

# LAWBY WRITES



**When non-consensual sex a.k.a rape meets marriage**

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# EDITORIAL



P Arun Sugavaneshvar  
Founder

## When non-consensual sex a.k.a rape meets marriage

The voices to criminalise marital rape have been steadily rising but without much response in favour. So, why is there a hesitation to pull up marital rape perpetrators? Is it the difficulty to prove the occurrence within a marital relationship the prime cause, or is it the cultural stigma attached to claims of rape within the institution of marriage? **Exception 2 to Section 63 of the Bharatiya Nyaya Sanhita, 2023 clearly states that sexual intercourse among husband and wife is not to be considered as rape if the woman is above 18 years of age.**

The lack of criminalization would result in significant consequences such as denial of women's sexual autonomy within marriage, limited to no legal recourse for victims, an indirect perpetuation of gender inequality and a violation of fundamental rights guaranteed by the Indian Constitution under Article 21. In ***Independent Thought vs Union of India (2017) 10 SCC 800***, the Supreme Court accepted that Exception 2 to Section 375 of the erstwhile IPC did not create a reasonable classification and was violative of Article 14. It also observed that Exception 2 was violative of statutes, which included the POSCO Act, 2012, the Prohibition of Child Marriage Act, 2006 and the Juvenile Justice (Care and Protection of Children) Act, 2000, which failed to recognize a person below 18 years as a child and prescribe the age of consent for sexual intercourse as 18 years. Exception 2 of Section 375 IPC had earlier legalised non-consensual sexual intercourse by husbands with their wives above the age of 15 years.

Marital rape as a form of spousal abuse is punishable in all 50 states of the United States of America. The Cyprus Government, in its Law on the Prevention of Violence in the Family and Protection of Victims, 1993, specifies that “rape is rape irrespective of whether it is committed within or outside marriage”.

The legal recourse for the time being is limited and there is hope that the Indian Parliament may adopt a more commonsensical approach to respecting bodily integrity and autonomy of both men and women. It would be in the best interest of society to coach, and reason with couples, either through couples therapy or government campaigns, the ill effects of marital rape and the psychological effects of such acts on the spouse.

**The solution is simple and the only logical thing to do will be to criminalize marital rape.** The institution of marriage, I believe, will withstand such transitions. The problem of fraudulent and vexatious cases being filed against spouses could be a big deterrent at the initial stage. **Probably, this time when the law is enacted to criminalize marital rape, it must be gender-neutral.**





# LEGAL CRISPS

## Legal frameworks governing handwritten and digital signatures in India

-Seethala B

In India, signatures are a fundamental aspect of legal transactions, signifying a person's intent to authenticate or agree to the contents of a document. The legality of signatures is governed by multiple laws to ensure their validity and enforceability. Under the **Indian Contract Act, 1872**, a valid signature requires the signatory to have the **legal capacity to contract, meaning they must be of sound mind, above 18 years of age, and not disqualified by law**. For organizations, authority to sign must be explicitly granted, often through a board resolution or power of attorney. Signatures can be handwritten, electronic, or digital. Handwritten signatures are traditional, while electronic and digital signatures are governed by **Sections 3 and 3A of the Information Technology Act, 2000**. Digital signatures, such as those issued by Certifying Authorities or Aadhaar-based eSign, are considered legally valid.

Documents, such as wills or affidavits, require notarization or attestation by witnesses under the **Notaries Act, 1952**, to establish their validity. Forgery and misuse of signatures are serious offences under the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**. **Section 334(3)** defines forgery as creating or altering a document with the intent to harm or deceive, imposing strict penalties, including imprisonment of up to seven years and fines, for forgery or using forged documents as genuine.

Signatures must always be executed with free consent and proper authorization to prevent disputes or liabilities. Additionally, in business contexts, regulations such as the **Companies Act, 2013** and the **Negotiable Instruments Act, 1881** further regulate the role of signatories, ensuring accountability in financial and corporate transactions. Whether handwritten or digital, signatures are a cornerstone of legal and commercial practices in India, underscoring the importance of adhering to the legal frameworks that govern their use.





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# House Mark

-Nithyaparvathy R G

The concept of trademarks usually requires them to be connected to specific products or services. However, a distinctive category exists known as the house mark, which represents an organization's overall identity across its diverse offerings. While individual products typically carry their own trademarks, the house mark serves as an overarching identifier.

Corporate identities and trade names fall under house marks, distinguishing them from product-specific branding. Consider the case of the Indian confectionery giant Parle, which is a house mark. While Parle represents the company's overall identity, its product portfolio includes distinct names like Monaco, Buttercup, Krackjack, and Hide & Seek.

Legal precedents have shaped the understanding of house marks in India. A notable Bombay High Court ruling in ***Meso Private Limited v. Liberty Shoes Ltd., AIR 2019 Bom 305***, examined potential confusion between perfumes sharing similar names but different house marks. The court determined that consumers primarily rely on house marks when distinguishing between similarly named products. This decision highlighted how house marks influence consumer choices and market differentiation.

However, subsequent legal interpretations have refined this perspective. The Bombay High Court decision in ***Meher Distilleries Pvt. Ltd. v. SG Worldwide Inc., Commercial Appeal (L) No 10963/2021***, emphasized that the earlier ruling's principles were situation-specific, and particularly relevant to high-end consumer goods. This interpretation suggested that the role of house marks in preventing marketplace confusion varies based on context and cannot be universally applied.

Though Indian law doesn't explicitly define house marks, they play a crucial role in corporate branding strategies and intellectual property protection. These marks effectively unite various products under a single corporate umbrella while navigating trademark regulations.





# CASE CHRONICLE

## Bail is a rule, denial an exception

-Sri Sai Kamalini M S

**Case name:** Muskan v State of Rajasthan

**Citation:** S.B. Criminal Miscellaneous Bail Application No. 13082/2024

The petitioner was granted bail in a case involving the recovery of 77 kg of poppy husk from a car she was travelling in. The case was registered under **Sections 8 and 15 of the NDPS Act, 1985**. The prosecution argued against granting bail, contending that the case was not suitable for Muskan's release. They highlighted that she was found in the car with Rajendra Jat, the driver, from whose possession the poppy husk was recovered.

The petitioner's lawyer argued that there was no evidence linking her to the contraband. He asserted that she was merely accompanying Rajendra Jat as a friend and was unaware of the poppy husk's presence in the car. The court, after examining the evidence and arguments, concluded that there was no indication of Muskan's involvement in the drug trafficking operation. The investigation revealed that Rajendra Jat was the key individual connected to the procurement and intended distribution of the poppy husk. The court noted that the seizure memo indicated the contraband was concealed in a bag in the car's dickey, supporting Muskan's claim of being unaware of its presence.

Citing **Section 37** of the NDPS Act, 1985 the court determined that its provisions did not apply in this case. Additionally, the court referred to the precedent set in the case of ***Sangeeta Vs. State of Rajasthan (S.B. Criminal Misc. Bail Application No.1102/2024 decided on 05.03.2024)***, which addressed the special provisions under Section 437 of the Cr.P.C. for granting bail to women.

Considering the circumstances and the principle of "**bail is a rule and denial from the same should be an exception**", the court granted bail to Muskan. She was required to furnish a personal bond of Rs. 50,000/- with two sureties of Rs. 25,000/- each to ensure her appearance in court for future hearings.





# BEYOND THE OBVIOUS

## Breathing trouble? Here's how to report smoke-belching vehicles on the spot!"

*-Saraswathy Thogainathan*

It was a typical morning ride to my office through the morning traffic when I caught myself behind an auto rickshaw. Suddenly, thick black smoke started pouring from its exhaust right at my face, making it difficult to breathe. I was uncomfortable, and I couldn't help but think that this could not be good for anyone around. If you have ever been in a similar situation like this, you know how frustrating it can be. But the good news is, you don't have to put up with it. Here's how you can do a report on any vehicle that is polluting the air.

Firstly, collect information about the particular vehicle; note the vehicle registration number. Take a photo or video (if possible) of the vehicle emitting smoke. Jot down information about the date, time and the location. Visit your concerned State Pollution Control Board Website and lodge your complaint in their Online Grievance Petition Redressal System. Log in with your personal details and upload the documents to process the complaint. The Pollution Control Board will investigate the matter. After this, you may receive updates on the status of your complaint through the contact information you provided.

As a vehicle owner who emits smoke, all you can do to avoid the situation is properly maintain your vehicle. Get your vehicle tested for Pollution Under Control (PUC) Certificate. If your vehicle is found violating the Road Safety and Pollution standards set by the Motor Vehicles Act, 1988, you will be levied a fine up to **Rs. 10,000 and imprisonment up to 3 months or both**; if done repeatedly, it would increase up to 6 months of imprisonment. Traffic Police have the authority to stop your vehicle under Section 190(2) of the Act for violating air pollution standards.

The study by researchers from the International Council on Clean Transportation (ICCT) reveals that thousands of premature deaths happen due to air pollution. Notably, 70% of these health impacts occur in the world's largest vehicle markets, such as China, India, the EU, and the United States. This suggests that regions with high vehicular traffic must prioritize strict emission control measures and adopt policies to protect public health. By taking action to report polluting vehicles, we can collectively work towards cleaner air, healthier communities and a sustainable future for all.



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# MEET THE TEAM



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