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Marital Immunity after Death: Reading the Silence of Section 377 in *Gorakhnath Sharma v State of Chhattisgarh*

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INTRODUCTION

Case Name: *Gorakhnath Sharma v State of Chhattisgarh*

Citation: 2025 SCC OnLine Chh 2287

Court: High Court of Chhattisgarh

Coram: Narendra Kumar Vyas, J.

Date of Decision: 10 February 2025

The judgment of the Chhattisgarh High Court in *Gorakhnath Sharma v State of Chhattisgarh* acquitted a husband of rape, an unnatural offence, and culpable homicide, notwithstanding a dying declaration implicating him in his wife's death following non-consensual anal penetration.¹ The acquittal followed inexorably, on the Court's own reasoning, from Exception 2

¹ *Gorakhnath Sharma v State of Chhattisgarh Through Station House Officer* (2025) SCC OnLine Chh 2287

to section 375 of the Indian Penal Code 1860, which excludes non-consensual sexual acts by a husband upon his wife from the definition of rape. The result has attracted swift and largely undifferentiated condemnation in the press and in student commentary, most of it converging on the now-familiar submission that the marital rape exception is unjust and ought to be removed. This comment does not dispute that submission; it seeks instead to demonstrate something more precise, that the outcome in *Gorakhnath Sharma* was not compelled by an airtight statutory text but was the product of an interpretive choice, made available by a colonial doctrine that India's own law reform bodies, courts, and treaty obligations have already substantially repudiated in adjacent contexts. The comment further argues that the Bharatiya Nyaya Sanhita 2023 has not merely left this position undisturbed but has, in one respect, foreclosed even the narrow judicial workaround that other High Courts had previously used.

FACTS

The appellant, a forty-year-old man, was married to the deceased. On the night of 11 December 2017, he forcibly inserted his hand into his wife's rectum, causing two perforations and consequent bleeding and abdominal pain. She was admitted to hospital, where an Executive Magistrate recorded her dying declaration implicating her husband in the assault. She succumbed to her injuries shortly thereafter. An FIR was registered, and the Trial Court at Jagdalpur convicted the appellant under sections 376 (rape), 377 (unnatural offences) and 304 (culpable homicide not amounting to murder) of the Indian Penal Code, sentencing him to ten years' rigorous imprisonment.² On appeal, the High Court set aside the conviction on all three counts and directed the appellant's release.

ISSUES

1. Whether non-consensual anal penetration by a husband upon his wife fell outside the definition of rape under section 375 by operation of Exception 2.
2. Whether that marital exemption, textually confined to section 375, could nonetheless be read into section 377, which contains no express spousal carve-out.

² Alisha, 'The Tragedy Of Marital Immunity A Critical Comment on *Gorakhnath Sharma v/s State of Chhattisgarh* (2025)' (*Legal Service India*, 04 February 2026) <<https://www.legalserviceindia.com/Legal-Articles/marital-immunity-gorakhnath-sharma-v-state-of-chhattisgarh-2025/>> accessed 15 June 2026

3. Whether the dying declaration and accompanying medical evidence were sufficient to sustain a conviction under section 304.

REASONING

Vyas J held that since the relationship between the parties was that of husband and wife, and since the wife was concededly above the statutory age threshold, the absence of her consent to the act ‘loses its importance,’ such that no offence under section 376 could be made out.³ The Court then extended this reasoning to section 377, holding that once the marital relationship placed the parties beyond the reach of section 375, the same non-consensual anal act could not independently constitute an unnatural offence, notwithstanding that section 377 draws no express distinction between marital and non-marital contexts. In doing so, the Court distinguished *Navtej Singh Johar v Union of India*⁴, which had decriminalised only consensual acts under section 377, on the footing that the presence or absence of consent became irrelevant once the marital exception was found to apply. Finally, on the section 304 charge, the Court held the dying declaration insufficiently corroborated to sustain a conviction, relying on the evidentiary threshold articulated in *Naeem v State of Uttar Pradesh*⁵ for resting a conviction solely upon a dying declaration.

CRITIQUE

The reasoning in *Gorakhnath Sharma* rests, at each stage, upon an unexamined premise: that a wife's consent to sexual access is given once, at marriage, and thereafter cannot be withdrawn. This premise is not derived from the Constitution, from a considered legislative judgment, or from contemporary understanding of sexual autonomy. It descends directly from Sir Matthew Hale's unsupported seventeenth-century assertion that a husband cannot be guilty of raping his wife because, by their ‘matrimonial consent and contract,’ she has ‘given up herself’ to him in a manner she ‘cannot retract.’⁶ Hale's statement carried no judicial authority even in its own time; it was an extra-judicial aside in a treatise on the pleas of the Crown, later absorbed into English and colonial Indian criminal law without independent scrutiny. It rests on, and reinforces, the

³ *Gorakhnath Sharma v State of Chhattisgarh Through Station House Officer* (2025) SCC OnLine Chh 2287

⁴ *Navtej Singh Johar & Ors v Union of India Thr Secretary Ministry of Law and Justice* (2018) 10 SCC 1

⁵ *Naeem v State of Uttar Pradesh* (2024) SCC OnLine SC 237

⁶ Sir Matthew Hale, *HISTORIA PLACITORUM CORONAE: THE HISTORY OF THE PLEAS OF THE CROWN* (HardPress 2018)

common law doctrine of coverture, under which a married woman's legal identity was subsumed into that of her husband upon marriage; she became, in Blackstone's formulation, a *femme covert* possessed of no separate legal personality, and therefore no separate capacity to withhold consent that the law would recognise.⁷ The Supreme Court has, in an adjacent context, already repudiated coverture-based reasoning in unequivocal terms: in *Joseph Shine v Union of India*, striking down the offence of adultery under section 497 of the Indian Penal Code, the Court held that the provision was unconstitutional precisely because it was grounded in the notion of a wife as her husband's property, and that the law could no longer sanction the 'legal subordination of one sex to another.'⁸ Exception 2 to section 375 rests on the identical premise that *Joseph Shine* condemned; the Court in *Gorakhnath Sharma* simply did not ask whether that premise could still bear the weight the law places upon it.

Nor is this a premise the Indian state has been unaware of or powerless to reconsider. The Law Commission's 172nd Report, while substantially widening the definition of rape, expressly declined to remove the marital exception, reasoning that doing so would cause 'excessive interference' with the marital relationship.⁹ Thirteen years later, the Justice Verma Committee reversed this position, recommending that the relationship between the parties be rendered wholly irrelevant to a finding of consent, and that marriage never again operate as a standing defence to rape.¹⁰ That recommendation was never enacted. The asymmetry in institutional urgency is made sharper by the Law Commission's 243rd Report, which addressed section 498A IPC, a provision protecting wives from marital cruelty, and moved comparatively swiftly toward safeguards against its perceived 'misuse' by husbands.¹¹ The legislative machinery that treats concerns about husbands' liability as requiring urgent correction has treated concerns about wives' bodily integrity as a matter that can wait indefinitely. *Gorakhnath Sharma* is not an aberration produced by this record; it is what the record predicts.

The judiciary, moreover, has not spoken with one voice on this question, and the Court did not engage the disagreement. In *Independent Thought v Union of India*, the Supreme Court read down Exception 2 as applied to minor wives, holding that a girl's status as a wife could not

⁷ William Blackstone, *COMMENTARIES ON THE LAWS OF ENGLAND* (1st edn, OUP 2016)

⁸ *Joseph Shine v Union of India* (2019) 3 SCC 39

⁹ Law Commission, *Report No 172: Review of Rape Laws* (2000)

¹⁰ *Report of the Committee on Amendments to Criminal Law* (2013)

¹¹ Law Commission, *Report No 243: Section 498A of the Indian Penal Code* (Law Com No 243, 2012)

extinguish the protection otherwise due to her as a child.¹² In *Nimeshbhai Bharatbhai Desai v State of Gujarat*, the Gujarat High Court took precisely the textual route that Vyas J declined: it held that because section 377 contained no marital carve-out on its face, a husband could be independently prosecuted under that provision where section 375 was unavailable.¹³ The Karnataka High Court, in *Hrishikesh Sahoo v State of Karnataka*, went further, directing that charges under section 376 be framed against a husband and questioning the exception's survival under Article 14.¹⁴ Against this backdrop, the Court's choice to read the marital exemption into section 377, despite a High Court of coordinate jurisdiction having reasoned to the opposite conclusion on the identical provision, was an interpretive election, not a compelled outcome.

India's international obligations reinforce this point without being permitted to alter it. India ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1993, and the CEDAW Committee has directly recommended that India criminalise marital rape in its Concluding Observations.¹⁵ The International Covenant on Civil and Political Rights, to which India is likewise a party, guarantees freedom from degrading treatment and the right to privacy, both squarely implicated by non-consensual penetration within marriage.¹⁶ India's dualist constitutional structure means these obligations do not directly bind a court applying domestic penal law; but courts have shown themselves willing to import unincorporated treaty standards where they consider it appropriate, as the Supreme Court did with the Convention on the Rights of Persons with Disabilities in *Suchita Srivastava v Chandigarh Administration*, holding that a woman's right to make reproductive choices is a dimension of personal liberty under Article 21, and that her privacy, dignity, and bodily integrity had to be respected notwithstanding cognitive disability.¹⁷ The doctrinal tension this creates for Exception 2 is difficult to overstate: the Court has already held that a woman's control over her own body survives even significant impairment of decision-making capacity when the State seeks to override it, yet the marital rape exception presumes that a wife of full mental capacity surrenders that same control entirely and permanently upon marriage, without any threshold inquiry into

¹² *Independent Thought v Union of India & Anr* (2017) 10 SCC 800

¹³ *Nimeshbhai Bharatbhai Desai v State of Gujarat* (2018) SCC OnLine Guj 732

¹⁴ *Hrishikesh Sahoo v State of Karnataka* (2022) LiveLaw (Kar) 89

¹⁵ Convention on the Elimination of All Forms of Discrimination against Women 1979

¹⁶ International Covenant on Civil and Political Rights 1966

¹⁷ *Suchita Srivastava & Anr v Chandigarh Administration* (2009) 9 SCC 1

her wishes at all. *Gorakhnath Sharma* did not merely fail to extend this logic to the marital context; it did not engage with it.

The Bharatiya Nyaya Sanhita 2023 offers no correction, and in one respect forecloses the very route other High Courts had used. Exception 2 is retained in materially the same form under section 63, the principal amendment being an increase in the minimum age of the wife from fifteen to eighteen years.¹⁸ More significant is a structural change that has attracted little comment: the BNS does not reproduce section 377 IPC as a standalone offence. Non-consensual oral, anal, and object-based penetration are now folded directly into the definition of rape itself under section 63(a)-(c).¹⁹ This eliminates the interpretive space *Nimeshbhai* relied upon, the argument that a textually silent, freestanding provision could not import a marital exemption never written into it. Because Exception 2 under the BNS attaches to 'sexual intercourse or sexual acts by a man with his own wife' without qualification as to the mode of penetration, the very route by which a future court might have reached the outcome *Nimeshbhai* reached is no longer available. The recodification exercise, framed by the government as a decolonising departure from the IPC, has in this respect not merely preserved colonial-era marital immunity but consolidated it, closing off the one interpretive avenue Indian courts had used to work around it.

IMPACT

Gorakhnath Sharma is not an isolated misstep by the Chhattisgarh High Court; commentators have noted that the same Bench delivered a substantially similar ruling roughly a year earlier on comparable facts, suggesting an interpretive pattern rather than a singular error.²⁰ The judgment arrives while a constitutional challenge to Exception 2 remains pending before the Supreme Court, following a split verdict of the Delhi High Court in *RIT Foundation v Union of India*²¹, leaving trial and appellate courts to continue applying a provision whose constitutional survival is itself sub judice. Because the BNS has now merged the offences previously divided between sections 375 and 377 into a single provision, future litigants situated as the appellant's

¹⁸ Bharatiya Nyaya Sanhita 2023, s 63, Exception 2

¹⁹ Bharatiya Nyaya Sanhita 2023, s 63(a)-(c)

²⁰ Shalini Gera, 'An Unfortunate Impenetrability of Law: The Law on Rape in Chhattisgarh High Court' (*PUCL*, 01 March 2026) <<https://pucl.org/manage-writings/an-unfortunate-impenetrability-of-law-the-law-on-rape-in-chhattisgarh-high-court/>> accessed 15 June 2026

²¹ *RIT Foundation v Union of India* (2022) SCC OnLine Del 1404

wife was will find no equivalent to the *Nimeshbhai* route available to them; the only prospect of relief lies in the Supreme Court's eventual disposal of the pending constitutional challenge, or in legislative amendment that, on the present record, shows no sign of arriving.

CONCLUSION

The tragedy of *Gorakhnath Sharma* lies not in a court applying the law as it stands, but in a court declining to notice how much room it had to decide otherwise. The marital rape exception is not a rule so settled that its application admits no scrutiny; it is a doctrine with a documented, discredited lineage in Hale and coverture, a domestic reform record that has recommended its removal and been ignored, a body of conflicting judicial authority the Court chose not to engage, and international obligations India has accepted but not incorporated. The Bharatiya Nyaya Sanhita's recodification of the offence of rape, far from an opportunity to correct this record, has instead closed off the narrow textual path by which courts such as the Gujarat High Court in *Nimeshbhai* had begun to work around it. Until Exception 2 is removed by legislative amendment or struck down by the Supreme Court, judgments of this kind will not be aberrations. They will be what the law, left as it is, continues to produce.