SOCIETAL ISSUES RELATING TO MARITAL RAPE IN INDIA: AN OVERVIEW

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ABSTRACT

Rape is one of the most heinous crimes ever committed, but India’s government and law enforcement authorities have ignored this atrocity committed in the institution known as "marriage." Marital rape is a serious problem that our laws have failed to address. Women in India who have been raped by their spouses are coming out these days, but our judicial system ignores them because the concept of rape in a marriage is not recognized. Marital rape has very serious emotional and psychological implications that are far worse and more serious than physical harm. With the use of statistics and observations, this article will explain the notion of marital rape and how women in India suffer in silence owing to a lack of regulations. The goal of this study is to look into India’s urgent need for appropriate laws against marital rape.

Over the past two decades, the abuse related to women and children whether it is physical or sexual has become widely recognized. But violence is at worst when it comes within the ambit of family. Family is treated as the safest place and most protected zone in entire human life. The effect of family violence is such devastating that it is hard to imagine how a victim might be going through. With the pace of time, lots of changes have been made in law but there is no one to hear the voice of a wife who is being sexually abused by none other than her husband. In India, we treat marriage as a sacrament or we can say the undivided union, where the relationship is based on trust and love. There are various matrimonial duties that spouses are bound to perform for each other but do those duties allow one spouse to abuse another spouse? A husband who should protect her wife from the world is itself abusing her sexually, mentally under the curtain of Marriage. The irony of our Indian society is that if a woman is trying to raise her voice against those ill acts of her husband she is being judged for no reason. The question here arises in India where we are welcoming Bi-sexual marriages and Live-in- Relationships why it is so hard to hear the voice of a wife who a victim of Marital Rape is. So, in this paper, the focus will be on To understand the concept of Marital Rape, To study the Feminist approach on the issue of Marital Rape, To find out the various Societal issues relating to Marital Rape, To discuss the Judicial Interpretation on Marital Rape, To provide suggestions for the criminalization of Marital rape.

Keywords: Marital Rape, Feminist, Societal Issues, Family, Sacrament, Marriage, Indian Society, Relationships, Abuse, Laws.

I. INTRODUCTION

In a male-dominated culture, sexual violence is one of the most extreme and effective ways of control, harming, and constraining women’s lives while also provoking individual and collective resistance among women, perpetuating the status quo of gender inequity, subordination, and control. The deliberate use of sex as a weapon to demonstrate control over, and inflict pain and humiliation upon, another human being is referred to as sexual violence.[1] Sexual violence can be described as any form of physical or psychological violence perpetrated against a person’s sexuality. Physical and psychological assaults on a person’s sexual features are classified as sexual violence. Threats, humiliation, and intimidation are all examples of sexual assault that do not require direct physical contact between the perpetrator and the victim. Sexual violence is a complicated political phenomenon that is deeply rooted in society. In a male-dominated culture, sexual violence is one of the most extreme and effective ways of control, harming, and constraining women’s lives while also provoking individual and collective resistance among women, perpetuating the status quo of gender inequity, subordination, and...
control. Sexual violence is prevalent and presents itself in a variety of ways in all aspects of life, including the family, which is the most basic unit of human civilization. The word “rape” comes from the Latin word “rapio,” which meaning “to seize.” As a result, rape means “forced seizure.” It is defined as “the ravishment of a woman without her consent, by force, by terror, or by fraud” or “the carnal knowledge of a woman by force against her will” in common terminology. In other words, rape is a violent breach of a woman’s private person that must be condemned.[2]

According to Oxford Dictionaries, Rape means “the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will”[3] According to Cambridge Dictionaries, Rape means “to force someone to have sex when they are unwilling, using violence or threatening behavior”[4]

According to the Webster dictionary and commonly accepted definition[5]of rape, any male can rape a woman regardless of their relationship status. Only judicial and criminal law interpretations have attempted to distinguish forced sex by husbands from rape. If one reads into numerous legal arguments, the rationale behind it is that the courts expect wives to engage in sex with their husbands as part of the marriage contract. The fact that men in Indian society get the resources, money, and provide for the women/family in the house makes this “compulsory nature of sexual relations”[6]arrangement work to their advantage most of the time, as the “duty of sex” is forced because men in Indian society get the resources, money, and provide for the women/family in the house. To comprehend the ramifications of marital rape and the gravity of the situation, one must first comprehend the many varieties of marital rape as defined by social scientists.

Thus, from the above definition, we find that Rape means when one forced another person to have sexual intercourse without taking the consent of the person.

In every country including India, Rape is considered to be a heinous crime against women. Recently in India, the number of criminal cases against women has been increased as per the data released by National Crime Records Bureau.[7] Every two minutes one case of crime against women is reported in India. According to the report of NCRB, 2.24 million cases of crimes against women have been registered in the past decade. A crime that is reported includes both physical and mental torture.

In the 21st century, when we speak about the equal rights and position of women in society and women empowerment etc but one thing which always put the question on the effort of the Government is the rise of crime against women and even though, we had a strong law for the protection of women, but still, we are lacking behind to control such crime against women.

Now one thing which strikes my mind is that though we had strong laws for the protection of women still the crime against women is rising year by year with some heinous gruesome stories in it like the Delhi Gang Rape Case in 2012,[8] recent Nirbhaya like rape case of 30 years old lady in Kerala. These incidents show that the law of our land fails to protect the women of our country.

Now questions that come to my mind again are that and of course one of the motives of this research is that 1) what about the Cases of Marital Rape as it is not considered a crime in India under section 375 of IPC? 2) Is marriage being a license to rape your wife?

Through this research, we will try to find out the answer to the above question and will also discuss the plight of the women in India when the question comes about their dignified life.

The Concept of Marital Rape

Rape must be viewed as the most severe kind of sexual violence against women — an extreme manifestation of a continuum of sexual violence that utterly destroys women’s human rights. Rape is a result of sexist norms and beliefs, and it is not a problem that only affects women. It’s a social and political issue that stems from power disparities between men and women. Rape is a form of aggression and violence in which the victim’s right to self-determination is taken away from her.

The majority of judicial systems agree that rape does not go beyond the confines of a patriarchal value system, that it represents archaic conceptions of chastity, virginity, marital bonds, and that it accentuates the dread of female sexuality. In most nations, the legal definition of rape is limited to non-consensual or forced vaginal penetrations, and it exempts a specific group of males–husbands–from being charged with the rape of their wives.
Any undesired sexual intercourse or penetration (vaginal, anal, or oral) gained by force, fear of force, or when the wife does not consent is classified as marital rape. One of the strange consequences of the narrow and limited definition of rape is that it cannot be perpetrated against a specific group of women - for example, a married woman cannot be raped by her husband. Furthermore, this loophole implies that violent and unwelcome intercourse is not always rape, but rather illegal sex, i.e., sexual assault by a male who has no legal rights over the woman.

To put it another way, violence in lawful sexual intercourse is permitted in the eyes of the law, but sexual relations with a woman who is not one’s property are not. Sir Matthew Hale’s statement in 1678 that “the husband cannot be guilty of rape committed by himself upon his lawful wife, for their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract” provided the initial rationale for the marital exemption clause. The statement’s assumption was founded on the common law concept of marital unity, which maintained that husband and wife were one person and that a married man could not be held accountable for raping himself. Husbands enjoy ‘criminal law impunity’ for raping their spouses in the vast majority of countries around the world. Wife rape has been for as long as marriage has existed.

The primary goal of the 2013 amendment was to increase women’s access to the legal system by making much-needed revisions to the definition of rape. The changes to the Criminal Penal Code and the Evidence Act were made to ensure that women were not re-victimized when they went to rape after being raped. The modifications aimed to eliminate needless medical examinations and questions asked of women during cross-questioning, as well as to improve the investigation and trial of rape cases.

Despite the modifications in the legislation, legislators and governments have done no action to address the issue of marital rape. Even the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a signatory, has said that discrimination against women contradicts the principles of equality of rights and human dignity. Furthermore, at its fifty-first session, the Commission on Human Rights suggested that marital rape be criminalized in Resolution No. 1995/85 of 8-3-1995 headed “The elimination of violence against women.” Article 21 of the Indian Constitution encompasses the right to live in dignity and is one of the most essential components of the right to life that considers a person’s independence. The Supreme Court has ruled in a series of judgments that rape violates the victim’s right to life and the right to live with dignity.

The court concluded in Bodhisattwa Gautam v. SubhraChakraborty that rape is a crime against humanity and a violation of the right to life established in Article 21 of the Constitution, and set forth rules for compensating rape victims. The Chairman, Railway Board v. Chandrima Das is a historic decision in which the Hon’ble Court stated that rape is more than just a breach of a person’s ordinary rights; it is also a violation of fundamental rights. Rape is a crime not only against a woman’s personality but also against society as a whole. It is a crime against basic human rights and a violation of the victims’ most prized right, namely the right to life, which includes the right to live in dignity as outlined in Article 21.

That a reading of the aforementioned cases, as well as various other catena’s of judgments and cases, it is abundantly clear that an exception like “Marital rape” violates the basic fundamental concepts on which our entire legal system is founded, and that such an exception damages the entitlement of women to live with dignity and encourages society to commit a crime against women, which is unaccountable in and of itself. In the case of State of Maharashtra v. Madhukar Narayan, the Supreme Court ruled that every woman has the right to her sexual privacy and that no one has the authority to violate her privacy at any time. The Supreme Court, in the landmark case of Vishakha v. State of Rajasthan, extended this right of privacy to working contexts as well. In a similar vein, we can deduce that even within a marriage, there is a right to privacy when it comes to sexual relationships.

The Kerala High Court held in Sree Kumar vs. Pearly Karun that the offense under Section 376A of the IPC will not be prosecuted because the spouse is not living independently from her husband under a declaration of partition or any custom or use, regardless of the possibility that she is subjected to sex by her better half without her consent. In this case, the spouse was forced to have sex against her will by her husband when she went to live with him for two days as part of a settlement of separation proceedings between the two parties. As a result, the spouse was found not guilty of raping his wife, even though he had done so.

The judiciary appears to have completely abandoned the notion that rape within marriage is unfeasible or that a woman’s shame from assault may be cleansed by marrying the attacker. The Protection of Women from
The Domestic Abuse Act of 2005 was approved in 2005, which classified marital rape as a type of domestic violence but did not make it a crime. If a woman has been the victim of marital rape, she can seek judicial separation from her husband under this Act. However, the same does not completely protect women from the effects of crime.

The entire judicial system surrounding rape is a jumble of contradictions. The following are the primary legal flaws that prevent women from being empowered against marital rape:

1. The breach of Article 21 of the Indian Constitution has been greatly broadened by judicial interpretation, and the “right to live with human dignity” now falls under its purview. Marital rape breaches a woman’s right to dignity, and the exception provided under Section 375 of the Indian Penal Code, 1860, is thus said to violate Article 21 of the Constitution.

2. “The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India,” according to Article 14 of the Constitution. As a result, Article 14 safeguards a person from discrimination by the government. However, when it comes to rape protection, the exclusion under Section 375 of the Indian Penal Code, 1860, discriminates against a wife. As a result, it is argued that the exception given under Section 375 of the Indian Penal Code, 1860, is not a rational classification, and thus breaches the constitutional protection afforded by Article 14.

Family and Violence

In many traditional communities like India, marriage guarantees women a special status, and married women are socially validated. Traditional Indian society is characterized by “arranged marriages” in which respectable matchmakers such as family priests and relatives create matrimonial alliances between two families. Although the bride and bridegroom may be consulted regarding the alliance, the parents have the final say. In such a context where it is hard to share something with your biological parents, some women are facing sexual abuse by her husband after marriage. Most of the women are not even aware of this kind of offence they are only accepting such intolerable acts for the concept of “duty”. We can imagine here when how it feels when someone is being tortured for the sake of sex in a way how hard and how much broken a victim might be feeling when she must go through with this all drama.

In India Violence is a means to demonstrate power, authority, or superiority in the societal structure. In essence, violence is the use or threat of use of force or coercion to establish domination and can be expressed at the individual level, between classes/communities, or at the level of the state. Since ancient times, women are made to believe that those who don’t enjoy sex against their own will are considered as bad wives. If murdering someone outside is a crime, then why we are not considering murdering someone on daily basis to satisfy his lust is not been giving recognition as a crime.

Sexual Violence occurs mainly in countries where there are foster beliefs of perceived male superiority and social and cultural inferiority of women. Although culture is an important factor to understand sexual violence in its entirety, we need to look at, as well as beyond cultural structures, their strengths, and weaknesses. The family has been traditionally considered as a retreat, where individuals can find security and shelter, private heaven where peace and harmony prevail. However, the family may be a “cradle of violence” for the women, who are subjected to violence at home. Throughout the world, there are practices in the family that are violent towards women and harmful to their health. Young girls are circumcised, live under a severe dress code, are given in prostitution, and are incestuously abused in the family. According to NHFC Report, 97.6% of sexual violence is committed by husbands.
Forms of Marital Rape

1. Non-physical sexual coercion is a form of social coercion in which the woman is forced to engage in sexual activity while being reminded of her responsibilities as a wife.
2. When a woman refuses to have intercourse and physical force is used, it is referred to as forced sex.
3. Battering Rape is when a man uses violence and aggressiveness against his wife to have sexual relations with her.
4. Force-Only Rape—does not necessarily abuse the woman, but instead utilizes force on an unwilling wife.
5. Obsessive Rape entails the husband’s sexual sadistic enjoyment.

The paucity of discussion of marital rape until now is due to a lack of resources. Women’s empowerment and low literacy rates are both issues that need to be addressed, especially in countries like India. The perpetuation of social norms that have hegemonically dominated the female psyche for ages has also been a major factor in women’s refusal to recognize marital rape as rape. Women have attempted to think that following the husband’s directives and meeting his sexual cravings is their responsibility as an ideal wife since the Manu smriti, were beating and sexually assaulting wives is justified based on upholding the family hierarchy.

The issue of marital rape is similar to the issue of child abuse/child violence from their parents, which was debated as an act that did not require legislation because it was a domestic family matter until recently, under the assumption that parents always have the best interests of their children at heart, even when they engage in violent behavior.

The emergence of the Concept

Despite the revolutionary legal reforms that have resulted in various rights being provided to women and wives in particular over the previous century and a half, the law and lawmakers have curiously kept silent on the matter of removing the marital rape exemption for husbands.

The marriage contract between a man and a woman falls under the category of “Private Economical Relations,” according to Blackstone, a well-known 18th-century British jurist. As a result, he attempted to contrast the relationship between a husband and his wife with other private, but essentially economic, interactions such as that between a master and servant or a parent and their child. Due to the prevalence of patriarchy in the 18th century, husbands were widely regarded as superior, and the discussion of rights was centered on this premise, which Blackstone referred to as their “rights and duties” in private economic relations.

It is not so simple, however, because the ideology that underpins the social compact of marriage distinguishes the relationship between a man and a woman from other private human partnerships. A man and a woman become one entity after marriage, according to the principle of Marital Unity, which is problematic in and of itself, but to which we will return later. What’s more crucial for our research is that their legal identities are blended as well. In plain terms, a woman’s legal existence is halted the moment she decides to swear sacred vows with a man. Worse, it is presumed that her rights are merged with those of her husband and that whatever is right for him would be regarded right for her as well. Her everyday actions are supposed to be carried out under the protection, cover, care, and supervision of her spouse, with whom her legal identity has been linked. That is most likely why, following marriage, women are obliged to join their husband’s surname on their own and use it on all legal documents from then on.
Surprisingly, the 19th-century legal discourse attempted to defend this unequal and unjust arrangement between men and women by citing natural law. They justified women as the protectorate and duty of men by citing the physical power argument. Even if men and women are physically unequal, the fact that nature prefers men to be superior to women was used to explain why. The following passage from Schouler’s description of the family structure provides some light on the situation: “The domicile of the wife follows that of the husband; the domicile of the infant may be changed by the parent. Thus does the law of domicile conform to the law of nature.” Even though ideological considerations have undergone significant revisions over time and women’s rights and empowerment have forced society to view man-woman relationships in a new light, the question of how to justify women’s rights in marriage has surprisingly remained regressive. The definition of marriage under the purview of law and within the wider dialectics of rights has remained the same over the centuries, much to the dismay and anger of proponents of women’s rights.

The most important question to address right away is whether we can or should research a phenomenon that, by legal definition, does not exist. Because forced sexual intercourse between a husband and wife isn’t legally regarded as “rape,” the question becomes whether the wife considers the incident to be a “rape.” In the 1970s, a study of physical violence between spouses and wives included a survey on Rape-Crisis Centers in London. The inquiry looked through transcripts of interviews with women who had been beaten by their husbands to determine if there was any information about the sexual aspects of the beatings. Because of the heightened awareness of the situation of sexual assault victims, Rape-Crisis Centers have sprouted up all over the world, providing legal, medical, and social services to rape victims. The reports from these institutions have shed light on society’s terrible dilemma. The ladies who were interviewed for these surveys described their husbands’ actions as rape according to the standard definition.

According to the rape crisis center in South Africa, just 15% of women who were raped were raped by strangers. Many wives believe that they are at fault for forced sexual intercourse. Because of patriarchal hegemony, women are taught that it is their responsibility to provide their bodies for their husband’s sexual satisfaction and that declining to do so would be against cultural and family norms. In the case of Marital Rape, the Feminist theory indicates that the legal system has been formed and remodeled by men since time immemorial and that the judiciary is largely male-controlled, therefore the interpretation of family conduct is similarly male-centric. The Gender Role. Another form of Feminist Theory, Socialization Theory, discusses how a specific gender role influences the sexual relations between spouses in a marriage. It discusses how women are taught to be calm and docile in marriages, whilst men are socialized to be dominant and aggressive.

A. Early Psychological Theories of Rape: When psychoanalytic theories gained prominence in the 20th century, “rape was conceptualized primarily as an act of sex rather than an act of violence.” Early psychological theorizing on rape tended to focus on clinical explanations including blaming poor parenting, castration anxiety and repressed homosexual inclinations, lack of social skills, and being sexually starved or sexually insatiable.

B. Feminist Theorizing on Rape: With the advent of the second wave of the women’s movement in the 1970s, women began to share their experiences of rape in consciousness-raising groups. the New York Radical Feminists Manifesto (1971, July), which stated, “when more than two people have suffered the same oppression the problem is no longer personal but political—and rape is a political matter”. By 1973, the more mainstream liberal branch of the women’s movement took up the cause and adopted the radical feminist theory of rape. While frontline feminist activists developed new theories, advocated for legal reforms, and provided victim services, feminist researchers in the academy began building empirical knowledge.

C. Psychological Theorizing on Rape: As feminists continued to work with victims, psychologists often worked with rapists. This wave of psychological theorizing often sought to classify rapists using a typology, which most often included a sexual component while minimizing the cultural factors identified by feminists.

D. Theoretical explanations: for the violent and sexually perverse behaviour of husband toward wife could be understood by the following theories:
II. THE REPRESSION THEORY

The most offered explanation attributes the linkage between sex and violence to repressive sexual norms. Empirical evidence supporting this theory is difficult to establish. Societies that are high in restriction of extramarital intercourse are also societies that tend to be violent-particularly in emphasizing military glory, killing, torture, and mutilation of the enemy. First, since sex is normally prohibited or restricted, engaging in sexual intercourse may imply license also to disregard other normally prohibited or restrictive aspects of interpersonal relations. Consequently, aggressively inclined persons will tend to express their aggressiveness when they express their sexuality. Second, since sex is defined as evil and base, this cultural definition of sex may create a label or an expectancy that tends to be acted out.

Figure 2. Relationship between power/control, sexual gratification, motivations, means, and effects.[31]

III. THE SEX ANTAGONISM AND SEGREGATION THEORY

Socially patterned antagonism between men and women is at the heart of a related theory to account for the association of sex and violence. This line of reasoning suggests the hypothesis that the higher the level of antagonism between men and women, the greater the tendency to use violence in sexual acts. The curse placed by God on all women when Eve sinned is only the earliest example in our culture of the sexually restrictive ethic, the placing of the “blame” for sex on women, and the resulting negative definition of women-all of which tend to make women culturally legitimate objects of antagonism and aggression.

The linkages between sex and violence are extremely complex and many other factors probably operate besides the degree of restrictiveness, the cultural definition of sexuality, and the antagonism between sexes. But even these factors are sufficient to indicate that it is incorrect to assume a direct connection between sexual drives and violence because such an assumption disregards the socio-cultural framework within which sexual relations are carried out. It is these social and cultural factors rather than sex drives per se that give rise to the violent aspects of sexuality in so many societies.

A. Also, as per Kelsen, a theory of law must be free from ethics, politics, sociology, history. In other words, the law must be “Pure”. According to him, every country has its ground norm from which the other norm is being originated. A ground norm is the constitution of a country from where other laws originate. And all these laws should be according to the constitution. Article 14 of the constitution speaks about equality and equal protection before the law. But Section 375 Act does not consider marital rape a crime leaving the exception. Then, how can we say that Section 375 is good law as per the jurisprudence aspect, victims of marital rape are still not getting any relief before the law? So, when a law whose motive is to punish the rape accused but fails to perform its function can’t be called a good law.

B. According to the legal philosophy of Jeremy Bentham, the function of law is to emancipate the individual from the bondage and restraint upon his freedom. Once made free, the individual will himself look after his freedom. According to him “the end of the legislation is the greatest happiness of the greatest number”. The purpose of the law and thereby the task of the government is to bring pleasure which is the consequence of good and to avoid pain, which is the consequence of evil. Pleasure and pain are therefore the ultimate standards on which law should be judged. According to Bentham, Security and equality form the main objective of legal regulation.

C. Also, as per Rosco Pound’s theory of law, as a tool of social engineering, with the change of society, or with the change of time, the law should be changed according to the need. But when we speak about marital rape, the law is stagnant and silent. Even in many surveys, it has been proved that cases of marital rape have increased and one can find such details from medicals where victims come for treatment.

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IV. SOCIETAL ISSUES RELATING TO MARITAL RAPE

1. The term “Marital Rape” is contentious and creates confusion for rape is widely regarded as a sexual transgression, and marriage is perceived as socially sanctioned sex. Generally, women themselves do not recognize sexual assaults by a husband as rape (compared with sexual assaults by strangers or acquaintances) and so are less likely to report it.

2. There are many stereotypes about women and sex such as women enjoy forced sex, women say "no" when they mean "yes," a wife must have sex which continues to be reinforced in Indian culture through both mainstream and pornographic media misleading men into believing that they should ignore a woman’s protest.

3. Victim Blaming Game is which plays a great role in Indian society. But also mislead women into believing that they must have "sent the wrong signals," blaming themselves for unwanted sexual encounters.

4. The concept of Bad Wives prevails in Indian society, believing that they are "bad wives" for not enjoying sex against their will.

5. Researchers [32] found it useful to distinguish between different forms of coercion that occurs in a husband-wife relationship and facilitates marital rape:

   a) Interpersonal coercion occurs when a woman has sex with her husband in the face of threats that are not violent. Husbands who threaten to withhold money or have an affair or who become nasty toward the children are guilty of interpersonal coercion. The coercive nature of such threats is especially salient in a marriage where a woman’s dependency and powerlessness undercut her bargaining position. Nevertheless, when such threats are not associated with any physical coercion, the sex that follows cannot regard as rape.

   b) Social coercion is the pressure women feel as a result of cultural expectations or social conventions. Social coercion regarding marital sex is institutionalized in our culture and internalized in individuals. While such coercion can be degrading and detrimental, especially when accompanied by other forms of male entitlement and control, it does not fall within a useful definition of rape.

   c) Threatened or actual physical coercion, in contrast, is at the core of rape. Physical threats can range from explicit threats to kill a woman if she does not comply, with the implied threat that she will get hurt if she doesn’t cooperate. The implied threats are especially potent in relationships where a husband has battered his partner in the past. The actual use of physical force has a wide range from holding a woman down with greater size and strength to inflicting extensive injuries.

6. Researchers [33] further suggest limiting the definition of marital rape to the use or threatened use of physical force without the consent of the woman though they consider other two forms of coercion important in politicizing the issue.

7. The concept of Patriarchal society: It is been said that “A good husband makes a good wife”, but we Indians have taken it a bit differently, making it ‘a good wife is the one who satisfies her husband all the times he wanted, and then call it as his love’ and a good husband is someone who can show his masculinity over his better-half. This system of Patriarchal society can be seen in India where we are treating married women as chattel only.

V. JUDICIAL PRONOUNCEMENTS:

So, in this part focus will be only on the part of how judiciary have played their role in recognizing marital rape as a criminal offence.

1. State of Haryana v. Janak Singh [34] since offence of rape, violates the dignity of a woman and erodes her honor, dwarfs her personality, and reduces her confidence level hence it violates her right to life guaranteed under Article 21 of Constitution.

2. ShyamNarain v. State [35] since rape is an assault on the individuality and inherent dignity of a woman and a crime against the whole body of a woman and the soul of the society hence, it demands just punishment from the court.
3. Deepak Kumar v. State of Haryana Crime against women and children violates human rights and it’s a crime against society as it causes psychological, physical harm and degrades and defiled victim’s soul, honour, and dignity and leaves a permanent scar on life.

The Marxist Explanation of Marital Rape

Political and legal philosophy has relied on the notion of an individual’s freedom to hold private property since its earliest stages, as Marxists demonstrate. Its second assumption – those males are superior to women and that, as a result, the legal, social, and economic inequities between the sexes are justified as natural – established the groundwork for a sexist society. With time, a man’s private property has become increasingly important. It necessitated the control of reproductive means and products to ensure the purity of male lineage, as well as controlled sexual access to a woman by a man to ensure the paternity of their offspring. Women were reduced to private property of a sexual character, owned by different male proprietors because ownership is considered the finest form of control. Such beliefs persist to this day, which is why the husband’s ultimate control of his wife’s body and sexuality is unquestioned, and the majority of legal systems do not recognize rape within marriage.

The Concept of Consent

There appears to be a distinction between a person’s permission to the liberal state as a citizen and his consent to the numerous social interactions he shares as a member of his family. Over the years, consent theorists have neglected to give fair credit or provide a forum for debates on permission in the various interactions that citizens share. The most personal relationship between a woman and her husband must be managed by permission. Consent must be proven at every level, from the moment where she accepts to marry the guy to the point where she agrees to engage in sexual intercourse with him. Since patriarchal supremacy has dominated history and societal studies, it has been thought that women will always provide their consent. Women’s existence has never had an independent identity, therefore decisions about their lives have always been made by the men in their lives. If a woman expresses unambiguous non-consent, it is regarded as inconsequential or a small kind of resistance that can be transformed and misinterpreted as consent. The portrayal of leading ladies in Hindi cinema has also looked at how an explicit refusal of consent by the lady is nevertheless perceived as a good signal by the leading guy to continue his quest of winning over the lady over the years.

It is a mistake to believe that just because women have been granted rights in numerous “Progressive” countries, the issue of consent would be resolved. The role of individualism in men’s and women’s relationships was emphasized in the early forms of consent theories in the 17th century. The first consent theories concentrated on human beings being “naturally free” or “born free and equal,” regardless of gender, and so consent from both ends was naturally given importance. As a result, if a human being is born inherently free, it begs the question of whether another human may force his or her will on others. Humans must, nevertheless, come together and surrender some of their basic liberties for peaceful coexistence in society, as Hobbes justified in his definition of “state of nature.” If we do not allow this, society will devolve into disorder, which will be detrimental to the survival of civilization as a whole. As a result, the existence of some clearly defined authority is required for society’s basic lawfulness. However, if a citizen’s freedom and individual identity are to be protected, such authority must get explicit approval to carry out its functions. As a result, consent theory focuses on every individual in society giving their explicit agreement voluntarily, without any external coercion, as part of their many societal relationships.

The historical origins of circumstances where submission occurs with permission unless the opposition can be demonstrated are complex. The challenge, in this case, is proving if the acts were done “against women’s will” and whether similar acts were done “without her consent.” This distinction is critical to grasp, especially when dealing with circumstances where permission is obtained through deception, fraud, dishonesty, or crafty guile. As a result, because this distinction is difficult to defend, most legal disputes have concentrated on circumstances where intercourse is done and consent is obtained by deception since the beginning of the nineteenth century.

To give a simple example, in a married relationship, if the wife has given her “consent” to her husband, but the husband has impersonated, pretended to be another person, or resorted to fraud and trickery to obtain her consent, which the wife eventually discovers, it is extremely difficult to prove that the intercourse was against her will and was indeed rape, especially if physical rape was involved.

However, there is currently no legal distinction between the term’s “submission” and “voluntary consent,” as they refer to wholly different states of mind. Furthermore, the terms “force” and “threat” have not been defined.
Consent must always be granted in a relationship, especially in married life, and it should always be given by the woman to the male. The “naturally” superior, active, and sexually aggressive male, on the other hand, takes the initiative or presents a contract, to which a “naturally” subordinate, passive woman “consents.” This can’t be the foundation of an egalitarian sexual connection; it can’t be based on such a simplified definition of “consent.” The inability to construct a shared framework, language, or discourse through which we can look at personal relationships where two individuals can form a lifetime affiliation based on mutual respect, consideration, and respect for human rights is perhaps the most fundamental issue.

The Age of Consent and Legislative Developments

After the establishment of the IPC in 1860, the legislation against rape remained unchanged for the next thirty years. The later amendment was made in response to several cases in Bengal in which the child-wife died as a result of the marriage being consummated. The most significant of these was Queen Empress v. Haree Mohan Mythee.[46] This case recounts the tragic story of Phulmonee Dassee, who died at the age of eleven years and three months as a result of her husband’s rape. Phulmonee died of hemorrhage caused by a burst vaginal wall, according to the medical findings. In this case, the rape of a juvenile wife was harshly denounced, and it was determined that the husband did not have the right to enjoy his wife’s person without regard for her safety. Sir Andrew Scoble proposed the Bill in 1891, which eventually became the Indian Criminal Law (Amendment) Act of 1891.[47] In both marital and extramarital rapes, this measure increased the age of consent to 12 years. The Act’s goal was humanitarian, with the goal of “to protect female children from immature prostitution and from pre-mature cohabitation.” Premature cohabitation caused the girl a great deal of pain, and in some cases, death, as well as harm to her health and that of her children.

At the turn of the century, there was a greater focus on improving the nation’s physical condition and reducing the causes of abnormal mortality among the younger population. Rai Bahadur Bakshi Sohan Lal, MLA, moved for leave to bring a Bill in the Assembly in 1922 to alter section 375 of the Indian Penal Code, 1860 (IPC), to raise the age of consent in both marital and extramarital instances.[48] This attempt at legislation failed, but as time passed, pressure for a change in the law intensified, owing to a better understanding of the negative repercussions of early marriage and early consummation. Hari Singh Gour introduced a bill in 1924 to amend section 375 of the Indian Penal Code, raising the age to 14 in both married and extramarital instances. The Bill was submitted to a Select Committee, which made a significant change by lowering the age of marital rape from 14 to 13 years.

For the first time, a distinction was made between marital and extramarital rape cases in 1925, with a separate age of consent in marital rape cases. The contrast was underlined even more in section 376, which included the phrase “unless the woman raped is his wife and is not under twelve years of age.” In such a case, the punishment was reduced to a maximum of two years in prison. Thus, the weakened punishment provided by revised section 376 neutralized to a significant extent the purpose sought to be attained by extending the age of consent to 13 years. Hari Singh Gaur presented a Bill in 1927 to raise the age of consent in married and extramarital instances to 14 and 16 years, respectively.

It was followed by the formation of the Age of Consent Committee, which examined the current situation and proposed a few changes. The committee concluded that the amended statute was ineffectual due to the nature of the offense, particularly in the case of marriage, which necessitates privacy. The awakened sectors of society
believed that forbidding the marriage of a girl under the age of a certain age would be a better solution than raising the age of consent for sexual intercourse.

The dissenters in these classes believed that the law was largely ineffective since it provided no protection to females above the age of 13, who require it due to their vulnerability. In marital instances, the Committee proposed that the word “marital misbehavior” be used instead of “rape.” In the case of sexual intercourse with his wife under the age of 15, a husband would be guilty of marital misconduct. The Committee proposed that the offense of marital misconduct is included in Chapter XX of the IPC and that sections 375 and 376 of the IPC be limited to rape outside the marital relationship. The Committee also proposed a maximum penalty of 10 years in jail and a fine if the wife was under the age of 12 years, and a maximum penalty of one year in prison and a fine or both if the wife was between the ages of 12 and 15.

National and International Perspective
The character of Janaki is married to a guy who obtains passion from the physical pain he causes his wife while participating in sexual intercourse in the Saitan theatrical group’s performance Pinjra’.[49] He does not value his wife’s permission to go on his lusty adventures. Janaki’s marriage to her husband is based solely on force, torture, physical intimidation, and coercion.

Unfortunately, for many women in India[50], this is the harsh and bleak truth. According to the National Family Health Survey of 62,652 married women conducted in 2005-06, at least 36.7 percent of them reported physical or sexual violence from their spouses, with 9.7 percent reporting only sexual violence.[51] Even if the horrible practice of Sati has been prohibited in our society, the practice of marital rape is now protected by law.

In a public address, Haribhai Chaudhary, Minister of State for Coal and Mines in the Government of India, stated that due to fundamental problems in the socio-economic realities of the country, it is impossible to enact laws connected to criminalizing marital rape in India. The minister cited issues such as the high illiteracy rate in rural areas, poverty estimates from several commissions, religious beliefs on the verge of extremism, and the very nature of marriages in India, where they are considered extremely holy and sacred, as reasons for the impossibility of criminalizing marital rape laws. Although all of his assumptions may be refuted by facts, there is a grain of logic in his reasoning that has prevented our country’s courts from going further in terms of progressive legislation. [52] The best approach for the law to protect women who have been subjected to marital rape is to charge the husband with a minor crime of cruelty, punishable by up to three years in prison or a fine. In the worst-case scenario, she can apply for a restraining order and protection under domestic violence laws.

The Indian Penal Code section 375, which defines the term rape[53], exempts marital rape from the definition of a crime. The legislature also believed that sexual intercourse between husband and wife should not be considered rape and should not be used as a reason for a divorce by the wife.[54] The Supreme Court of India’s recent Right to Privacy decision analyzed the concept of personal autonomy and its relationship to privacy in depth. They also discussed rape survivors’ right to privacy and the right to privacy regarding abortion, but they regretfully missed an opportunity to expand on the rights of marital rape cases and bring them under the law. At its most basic level, not criminalizing husband-wife rape is a violation of Article 14 of the Indian Constitution, which attempts to ensure equality yet requires classification based on “intelligent Differentia.” There should be a link between the classification and the goal we’re attempting to attain.[55] Thus, a married woman is punished under Sections 354 and 376 of the IPC if she is subjected to an act of molestation or rape by a stranger, but the same offense is not actionable if it is committed by her husband. We strive to rectify this anomaly, and in the developing space of human rights, married women’s rights should be addressed as well by making marital rape a criminal offense.

Article 21 of the Indian Constitution also mentions bodily self-determination, which states that a person has sole authority over his or her own body. Unfortunately, when it comes to marital rape, this privilege is taken away since it is considered that by consenting to marriage, the wife has also consented to intercourse with the husband for the rest of her life, regardless of the physical, mental, or psychological circumstances. Without her knowledge or agreement, she is subjected to marital rape and other forms of physical violence. As a result, the most fundamental right is ripped away with the social institution of marriage, putting millions of women at risk and reinforcing patriarchy in society.

All hope, however, is not lost. The Supreme Court and several high courts have exhibited the vision and boldness to fight these social evils and correct historical wrongs from time to time through various landmark judgments. In several situations, women’s rights, particularly those of married women, have been affirmed. Justice Bhagwati
notably defined the word “personal liberty” in Maneka Gandhi versus Union of India[56], and declared that personal liberty cannot be violated unless there is a legal mechanism in place. The law must, however, pass through the golden triangle of articles 14, 19,21, which requires that the law be just, reasonable, and not arbitrary.

The Supreme Court has stated repeatedly in various rape decisions that the act of rape is a grave breach of basic human dignity and the most crucial right to life[57]. Furthermore, rape is less of a sexual offense and more of a dominance act in which the male perpetrator imposes his will against the agreement of the partner, supporting patriarchy and demonstrating his masculinity. It is a tool in the hands of the powerful patriarchy to humiliate and degrade women to “show them their place.” The entire argument against domestic abuse revolves around this simple reality, but strangely, the legislature has not developed to safeguard women’s rights. Nothing can be worse in a democracy than half of the population has no access to basic rights and no state protection for their lives and dignity.

Article 21[58] also preserves the right to sexual privacy, which is the most significant part of marital rape. In other words, if a woman is forced to engage in sexual activity, it is deemed a violation of her sexual privacy. This right should not be taken away from a woman simply because she is married. In the well-known case of State of Maharashtra v. Madhukar Narayan[59], the Supreme Court ruled that “every woman has the right to sexual privacy,” which no one can violate. Millions of women’s dignity in India might be preserved and secured if the honorable court’s verdict is followed in spirit as well as the letter. Empowerment could be furthered in the truest sense.

Another key goal of Article 21 is to ensure that everyone has the right to live in dignity.[60] This component is broken using the exemption under Section 375 of the IPC, as evidenced by the sufferings of Indian women in the form of marital rape. The important aspect to remember in this issue is that following independence, Indian women’s literacy rates were exceedingly low, and their reliance on male family members was extremely high. This situation occurred for a variety of societal and cultural causes. It was nearly impossible to have a discussion regarding marital rape at the time. However, 70 years after independence, when women’s empowerment has been a hallmark of several government public policies, resulting in overall literacy rates rising from 18.3 percent to 74.04 percent and female literacy rising from 8.9 percent to 65.46 percent[61], it is still a shame that we cannot legally protect a married woman’s human dignity and rights. Legalizing marital rape will go a long way toward leveling the playing field for patriarchy to be entirely eradicated from society.

The three waves of feminism have had a significant impact on the global public psyche, leading to various constitutional and legislative changes in favor of women’s empowerment in an attempt to right past wrongs. According to information provided to the High Court in a recently filed case, nearly 52 countries have criminalized marital rape around the world.[62] After so many years, no one has attempted to address the legal anomaly. Indian law prohibits a girl under the age of 18 from marrying, but also prevents men from sexual intercourse with their wives if the wife is over the age of 15. On various levels, the standstill law is unjust and unfair.

Similarly, an unmarried female under the age of 16 cannot give her consent to have sexual intercourse under article 375 of the IPC, hence it is not consent. However, it is thought that she is capable of giving consent and has given her consent for sexual intercourse after she marries and becomes a wife between the ages of 15 and 16, and has intercourse with her husband.

The law takes away female agency over her own body, sexual behavior, and reproduction by excluding marital rape. By refusing to recognize marital rape as a severe type of rape, society, and the state are implicitly supporting and legitimizing sexual coercion and exploitation. On the one hand, the Hon. SC has stated that rape is a crime against humanity in general[63], yet it has strangely stayed silent on situations of marital rape. In addition, the state lacks any other powerful and severe channels for women who want to speak out against sexual spousal abuse, making it a futile exercise.

The insertion of Section 376-A, which tries to prosecute a husband who uses force to have sexual intercourse with his separated wife, is a positive move in this direction. This is a clear recognition that, by staying apart and expressing her dislike of her husband, the wife has effectively withdrawn her consent to engage in sexual actions with her husband. Similarly, the provision should be expanded to encompass women who refuse to leave their husband’s house and instead opt to stay in the same household but refuse to engage in any sexual activity. This will necessitate revisiting the concept of consent, which has been gradually enlarged in various nations over the
years to encompass the subject of marital rape. Although not specifically mentioned in the Domestic Violence Act 2005, marital rape has been mentioned to some extent. In a live-in or marital relationship, the act condones any sort of sexual abuse.[64]

Only life-threatening or gravely injurious sexual abuse that can be physically demonstrated or confirmed is included in the definition of sexual abuse. This at least acknowledges that, while being in a marriage institution, a woman keeps her own identity and status, and that she is free to refuse or concede any physical overtures, even if it is from her spouse.

The JS Verma committee, which was formed in the aftermath of the gruesome Nirbhaya gang rape in Delhi (2013), proposed that marital rape be made a crime. It claimed that “The law ought to specify that marital or other relationship between the perpetrator and victim is not a valid defense against the crimes of rape or sexual violence.”[65]

As a result, the Verma committee report is progressive in its outlook and encourages politicians to alter and innovate in response to new circumstances. If not, the legislation will have the unenviable distinction of becoming obsolete and a hindrance to progress. Some of the practical challenges mentioned by Maneka Gandhi[66], the Minister of Women and Child Development, in including marital rape under the traditional definition of rape were education/literacy, poverty, myriad social customs and values, religious beliefs, and the society’s mindset of treating marriage as a sacrament act. This is consistent with the patriarchal mindset of the lawmakers who plagiarized the traditional definition of rape.[67]

It isn’t an issue of whether you are married or a prostitute. It’s all about treating women with dignity and respecting their rights. Article 10 of the 1967 Declaration on the Elimination of Discrimination Against Women demands that necessary measures be taken to ensure that women, married or unmarried, are treated equally with men. Regardless of the circumstances, no one should be denied their right to equality and respect. [68]

Exemption of Marital Rape in India

The 42nd report advised redrafting Sections 375 and 376 E to include Explanation II, which stated expressly that “a woman living separately from her husband under a decree of judicial separation or by mutual agreement shall be deemed not to be his wife for this section.” This is significant because the commission’s redraft of the clause said that “a man is said to commit rape who has sexual intercourse with a woman other than his wife” Another major recommendation offered in this report was to engage in sexual activity with a child-wife. However, before moving on to the other Law Commission findings, it is necessary to point out certain fundamental faults in the 42nd Law Commission’s rationale. The commission’s argument for making forced sex with a judicially separated wife criminal appears to be based on the assumption that she is no longer the "wife" (de facto), and hence the husband has no right to exercise his conjugal rights through force. As a result, all avenues for making rape within marriage punishable are closed.

When it comes to the 84th Law Commission Report on Rape[69], they claim to be using a new and broader framework than the 42nd report. The researchers, on the other hand, would argue that there does not appear to be any broader strategy offered in this article. They also propose the same adjustments in terms of marital rape, such as rape of a child-wife and rape of a judicially separated wife. The only substantive change they advocated was to make any rape committed by a man on his wife unlawful if she is under the age of 18, albeit this age limitation has tragically not been adopted into the IPC. It should be noted that the suggested amendments in these reports were adopted into the IPC as exceptions to S. 375 and S. 376A.

Finally, The Law Commission of India: 172nd Report on the Review of Rape Laws[70] The report was written in response to Supreme Court orders issued in 1998, which compelled them to address issues presented in the case of Sakshi v. Union of India. To corroborate the notion that “criminals go unscathed due to mere technicalities of law,” the classic English case of R v. R25 was cited in this case, which dealt with marital rape.

In its report, the Law Commission recommends that the Exception to S. 375 be kept in its current form. In terms of amending S. 376A, it was proposed that the penalty be increased to a minimum of two years and a maximum of seven years with a fine. “When a man who causes hurt or any other physical injury to his wife is liable to be punished for such offense like any other person causing such hurt or physical injury, why should a husband who sexually assaults his wife...be not punished like any other person...,” Miller reasoned.[71] While acknowledging the strength of these arguments, the Commission refused to strike S. 376-A under the guise of “not ignoring” the
fact that the marriage tie remained intact even in such a circumstance. As a result, they decided to increase the sentence while keeping the portion.

As a result, this report simply repeats the recommendations of prior Commissions and fails to keep up with changing rape legislation. Furthermore, while there has been no reporting of occurrences of marital rape in India, a few judges have recognized that under several treaties and conventions, they are expected to punish marital rape. Mentions of such pronouncements, on the other hand, are mere “rhetoric” on the part of the judge and are nothing more than filler in a worthless ruling [72].

After considering the shortcomings of the IPC and the half-hearted efforts of Law Commissions, it is impossible to avoid the conclusion that male legislators are still unwilling to abandon their notion of marriage as the legitimation of all sexual intercourse with women [73], for patriarchal reasons and to deny women sexual agency. When compared to the rape laws in most other jurisdictions, where marital rape has already been criminalized, India’s rape laws appear to be even more behind.

Validity of Marital Rape in Other Countries

USA-It’s worth noting that cultural norms and the perceived social stigma associated with rape deter people from reporting marital rape, and prosecution is uncommon in many nations. Marital rape was legal in every state in the United States until 1976. Even though marital rape is now a crime in all 50 states, some states still do not view it as seriously as other types of rape. [74] Colorado, Delaware, Florida, Georgia, Indiana, Massachusetts, Montana, Nebraska, New Jersey, and New Mexico are the only states with laws that do not distinguish between marital rape and stranger rape. North Dakota, Oregon, Texas, Utah, Vermont, Wisconsin, and the District of Columbia are among the states. There are no exceptions for marital rape in these states.

Marital rape became illegal in all 50 states on July 5, 1993, under at least one component of the sexual offence statutes. There are no rape prosecution protections for husbands in 20 states, the District of Columbia, or on federal grounds. However, husbands are still protected from rape prosecution in 30 states. In most of these 30 states, a husband is immune from using force while his wife is at her most vulnerable (e.g., mentally or physically disabled, unconscious, asleep, etc.) and unable to consent. Women who are raped by their spouses are more likely to be raped multiple times, sometimes 20 or more. They are subjected to vaginal, oral, and anal rape in addition to vaginal rape. [75]

The UK- The phrase “unlawful sexual intercourse” had been interpreted to signify “illicit intercourse” for the Sexual Offences Act of 1956, i.e. intercourse outside the bonds of marriage. The Common Law rule held that a husband could not be convicted of raping his wife, thanks to Lord Mathew Hale’s famous statement (“Recent Book: Smith and Hogan: Criminal Law: Cases and Materials. Butterworth. Hardback £12.00 Soft Cover £7.60”)

This concept of the law was so widely held that no husband was ever prosecuted for marital rape until 1949 when the case of R v. Clarke took the legal world by storm.

The husband was found guilty of raping his wife as a result of forced intercourse with her when they were separated by a court separation decree. The separation order was issued due to the husband’s continued cruelty to the wife, and cohabitation had not been resumed at the time of the accused incident. In such circumstances, Justice Byrne reasoned, the wife’s permission to sexual intercourse can be interpreted as canceled. Because it altered the trajectory of the law and granted the widow some agency, this case is immensely significant. This ruling also left open the question of whether permission can be deemed to be canceled just when a divorce decree is issued or when the husband and wife are separated de facto. In reality, a similar issue arose in the latter case of R v. Miller.

Even though these advancements have enormous symbolic value, there are still uncertainties regarding their practical impact due to the general factors that work against the reporting and effective prosecution of rape cases. Furthermore, it is feared that courts may consider marital rapes more leniently. Changes in societal morality and behavior do not happen quickly, but the legal acknowledgment of the crime of marital rape has opened the way for it.

The Recent Judicial Debate

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A PIL[76] filed in the Delhi High Court recently sparked a judicial controversy over the legitimacy of section 375, IPC, Exception 2 - the marital rape exemption provision. Hearing the PIL against the penal code clause, a division bench of acting Chief Justice Gita Mittal and C. Hari Shankar J stated that “marital rape is a severe issue that has notoriously become a part of the culture.”

The RTI Foundation filed the PIL in 2015, and other people and institutions[77] have also approached the High Court of Delhi to challenge the exemption under sections 375 and 376B of the Indian Penal Code, claiming that it criminalizes marital rape. The exception is unlawful, according to the PIL, and infringes married women’s rights under Articles 14, 15, 19, and 21 of the Constitution. One of the petitioners has challenged the provisions of the Cr PC, which are to be read in conjunction with section 376 IPC, on the basis that they mandate differential procedure and penalty, which is arbitrary and unconstitutional.[78]

In addition, another NGO, Men’s Welfare Trust, has intervened in the case, claiming that laws have already given a married woman a special status, in which she is entitled to maintenance, alimony, and the right to dwell from her husband under numerous articles.

As a result, men become subject to exploitation by women who file bogus complaints of sexual harassment, 498-A IPC, and domestic abuse, among other things. According to the Men’s Welfare Trust, over 62,000 married men commit suicide each year, which is more than double the number of suicides committed by women, with domestic violence, including marital troubles, being the leading cause.

The Indian government has filed an affidavit with the Delhi High Court[80], stating that “it has to be ensured adequately that marital rape does not become an easy tool for harassing the husbands. The affidavit further maintains that criminalizing rape could destabilize marriages and make men vulnerable to harassment by their wives”

Because of traditional and patriarchal customs, there is virtually little data on domestic abuse, including marital rape. Several nations, including Nepal, the United States, the United Kingdom, and South Africa, have made marital rape illegal, but the Indian government’s response has been exceedingly misogynist and disrespectful. Because there may be cultural differences on the problem of marital rape, the Central Government has declared its desire to enlist the help of “State Governments.”[81] The government’s views, which are blatantly anti-women from the start, are quite disappointing. The government has presumed that all husbands’ sexual acts will be labeled as rapes and that all wives are potential liars who will falsely accuse their husbands. The government’s belief that prohibiting women from registering rape accusations will keep marriages stable reflects patriarchs’ actual mindset in a conservative society.

Independent Thought V. Union of India

The Supreme Court has evaluated the scope and feasibility of exception 2 to section 375 IPC in a writ case brought in the public interest by an organization called Independent Thought. The court was asked to consider whether a husband can be charged with marital rape if he had sexual contact with his wife when she is between the ages of 15 and 18. This is a major Supreme Court ruling, in which the court rules:[82]

“Exception 2 to s-375 of the Indian Penal Code answers this in negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial the distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and not in the best interest of the girl child.”

The artificial distinction is also opposed to the idea and ethos of articles 15(3) and 21 of the Constitution, as well as international conventions, according to the court. It violates the girl child’s bodily integrity and reproductive choices. The petitioner society pointed out that anyone who has sexual intercourse with a girl child under the age of 18 will be liable for statutory rape, even if the minor girl consents, and that the situation is even more absurd when the offender is her husband, because the marital exemption applies in such cases, and the husband is completely exempt from punishment.

The right of such a female child to bodily integrity and to refuse sexual intercourse with her spouse is stripped away by her marriage. She does not become emotionally or physically fit for such judgments simply because she
is married. The Independent thinking decision is an excellent example of judicial activism and craftsmanship in providing a socially desirable meaning to a clause in the law that incorporates a dead notion. However, it is somewhat sad to observe that the Supreme Court has indicated unequivocally on multiple occasions that it will not comment on marital rape in general if the wife’s age is 18 or more than 18 years.

**Rit Foundation V Union of India[83]- The Game Changer**

The All-India Democratic Women’s Association and the RIT Foundation, an NGO, challenged the validity of Section 375 in the Hon’ble High Court of Delhi, claiming that it failed to effectively protect married women from sexual assault by their spouses.

According to the Centre’s declaration, criminalizing marital rape would “destabilize the institution of marriage” and might be used to “harass husbands.” In addition, the Men Welfare Trust, a non-governmental organization, rejected the proposal to make marital rape a crime. The Court responded that if a wife is already protected from marital sexual violence under the Prevention of Women from Domestic Violence Act, harassment of married women, sexual intercourse with wife without her consent while she is living separately, and unnatural sex laws, then Section 375 of the IPC should not be an exception. The bench, which included then-Acting Chief Justice Gita Mittal and C Hari Shankar, made the following observations:

This remark casts doubt on the presumption of “consent” in a marriage. The Delhi High Court, on the other hand, refused to hear Adv. AnujaKapur’s appeal, which asked the Centre to issue guidelines for filing an FIR for marital rape as well as laws making it a reason for divorce. The PIL was dismissed by a bench comprising of Chief Justice D N Patel and Justice C Hari Shankar, who stated that the Court cannot direct the formulation of legislation because that is the realm of the legislature, not the judiciary.[84]

While the hearing of the RIT Foundation’s PIL is still ongoing, it would be fascinating to see the proceedings before the Hon’ble High Court of Delhi, which will go down in history as a milestone in the recognition of women’s rights in India.

**Consequences of Marital Rape**

Although the aforementioned reservations may not be exactly correct, the following repercussions should be carefully considered.[85] An unmarried rape survivor has several tools at her disposal to help her navigate her way to justice.

Without the protection of the law, a married rape victim must live with.[86]

1. Physical injuries to the vaginal and anal areas, including lacerations, bruising, and other types of injuries that may never heal due to a lack of prompt medical attention.

2. Anxiety, shock, depression, and suicidal thoughts, which may result in a reduction in the female’s ideal output capacity. Without assistance, women may resort to suicide, jeopardizing their parental responsibilities if they have children.

3. Gynecological effects such as miscarriage (when she becomes pregnant without her consent or knowledge), stillbirth, bladder infections, STDs, and so on – again, because these medical complications are caused by sexual activities carried out by force in a marriage with the clear knowledge that there are no legal protections, women are more likely to suffer physical and emotional harm and live with the consequences. This is a textbook example of modern-day exploitation and a glaring failure of the three waves of feminism, particularly in India.

4. Long-term symptoms like insomnia, eating disorders, sexual dysfunction, low self-image, and so on are some of the long-term consequences for which no legal, societal, or governmental assistance is available. If this continues, a significant portion of the population will continue to be unhappy, and no amount of government action/policies to uplift/empower them will be effective, because, as we have shown, the problem begins behind closed doors.

**VI. SUGGESTIONS**

The experts recommend the following methods to help prevent this horrible crime:
1. According to Wolfgang and Schaffer, mutual victimization occurs when both parties consent. Due to societal pressure, women should speak up rather than keeping silent. This behavior cannot be placed solely on men. — “A person who silently bears the violence is also equally wrong.”[87]

2. The term “consent” should be defined to distinguish it from “coercion.”

3. Inequalities should be eradicated and gender-neutral laws should be enacted.

4. Marital rape should be made a crime under the Indian Penal Act, 1860, and section 375 of that code should be changed to include certain requirements to prevent its misuse.

5. Under all personal laws, marital rape should be considered one of the most essential grounds for divorce.

VII. CONCLUSION

Marriage is the union of two people who have mutual regard for one another. Educating boys and men to see women as valuable participants in life, in the development of society, and the attainment of peace, according to the United Nations,[88] is just as important as taking legislative actions to defend women’s human rights. To achieve this, it is necessary to include marital rape in the scope of the law and to educate society beginning in elementary school. The researchers attempted to provide insight into the nature of this horrible crime. The topic of marital rape is largely ignored, and as a result, it requires our attention. Modern leaders who assist victims of marital rape agree that this act is a sort of rape that takes place in the privacy of the home[89]. It is not the job of a guard to conceal violent behavior. As a result, the purpose of this study is to discuss the concept of consent in the context of marital rape and why it needs to be defined under Indian law.

Marital rape is one of the most heinous forms of sexual assault that may occur within a family. The women victims do not come forward with their sufferings because of the nature of the activity and the accompanying issues of secrecy of relationships, internalization of patriarchal domination, and most of the time, because of their economic dependence.

The patriarchal mindset has caused the law to turn a blind eye to the wretched suffering of abused women, and the law does not even recognize marital rape as a crime, let alone provide any sanctions in such circumstances. Regardless of age, socioeconomic class, race, or ethnicity, rape occurs in all sorts of marriages. There is a scarcity of research data on the subject, and the absence of data is a key impediment to the government and legislature making adequate attempts to offer an effective legal forum to address the traumatized victim’s issues.

Acceptance of any spousal rape exemption suggests that the outdated concept that wives are the sexual property of their husbands and that the marriage contract is an entitlement to coercive sex is still prevalent. Furthermore, by limiting the offence to women who are not married to the perpetrator, rape laws become discriminatory, depriving a group of people-married women – of equal protection.

It has been determined that Indian laws have failed to give adequate protection to women in the same way that they did previously. Women are still viewed as the property of their husbands, who have complete rights to exploit them with no recourse. Though a husband’s violent and non-consensual act of intercourse may empower a wife to file a criminal assault charge, our penal laws do not include the principle of culpability for marital rape. This appears to be a violation of Indian Constitution Articles 14 and 21. The Indian legal system is concerned about the non-criminalization of marital rape. The judiciary should take steps to safeguard women to protect them. Married women should be treated with respect and should not be subjected to sexual violence or assault. As a result, this section takes a very restricted view of sexual assault, and there is currently no legal provision that protects married women.

The Supreme Court has declared the rape of a minor wife to be a crime and has issued a groundbreaking decision recommending a legislative formula to make child marriages unlawful from the start. However, the major spouses have been unable to gain judicial sympathy to have marital rape recognized by the Supreme Court. The weak and limiting definition of rape, which allows for marital exemption, is a hollow assertion that gives a rape route for many perpetrators of sexual violence, and the hunt for justice continues unabated.

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44. (1979)2 SCC 143:1979 SCC(Cri).
46. ILR 1891 Cal 49.
47. Act No. X of 1891, published in Gazette of India, (1891), Pt.V.
51. Government of India . (2011, December 22). Retrieved December 22, 2020-National Family Health Survey : http://rchiips.org/nfhs/a_subject_report_gender_for_website. Calling out the persistent dichotomy regarding the age of consent, the 2011 data presents the highest percentage of women victims of spousal sexual violence under the 15-19 years age bracket (13.1 per cent). While 10.5 % of women in the age bracket of 20-24 experienced sexual violence from their husbands, in the next bracket of 25-29, the percentage of women falls marginally to 10.4%. The lowest percentage of women having suffered spousal sexual violence is reported in the 40-49 age group (8.2%).
56. AIR 1978 SC 597.
59. AIR 1991 SC 207.
64. “Section 3, Domestic Violence Act, 2005- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—
(i) —physical abuse means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
(ii) —sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;”
70. New Delhi: Union of India Press, 2000 is the 172nd Law Commission’s Report on Rape.
73. Michelle Anderson, “Marital Rape/Abuse.” Marital Rape, 2016, pp. 177–86.
76. The PIL has been filed by NGO RTI Foundation challenging that IPC’s s. 375 saying that it does not consider forcible sexual intercourse by a man with his wife, as rape.
77. The High Court of Delhi is hearing a clutch of petitions filed by All India Democratic Women’s Association, RTIFoundation and some other individuals who want deletion of exception 2 to s.375, IPC.
78. Delhi High Court to Hear Pleas Against Criminalizing Marital Rape”, Times of India, Aug. 29, 2017.