follows:

“375. Rape.— A man is said to commit ‘rape’, who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions :

First.— Against her will.

Secondly.— Without her consent, while she is insensible.

Thirdly.— With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.— With her consent, when the man knows that her consent is given because she believes that he is a different man to whom she is or believes herself to be married.

Fifthly.— With or without her consent, when she is under ten years of age.

Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.— Sexual intercourse by a man with his own wife, the wife not being under 10 years of age, is in no case rape.”

10. Thereafter it was amended in the year 1940 wherein the age limit in Exception was enhanced from 10 years to 15 years.
11. In 2012, after a gruesome incident of gang rape in Delhi, the Union Government constituted a committee headed by Justice J.S. Verma (Retd.) to review amendments to criminal law. The said Committee was entrusted with the monolith task of suggesting amendments to criminal law. The said Justice J.S. Verma (Retd.) Committee’s Report on Amendment to Criminal Law, 2013, made a

recommendation that exception for marital rape be removed. The following recommendations were made: -

79. We, therefore, recommend that:

- i. **The exception for marital rape be removed.**
- ii. *The law ought to specify that:*
 - a. *A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation;*
 - b. *The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;*
 - c. *The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.*

(A copy of the Justice J.S. Verma (Retd.) Committee's Report on Amendment to Criminal Law, 2013 dated 23.01.2013 is annexed herewith and marked as **Annexure P4 Pages 58 to 68**.)

12. Thereafter, the recommendations made by the Justice J.S. Verma (Retd.) Committee were accepted by the Union Government partially and amendments were carried out vide Criminal Law (Amendment) Act, 2013. Under the said Act, Section 375 of the IPC was amended as follows:

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

- (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—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—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.

Fourthly.—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.

Fifthly.—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.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—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 fifteen years of age, is not rape].

(A true copy of the Criminal Law (Amendment) Act, 2013 [No.13 of 2013] as notified on 02.04.2013 through a gazette notification is annexed herewith and marked as **Annexure P5 Pages 69 to 71**)

13. When matters stood thus, this Hon’ble Court delivered a landmark judgment in “*Independent Thought Vs. Union of India (W.P. (c) No. 382 of 2013)*” on the 11.10.2017, whereby it read down Exception 2 to Section 375 of the Indian Penal Code, 1860 to be read as “***Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years (instead of fifteen years as provided in the Indian Penal Code, 1860) of age, is not rape.***” It was, however, careful in recording that it had not dealt with the larger issue of “*marital rape*” of adult women since that issue was not raised before it.

14. The National Family Health Survey – 5 (“NFHS-5”) found that between 2019-2021, 29.3% of married women experienced physical, sexual or emotional violence by their current husbands (15.6.1), and 82% of married women aged 18-49 who have experienced sexual violence reported their current husbands as the perpetrators (15.3.2). Thus, sexual violence at the hands of a spouse

is a serious form of violence and abuse faced by women within marriage.

(A true copy of the National Family Health Survey (NFHS-5) Report of 2019-2021 released by Ministry of Health and Family Welfare, Government of India, is annexed herewith and marked as **Annexure P6 Pages 72 to 80**)

15. Thereafter a batch of petitions were filed in the Delhi High Court challenging the constitutionality of the Second Exception to section 375 and vide order dated 11.05.2022, the Hon'ble High Court of Delhi passed a split verdict on a batch of petitions (*Parent Petition - RIT Foundation v. Union of India (W.P. (C) No.284 of 2015)* and which was then challenged before this Hon'ble Court.

16. Thereafter the Hon'ble High Court of Karnataka, Bench at Bengaluru in *Hrishikesh Sahoo v. State of Karnataka W.P. No. 48367 of 2018*, while dealing with the petition for quashing the entire criminal proceedings against Petitioner – Hrishikesh Sahoo in Special C.C. No. 356 of 2017 pending before the Trial Court, Bangalore, dismissed the said writ petition and the Sessions Court was directed to frame an additional charge against the

Petitioner/Husband under Section 377 of the IPC, 1860 for having carnal intercourse against the will of his wife.

17. Lastly, challenging the judgment passed by the Hon'ble High Court of Delhi and the Hon'ble Karnataka High Court, various Special Leave Petitions and Civil Appeals have been filed along with other writ petitions in the nature of PIL in which this hon'ble court issued notice and are pending for final adjudication.

18. During this time, on 1.7.2024 the new law being the Bharatiya Nyaya Sanhita ("BNS") was enacted, repealing the Indian Penal Code. The BNS in section 63 which deals with rape and the marital rape exemption is still retained under Exception 2 of Section 63 of BNS of 2023.

COMPARATIVE JURISPRUDENCE

19. Presently, most countries all over the world have removed the marital rape exception in their criminal laws. As of 2025, approximately 150 countries have criminalized marital rape, effectively removing the exception to rape laws that previously allowed a husband to sexually coerce his wife without legal

repercussions. Some of the most important countries to have done that are as follows:

- (i) **USA:** All 50 States in the USA have enacted laws criminalizing marital rape.
- (ii) **United Kingdom:** The marital rape exemption was abolished in England and Wales in 1991 by the Appellate Committee of the House of Lords, in the case of *R v. R (1992) 1 A.C. 599*.
- (iii) **Canada:** ‘Sexual assault’ is not limited to conduct occurring outside a marriage. A specific section was added to the Criminal Code to make it clear that sexual assaults were criminal within the context of marriage whether the parties were living together or not.
- (iv) **Netherlands:** marital rape was made illegal in the Netherlands in 1991. The legislative changes provided a new definition of rape in 1991, which removed the marital rape exemption and also made the crime gender neutral.
- (v) **Australia:** Marital rape was criminalized in Australia between the late 1970s and early 1990s. Previously, the country’s rape laws were based on the English common law offence of rape. In 1991, the High Court of Australia, in *R v. L*, ruled that the common law exemption for marital rape no longer applied in Australia. The process of criminalization was completed across

all states and territories through both statutory reforms and judicial rulings during this period.

- (vi) ***South Asian countries***: Even the neighbouring South Asian countries of Nepal, Bhutan, Laos, Philippines, Vietnam, Thailand, Singapore and Indonesia have removed the marital rape exception in their criminal codes.

20. As the Petitioner Trust deems it proper to approach this Hon'ble Court representing women who have been subjected to domestic violence in the nature of sexual violence so that marital rape exception is declared unconstitutional and interests of many such women associated with Petitioner Trust remains protected.

21. Thus, on the basis of the facts set out hereinabove, this Hon'ble Court ought to declare that the exception 2 of Section 63 of the BNS to be unconstitutional as it Articles 14, 15(1) and 21 of the Constitution of India.

GROUND

22. **THAT**, the impugned provision of law i.e., Exception 2 of Section 63 of BNS of 2023 (erstwhile Exception 2 of Section 375 of IPC,

1860) is violative of Article 14, 15(1) and Article 21 of the Constitution of India, 1950 and thus deserves to be set aside.

I. The marital rape exception is a violation of the guarantee of equality and equal protection of laws under Article 14 of the constitution:

23.**THAT**, the Exception 2 of Section 63 of BNS of 2023 which exempts the offence of rape if it is within marriage, when committed by a man against his own wife, does meet the test of “intelligible differentia” in Article 14 of the Constitution of India, as it grants immunity to a man from prosecution for forcibly having sex with his wife without her consent, while denying the same immunity to a man who forcibly has sex with a woman who is not his wife – despite the fact that both acts are fundamentally the same and thus amounts to treating married women unequally and is a violation of the right to equality under Article 14.

24.**THAT**, marriage, in itself, is not a valid criterion for determining when a sexual act constitutes rape or for establishing the right to consent. Sexual assault within marriage is already punishable under other criminal laws, such as the Protection of Women Domestic Violence Act 2006 or Section 86 of the Bharatiya Nyaya Sanhita

(Cruelty) and therefore, making an exception to the act of rape and sexual assault solely on the basis of marital status, despite all elements of the offence being otherwise met, is unconstitutional and hence deserves to be set aside.

25. **THAT**, it is an accepted principle that legislation can be struck down if it is found to be manifestly arbitrary, as laid down in *Shayara Bano v. Union of India* (2017) 9 SCC 1. The test of “manifest arbitrariness” would apply to invalidate legislation as well as subordinate legislation under Article 14 of the Constitution of India, as and when something is done by the legislature which is excessive and disproportionate. Granting complete immunity to the offence of rape based solely on marital status, is manifestly arbitrary and discriminatory. This Hon’ble Court with a majority in the ratio of 3:2 declared that a Triple Talaq at one go by a Muslim husband which severs the marital bond, as bad in constitutional law. Justice R. Nariman at para 28 at page 335 of the judgment relied upon a judgment of the US Supreme Court, decided on June 26, 2015, wherein the U.S. Supreme Court had observed that:

“The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right..... An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.”

Thus in the present instance also, the impugned provisions of the Marital Rape Exception, is manifestly arbitrary as having no rational nexus with the object sought to be achieved with the classification of rape victims as per their marital status and deserves to be struck down and declared void.

II. **The Marital Rape Exception violates Article 15 (1) which prohibits the discrimination on the basis of Sex and Marital Status:**

26. **THAT** the exception to marital rape in section 63 of the BNS is a violation of Article 15 (1) as it is discriminatory on the ground of sex, which includes marriage, as it discriminated against women who are married and thus deserves to be set aside.

27. **THAT**, marital rape amounts to sexual assault and sexual violence within marriage which is treated as an exception to the criminal offence of rape, is both a cause and effect of women's subordinate position in Indian society. Some women are more vulnerable to sexual violence and may experience it in unique ways because of circumstances of caste, poverty, disability, and other factors. The exception to marital rape thus leads to subordination and

discrimination of women within marriage and family under Article 15 (1) of the constitution, as it amounts to sexual violence not being criminally actionable and thus deserves to be set aside.

28.**THAT**, the exclusion of married women from the coverage of the criminal offence of rape is discriminatory to women and violates their guarantee to equality and non-discrimination on the basis of sex under Articles 14 and 15 (1) of the constitution. This also amounts to negative and gendered stereotyping which promotes the subordinate role of women, which has been prohibited by this Hon'ble Court. In Anuj Garg ----, it was held that:

“44. It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.

45. No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until unless there is a compelling state purpose. Heightened level of scrutiny is the normative threshold for judicial review in such cases.

Therefore the anti-stereotyping principle mandates that the Exception 2 to Section 63 must be set aside. Exception 2 endorses

the gendered roles within marriage, and the wife's duty to provide sex, even without her consent, thus permitting non-consensual sex and not making it a criminal offence and the same amounts to a violation of Article 15(1) of the constitution.

29.**THAT**, the anti-stereotyping principle propounded by this Hon'ble Court is now settled law which states that no law in its ultimate effect should end up perpetuating the oppression of women and each law has to be assessed not on its proposed aims but on its ultimate implications and effects. (*Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1). No claim or action which in its final effect stereotypes or stigmatizes or impairs individual dignity can be accepted by Courts. In *Indian Young Lawyers Association and Ors. v. State of Kerala and Ors.*, (2019) 11 SCC 1 and in *Joseph Shine v. Union of India*, (2019) 3 SCC 39, it was further held that gendered provisions ought to be accorded a higher scrutiny as they are susceptible to perpetuate harmful stereotypes.

30.**THAT**, the exception carved out by the impugned provision creates an unnecessary and artificial distinction between a married woman and an unmarried woman while dealing with the offence of rape and has no rational nexus with any unclear objective sought to be

achieved. The above-stated artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the female fraternity. The said artificial distinction is contrary to the philosophy and ethos of Article 15(3), which advocates for making special provisions for women and children.

III. Article 21 and the right to liberty and bodily integrity

31.**THAT**, the marital rape exception in Section 63 of the BNS amounts to a clear violation of the right to life and personal liberty guaranteed under Article 21 of the constitution which also includes the right to bodily integrity and autonomy, of married woman who do not consent to sexual intercourse with their partners and thus deserves to be set aside.

32.**THAT**, sexual violence faced by women is a serious breach of women's sexual and reproductive autonomy, bodily and psychological integrity and, when it occurs in intimate relationships such as marriage, it is a breach of trust and serious risk factor. Women who face sexual violence in marriage also are at risk for physical injury, emotional harm, unwanted pregnancy, and exacerbation of other health conditions. Women experiencing

spousal violence are far more likely than men to be fearful, depressed, or suffer anxiety attacks. Poverty, social inequalities and the lack of available services may make it difficult for women to leave violent marriages, putting them at risk of further violence and harm. Therefore the marital rape exception which excludes rape as a criminal offence under section 63 amounts to a serious violation of women's right to life and personal liberty and bodily autonomy under Article 21 of the constitution and deserves to be set aside.

33.**THAT**, the Exception to marital rape in section 63 of the BNS is in violation of Article 21 of the constitution as this Hon'ble Court in *Suchita Srivastava v. Chandigarh Administration*, [2009 (9) SCC 1], recognised a woman's right to refuse to participate in sexual activity as a dimension of "personal liberty" under Article 21 of the Constitution. This Hon'ble Court explicitly stated that:

"it is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse to participate in sexual activity or alternatively the insistence on use of contraceptive methods. "

The above observations of the Hon'ble Court do not make a distinction between the rights of married women and unmarried women. The right to abstain from sexual reproductive activity has

been recognised for all women, irrespective of their marital status and hence the impugned provisions of Section 63 of the BNS are in clear violation of the basic fundamental rights of women and must be struck down and declared as unconstitutional.

34. **THAT**, a nine judge bench of this Hon'ble Court stated in *Justice (Retd) KS Puttuswamy vs Union of India* (2017) 10 SCC 1, all citizens, including married women, have the right to privacy. Justice Chandrachud speaking for himself and three others relied on the judgement of the Constitutional Court of South Africa in *National Coalition for Gay and Lesbian Equality v Minister of Justice* 274 1996 (2) SA 751 (CC) and held that:

“Privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which we give expression to our sexuality is at the core of this area of private intimacy. If, in expressing our sexuality, we act consensually and without harming one another, invasion of that precinct will be a breach of our privacy...” Sachs J. discussed the interrelation between equality and privacy and held that: *“...equality and privacy cannot be separated, because they are both violated simultaneously by anti-sodomy laws. In the present matter, such laws deny equal respect for difference, which lies at the heart of equality, and become the basis for the invasion of privacy. At the same time, the negation by the state of different forms of intimate personal behaviour becomes the foundation for the repudiation of equality.”*

Thus, the right to personal liberty and privacy is premised on consensual relations even between spouses and the marital rape exception would amount to a violation of the right to privacy.

35.**THAT**, in *Joseph Shine v. Union of India* (2019) 3 SCC 39, this Hon'ble Court preserved the spirit of rights-based jurisprudence, while dealing with the offence of adultery, which seeks to protect the dignity of an individual and her "intimate personal choices", and held that such right does not cease to exist once the woman enters a marriage and stated as follows:

"273.5. The time when wives were invisible to the law, and lived in the shadows of their husbands, has long since gone by. A legislation that perpetuates such stereotypes in relationships, and institutionalises discrimination is a clear violation of the fundamental rights guaranteed by Part III of the Constitution. There is therefore, no justification for continuance of Section 497 IPC as framed in 1860, to remain on the statute book."

36.**THAT**, in the case of *Independent Thought v. Union of India*, (2017) 10 SCC 800, this Hon'ble Court held that Exception 2 to Section 375 of the IPC creates an artificial distinction between a married girl child and an unmarried girl child with no real rationale and thereby does away with consent for sexual intercourse by a husband with his wife who is a girl child between 15 and 18 years of age. It went on to hold that Exception 2 to Section 375 of the

IPC to be meaningfully read as: “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape” and thus decriminalised child marital rape where the wife was below 18 years of age. While in the said judgement this Hon’ble Court did not address the issue of marital rape of adult women, as it was not raised in the said petition, it also stated that as several countries had removed the marital rape exception, this should be taken very seriously by the Union of India and went to hold as follows:

24. The Report of the Working Group on the Universal Periodic Review for India (issued on 17th July, 2017 without formal editing) for the 36th Session of the Human Rights Council refers to recommendations made by several countries to remove the exception relating to marital rape from the definition of rape in Section 375 of the I.P.C. In other words, the issue raised by the petitioner has attracted considerable international attention and discussion and ought to be taken very seriously by the Union of India.

64. The discussion on the bodily integrity of a girl child and the reproductive choices available to her is important only to highlight that she cannot be treated as a commodity having no say over her body or someone who has no right to deny sexual intercourse to her husband. The human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance.

72. In Eisenstadt v. Baird the US Supreme Court observed that a “marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup.”

73. On a combined reading of C.R. v. UK and Eisenstadt v. Baird it is quite clear that a rapist remains a rapist and

marriage with the victim does not convert him into a non-rapist. Similarly, a rape is a rape whether it is described as such or is described as penetrative sexual assault or aggravated penetrative sexual assault. A rape that actually occurs cannot legislatively be simply wished away or legislatively denied as non-existent.

37. **THAT**, the Justice Verma Committee on Amendments to Criminal Law chaired by Justice J.S. Verma (Retired) clearly stated that the out-dated notion that a wife is no more than a subservient chattel of her husband has since been given up in the United Kingdom and held that “a rapist remains a rapist regardless of his relationship with the victim.” The relevant paragraphs of the Report read as follows:

“72. The exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands. According to the common law of coverture, a wife was deemed to have consented at the time of the marriage to have intercourse with her husband at his whim. Moreover, this consent could not be revoked. As far back as 1736, Sir Matthew Hale declared: ‘The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract’.

73. This immunity has now been withdrawn in most major jurisdictions. In England and Wales, the House of Lords held in 1991 that the status of married women had changed beyond all recognition since Hale set out his proposition. Most importantly, Lord Keith, speaking for the Court, declared, ‘marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.’

74. Our view is supported by the judgment of the European Commission of Human Rights in C.R. v UK [C.R. v UK Publ. ECHR, Ser.A, No. 335-C] which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. Importantly, it acknowledged that this change in the common law was in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom. This was given statutory recognition in the Criminal Justice and Public Order Act 1994.”

38.**THAT**, in *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1

SCC 490, it was observed by this Hon’ble Court that rape is a crime not only against a woman but against society. It was held in paragraph 10 of the Report that:

“Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.”

Thus, marital rape cannot be given an exception, and the exception thus deserves to be set aside.

39.**THAT**, in *Prahlad v. State of Haryana*, 2015 (8) SCC 688, this

Hon’ble Court held that

“It has to be borne in mind that an offence of rape is basically an assault on the human rights of a victim. It is an attack on her individuality. It creates an incurable dent in her right and free will and personal sovereignty over the physical frame. Anyone who indulges in a crime of such nature not only does he violate the penal provision of the Indian Penal Code but also right of equality, right of individual identity and in the ultimate eventuality an important aspect of rule of law which is a constitutional commitment. The Constitution of India, an organic document, confers rights. It does not condescend or confer any allowance or grant. It recognises rights and the rights are strongly entrenched in the constitutional framework, its ethos and philosophy, subject to certain limitation. Dignity of every citizen flows from the fundamental precepts of the equality clause engrafted under Articles 14 and right to life under Article 21 of the Constitution, for they are the "fon juris" of our Constitution. The said rights are constitutionally secured.”

Therefore by not recognizing non-consensual sexual intercourse within marriage as the crime of rape and not ensuring adequate protection and criminal remedies for married women is a clear and gross violation of Article 14 and Article 21 of the Constitution of India.

40.**THAT**, in light of the dictum of this Hon’ble Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Others* (1981) 1 SCC 608, wherein it was categorically held that it is implicit in Article 21 of the Constitution of India, 1950, the right to protection against torture or cruel, inhuman or degrading treatment, as enunciated in Article 5 of Universal Declaration of

Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights and stated that:

8.....Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights.

If marital rape is not recognised as an offence, it would amount to subjecting women within marriage to cruel and degrading treatment which would be a violation of their right to life and dignity and deserves to be set aside.

41. **THAT**, it is to be noted that the marital rape exemption stems from the archaic common law principle known as ‘*doctrine of coverture*’. As per the said common law principle, a wife was deemed to have consented at the time of marriage to have intercourse with her

husband at his whim and the said consent cannot be revoked. This is based on the assumption – that a wife acts according to her husband's wishes and demands and does not align with contemporary constitutional standards of equality and personal autonomy of women in India. A marital relationship is understood as a partnership of equals, the exemption for marital rape seems outdated and regressive and the same needs to be abolished in its entirety as constitutional compulsions requires a contemporary reading of law.

42.**THAT**, in the case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat* (2018 SCC OnLine Guj 732), the Hon'ble Gujarat High Court recognized that marital rape was violence against women and that it should be recognized as a criminal offence and held as follows:

“73. Marital rape is a widespread problem for a woman that has existed for centuries throughout the world. This problem has received relatively little attention from the criminal justice system and the society as a whole. Marital rape is illegal in 50 American states, 3 Australian states, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia.

74. Marital rape is one of the acts of sexual intercourse with one's spouse without consent. It is a form of intercourse with one's spouse without consent. It is a form of domestic violence and sexual abuse.

105. The concept of crime, undoubtedly, keeps on changing with the change in the political, economic and social set-up

of the country. The constitution, therefore, confers powers both on the Central and State Legislature to make laws in this regard. Such right includes the power to define a crime and provide for its punishment. It is high time that the legislature once again intervenes and go into the soul of the issue of marital rape. Marital rape is a serious matter though, unfortunately, it is not attracting serious discussions at the end of the Government.

110. A woman is no longer the chattel—antiquated practices labelled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent.

130.6 The exemption given to marital rape, as Justice Verma noted, “stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands”. Marital rape ought to be a crime and not a concept.”

IV. International Conventions and Treaties and Comparative Decisions

43. **THAT**, India ratified CEDAW in 1993 and is bound to eliminate discrimination against women, including in matters of personal security and bodily autonomy. CEDAW mandates States Parties to guarantee women’s security of the person and equality generally and also as spouses The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 184 taken together with General Recommendation 19 requiring states to take action on violence against women.

44.**THAT**, even the explicit recognition of marital rape in the Declaration on the Elimination of Violence Against Women 1993 would mandate that there us a state duty not to create a climate of impunity around domestic and sexual violence. There is a commitment to end all forms of violence against women including marital rape, as stated in Article 2(a) as given below:

Article 2(a)

Violence against women shall be understood to encompass, but not be limited to, the following:

*Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, **marital rape**, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*

45.**THAT**, in the United Kingdom, in the case of *R v. R (1992) 1 A.C.*

599, the House of Lords held, that there was no longer a rule of law that a wife was deemed to have consented irrevocably to sexual intercourse with her husband; and that, therefore, a husband could be convicted of the rape or attempted rape of his wife where she had withdrawn her consent to sexual intercourse and held “I am therefore of the opinion that section 1(1) of the Act of 1976 presents no obstacle to this House declaring that in modern times the supposed marital exemption in rape forms no part of the law of England.”

46. **THAT**, the Supreme Court of Nepal struck down the marital rape exception through the case of *FWLD v. HMG* (Writ No. 55/2058, Supreme Court Bulletin 2058 (2002), Vol.5, p. 129 (2001–2002) and held:

“In the light of the discussions made in the foregoing pages and spirit of equality guaranteed in the Constitution, various international human rights instruments ratified by Nepal and changing norms and values in criminal law with the pace of time, it is appropriate reasonable and contextual to define marital rape too as a criminal offence. It cannot be said that any man who commits heinous and inhuman crime of rape to a woman may be immune from criminal law simply because he is her husband. Such husband has to be liable to the punishment for the offence he has committed”.

Further in the case of *Jit Kumari v. Government of Nepal*, (Writ No. 064-0035 of 2063), the Supreme Court while analysing the discrepancy the punishment for marital rape and non-marital rape, ruled that where the offence is the same, there is no rationality in differentiating between marital and non-marital rape. It further issued a direction to the Ministry of Law, Justice and Parliamentary Affairs to bring about an amendment to settle this discrepancy in the law and to make the punishment for marital rape equal to that of non-marital rape.

47.**THAT**, in Australia in the case of *R v. L* [(1991) 174 CLR 379], the High Court of Australia ruled that if it was ever the common law that by marriage a wife gave irrevocable consent to sexual intercourse by her husband, it is no longer the common law.” It further asserted that that a husband could be found guilty of raping his wife.

48.**THAT**, the European Court of Human Rights through the case of *SW v. UK* [(1995) 21 EHRR 363], while upholding the conviction of the accused for marital rape stated the following: “the abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his wife was in conformity not only with a civilised concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom”.

49.**THAT**, in Canada through the case of *R v. J.A.*, ([2011] 2 SCR 40), the Supreme Court of Canada held that consent does not depend on the relationship between the accused and the 26 complainant and that “it is not open to the defendant to argue that the complainant’s consent was implied by the circumstances, or by the relationship between the accused and the complainant”.

That the Petitioner has not filed any other petition before this Hon'ble Court or any other court seeking the same relief.

PRAYER

Whereof, in the light of the facts and circumstances stated hereinabove, it is respectfully prayed that this Hon'ble Court may be pleased to: -

- a) Issue appropriate writ, order or direction striking down Exception 2 of Section 63 of the BNS 2023, which makes an exception to marital rape or sexual intercourse or sexual acts by a man with his own wife without her consent, the wife not being under eighteen years of age from being a criminal offence, as being unconstitutional as it violates Article 14, Article 19(1)(a) and Article 21 of the Constitution of India, 1950 and

b) Pass any other order which this court deems fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS SHALL,
AS IN DUTY BOUND EVER PRAY

DRAWN BY

MRITUNJAY PATHAK
APARNA MEHROTRA
(ADVOCATES)

SETTLED BY

JAYNA KOTHARI
(SENIOR ADVOCATE)

FILED BY



**RADIAM LAW
ADVOCATES FOR THE PETITIONER**

DRAWN ON: 02.04.2025

FILED ON: 24.04.2025

IN THE SUPREME COURT OF INDIA
WRIT ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2025

IN THE MATTER OF:

Aweksha Women's Charitable Trust

...Petitioner

Versus

Union of India & Anr.

...Respondents

AFFIDAVIT

I, Donna Maria Fernandes, D/o Ms. Elizabeth Mayne, R/o No. 5 Myrtle Lane, Richmond Town, Bengaluru – 560025 do hereby solemnly affirm and state as under:

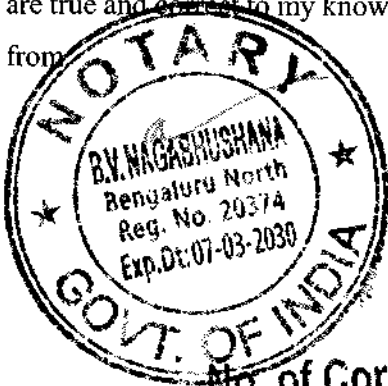
1. I am the President of the Petitioner Trust and I am duly authorized to sign the present Affidavit on it's behalf. I am well conversant with the facts of the case and as such competent to swear this affidavit.
2. That the contents of the accompanying Writ Petition and application(s) have been seen and understood by me. The List of Dates is from pages B to Q and the Writ Petition from pages 1 to 38. The Writ Petition has paragraph 1 to 49. Accompanying application(s) is from pages 81 to 83. It is stated that the contents of the list of dates, Writ Petition and application(s) are true and correct to the best of my knowledge as derived from the record of the case.
3. That the Annexures filed along with this Writ Petition are true copies of their respective originals.



DEPONENT

VERIFICATION

Verified this on the 2nd day of May 2025 that the contents of the paras 1 to 3 of this affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom



SWORN TO BEFORE ME

B.V. NAGABHUSHANA B.A., LL.B.
ADVOCATE & NOTARY
Govt. of India

No 10, 1st Main, 2nd Cross, Neelakanteshwara
Swamy Temple Road, Sanjeevinagar,
Hegganahalli, Cross, Bengaluru - 560091.



DEPONENT

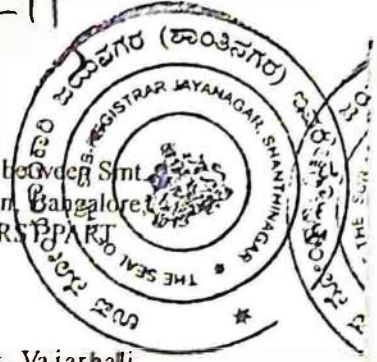
No. of Correction: 02 MAY 2025.

BNC(U) SHR. 198...21-22BK...PAGE - 11

B K IV 198

21-22

THIS DEED OF TRUST is executed on this Tuesday the 27th Day of October, 2021 between Donna Fernandes, aged 70 years, residing at No. 5 Myrtle lane, Richmond Town, Bangalore, Karnataka, 560025, "SETTLOR OF THE TRUST" hereinafter called Party of the FIRST PART



AND

1. Mrs. Satyadevi K., W/o Kiran R., aged 48 years residing at #50, Balaji Layout, Vajarahalli, Doddakallasandra, Bengaluru, 560062.
2. Dr. Prabha S. Chandra, W/o Dr. P Satish Chandra, aged 60 residing at No. 947 21st Cross 5th Main, HSR Sector 7, Bengaluru 560102.
3. Ms. Ashwini N.V. D/o. J.V. Nataraja, aged 33 years residing at #124/1, 301, Shamanna Reddy Building, Sarjapur Road, Near Doddakannalli Bus Stop, Doddakannalli, Bengaluru 560035.
4. Mr. Abhilesh J. S/o Late S.N. Jayakumar, aged 31 years residing at No.91, 5th cross, 1st Main, Hanumanthana, Bengaluru 560019.
5. Mrs. Jyothi Kiran, W/o Kiran Mandanna, aged 73 years residing at D-31, 3rd floor, Clarence Home Settler Street, Langford Town, 3 Langford Road, Richmond Town, Bengaluru, Karnataka, 560025.
6. Dr. Himanshu M S/o Dr. G. Mohan Kumar, aged about 37 years, residing at 77 2nd Floor, 15 Cross Aecs Layout Sanjaynagar, Bengaluru 560094.
7. Ms. Ashika Shetty, D/o Derebail Somappa Shetty, aged 44 years residing at 404, Srinidhi Vintage, 8th A Main, L B Shastri Nagar, Bengaluru 560017.
8. Mr. Adhitya Pradyumna, S/o Dr. M. G. Pradyumna, aged 37 years residing at 1, 1st Cross, Opposite Clumax Diagnostics, New Thippasandra Main Road, HAL 3rd Stage, Bengaluru 560075.
9. Ms. Vidushi Asthana, D/o Rajesh Kumar Asthana, aged 24 residing at C-24, L Road, Mahanagar Extension, Lucknow 226006.

"The Trustees" which expression shall unless repugnant to the context or meaning shall mean and include their heirs, representatives, assignees, executors and administrators of the OTHER PART;

WHEREAS the party hereto of the first part is desirous of establishing a Public Charitable Trust for the benefit of fellow human beings and the public at large, without distinction of gender, sexuality, nationality, religion, caste, creed or sex in the field of health, education, research and social service

WHEREAS with the said intent and in furtherance of such objective the party of the first part has settled a sum of Rs. 5000/- (Rs. Five thousand only) in cash as Trust Fund and delivered to the Trustees herein above mentioned to hold the same in trust and to utilize the same including the accumulations, accretions, gifts and donations for the objects and purposes herein mentioned

AND WHEREAS each of the parties hereto of the "Other Part" has individually and jointly

[Signatures of the parties]

Donna Fernandes, Satyadevi K., Prabha S. Chandra, Ashwini N.V., Jyothi Kiran, Himanshu M., Ashika Shetty, Adhitya Pradyumna, Vidushi Asthana

B NG(U) SHR.....19.8....21-22 BK IV.....PAGE 2 - 11



ಕರ್ನಾಟಕ ಸರ್ಕಾರ
ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Department of Stamps and Registration
ಪ್ರಮಾಣ ಪತ್ರ

1957 ರ ಕರ್ನಾಟಕ ಮುದ್ರಾಂಕ ಕಾಯ್ದೆಯ ಕಲಂ 10 ಎ ಅಡಿಯಲ್ಲಿಯ ಪ್ರಮಾಣ ಪತ್ರ

ಶ್ರೀಮತಿ Mrs Donna Fernandes , ಇವರು 1200.00 ರೂಪಾಯಿಗಳನ್ನು ನಿಗದಿತ ಮುದ್ರಾಂಕ ಶುಲ್ಕವಾಗಿ ಪಾವತಿಸಿರುವುದನ್ನು ದೃಢೀಕರಿಸಲಾಗಿದೆ

ಪ್ರಕಾರ	ಮೊತ್ತ (ರೂ.)	ಹಣದ ಪಾವತಿಯ ವಿವರ
ಚೆಲನ್	1200.00	Challan No CR1021003000630516 Rs.1200/- dated 25/Oct/2021
ಒಟ್ಟು :	1200.00	

ಸ್ಥಳ : ಶಾಂತಿನಗರ

ದಿನಾಂಕ : 27/10/2021

ಉಪನೋಂದಣಾಧಿಕಾರಿ
ಜಯಪುರ, (ಶಾಂತಿನಗರ)
ಕೆಂಗಳೂರು - 560 027

BNG(U) SHR.....198.....21-22 BK IV.....PAGE 2 -11



**Government of Karnataka
Department of Stamps and Registration
Certificate**

Certificate under Section 10A of the Karnataka Stamp Act, 1957

It is certified that Mrs. Donna Fernandes has paid Rs.1200.00 as
prescribed stamp duty.

Type	Amount (Rs.)	Payment details
Chalan	1200.00	Challan No CR1021003000630516 Rs.1200/- dated 25/Oct/2021
Total:	1200.00	

Place: Shantinagar

Date: 27/10/2021

ದಿನಾಂಕ : 27/10/2021

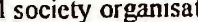
ಉಪನಿರ್ದೇಶಕರು
ಜಯಪುರ (ಶಾಂತಿನಗರ)
ಕೆಂಗಲೂರು - 560 027

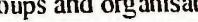
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civil society organisations, women's groups and organisations with similar values and principles in order to seek support for activities and programs.









BNG(U) SHR.....198.....21-22 BK.....PAGE 6 - 11

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Print Date & Time : 27-10-2021 04:31:03 PM

ದಸ್ತಾವೇಜು ಸಂಖ್ಯೆ: 198

ಶಾಂತಿನಗರ ದಲ್ಲಿರುವ ಉಪನೋದಕಾಧಿಕಾರಿ ಜಯನಗರ ರವರ ಕೆಚೇರಿಯಲ್ಲಿ ದಿನಾಂಕ 27-10-2021 ರಂದು 04:04:12 PM ಗಂಟೆಗೆ ಈ ಕೆಳಗೆ ವಿವರಿಸಿದ ಶುಲ್ಕದೊಂದಿಗೆ

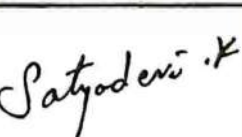
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1	ನೋಂದಣಿ ಶುಲ್ಕ	500.00
2	ಸೇವಾ ಶುಲ್ಕ	1000.00
	ಒಟ್ಟು :	1500.00

ಶ್ರೀಮತಿ Mrs Donna Fernandes ಇವರಿಂದ ಹಾಜರ ಮಾಡಲ್ಪಟ್ಟಿದೆ

ಹೆಸರು	ಫೋಟೋ	ಹೆಚ್ಚಿಟ್ಟ ಗುರುತು	ಸಹಿ
ಶ್ರೀಮತಿ Mrs Donna Fernandes			

ಉಪನೋದಕಾಧಿಕಾರಿ
ಜಯನಗರ, (ಶಾಂತಿನಗರ),
ಕೆಂಗಳೂರು - 560 027.

ಬರೆದುಕೊಟ್ಟಿದ್ದಾಗಿ ಒಪ್ಪಿರುತ್ತಾರೆ

ಕ್ರಮ ಸಂಖ್ಯೆ	ಹೆಸರು	ಫೋಟೋ	ಹೆಚ್ಚಿಟ್ಟ ಗುರುತು	ಸಹಿ
1	Smt Donna Fernandes. (ಬರೆದುಕೊಡುವವರು)			
2	Mrs Satyadevi K. (ಬರೆದುಕೊಡುವವರು)			

ಕ್ರಮ ಸಂಖ್ಯೆ	ಹೆಸರು	ಫೋಟೋ	ಹೆಚ್ಚಿಟ್ಟ ಗುರುತು	ಸಹಿ
	Mrs Ashwin INV.			

ಉಪನೋದಕಾಧಿಕಾರಿ
ಜಯನಗರ, (ಶಾಂತಿನಗರ),
ಕೆಂಗಳೂರು - 560 027.

Document number: 198

Presented by Mrs. Donna Fernandes at the office of the Deputy Registrar, Jayanagar, Shantinagar, on dated 27-10-2021 at 04:04:12 Pm, along with the fee as detailed below.

Sl.No	Details	Rs. Pai
1	Registration fee	500.00
2	Service fee	1000.00
	Total:	1500.00



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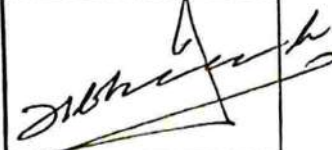
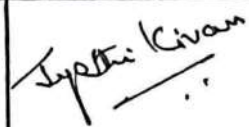
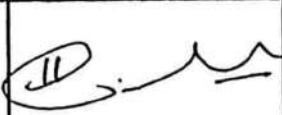
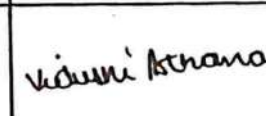
2. to undertake any other activity incidental to the above activities but which are not inconsistent with the above objects.

PROVIDED the Trust may donate / assist the other TRUST to carry out the various objects mentioned in the objects clause in such manner and to the extent the Trustees may decide upon from time to time.

The Trust may accept donations, gifts, grants, subscriptions, aids or contributions from any person, private institutions, Government, Local authorities or any other charitable institutions, in cash or in kind including immovable property without any encumbrance for

[Handwritten signatures and stamps]

BNG(U) SHR.....198...21-22BK. IV PAGE 6 - 11

3	(ಬರೆದುಕೊಡುವವರು)			
4	Mr Abhilesh J . (ಬರೆದುಕೊಡುವವರು)			
5	Mrs Jyothi Kiran. (ಬರೆದುಕೊಡುವವರು)			
6	Mr Dr. Himonshu M . (ಬರೆದುಕೊಡುವವರು)			
7	Miss Vidushi Asihona . (ಬರೆದುಕೊಡುವವರು)			

ಉಪನಿರ್ದೇಶಕರು,
ಜಯನಗರ, (ಪಾಂಡುರೋಡು)
ಕೆಂಗಳೂರು - 560 027.

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objects of the trust. Trustees shall not accept any receipt with any condition or terms inconsistent with the objects of the Trusts.

While applying such receipts to the objects, the Trustees shall respect the directions, if any, by the grantor.

Any receipt with specific direction to treat the same as part of the corpus of the Trust or separate fund shall be funded accordingly.

06. INVESTMENTS /UTILISATION OF FUNDS

- i. All monies, which is not immediately required or for current needs shall be invested by the Trustees in eligible securities and investments, or in banks or in other movable and immovable properties. Such investments shall be in the name of the Trust.
- ii. That the settlor shall invest the funds of the Trust as per the guidelines laid down under I T Act, 1961 and in the modes specified under the provisions of Section 13 (1) read with Section 11(5) of the I T Act, 1961, as amended from time to time.
- iii. That the settlor shall manage the trust fund and investments thereof as a prudent person would do the same. They shall recover all dues and outstanding and meet all recurring and other expenses incurred in the upkeep or management thereof.
- iv. That the Trustees shall receive and hold the income of the trust on behalf and for the benefit of the beneficiaries under the trust.
- v. The funds and the income of the Trust shall be solely utilized for achievement of the objects of the Trust and no payment shall be made to the Trustees/ members by way of profit, interest, dividends etc.
- vi.

07. MANAGEMENT AND POWER OF Trustees

The Settlor and Trustees shall constitute the Board of Trustees. The Board of Trustees shall manage the affairs of the trust in order to achieve the objectives for which the trust is set up.

For effective implementation of the objects of the Trust, the Board of Trustees shall have power to appoint advisory council, committees or sub-committees, from time to time, and the members of the advisory council, committee / sub-committee need not necessarily be a trustee

The Board of Trustees shall conduct meeting of the Board of Trustees at least once in a year with no more than a year's gap between 2 such meetings for effective conduct of the affairs of the trust and shall cause to maintain minutes of the meeting which shall be signed by all the Trustees present in the meeting as a token of authenticity.

50% of the total number of Trustees shall form the quorum for all the meetings of the Board of Trustees and decisions shall be taken by consensus of the Trustees present in the meeting

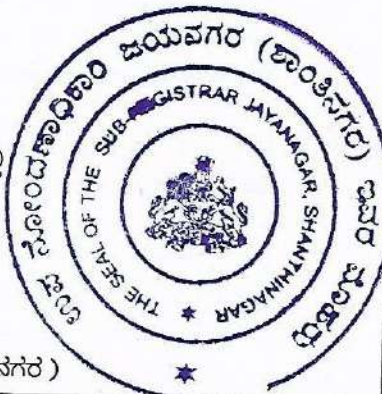
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Satyadwik
Shri. S. S. S. S. S.
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Shri. S. S. S. S. S.
Shri. S. S. S. S. S.

ಗುರುತಿಸುವವರು

5

ಕ್ರಮ ಸಂಖ್ಯೆ	ಹೆಸರು ಮತ್ತು ವಿಳಾಸ	ಸಹಿ
1	Sahil Anees No.D2 LE Infantry Road,B'lore	<i>Sahil Anees</i>
2	L Kalappa NO. 24 1st A Cross, Chikkabommasandra, Yelahanka, B'lore	<i>ಎ.ಕೆ.ಎಲ್</i>

ಜಿ.ಎ.ಎಂ.
ಉಪನೋಂದಣಾಧಿಕಾರಿ,
ಜಯನಗರ, (ಶಾಂತಿನಗರ).
ತೆಂಗಳೂರು - 560 027.

 4 ನೇ ಪುಸ್ತಕದ ದಸ್ತಾವೇಜು ನಂಬರ SHR-4-00198-2021-22 ಆಗಿ ಸಿ.ಡಿ. ನಂಬರ SHRD824 ನೇ ಧರಲ್ಲಿ ದಿನಾಂಕ 27-10-2021 ರಂದು ನೋಂದಾಯಿಸಲಾಗಿದೆ <i>ಜಿ.ಎ.ಎಂ.</i> ಉಪನೋಂದಣಾಧಿಕಾರಿ, ಜಯನಗರ (ಶಾಂತಿನಗರ) ಜಯನಗರ, (ಶಾಂತಿನಗರ). ತೆಂಗಳೂರು - 560 027.	
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BNG(U) SHR. 98.....21-22 BK...IV...PAGE 9-1108. THAT THE TRUSTEES SHALL HAVE THE FOLLOWING POWERS :

- to make decisions about all the assets and properties of the trust by mutual consensus.
- to appoint employees, to settle their terms of service, remuneration and termination;
- to open bank accounts in the name and on behalf of the trust and to operate the same;
- to pay all charges, impositions and other outgoings payable in respect of the trust properties and also to pay all costs incidental to the administration and management of the trust properties
- to appoint Chartered Accountants / auditors as and when required and to fix their remuneration
- to sell, alter, vary, transpose or otherwise dispose or alienate the trust properties or any investment representing the same for consideration and to reinvest the same;
- to pledge or mortgage the trust properties for raising loans;
- to enter into agreements, contracts and to cancel or vary them with any other party or parties;
- to apply for and benefit from government schemes which are in line with the objectives of the trust
- to seek legal opinion and engage lawyers as and when required at such cost as considered necessary
- to institute, prosecute and defend all actions and proceedings including suits, appeals, reviews, revisions and executions and the like before Government, courts, tribunals, revenue and municipal and local authorities and taxation authorities on behalf of the trust and to refer to arbitration all actions, proceedings and disputes affecting the trust properties and to compromise and compound the suits filed;
- The Trustees shall have the authority and powers from time to time to make, amend, alter or rescind one or more clauses of this trust deed and the rules, if found necessary, for effective management and administration of the affairs of the trust and to achieve the objects of the trust.

But no amendments to the Trust Deed shall be made which prove to be repugnant to the provisions of Sections 1(15), 11, 12, 13 and 80G of I T Act, 1961 as amended from time to time. Further, no amendment shall be carried out without the prior approval of the Commissioner of Income Tax.

- The number of the Trustees shall not be less than two but not more than five.
- Every trustee will be at liberty to nominate or appoint attorneys or agents and to delegate all or any of the duties and powers vested in him to such attorney or agent, and to remove

RECEIVED
OFFICE OF THE
SECRETARY
GOVT. OF INDIA

Proh

Donnas J. Saty with

Sh. Singh

Sup. Sub. Singh

Vidushi Sharma
Subi

Tax Act, 1961 and under prior intimation to the Charity Commissioner or such other ~~relevant~~ relevant Authority

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11-11

authority as may be applicable for the time being."

ACCEPTANCE OF THE TRUST

All the Trustees above named accept this trust and in witness whereof and execute this Deed of Trust attesting their signatures at Bengaluru on the day and year herein above written.



SETTLOR:

Donna
DONNA FERNANDES

WITNESS:

1. TRUSTEE

Satyandevi K

1. Sahel Anees

Sahel Anees

2. TRUSTEE

R. K. Kulkarni

2. L. Kalappa

LC Kalappa

3. TRUSTEE

Sh. K. Kulkarni

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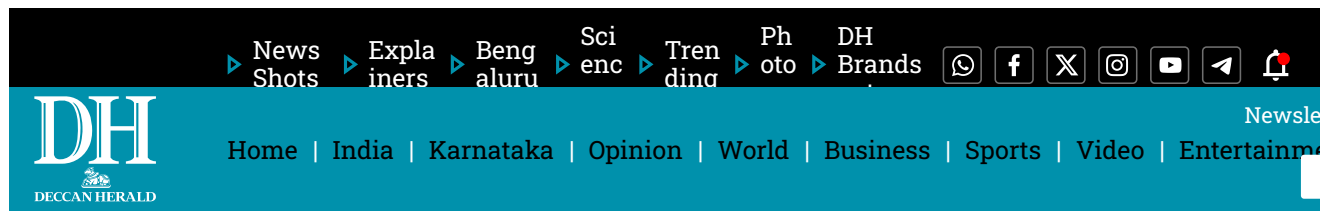
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Victims of domestic violence narrate tales of abuse and horror in Bengaluru

The public hearing held by Aweksha, a charitable trust for women, showcased the heart-wrenching narratives of 12 victims and survivors of domestic violence.

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**Chetan B C**

Last Updated : 25 June 2023, 05:14 IST

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Women victims, survivors speak, share testimonies at the public hearing: "From Despair to Hope Survivors Share Stories" organised at Aweksha A Charitable Women's Trust, Myrtle Line, Richmond Town in Bengaluru. Credit: DH Photo

Tales of horror, terror, and distress unfolded at a public hearing of domestic violence survivors, on Saturday.

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The public hearing held by Aweksha, a charitable trust for women, showcased the heart-wrenching narratives of 12 victims and survivors of domestic violence.

During the gathering, women bravely shared their accounts of marital violence and recounted their struggles with an unyielding and apathetic system.

Listening to their testimonies were Raghavendra Shettigar, Deputy Secretary of the Karnataka State Legal Services Authority, Sangeeta Rege, Director-CEHAT from Mumbai, transgender activist Akkai Padmashali, and Geeta Rameseshan, advocate and activist.

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The first story presented was that of a victim of child marriage who also endured abuse from her parents during her childhood.

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She recounted, "As a little girl, I was restricted from exploring the outside world. I was later married to a man whose age was twice as that of mine and was already involved with another woman. He used to chat with her even as I sat around watching him," she said. She revealed that she sought help after discovering that her mother and husband conspired to have her killed.

Another case brought forward involved a woman whose chest and hands were burned after being assaulted by her husband, who used a kerosene lamp as a weapon. Exhausted from enduring repeated abuse, she summoned the courage to work and managed to raise funds to send her son to school.

Another survivor shared her harrowing story, emphasising that her job was her saving grace. "It allowed me to secretly save money, which proved invaluable when I finally decided to leave my abusive husband and forge my own path," she said.

Among the other accounts shared were those of at least five women who fell victim to the perils of a patriarchal society. Some were coerced by their fathers-in-law to quit their jobs, while others faced threats of severe consequences if they gave birth to a girl.

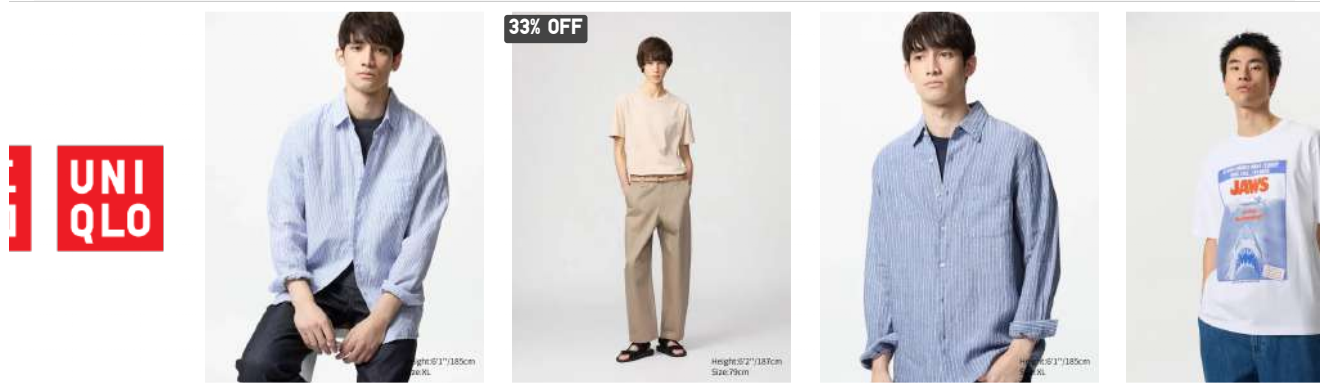
Most of the survivors expressed their gratitude for reaching out for help instead of suffering in silence, which ultimately kept them alive.

Dona Fernandes, a member of Aweksha, stressed the significance of hosting such public hearings. "These initiatives provide a platform for many unheard voices, making them feel that they belong somewhere and that someone cares for them. Timely assistance and intervention give them the confidence to rebuild their lives and reintegrate into society," she said.





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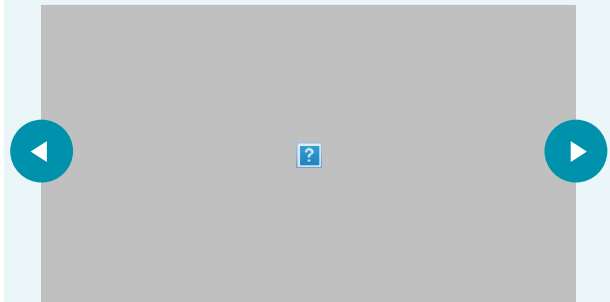


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Victims of domestic violence break their silence, and shackles

About 20 women gathered at Aweksha in Richmond Town on Friday, having broken free from the confines of their marriages and been cast out of their homes by their husbands.

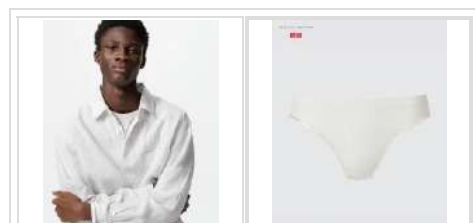
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Aweksha, co-founded by women's rights activist Donna Fernandes, holds a closed-door discussion with domestic violence survivors on Friday. DH PHOTO/PUSHKAR V

Bengaluru: In the backdrop of the ongoing struggle of women against gender-based violence and discrimination, Aweksha, a women's support group co-founded by women's rights activist Donna Fernandes, conducted a closed-door discussion with women, many of whom are victims of domestic violence.

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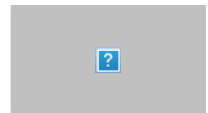
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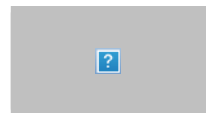
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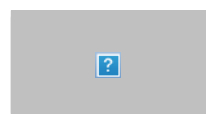
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REPORT OF THE COMMITTEE ON
**AMENDMENTS
TO
CRIMINAL LAW**

JUSTICE J.S. VERMA (RETD)
CHAIRMAN

JUSTICE LEILA SETH (RETD)
MEMBER

GOPAL SUBRAMANIAM
MEMBER

JANUARY 23, 2013

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 23, 2013

Dear Prime Minister,

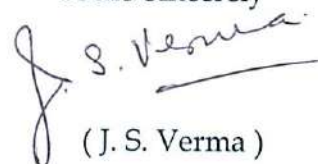
This Committee was constituted by GOI Notification No. SO (3003)E, dated December 23, 2012 to look into possible amendments of the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. In view of the significance and urgency of the task, the Committee undertook to perform it within 30 days, which task has been completed.

Accordingly, the Committee has prepared its Report, which is enclosed herewith.

It is the Committee's hope that the promptitude with which this Committee was constituted within a few days of the brutal gang rape in Delhi on December 16, 2012, will continue to accomplish the task by speedy implementation of its Recommendations to retain public confidence in good governance.

With Regards,

Yours Sincerely


(J. S. Verma)

Hon'ble Dr. Manmohan Singh
Prime Minister of India
7, Race Course Road,
New Delhi

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the South African legislation to go beyond the vagina, mouth or anus.

69. An offence of *sexual assault* should be introduced to include all forms of non-consensual non-penetrative touching of a sexual nature. It is recommended here that the Canadian approach be followed, according to which the 'sexual nature' of an act is established if: 'viewed in the light of all the circumstances... the sexual or carnal context of the assault [is] visible to a reasonable observer.'⁸¹ Courts will examine the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances. It should not be a pre-requisite that the assault be for sexual gratification. The motive of the accused is 'simply one of many factors to be considered.'⁸²

70. In this background it is necessary to examine the Criminal Law Amendment Bill, 2012. The offence of rape falls under Chapter XVI dealing with "offences affecting human body". Sections 375 to 376D are put under the category of "sexual offences". While Courts have often used the expression "sexual assault" in dealing with not only rape cases but also cases of sexual abuse, the IPC did not define the said expression. The definition of "assault" is found under section 351.

71. By virtue of the Amendment, the legislature has sought to widen the scope of the offence under section 375 to 376D by substituting the expression rape with "sexual assault". While we feel that the

⁸¹ *R v Chase* (n 78).

⁸² *ibid.*



proposed Bill (as placed before Parliament) proposes some welcome changes to the law, there is still much ground that needs to be covered. Accordingly, this Committee has recommended amendments (appended to this Report) to the Criminal Law Amendment Bill 2012, which should be considered and enacted by Parliament at the earliest possible, if not immediately. In any event, we feel that the same ought to be promulgated by the Government as an ordinance.

Marital Rape

72. The exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands. According to the common law of coverture, a wife was deemed to have consented at the time of the marriage to have intercourse with her husband at his whim. Moreover, this consent could not be revoked. As far back as 1736, Sir Matthew Hale declared: *'The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract'*.⁸³

73. This immunity has now been withdrawn in most major jurisdictions. In England and Wales, the House of Lords held in 1991 that the status of married women had changed beyond all recognition since Hale set out his proposition. Most importantly, Lord Keith, speaking for the Court, declared, *'marriage is in modern times*

⁸³ Sir Matthew Hale. *History of the Pleas of the Crown*, 1 Hale PC (1736) 629. See further S. Fredman *Women and the Law* (OUP, 1997) pp. 55-57.



*regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.*⁸⁴

74. Our view is supported by the judgment of the European Commission of Human Rights in *C.R. v UK*, which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. Importantly, it acknowledged that this change in the common law was in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom.⁸⁵ This was given statutory recognition in the Criminal Justice and Public Order Act 1994.⁸⁶

75. We find that the same is true in Canada, South Africa and Australia. In Canada, the provisions in the Criminal Code, which denied criminal liability for marital rape, were repealed in 1983.⁸⁷ It is now a crime in Canada for a husband to rape his wife. South Africa criminalised marital rape in 1993, reversing the common law principle that a husband could not be found guilty of raping his wife. Section 5 of the Prevention of Family Violence Act 1993 provides: 'Notwithstanding anything to the contrary contained in any law or in the common law, a husband may be convicted of the rape of his wife.' In Australia, the common law 'marital rape immunity' was legislatively

⁸⁴ *R. v R* [1991] 4 All ER 481 at p.484.

⁸⁵ *C.R. v UK Publ.* ECHR, Ser.A, No. 335-C; see Palmer Feminist Legal Studies Vol.V no.1 [1997] pp. 1-7

⁸⁶ S. 142 abolished the marital rape exception by excluding the word 'unlawful' preceding 'sexual intercourse' in s. 1 of the Sexual Offences Act 1956.

⁸⁷ R.S.C. 1985, c. C-46.



abolished in all jurisdictions from 1976.⁸⁸ In 1991, the Australian High Court had no doubt that: ‘if it was ever the common law that by marriage a wife gave irrevocable consent to sexual intercourse by her husband, it is no longer the common law.’⁸⁹ According to Justice Brennan (as he then was): ‘*The common law fiction has always been offensive to human dignity and incompatible with the legal status of a spouse.*’⁹⁰

76. These jurisdictions have also gone further and recognised that consent should not be implied by the relationship between the accused and the complainant in any event. In the Canadian 2011 Supreme Court decision in *R v. J.A.*, Chief Justice McLachlin emphasised that the relationship between the accused and the complainant ‘does not change the nature of the inquiry into whether the complaint consented’ to the sexual activity.⁹¹ The defendant cannot argue that the complainant’s

⁸⁸ Criminal Law Consolidation Act 1935, s. 73(3). See also s. 73(4) which provides that ‘No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.’ The Crimes (Sexual Assault) Amendment Act 1981 (NSW) inserted s. 61A(4) into the Crimes Act 1900 (NSW), which provided that the fact that a person is married to a person on whom an offence of sexual assault is alleged to have been committed is no bar to conviction for that offence. The Crimes (Amendment) Ordinance (No 5) 1985 (ACT) inserted s 92R into the Crimes Act 1900 (NSW), as it applied to the ACT, which provided that the fact that a person is married to a person upon whom an offence of sexual intercourse without consent contrary to s. 92D is alleged to have been committed shall be no bar to the conviction of the first-mentioned person for the offence. In Victoria, the Crimes (Amendment) Act 1985 (Vic) substituted for s 62(2) of the Crimes Act 1958 (Vic) a new sub-section providing that the existence of a marriage does not constitute, or raise any presumption of, consent by a person to a sexual penetration or indecent assault by another person.

⁸⁹ *R v L* [1991] HCA 48; (1991) 174 CLR 379 at p. 390 per Mason CJ, Deane and Toohey JJ.

⁹⁰ *R v L* [1991] HCA 48; (1991) 174 CLR 379 at p. 402.

⁹¹ [2011] 2 SCR 40, para 64.



consent was implied by the relationship between the accused and the complainant.⁹² In South Africa, the 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act ('Sexual Offences Act') provides, at s. 56 (1), that a marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation.

77. Even when marital rape is recognised as a crime, there is a risk that judges might regard marital rape as less serious than other forms of rape, requiring more lenient sentences, as happened in South Africa.⁹³ In response, the South African Criminal Law (Sentencing) Act of 2007 now provides that the relationship between the victim and the accused may not be regarded as a 'substantial and compelling circumstance' justifying a deviation from legislatively required minimum sentences for rape.

78. It is also important that the legal prohibition on marital rape is accompanied by changes in the attitudes of prosecutors, police officers and those in society more generally. For example, in South Africa, despite these legal developments, rates of marital rape remain shockingly high. A 2010 study suggests that 18.8% of women are raped by their partners on one or more occasion.⁹⁴ Rates of reporting and conviction also remain low,

⁹² *ibid* para 47.

⁹³ See, for example, *S v Moipolai* [2004] ZANWHC 19 (Mogoeng J) and *S v Modise* [2007] ZANWHC 73.

⁹⁴ Gender Links and the South African Medical Research Council, 'The War at Home' (2010) <<http://www.mrc.ac.za/gender/gbvthewar.pdf>> accessed 12 January 2013.



aggravated by the prevalent beliefs that marital rape is acceptable or is less serious than other types of rape.⁹⁵ Changes in the law therefore need to be accompanied by widespread measures raising awareness of women's rights to autonomy and physical integrity, regardless of marriage or other intimate relationship. This was underlined in *Vertido v The Philippines*, a recent Communication under the Optional Protocol of the Convention on the Elimination of Discrimination Against Women (CEDAW), where the CEDAW Committee emphasised the importance of appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner.⁹⁶

79. We, therefore, recommend that:

- i. The exception for marital rape be removed.
- ii. The law ought to specify that:
 - a. A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation;
 - b. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;
 - c. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.

⁹⁵ See further Gemma Hancox, 'Marital Rape in South Africa: Enough is Enough' (2012) BUWA Journal on African Women's Experiences 70 <<http://www.osisa.org/buwa/south-africa/marital-rape-south-africa>> accessed 12 January 2013.

⁹⁶ *Vertido v The Philippines* Communication No. 18/2008, Committee on the Elimination of Discrimination against Women July 2010.



80. We must, at this stage, rely upon Prof. Sandra Fredman of the University of Oxford, who has submitted to the Committee that that *“training and awareness programmes should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife”*.

A handwritten signature in black ink, appearing to be 'S. S. S.' or similar, written in a cursive style.

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रजिस्ट्री सं. डी. एल.—(एन)04/0007/2003—13

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भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 17] नई दिल्ली, मंगलवार, अप्रैल 2, 2013/चैत्र 12, 1935 (सक)
No. 17] NEW DELHI, TUESDAY, APRIL 2, 2013/CHAITRA 12, 1935 (SAKA)

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd April, 2013/Chaitra 12, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 2nd April, 2013, and is hereby published for general information:—

THE CRIMINAL LAW (AMENDMENT) ACT, 2013

No. 13 of 2013

[2nd April, 2013]

AN ACT further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2013.
- (2) It shall be deemed to have come into force on the 3rd day of February, 2013.

Short title and
commencement.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

2. In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause *Sixthly*, the following clause shall be inserted, namely:—

“*Seventhly*.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

Amendment
of section
100.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

Exploitation
of a trafficked
person.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

9. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:—

Substitution of
new sections
for sections
375, 376,
376A, 376B,
376C and
376D.

'375. 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:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—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.

Fourthly.—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.

Fifthly.—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.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—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 fifteen years of age, is not rape.

Punishment
for rape.

376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age;

or

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सत्यमेव जयते

National Family Health Survey (NFHS-5) 2019-21

COMPENDIUM OF FACT SHEETS

KEY INDICATORS

INDIA AND 14 STATES/UTs (Phase-II)

Ministry of Health & Family Welfare
Government of India



सत्यमेव जयते

Government of India
Ministry of Health and Family Welfare

COMPENDIUM OF FACT SHEETS
INDIA AND 14 STATES/UTs (Phase-II)

National Family Health Survey (NFHS-5)
2019-21



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National Family Health Survey (NFHS-5) 2019-21

FACT SHEET

INDIA



**Ministry of Health & Family Welfare
Government of India**

Introduction

The National Family Health Survey 2019-21 (NFHS-5), the fifth in the NFHS series, provides information on population, health, and nutrition for India and each state/union territory (UT). Like NFHS-4, NFHS-5 also provides district-level estimates for many important indicators.

The contents of NFHS-5 are similar to NFHS-4 to allow comparisons over time. However, NFHS-5 includes some new topics, such as preschool education, disability, access to a toilet facility, death registration, bathing practices during menstruation, and methods and reasons for abortion. The scope of clinical, anthropometric, and biochemical testing (CAB) has also been expanded to include measurement of waist and hip circumferences, and the age range for the measurement of blood pressure and blood glucose has been expanded. However, HIV testing has been dropped. The NFHS-5 sample has been designed to provide national, state/union territory (UT), and district level estimates of various indicators covered in the survey. However, estimates of indicators of sexual behaviour; husband's background and woman's work; HIV/AIDS knowledge, attitudes and behaviour; and domestic violence are available only at the state/union territory (UT) and national level.

As in the earlier rounds, the Ministry of Health and Family Welfare, Government of India, designated the International Institute for Population Sciences, Mumbai, as the nodal agency to conduct NFHS-5. The main objective of each successive round of the NFHS has been to provide high-quality data on health and family welfare and emerging issues in this area. NFHS-5 data will be useful in setting benchmarks and examining the progress the health sector has made over time. Besides providing evidence for the effectiveness of ongoing programmes, the data from NFHS-5 help in identifying the need for new programmes with an area specific focus and identifying groups that are most in need of essential services.

Four Survey Schedules - Household, Woman's, Man's, and Biomarker - were canvassed in local languages using Computer Assisted Personal Interviewing (CAPI). In the Household Schedule, information was collected on all usual members of the household and visitors who stayed in the household the previous night, as well as socio-economic characteristics of the household; water, sanitation, and hygiene; health insurance coverage; disabilities; land ownership; number of deaths in the household in the three years preceding the survey; and the ownership and use of mosquito nets. The Woman's Schedule covered a wide variety of topics, including the woman's characteristics, marriage, fertility, contraception, children's immunizations and healthcare, nutrition, reproductive health, sexual behaviour, HIV/AIDS, women's empowerment, and domestic violence. The Man's Schedule covered the man's characteristics, marriage, his number of children, contraception, fertility preferences, nutrition, sexual behaviour, health issues, attitudes towards gender roles, and HIV/AIDS. The Biomarker Schedule covered measurements of height, weight, and haemoglobin levels for children; measurements of height, weight, waist and hip circumference, and haemoglobin levels for women age 15-49 years and men age 15-54 years; and blood pressure and random blood glucose levels for women and men age 15 years and over. In addition, women and men were requested to provide a few additional drops of blood from a finger prick for laboratory testing for HbA1c, malaria parasites, and Vitamin D3.

Readers should be cautious while interpreting and comparing the trends as some States/UTs may have smaller sample size. Moreover, at the time of survey, Ayushman Bharat AB-PMJAY and *Pradhan Mantri Surakshit Matritva Abhiyan* (PMSMA) were not fully rolled out and hence, their coverage may not have been factored in the results of indicator 12 (percentage of households with any usual member covered under a health insurance/financing scheme) and indicator 41 (percentage of mothers who received 4 or more antenatal care check-ups).

This fact sheet provides information on key indicators and trends for India. NFHS-5 fieldwork for India was conducted in two phases, phase one from 17 June 2019 to 30 January 2020 and phase two from 2 January 2020 to 30 April 2021 by 17 Field Agencies and gathered information from 636,699 households, 724,115 women, and 101,839 men. Fact sheets for each State/UT and District of India are also available separately.

India - Key Indicators

Indicators	NFHS-5 (2019-21)			NFHS-4 (2015-16)
Population and Household Profile	Urban	Rural	Total	Total
1. Female population age 6 years and above who ever attended school (%)	82.5	66.8	71.8	68.8
2. Population below age 15 years (%)	23.1	28.1	26.5	28.6
3. Sex ratio of the total population (females per 1,000 males)	985	1,037	1,020	991
4. Sex ratio at birth for children born in the last five years (females per 1,000 males)	924	931	929	919
5. Children under age 5 years whose birth was registered with the civil authority (%)	93.3	87.5	89.1	79.7
6. Deaths in the last 3 years registered with the civil authority (%)	83.2	65.8	70.8	na
7. Population living in households with electricity (%)	99.1	95.7	96.8	88.0
8. Population living in households with an improved drinking-water source ¹ (%)	98.7	94.6	95.9	94.4
9. Population living in households that use an improved sanitation facility ² (%)	81.5	64.9	70.2	48.5
10. Households using clean fuel for cooking ³ (%)	89.7	43.2	58.6	43.8
11. Households using iodized salt (%)	96.9	93.0	94.3	93.1
12. Households with any usual member covered under a health insurance/financing scheme (%)	38.1	42.4	41.0	28.7
13. Children age 5 years who attended pre-primary school during the school year 2019-20 (%)	18.1	12.0	13.6	na
Characteristics of Adults (age 15-49 years)				
14. Women who are literate ⁴ (%)	83.0	65.9	71.5	na
15. Men who are literate ⁴ (%)	89.6	81.5	84.4	na
16. Women with 10 or more years of schooling (%)	56.3	33.7	41.0	35.7
17. Men with 10 or more years of schooling (%)	62.1	43.7	50.2	47.1
18. Women who have ever used the internet (%)	51.8	24.6	33.3	na
19. Men who have ever used the internet (%)	72.5	48.7	57.1	na
Marriage and Fertility				
20. Women age 20-24 years married before age 18 years (%)	14.7	27.0	23.3	26.8
21. Men age 25-29 years married before age 21 years (%)	11.3	21.1	17.7	20.3
22. Total fertility rate (children per woman)	1.6	2.1	2.0	2.2
23. Women age 15-19 years who were already mothers or pregnant at the time of the survey (%)	3.8	7.9	6.8	7.9
24. Adolescent fertility rate for women age 15-19 years ⁵	27	49	43	51
Infant and Child Mortality Rates (per 1,000 live births)				
25. Neonatal mortality rate (NNMR)	18.0	27.5	24.9	29.5
26. Infant mortality rate (IMR)	26.6	38.4	35.2	40.7
27. Under-five mortality rate (U5MR)	31.5	45.7	41.9	49.7
Current Use of Family Planning Methods (currently married women age 15–49 years)				
28. Any method ⁶ (%)	69.3	65.6	66.7	53.5
29. Any modern method ⁶ (%)	58.5	55.5	56.5	47.8
30. Female sterilization (%)	36.3	38.7	37.9	36.0
31. Male sterilization (%)	0.2	0.3	0.3	0.3
32. IUD/PPIUD (%)	2.7	1.8	2.1	1.5
33. Pill (%)	4.4	5.4	5.1	4.1
34. Condom (%)	13.6	7.6	9.5	5.6
35. Injectables (%)	0.4	0.6	0.6	0.2
Unmet Need for Family Planning (currently married women age 15–49 years)				
36. Total unmet need ⁷ (%)	8.4	9.9	9.4	12.9
37. Unmet need for spacing ⁷ (%)	3.6	4.3	4.0	5.7
Quality of Family Planning Services				
38. Health worker ever talked to female non-users about family planning (%)	23.0	24.3	23.9	17.7
39. Current users ever told about side effects of current method ⁸ (%)	64.7	61.5	62.4	46.6

Note: Major indicators are highlighted in grey.

LHV = Lady health visitor; ANM = Auxiliary nurse midwife; na = Not available

¹Piped water into dwelling/yard/plot, piped to neighbour, public tap/standpipe, tube well or borehole, protected dug well, protected spring, rainwater, tanker truck, cart with small tank, bottled water, community RO plant.

²Flush to piped sewer system, flush to septic tank, flush to pit latrine, flush to don't know where, ventilated improved pit (VIP)/biogas latrine, pit latrine with slab, twin pit/composting toilet, which is not shared with any other household. This indicator does not denote access to toilet facility.

³Electricity, LPG/natural gas, biogas.

⁴Refers to women/men who completed standard 9 or higher and women/men who can read a whole sentence or part of a sentence.

⁵Equivalent to the age-specific fertility rate for the 3-year period preceding the survey, expressed in terms of births per 1,000 women age 15-19.

⁶Any method includes other methods that are not shown separately; Any modern method includes other modern methods that are not shown separately.

⁷Unmet need for family planning refers to fecund women who are not using contraception but who wish to postpone the next birth (spacing) or stop childbearing altogether (limiting). Specifically, women are considered to have unmet need for spacing if they are:

- At risk of becoming pregnant, not using contraception, and either do not want to become pregnant within the next two years, or are unsure if or when they want to become pregnant.
 - Pregnant with a mistimed pregnancy.
 - Postpartum amenorrhoeic for up to two years following a mistimed birth and not using contraception.
- Women are considered to have unmet need for limiting if they are:
- At risk of becoming pregnant, not using contraception, and want no (more) children.
 - Pregnant with an unwanted pregnancy.
 - Postpartum amenorrhoeic for up to two years following an unwanted birth and not using contraception.

Women who are classified as infecund have no unmet need because they are not at risk of becoming pregnant. Unmet need for family planning is the sum of unmet need for spacing plus unmet need for limiting.

⁸Based on current users of female sterilization, IUD/PPIUD, injectables, and pills who started using that method in the past 5 years.

India - Key Indicators

Indicators	NFHS-5 (2019-21)			NFHS-4 (2015-16)
	Urban	Rural	Total	Total
Maternal and Child Health				
Maternity Care (for last birth in the 5 years before the survey)				
40. Mothers who had an antenatal check-up in the first trimester (%)	75.5	67.9	70.0	58.6
41. Mothers who had at least 4 antenatal care visits (%)	68.1	54.2	58.1	51.2
42. Mothers whose last birth was protected against neonatal tetanus ⁹ (%)	92.7	91.7	92.0	89.0
43. Mothers who consumed iron folic acid for 100 days or more when they were pregnant (%)	54.0	40.2	44.1	30.3
44. Mothers who consumed iron folic acid for 180 days or more when they were pregnant (%)	34.4	22.7	26.0	14.4
45. Registered pregnancies for which the mother received a Mother and Child Protection (MCP) card (%)	94.9	96.3	95.9	89.3
46. Mothers who received postnatal care from a doctor/nurse/LHV/ANM/midwife/other health personnel within 2 days of delivery (%)	84.6	75.4	78.0	62.4
47. Average out-of-pocket expenditure per delivery in a public health facility (Rs.)	3,385	2,770	2,916	3,197
48. Children born at home who were taken to a health facility for a check-up within 24 hours of birth (%)	3.8	4.3	4.2	2.5
49. Children who received postnatal care from a doctor/nurse/LHV/ANM/midwife/other health personnel within 2 days of delivery (%)	85.7	76.5	79.1	na
Delivery Care (for births in the 5 years before the survey)				
50. Institutional births (%)	93.8	86.7	88.6	78.9
51. Institutional births in public facility (%)	52.6	65.3	61.9	52.1
52. Home births that were conducted by skilled health personnel ¹⁰ (%)	2.1	3.7	3.2	4.3
53. Births attended by skilled health personnel ¹⁰ (%)	94.0	87.8	89.4	81.4
54. Births delivered by caesarean section (%)	32.3	17.6	21.5	17.2
55. Births in a private health facility that were delivered by caesarean section (%)	49.3	46.0	47.4	40.9
56. Births in a public health facility that were delivered by caesarean section (%)	22.7	11.9	14.3	11.9
Child Vaccinations and Vitamin A Supplementation				
57. Children age 12-23 months fully vaccinated based on information from either vaccination card or mother's recall ¹¹ (%)	75.5	76.8	76.4	62.0
58. Children age 12-23 months fully vaccinated based on information from vaccination card only ¹² (%)	83.3	84.0	83.8	77.9
59. Children age 12-23 months who have received BCG (%)	94.7	95.4	95.2	91.9
60. Children age 12-23 months who have received 3 doses of polio vaccine ¹³ (%)	79.2	80.9	80.5	72.8
61. Children age 12-23 months who have received 3 doses of penta or DPT vaccine (%)	86.0	87.0	86.7	78.4
62. Children age 12-23 months who have received the first dose of measles-containing vaccine (MCV) (%)	87.1	88.1	87.9	81.1
63. Children age 24-35 months who have received a second dose of measles-containing vaccine (MCV) (%)	30.4	32.4	31.9	na
64. Children age 12-23 months who have received 3 doses of rotavirus vaccine ¹⁴ (%)	34.9	37.0	36.4	na
65. Children age 12-23 months who have received 3 doses of penta or hepatitis B vaccine (%)	83.0	84.2	83.9	62.8
66. Children age 9-35 months who received a vitamin A dose in the last 6 months (%)	71.8	71.0	71.2	64.5
67. Children age 12-23 months who received most of their vaccinations in a public health facility (%)	87.7	97.0	94.5	90.7
68. Children age 12-23 months who received most of their vaccinations in a private health facility (%)	11.1	1.6	4.2	7.2
Treatment of Childhood Diseases (children under age 5 years)				
69. Prevalence of diarrhoea in the 2 weeks preceding the survey (%)	6.2	7.7	7.3	9.2
70. Children with diarrhoea in the 2 weeks preceding the survey who received oral rehydration salts (ORS) (%)	62.5	60.1	60.6	50.6
71. Children with diarrhoea in the 2 weeks preceding the survey who received zinc (%)	31.5	30.3	30.5	20.3
72. Children with diarrhoea in the 2 weeks preceding the survey taken to a health facility or health provider (%)	72.2	68.0	68.9	67.9
73. Prevalence of symptoms of acute respiratory infection (ARI) in the 2 weeks preceding the survey (%)	2.3	3.0	2.8	2.7
74. Children with fever or symptoms of ARI in the 2 weeks preceding the survey taken to a health facility or health provider (%)	72.7	67.8	69.0	73.2

⁹Includes mothers with two injections during the pregnancy for their last birth, or two or more injections (the last within 3 years of the last live birth), or three or more injections (the last within 5 years of the last birth), or four or more injections (the last within 10 years of the last live birth), or five or more injections at any time prior to the last birth.

¹⁰Doctor/nurse/LHV/ANM/midwife/other health personnel.

¹¹Vaccinated with BCG, measles-containing vaccine (MCV)/MR/MMR/Measles, and 3 doses each of polio (excluding polio vaccine given at birth) and DPT or penta vaccine.

¹²Among children whose vaccination card was shown to the interviewer, percentage vaccinated with BCG, measles-containing vaccine (MCV)/MR/MMR/Measles, and 3 doses each of polio (excluding polio vaccine given at birth) and DPT or penta vaccine.

¹³Not including polio vaccination given at birth.

¹⁴Since rotavirus is not being provided across all states and districts, the levels should not be compared.

India - Key Indicators

Indicators	NFHS-5 (2019-21)			NFHS-4 (2015-16)
Child Feeding Practices and Nutritional Status of Children	Urban	Rural	Total	Total
75. Children under age 3 years breastfed within one hour of birth ¹⁵ (%)	44.7	40.7	41.8	41.6
76. Children under age 6 months exclusively breastfed ¹⁶ (%)	59.6	65.1	63.7	54.9
77. Children age 6-8 months receiving solid or semi-solid food and breastmilk ¹⁶ (%)	52.0	43.9	45.9	42.7
78. Breastfeeding children age 6-23 months receiving an adequate diet ^{16, 17} (%)	11.8	10.8	11.1	8.7
79. Non-breastfeeding children age 6-23 months receiving an adequate diet ^{16, 17} (%)	14.2	12.0	12.7	14.3
80. Total children age 6-23 months receiving an adequate diet ^{16, 17} (%)	12.3	11.0	11.3	9.6
81. Children under 5 years who are stunted (height-for-age) ¹⁸ (%)	30.1	37.3	35.5	38.4
82. Children under 5 years who are wasted (weight-for-height) ¹⁸ (%)	18.5	19.5	19.3	21.0
83. Children under 5 years who are severely wasted (weight-for-height) ¹⁹ (%)	7.6	7.7	7.7	7.5
84. Children under 5 years who are underweight (weight-for-age) ¹⁸ (%)	27.3	33.8	32.1	35.8
85. Children under 5 years who are overweight (weight-for-height) ²⁰ (%)	4.2	3.2	3.4	2.1
Nutritional Status of Adults (age 15-49 years)				
86. Women whose Body Mass Index (BMI) is below normal (BMI <18.5 kg/m ²) ²¹ (%)	13.2	21.2	18.7	22.9
87. Men whose Body Mass Index (BMI) is below normal (BMI <18.5 kg/m ²) (%)	13.0	17.8	16.2	20.2
88. Women who are overweight or obese (BMI ≥25.0 kg/m ²) ²¹ (%)	33.2	19.7	24.0	20.6
89. Men who are overweight or obese (BMI ≥25.0 kg/m ²) (%)	29.8	19.3	22.9	18.9
90. Women who have high risk waist-to-hip ratio (≥0.85) (%)	59.9	55.2	56.7	na
91. Men who have high risk waist-to-hip ratio (≥0.90) (%)	50.1	46.4	47.7	na
Anaemia among Children and Adults				
92. Children age 6-59 months who are anaemic (<11.0 g/dl) ²² (%)	64.2	68.3	67.1	58.6
93. Non-pregnant women age 15-49 years who are anaemic (<12.0 g/dl) ²² (%)	54.1	58.7	57.2	53.2
94. Pregnant women age 15-49 years who are anaemic (<11.0 g/dl) ²² (%)	45.7	54.3	52.2	50.4
95. All women age 15-49 years who are anaemic ²² (%)	53.8	58.5	57.0	53.1
96. All women age 15-19 years who are anaemic ²² (%)	56.5	60.2	59.1	54.1
97. Men age 15-49 years who are anaemic (<13.0 g/dl) ²² (%)	20.4	27.4	25.0	22.7
98. Men age 15-19 years who are anaemic (<13.0 g/dl) ²² (%)	25.0	33.9	31.1	29.2
Blood Sugar Level among Adults (age 15 years and above)				
Women				
99. Blood sugar level - high (141-160 mg/dl) ²³ (%)	6.7	5.9	6.1	na
100. Blood sugar level - very high (>160 mg/dl) ²³ (%)	8.0	5.5	6.3	na
101. Blood sugar level - high or very high (>140 mg/dl) or taking medicine to control blood sugar level ²³ (%)	16.3	12.3	13.5	na
Men				
102. Blood sugar level - high (141-160 mg/dl) ²³ (%)	7.8	7.0	7.3	na
103. Blood sugar level - very high (>160 mg/dl) ²³ (%)	8.5	6.5	7.2	na
104. Blood sugar level - high or very high (>140 mg/dl) or taking medicine to control blood sugar level ²³ (%)	17.9	14.5	15.6	na
Hypertension among Adults (age 15 years and above)				
Women				
105. Mildly elevated blood pressure (Systolic 140-159 mm of Hg and/or Diastolic 90-99 mm of Hg) (%)	13.6	11.9	12.4	na
106. Moderately or severely elevated blood pressure (Systolic ≥160 mm of Hg and/or Diastolic ≥100 mm of Hg) (%)	5.2	5.2	5.2	na
107. Elevated blood pressure (Systolic ≥140 mm of Hg and/or Diastolic ≥90 mm of Hg) or taking medicine to control blood pressure (%)	23.6	20.2	21.3	na
Men				
108. Mildly elevated blood pressure (Systolic 140-159 mm of Hg and/or Diastolic 90-99 mm of Hg) (%)	17.1	15.0	15.7	na
109. Moderately or severely elevated blood pressure (Systolic ≥160 mm of Hg and/or Diastolic ≥100 mm of Hg) (%)	5.9	5.5	5.7	na
110. Elevated blood pressure (Systolic ≥140 mm of Hg and/or Diastolic ≥90 mm of Hg) or taking medicine to control blood pressure (%)	26.6	22.7	24.0	na

¹⁵Based on the last child born in the 3 years before the survey.

¹⁶Based on the youngest child living with the mother.

¹⁷Breastfed children receiving 4 or more food groups and a minimum meal frequency, non-breastfed children fed with a minimum of 3 Infant and Young Child Feeding Practices (fed with other milk or milk products at least twice a day, a minimum meal frequency that is, receiving solid or semi-solid food at least twice a day for breastfed infants 6-8 months and at least three times a day for breastfed children 9-23 months, and solid or semi-solid foods from at least four food groups not including the milk or milk products food group).

¹⁸Below -2 standard deviations, based on the WHO standard.

¹⁹Below -3 standard deviations, based on the WHO standard.

²⁰Above +2 standard deviations, based on the WHO standard.

²¹Excludes pregnant women and women with a birth in the preceding 2 months.

²²Haemoglobin in grams per decilitre (g/dl). Among children, prevalence is adjusted for altitude. Among adults, prevalence is adjusted for altitude and for smoking status, if known. As NFHS uses the capillary blood for estimation of anaemia, the results of NFHS-5 need not be compared with other surveys using venous blood.

²³Random blood sugar measurement.

India - Key Indicators

Indicators	NFHS-5 (2019-21)			NFHS-4 (2015-16)
	Urban	Rural	Total	Total
Screening for Cancer among Adults (age 30-49 years)				
Women				
111. Ever undergone a screening test for cervical cancer (%)	2.2	1.7	1.9	na
112. Ever undergone a breast examination for breast cancer (%)	1.2	0.7	0.9	na
113. Ever undergone an oral cavity examination for oral cancer (%)	1.2	0.8	0.9	na
Men				
114. Ever undergone an oral cavity examination for oral cancer (%)	1.0	1.3	1.2	na
Knowledge of HIV/AIDS among Adults (age 15-49 years)				
115. Women who have comprehensive knowledge ²⁴ of HIV/AIDS (%)	28.6	18.2	21.6	20.9
116. Men who have comprehensive knowledge ²⁴ of HIV/AIDS (%)	37.5	27.1	30.7	32.5
117. Women who know that consistent condom use can reduce the chance of getting HIV/AIDS (%)	76.1	64.7	68.4	54.9
118. Men who know that consistent condom use can reduce the chance of getting HIV/AIDS (%)	86.4	79.6	82.0	77.4
Women's Empowerment (women age 15-49 years)				
119. Currently married women who usually participate in three household decisions ²⁵ (%)	91.0	87.7	88.7	84.0
120. Women who worked in the last 12 months and were paid in cash (%)	25.0	25.6	25.4	24.6
121. Women owning a house and/or land (alone or jointly with others) (%)	38.3	45.7	43.3	38.4
122. Women having a bank or savings account that they themselves use (%)	80.9	77.4	78.6	53.0
123. Women having a mobile phone that they themselves use (%)	69.4	46.6	54.0	45.9
124. Women age 15-24 years who use hygienic methods of protection during their menstrual period ²⁶ (%)	89.4	72.3	77.3	57.6
Gender Based Violence (age 18-49 years)				
125. Ever-married women age 18-49 years who have ever experienced spousal violence ²⁷ (%)	24.2	31.6	29.3	31.2
126. Ever-married women age 18-49 years who have experienced physical violence during any pregnancy (%)	2.5	3.4	3.1	3.9
127. Young women age 18-29 years who experienced sexual violence by age 18 (%)	1.1	1.6	1.5	1.5
Tobacco Use and Alcohol Consumption among Adults (age 15 years and above)				
128. Women age 15 years and above who use any kind of tobacco (%)	5.4	10.5	8.9	na
129. Men age 15 years and above who use any kind of tobacco (%)	28.8	42.7	38.0	na
130. Women age 15 years and above who consume alcohol (%)	0.6	1.6	1.3	na
131. Men age 15 years and above who consume alcohol (%)	16.5	19.9	18.8	na

²⁴Comprehensive knowledge means knowing that consistent use of condoms every time they have sex and having just one uninfected faithful sex partner can reduce the chance of getting HIV/AIDS, knowing that a healthy-looking person can have HIV/AIDS, and rejecting two common misconceptions about transmission or prevention of HIV/AIDS.

²⁵Decisions about health care for herself, making major household purchases, and visits to her family or relatives.

²⁶Locally prepared napkins, sanitary napkins, tampons, and menstrual cups are considered to be hygienic methods of protection.

²⁷Spousal violence is defined as physical and/or sexual violence.

TRUE COPY

**IN THE SUPREME COURT OF INDIA
WRIT CRIMINAL JURISDICTION**

CRL. M. P. NO. OF 2025

IN

WRIT PETITION (Crl.) NO. _____ OF 2025

IN THE MATTER OF:-

Aweksha Women's Charitable Trust ... Petitioner

Versus

Union of India & Ors. ... Respondents

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL

TRANSLATION OF ANNEXURE P-1

To,

The Hon'ble the Chief Justice of India
and his companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. The present petition has been filed by the Petitioner Trust in public interest challenging the constitutionality of Exception 2 of Section 63 of Bhartiya Nyaya Sanhita (“BNS”) of 2023 being the exception to marital rape, as being violative of Articles 14, Article 15, Article 19(1)(a) and Article 21 of the Constitution of India, 1950 and ultra vires to the constitutional scheme as it makes an exception to rape or non-consensual sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, only on the ground of marriage.

2. That it is submitted that that Annexure P-1 is being filed along with the instant Writ Petition is in Kannada Language and therefore the Petitioner is filing a true and correct translated copy of the above-mentioned annexure.

3. That in the circumstances, the present Writ Petition is being filed accompanied with the true and correct typed copy of the said annexures. It is submitted that that this Hon’ble Court may kindly exempt the Petitioner from filing the official translated copy of Annexure P-1 avoid delay in the matter given the urgency in the matter.

4. That the present Application is bonafide and in the interest of justice.

PRAYER

In the facts and circumstances stated herein above, this Hon'ble Court may graciously be pleased to;

- i. Exempt the Petitioner from filing official translation of Annexure P-1 filed along with the instant Transfer Petition; and/or
- ii. Pass such other order(s) as may be deemed fit and appropriate by this Hon'ble Court in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY



**RADIAM LAW
ADVOCATE FOR THE PETITIONER**

Place: New Delhi
Filed on: 24.04.2025

RADIAM LAW
100 LAWYERS CHAMBER
Supreme Court of India

Date: 08.05.2025
Diary no.: 22030/2025
Section: X

To,
The Registrar,
Supreme Court of India,
New Delhi.

Sub: W.P. (CRL.) No. of 2025
Aweksha Women's Charitable Trust
v. Union of India & Ors.

Dear Sir,

This is to bring to your kind attention that the Registry had, at the time of filing, raised a defect in Annexure Nos. P/2, P/3 and P/5 in view of an issue with the margins. The same has been rectified to the best possible ability. It is requested that the same may be taken on record as the text of the annexures is completely visible and legible.

Additionally, Annexure P/1 which is the trust deed of the Petitioner Trust, is being refiled with an identity proof of the President. It is submitted that this is the clearest possible copy available of the ID proof and it is part of the trust deed and the same may be taken on record and any defects therein kindly be waived.

That the Registry has raised a defect at the time of refiling dated 9.5.2025 for filing an authorization letter of the Petitioner. It is submitted that the petition has been filed in the name of Aweksha Trust through its founder and President Ms. Donna Fernandez. Trust Deed dated 27.10.2021 marked as Annexure P/1 clearly states Ms. Donna Fernandez to be the settlor of the Trust. Under Clause 8 of the Deed, the Trustees are empowered to engage lawyers and file petitions in Court in the name of the Trust. In view of this, there is no further requirement of an authorization letter of the Petitioner that needs to be filed.

Hence, the said defect is liable to ignored and as such the matter be listed before the Hon'ble Court at my risk.

Thanking you

Yours sincerely,


(RADIAM LAW)
Advocates for petitioner

SECTION : - -X

MATTER NOT COMING WITHIN NEXT FIVE DAYS OR MENTIONED

IN THE SUPRE COURT OF INDIA

CIVIL/CRIMINAL/APPELLATE/ORIGINAL JURISDICTION

WRIT PETITION (CrI.) NO.

OF 20 25

Aweksha Women's Charitable Trust

« .. Petitioner(s) /Appellant(s)

VERSUS

Unon of India & Anr.

. ...Respondent(s)

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4.	Annexure P-1 to P-	1+3	
5.	Vakalatnama with M/A	1+3	
6.	Application for O/T	1 1+3	

7 2 7 \$ / « « « « « «



ARENDRA KUMAR
CLERK I.C. NO. 3852
Mob. 9899005183

(RADIAM LAW)
Advocates for the Petitioner(s)
Supreme Court of India
New Delhi 110001

Email- radiamlawfirm@gmail.com

Filed on: - 24.04.2025

CODE No. 3101

Union of India & Ors. **Respondent(s)**

VAKALATNAMA

I/We, undersigned in the above Petition/appeal do hereby appoint and retain **RADIAN LAW, ADVOCATES**. Supreme Court of India, to act and appear for me/us in the above Suit/ Appeal/ Petition/ Reference and or my /our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/ or behalf in the said Suit Appeal/ Petition Reference and in application of Review, and to represent me/us and to take all necessary steps on my /our behalf in the above matter, I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 04 day of April 2025

Accepted, identified, Certified & satisfied:

**RADIAN LAW,
Advocates**

**E-50 (Lower Ground Floor),
Greater Kailash Enclave-I,
New Delhi – 110 048
L: 011 26242900-01 | M: 9953001696
Email: radiamlawfirm@gmail.com**

Jogy Scaria, AOR

Enrollment No. : K/1671/2001



Signed
(Donna Maria Fernandes)

MEMO OF APPEARANCE

To, The Registrar,
 Supreme Court of India
 New Delhi

Sir,

Please enter my appearance on behalf of the Petitioner in the matter above mentioned.

Yours faithfully,

Place: New Delhi
Filed on: 24.04.2025

(RADIAM LAW)
Advocates for Petitioner
Code No. 3101