

## CRIMINALIZATION OF MARITAL RAPE IN INDIA: A CRITICAL ANALYSIS

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### **ABSTRACT**

Our humanity stands on two pillars, men and women, they should have equal importance and role in the development and the growth, but on the other hand women have always been subjected to a lot of humiliation and atrocities by men from the ancient time. For example, rape. The offence of rape is one of the most barbaric crime against women. Marital rape, though not defined as a crime anywhere but in India it is one of the most debatable and conflicting issues. Women have been treated as an object of pleasure since long time. Women have been victims of crime like rape, sodomy, sexual harassment, female infanticide etc. In recent times where the general public is fighting for equal rights for both men and women the rate of crime against the women is increasing day by day. India is also focusing to lesser the crime which is committed against women but eventually has failed to give protection to the married women.

### **INTRODUCTION**

#### **Overview**

“The husband cannot be guilty of rape committed by himself on his lawful wife, for by their mutual matrimonial consent which the wife herself gives to the husband, whom she cannot retract”<sup>1</sup>

It is rightly asserted by Susan Brown miller that, “The ancient patriarchs who came together to write their early covenants had used the rape of woman to forge their male power- how then

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<sup>1</sup>TamannaKhosla, Marital Rape in India: A Radical Feminist Perspective, 38 Mainstream Weekly, (2014)

could they see rape as a crime of man against woman? Women were wholly owned subsidiaries and not independent beings.”<sup>2</sup>

Rape is an act of sexual assault committed against a woman without her consent. The act may be carried out by force, abuse or it is committed against someone who is incapable of giving the consent such as a woman who is in an unconscious state or in an intoxicated state. The Supreme Court has stated that “Rape is a deadliest shame and the gravest crime committed against the human dignity”<sup>3</sup>. Marital Rape on the other hand can be said as the act of forcing a woman to have sexual intercourse with her husband just because they are married. Marital Rape is a rape which occurs behind the four walls of the house. It is also a physical violence which is done on the wife by her husband, it is not just an abuse, rather it is a rape. The only difference here is that the accused is the husband of the victim. The prevalent notion which is there is that upon marriage a woman is regarded to have consented to have a sexual intercourse, thereby making the “marital rape” a redundant and ridiculous notion. It was only in the 1990s that the marital rape came to be recognized as a crime in the legal codes of the different countries. Marital Rape is not recognized as an offence under the IPC unless the wife is below 15 years of age, the punishment of rape of wife who is below 12 yrs. of age is far below the minimum mandatory punishment which is there for the rape. For a very long time, the contract of marriage was viewed through an archaic approach in the sense that the wife promises or gives consent to give herself to her husband and to never retract. Wife as viewed as a property of her husband <sup>4</sup> therefore it cannot be termed as rape and is also considered as a right of husband to have intercourse with his wife.

The term rape has been derived from the word “rapio” which means basically to seize.

Marital rape is particularly complicated because of the complex and personal nature of the marital relationships. These all things make it hard for the victim of marital rape to even consider herself as a victim of rape. Even for the women who consider themselves as victim of marital rape they are hesitant to approach to the authorities as they are financially dependent on their

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<sup>2</sup> Susan Brown miller, *Against Our Will: Men, Women and Rape* (Penguin, 1975) p.18.

<sup>3</sup>Rafiq v. State of U.P, (1980) 4 SCC

<sup>4</sup>ANNIE BESANT, *MARRIAGE, AS IT WAS, AS IT IS, AND AS IT SHOULD BE: A PLEA FOR REFORM*, LONDON FREETHOUGHT PUBLISHING COMPANY (2nd ed. 1982)

husband and reporting may result in the withdrawal of the financial support from them and leaving them and their children without food and shelter. The major elements of marital rape include the mental agony of being raped, being victimized by her own husband and the unforgettable scar which the victim has got. The law has never conceptualized the marital rape as a crime or as an offence which is committed against the women, the law has also never seen it as a crime which destroys the freedom of women. It has always taken rape as an instrument which is there for protecting the property of a man from the sexual aggressions of other men. Therefore, the act of marital rape is never recognized as an offence as women is considered as the property of man and a man could not be ever perceived to violate his own property<sup>5</sup>.

There are many countries that have enacted marital rape laws, repealed the exceptions of marital rape laws which were there existing or have laws that does not distinguish between the ordinary rape and marital rape. Some of these countries include: Albania, Algeria, Australia, Canada, China, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, New Zealand etc. Turkey had criminalized the marital rape back in 2005 itself, Mauritius and Thailand did it in 2007. The criminalization of marital rape in these countries both in Asia and around the world indicates that marital rape is now recognized as the violation of human rights. In 2006, it was even estimated that marital rape is an offence which is punished under criminal law in at least 100 countries and it is very shameful on our part that our country is not one of them.<sup>6</sup> Even when marital rape is very prevalent very much in India, here it is hidden behind the sacrosanct veil of marriage.

In the present India, the place of women is considered as equal to that of a man and this existing draconian law has to be changed as the scenario in the present is changing and law is becoming obsolete. Our fast progressing society today has geared more towards complete equality between partners, equal protection of law and equal rights of each spouse<sup>7</sup>.

There have been multiple cases where deletion of exception clause of section 375 of the IPC had not taken into account simply owing to the fact that it will interfere with the Indian culture and

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<sup>5</sup> Indian women: Yesterday, today and tomorrow, India Today, (April 28, 2015), <https://www.indiatoday.in/magazine/cover-story/story/19760115-indian-women-yesterday-today-andtomorrow-819610-2015-04-28>

<sup>6</sup> Dr. Bhavish Gupta & Dr. Meenu Gupta, Marital Rape: - Current Legal Framework in India and the Need for Change, 1 GJLS 18 (2013)

<sup>7</sup> Mehal Jain, Husband Is Not the Master of Wife', SC Strikes Down 158 Year Old Adultery Law Under Section 497 IPC, live law, (September 27, 2018), <https://www.livelaw.in/husband-is-not-the-master-of-wife-sc-strikes-down-158-year-old-adultery-lawunder-section-497-ipc/>

family system, so till now the offence of rape within the marriage has not taken note on a serious note. The ironic reason for not criminalizing marital rape is mainly that it would disturb the institution of marriage and break its sanctity<sup>8</sup>. Such an act will put too much inference with marriage, so completely failing to consider the consequences of ignoring an offence. Also, IPC does not criminalize the marital rape rather it provides for its exception<sup>9</sup>. Non criminalization of marital rape violates the very fundamental right of a women, her right to privacy, protection from exploitation also her right to bodily integrity. Moreover, she is also being deprived of her fundamental rights which are guaranteed under Article 21 which is Right to Life and Liberty and Article 14 which is Equality before law and equal protection of law. Even the International conventions which are pertaining to women, especially Article 16 of the convention on Elimination of all forms of Discrimination against women whether married or unmarried, they should be treated equally to the men and necessary measure should be taken into account to ensure that the women's right to equality and her respect is not at all violated<sup>10</sup>.

The victims of marital rape go through a lot of consequences and hence, there is very urgent need to criminalize this heinous offence. The National Family Health Survey (2015- 2016) reflects that 10.4% of women only complain of sexual violence by their husbands<sup>11</sup>. Recently the Supreme Court of India has pronounced many decisions which have brought a positive change for Indian women but still many things need to be done now also for criminalizing marital rape and protecting the basic rights of the women<sup>12</sup>.

Violence against the women is an old manifestation of historic power play struggles between men and women, which has led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position as

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<sup>8</sup> Criminalizing marital rape may destabilize institution of marriage, Centre tells HC, The Hindu (August 29, 2017, 06:42pm IST) <https://www.thehindu.com/news/national/criminalising-marital-rape-will-destabilise-marriage-govttells-hc/article19581512.ece>

<sup>9</sup>Section 375, Exception 2 of IPC states "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

<sup>10</sup>Convention on Elimination of all Forms of Discrimination against women, 1979, Article 16

<sup>11</sup> 11 Prof. Kshitij Naikade & Dr. Garima Pal, Issues & Challenges Related to Marital Rape in India, 7 IJHSSI 58-69 (2018)

<sup>12</sup>Hari Haran, Marital Rape, Academike (November 16, 2014) <https://www.lawctopus.com/academike/marital-rape>.

compared to men<sup>13</sup>. From starting of the history in majority of the societies, it has been acceptable for the men to force their wives to have sex with them against will. The traditional definition of rape in the most of countries was having a sexual intercourse with a female without her consent and that female didn't include his wife. This has provided an exemption to husbands from the prosecution of raping their own wives. In other word we can say it is a "license to rape".

The foundation of this exemption can be traced back to the statements which was made by Sir Mathew Hale, the chief justice in 17<sup>th</sup> century in England.

According to the Sir Mathew Hale: "The husband cannot be guilty of rape committed by himself upon his lawful wife, for, by their mutual consent and the contract, the wife has given up herself for this to her husband and she cannot retract to it"<sup>14</sup>. It is very surprising that Lord Hale never did provide any argument, case law or any legal basis to support his assertion. He asserted that upon marriage, the wife automatically hands over herself to her husband as her husband is her legal guardian after marriage, moreover she also gives consent to all the sexual acts which cannot be retracted at later for any reason whatsoever it may be.

There is a notion of "implied consent" within any marriage which starts from the starting of the marriage and it continues for the entire course, such consent is deemed to be irrevocable. This is established fact that once a woman is married, she does not have right to revoke sex with her husband. Due to construction of sex the duty of women in marriage is always presumption of consent<sup>15</sup>.

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 famous 18th century British jurist Blackstone wrote about the marital contract. under the heading of "private economic interactions" between a man and a woman<sup>16</sup>. As a result, he attempted to compare the relationship between a husband and his wife to other private, but purely economic,

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<sup>13</sup> The United Nations Declaration on the Elimination of Violence against Women, General Assemble Resolution, December, 1993.

<sup>14</sup>Hale, Matthew, History of the Pleas of the Crown, p. 629. (1736, London Professional Books, 1972)

<sup>15</sup> ibid

<sup>16</sup> American & English Encyclopedia of Law; (1765) William Blackstone Commentaries Clarendon Press; Oxford

relationships such as that between a master and servant or a parent and their child. Due to the predominance of patriarchy in the 18th century, husbands were widely regarded as superior, and the discussion of rights was framed around this premise, which Blackstone referred to as their "rights and obligations in private economic relations"<sup>17</sup>."

However, it is not so simple as the ideology that underpins the social contract of marriage distinguishes the relationship between a man and a woman from other private human relationship. 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, her rights are presumed to be merged with those of her spouse.

Currently, the scenario resembles that of 17th century England, when the wife is expected to stay in the marriage despite her fundamental rights being violated. So far, 150 countries have made marital rape illegal, with some doing so as early as 1922, such as the former Soviet Union. The criminalization is based on the basic assumption that, while a spouse has the right to have sex with his or her spouse in marriage, that right cannot be imposed through force, pressure, or abuse of authority. India is one of the 36 countries that hasn't decided whether or not the court has jurisdiction over them.

There existed an exception in the Indian legal system till 2017 that said that sexual intercourse between a man and his own wife is not a criminal offence if the wife is over the age of 15. The Protection of Children from Sexual Offences Act (POCSO) and the Child Marriage Act 2006 clashed with this provision. In 2017, the Indian judiciary made sexual intercourse with a girl child under the age of 18 illegal<sup>18</sup>. The SC also further stated that sex with minor wife, despite consent, is rape. It is only outdated that this hasn't been the case for women above 18 years of age<sup>19</sup>.

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<sup>17</sup> *ibid*

<sup>18</sup> Raja Gopal, K., & *The Hindu*. (n.d.). *Sex with minor wife, despite consent, is rape: Supreme Court*. <https://www.thehindu.com/news/national/sex-with-minor-wife-is-rape-says-supreme-court/article19838085.ece>

<sup>19</sup> *ibid*



The relationship between the victim and the perpetrator should not be tainted by judgement in the eyes of the law. It is rape if a spouse or a live-in partner forces themselves onto their spouses or partners, coerces them into sex, or abuses their authority to assault or inflict pain.

### **MARITAL RAPE AND LEGAL PROVISIONS FOR MARITAL RAPE IN INDIA.**

#### **MEANING OF RAPE AND MARITAL RAPE**

The dictionary meaning of word rape is “ravishing or violation of women”. The summary of the definition of Rape as defined and also accepted by FBI is “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without victim’s consent”<sup>20</sup> According to Morton Hunt, “The typical marital rapist is a man who still in belief that husbands have the right to rule their wives. “this extends that he feels as in sexual matters when he wants her, she should be glad or at least willing, and if she isn’t willing than he can force her, but in forcing her he gains far more than the few minutes of sexual pleasure. He humbles her and reaffirms her in the most emotionally powerful way that he is the ruler and she is the subject”<sup>21</sup>.

According to section 375 of IPC, a man is said to have committed “rape” if he –

- (a) “penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person;
- (b) or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person;

<sup>20</sup> Definition of rape, *available at* : <https://www.fbi.gov/about-us/cjis/ucr/recent-program-%20updates/new-rape-definition-frequently-asked-questions>, (visited on July 13, 2015)

<sup>21</sup>Morton Hunt, “Legal Rape,” *Family Circle* (January 9, 1979), p. 38.

- (c) or manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person;
- (d) or applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances following under the seven description provided in the code<sup>22</sup>”

Moreover, explanation 2 to section 375 says that if a man involves himself in any sexual intercourse with his wife who is not below the age of 15 years then it is not rape. The age has been now increased to 18 years from the case of *Independent Thought v. Union of India*<sup>23</sup>. As per this exception, a man cannot be liable for rape if at all he indulges in sexual intercourse with his wife with or without consent if she is above 18 years of age. This exception has given immunity to the husbands who commit rape on their wives.

Marital Rape can be defined as any act of sexual intercourse which is committed by a husband on his wife by using unlawful force or physical violence without her consent. It is a very shameless and non-consensual act of sexual assault done by a man on his wife and in this his wife is abused both physically and sexually which in most of the cases lead to serious both physical and mental problems to the victims<sup>24</sup>

Whenever we use the word “Rape”, it is mentioned that we tend to think of an act which is committed by a stranger a vengeful person. Usually we don’t think of rape in the context of marriage. Even women find it hard to believe the fact that she can be raped by her own husband. Marital Rape is one of the most under- reported crimes which is committed against the women<sup>25</sup>. One of the major reasons behind the marital rape in India is that it is not criminalized under IPC section 375 instead it has been put under the exception. This exception has been challenged and also have been debated various times in the recent past but the proposal of criminalizing the marital rape has always been rejected as it happens within the boundaries of socially accepted

<sup>22</sup> Indian penal code, 1860, section 375

<sup>23</sup> *Independent Thought v. Union of India*, SCC Online SC 1222

<sup>24</sup> Natasha Tracy, Marital Rape, Spousal Rape, Healthy Place, <https://www.healthyplace.com/abuse/rape/marital-rape-spousal-rape>.

<sup>25</sup> Urvashi Prasad, National Family Health Survey underscores need for serious discussion on marital rape, (March 15, 2018), <https://indianexpress.com/article/gender/national-family-health-survey-underscores-need-for-seriousdiscussion-on-marital-rape>.



institution of marriage and because of the belief that criminalizing the marital rape can also tamper the sanctity of the marriage which is regarded as a sacred bond between a man and his wife. Over the decades this “sacred “marriage has been used as a sort of sexual contract which provides an implicit consent to the husbands on the behalf of their wives.

Currently the only provided recourse to the victims of marital rape is section 498 of IPC which deals with cruelty to protect them against the perverted sexual conduct by their husbands. It is very interesting to see that the IPC understands the existence of rape outside marriage but not within marriage. The marital rape is just treated as an act of domestic violence and hence providing very less remedies to the victims of the crime.

According to the data of NCRB of 2015 to 2017 alone in Bihar the rate of crime against women is 28.8% which includes all sorts of crime. The highest rate of crime against women is reported in Assam which is approx. 143.6%<sup>26</sup>. In Bihar alone for Rape cases approx. 700 convictions have been made according to the data by NCRB in 2019<sup>27</sup>.

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<sup>26</sup>[https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%203A.1.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203A.1.pdf)

<sup>27</sup>[https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%203A.111.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203A.111.pdf)

<sup>28</sup>Natasha Tracy, Marital Rape, Spousal Rape, Healthy Place, <https://www.healthyplace.com/abuse/rape/marital-rape-spousal-rape>.

Marriage, which also called “matrimony or wedlock”, is a socially, legally recognized unions in between the spouses that establishes the rights, duties, obligations between them, their children and their in-laws.<sup>29</sup>

Marital Rape affects a woman in very drastic manner, it has always been thought that if a woman is raped by her husband it is less traumatic to her but this is a total myth. Research show that marital rape has more severe and long impact on the mind of the women as the rapist is none other than her own husband.

The effects of marital rape can be broadly classified into two main categories:

- **Physical Effects:** The physical effects of marital rape include injuries in the private part, bruises, torn muscles, lacerations, fatigue, fractures etc. women who are subjected to physical violence as well as rape suffer from many other complications. They also go through some sorts of gynecological issues also like miscarriage, infections, infertility and also there is high chances of contracting many sexually transmitted disease like HIV.
- **Psychological Effects:** The psychological effects are far worse than the physical effects some of it are shock, fear, post-traumatic stress, suicidal tendencies etc.

There can be numerous reason for the marital rape but the very obvious and main reason is the desire of men to assert superiority over the women. Our patriarchal society is the main reason behind the widespread gender inequality which eventually leads to the suppression of the female counterparts in the society. Women have never been given the same status and importance as men in the society gets. This only gives an unjustified edge to men over the women which is exploited very much.

Marital rape is in itself a type of domestic violence. It is an act of forceful and violent control and thus in many cases it also includes physical abuse, emotional abuse, mental abuse, social abuse, financial abuse etc. wife experiencing such forms of abuse may doubt their own worth or sanity and may have little self-confidence<sup>30</sup>.

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<sup>29</sup> Dr. (Ms.) Rekha Singh, “Status of Women in Indian Society”, *available at*: : <https://www.bu.edu/wcp/Papers/Huma/HumaSing.htm> (Visited on July 11, 2015).

<sup>30</sup> *ibid*

An unmarried woman who has been raped has a number of legal options available to her. However, a married woman who has been raped by her own husband has no legal recourse, despite the fact that she has also been raped. When compared to stranger rape, acquaintance rape produces more suffering<sup>31</sup> because the perpetrator is a well-known figure and the victim and the offender share a trusting relationship being raped by your husband creates both mental and physical suffering. Furthermore, the victim's sense of powerlessness is exacerbated by the lack of legal protection. The following are some of the effects of marital rape on the victim:

- Physical injuries to vagina and anal areas, multiple bruises and other injuries which may never be healed because they do not always get immediate medical treatment<sup>32</sup>
- Psychological problems like anxiety, shock, and depression. Also, without any legal remedies a woman might take the course of suicide<sup>33</sup>
- Various gynecological problems like miscarriage, stillbirth, sexually transmitted diseases etc. These medical complications occur because of sexual activities conducted by force<sup>34</sup>
- Long term symptoms like insomnia, eating disorders etc.
- Some marital rape victims also report flashbacks, sexual dysfunction, and emotional pain for many years after the violence<sup>35</sup>

There is no law prohibiting marital rape in India, and no efforts are being made to criminalize it. Because the husband gets immunity under exception 2 of section 375 of the IPC, there are no legal remedies for a woman who has been raped by her husband. The rationale for this immunity is that the lady is over the age of 18 and that the criminal and the victim have a relationship, which is that they are husband and wife. The Indian law restricts the crime of rape to stranger rape alone, therefore discriminating against and denying protection to a certain group of people: married women. In addition, the 172nd law commission study discovered that the exception

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<sup>31</sup> Indian Penal Code, 1860, Section 375

<sup>32</sup> Shellie Patscheck & Sharon Shears, The effects of acquaintance versus stranger rape and gender on rape myth acceptance and attitudes toward rape in college students, *Modern Psychological Studies* 14(1), (2008)

<sup>33</sup> Raquel Kennedy Bergen & Elizabeth Barnhill, Marital Rape: New Research and Directions, VAWnet Resource Library, (February 2006),

<sup>34</sup> Ibid

<sup>35</sup> Ibid

clause of Section 375 of the IPC is deemed unnecessary since it may interfere with the husband and wife's marital relationship.

### **FORMS OF MARITAL RAPE**

Marital rape can be categorized into 2 categories: Non- Physical sexual coercion and threatened or forced sex. In first case which is Non- physical sexual coercion, the perpetrators of marital rape often use social or normative coercion which eventually has the element of duty of wife and the responsibility of a wife to satisfy her husband<sup>36</sup>. As identified by the legal scholars, the following three forms of marital rape generally prevalent according to further categorization of threatened or forced sex<sup>37</sup>.

The different forms of marital rape are basically of:

- **Battering Rape:** In this form of marital rape both physical and sexual violence takes place together. The victim is battered during the sexual violence, and the husband basically uses force here to have a sexual intercourse with his wife. Mostly cases of marital rape fall under this category.
- **Force only Rape:** This kind of rape happens when the women is not willing to have sexual intercourse with her husband and he uses the force for the same. Any sort of physical violence is not there in this kind of rape.
- **Obsessive Rape:** This kind of rape involves assaults, torture or usually perverse sexual acts and are most of the time physically violent.

<sup>36</sup>UdishaGhosh, Marital Rape: The Need for Criminalization in India, Academike, (February 4, 2015), <https://www.lawctopus.com/academike/marital-rape-need-criminalisation-india>.

<sup>37</sup> ibid

**CONCEPT OF CONSENT IN MARITAL RAPE**

The initial version of theories of consent was of early 17<sup>th</sup> century which focused on equality of every human being in the society irrespective of their gender and because of the fact that every human is born free with an individual identity, therefore consent from both men and women was naturally given importance. Since every individual is born free, other person cannot force against their will. According to some of the early theories some well-defined authority is required for maintaining the basic law and order and also for their peaceful co-existence. For preserving the individual liberty and identity of every citizen, this authority must receive an explicit consent by every individual voluntarily without any external impact or pressure. Thus at that time consent theory provided that an individual must provide an explicit consent in every cases without any external pressure<sup>38</sup>. The most personal relation which is share between a man and a woman should be governed by consent. From the time a woman agrees to marry a man, till the time she agrees to have a sexual intercourse with him, there is a need to establish explicit consent at every stage. Consent is the legal line which segregates a rape from a sexual intercourse, but it is very sad to take into consideration that once a woman is married, her consent is automatically presumed for having a sexual intercourse and she cannot even retract it. India has always considered men as superior to women and therefore she has always been identified by the name of the man in her life and never had an identity of her own. Before marriage she is treated as her father's property<sup>39</sup> and after marriage she is treated as her husband's property and is thus expected to always give consent to her husband in every matter. Even at times when woman shows explicit non-consent, it is considered to be as redundant or some sort of minor hindrance which can then be converted and reinterpreted as consent<sup>40</sup>.

“Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of

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<sup>38</sup> Prof. Kshitij Naikade & Dr. Garima Pal, Issues and Challenges Related to Marital Rape in India, “7 IJHSSI 58-69 (2018)

<sup>39</sup> Amit Varma, Misogyny is the oldest Indian tradition, The Hindu Business online, (August 04, 2017), <https://www.thehindubusinessline.com/blink/talk/misogyny-is-the-oldest-indiantradition/article9800756.ece>

<sup>40</sup> Supra note 17

penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity”<sup>41</sup>

The explanation clearly distinguished between submission and consent by stating that just because the woman did not resist it shall not be presumed that she consented to the act. In case of **State of Maharashtra v. Madhukar Narayan Mardiakar**<sup>42</sup> the court held that “prostitutes also have a right to privacy and no one can interfere with her privacy when he likes to. Explicit consent in sexual intercourse has been given importance in these cases also. It is sad to notice that only in cases of marriage the consent is presumed and a man is not held liable for raping her wife. In marital rape, consent from the wife for sexual intercourse is automatically taken as always implied, whereas it should be left for the wife to decide whether she wants to provide her consent for the same or not. Thus, consent is very important especially in a married life and it must always be given explicitly. An equal sexual relationship cannot be held on the basis that a physically more powerful male makes a sexual attempt on the physically less powerful female and she provides consent. The most important problem is the need for creation of an environment for personal relations where two individuals can form a virtual association for lifetime based on respect for each other”.

## BRILLOPEDIA

### **REASONS TO BE CONSIDERED FOR CRIMINALIZATION OF MARITAL RAPE.**

Non criminalization of marital rape violates both article 14 and article 21 of the Indian constitution. Article 14 of the Indian Constitution states:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”

According to the Article 14 of the Indian Constitution, every person in India is equal in the eyes of law, and the state must guarantee equal protection of all the laws to every person. In the cases **BudhanChoudhry v. State of Bihar**<sup>43</sup> and **State of West Bengal v. Anwar Ali Sarkar**<sup>44</sup>, the

<sup>41</sup> Indian Penal Code, 1860, Section 375, exception (2)

<sup>42</sup> State of Maharashtra v. Madhukar Narayan Mardiakar, 1991 (1) SLR SC 140: AIR 1991 SC 207

<sup>43</sup> AIR 1955 SC 191



Supreme court had held that Article 14 of the Constitution does not permit class-legislation but it permits some reasonable classification if the classification is justified and has a reasonable relation towards the objective of the law<sup>45</sup>

### **Constitution of India viz-a-viz marital exemption to rape**

A country's Constitution is the text that expresses the nation's soul. The Indian Constitution organizes and controls authority, protects human rights, balances competing social and individual interests, reflects the country's traditions and experiences, and functions as a vehicle for national advancement and unity<sup>46</sup>.

According to the Indian constitution, every law passed in the country must adhere to the concepts and ideas expressed in the Indian constitution. Any statute that does not meet this threshold is called ultra vires and is likely to be found unconstitutional by the courts and now it will be seen as to how the doctrine of marital exemption to rape fails to meet the standard of conformity with the provisions of Article 14 and Article 21 of the Constitution of India.

Marriage is regarded as a sacred institution that serves as the foundation of our society. It is regarded as profoundly personal, and the government is wary of intruding into this delicate territory. This is to protect residents' privacy, and the government's involvement in this area would be harmful. This privacy is being violated. As a result, the state does not compel any two people to do anything. Either you marry or you divorce. However, the government's refusal to enter this personal area even in certain situations, it can be harmful. If a wife is, for example, if a marriage is subject to cruelty, the state will be forced to intervene<sup>47</sup>. If the State does not take action to criminalize the wife's maltreatment, not to do it. Thus, it is important for the State to penetrate this private sphere on certain occasions.

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<sup>44</sup> AIR 1952 SC 75

<sup>45</sup> Article 14 of Constitution of India & Doctrine of Reasonable Classification, GKToday, (March 10, 2013), <https://www.gktoday.in/gk/article-14-of-constitution-of-india-doctrine-of-reasonable-classification/>

<sup>46</sup> Roy, Sudhanshu & Jain, Iti, "Criminalizing Marital Rape in India: A Constitutional Perspective", Criminal Law Journal, Apr 2008, p. 81-92

<sup>47</sup> In this instance, the State has entered into the supposed private sphere by criminalizing activities that happen in the private spaces of husband and wife.

**Equal protection of the law**

Article 14 guarantees a fundamental right of equality before the law and equal protection of laws to every citizen of India, Article 14 does not demand that every individual be treated equally in all circumstances, but it does require that the equals within a society are not treated unequally, and that the community's unequal's are not treated identically.

The two requisites of a valid classification were laid down by the Supreme Court, as early as in 1952: -

- a). The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and
- b). The differentia must have a rational relation to the object sought to be achieved by the legislation<sup>48</sup>

Marital rape is also a violation of a woman's fundamental right under Article 14 and 21 of the Indian Constitution ('Constitution'). We argue in this section that the lack of criminalization of marital rape violates a woman's fundamental rights. Even though the crime of marital rape happens within the private realm of a marriage, it is the State's responsibility to break through this barrier. If the state does not intrude into this private realm, a woman who is raped by her husband is left without recourse. However, an examination of judicial decisions involving things generally considered to be within the private sphere of marriage and family reveals the judiciary's reluctance to include fundamental rights in this area. The courts have constructed a fake private sector in which fundamental rights are not implemented or read in. As a result, the topic of whether marital rape is a violation of fundamental rights has been debunked. This is because fundamental rights have no place in the supposed marital domain.

Exception 2 of Section 375 of the IPC creates a categorization between married and unmarried women in India by discriminating against women who have been raped by their husbands, despite the fact that Article 14 of the constitution guarantees equality to all individuals. This distinction between married and unmarried women is illogical since it contradicts the intent of Section 375, which is to punish those who commit such barbaric acts of rape. Instead, it serves

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<sup>48</sup>State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75, 80.

the exact opposite objective of immunizing husbands who rape their wives. Furthermore, rape is rape, and any woman, married or single, suffers the same emotional and physical pain.

As a result, in this section, we shall first talk against the construction of a private sector in which constitutional rights cannot be exercised. We'll look at why this conception of the private sphere is incorrect. Furthermore, we will also see that how Section 375 of the IPC's exception provision violates Article 14 of the Constitution.<sup>49</sup> In **HarvenderKaur v. Harmander Singh Choudhry** ('HarvenderKaur')<sup>50</sup> the Delhi High Court was also confronted with a petition challenging the constitutionality of the RCR. Departing from Sareetha, the Court upheld the constitutionality of section 9 of the Hindu Marriage Act. In this case, the Court had stated that the purpose of RCR was basically not to force someone to stay with their partner but rather to "protect the institution of marriage"<sup>51</sup>.

### **JUDICIAL INTERPRETATION TO MARITAL RAPE.**

**“A murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.”- Justice ArjitPasayat.**

The legal restrictions imposed on India's courts, particularly the marital rape exception provision, are disappointing. What's more disappointing is that women continue to suffer at the hands of men to this day. The first and most important step in changing society's thinking is to make non-consensual sex within marriage illegal. This sends the message that demeaning treatment of women in marriage will no longer be accepted. While the Indian judiciary has one hand tied behind its back, it refuses to provide women with the constitutional protections that every Indian deserves men's advances.

"I do not believe that marital rape should be considered a crime in India," DipakMisra stated, because it will create complete anarchy in families, and our society is surviving itself because of the family platform that defends family values. In some ways, the Supreme Court of India's

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<sup>49</sup> 2 Roy, Sudhanshu& Jain, It, "Criminalizing Marital Rape in India: A Constitutional Perspective", Criminal Law Journal, Apr 2008, p. 81-92.

<sup>50</sup>HarvenderKaur v. Harmander Singh Choudhry, 1983 SCC On Line Del 322: AIR 1984 Del

<sup>51</sup> Ibid

analysis of domestic statutes, constitutional provisions, and legal rulings represents this complex subject. Various constitutionally protected rights, such as equality before the law and physical integrity, have already been examined and decided by India's top court.

The constitutional legal framework that finally challenges the marital rape exception was constructed by India's Supreme Court. By examining the text, structure, and purpose of these legal sources, it becomes clear that the marital rape exception clause codified in Section 375 of the Indian Penal Code (hereinafter IPC) has no legal foundation, making it illegal, unconstitutional, and an arbitrary creation of the legislature and judiciary that is not based on the rule of law.

In the recent case of **NimeshbhaiBharatbhai Desai vs State of Gujarat**<sup>52</sup> The wife accused her husband of rape and filed a FIR under sections 376, 377, 498(a), and 114 of the Indian Penal Code. The husband's counsel claimed that marital rape does not exist in India and hence is not a crime, and that the FIR filed by his wife should be quashed. The court, led by Justice JB Pardiwala, ruled that the Section 376 allegation would not apply in this case because rape of a wife by her husband is not punished.

Further in case of **Independent thought vs union of India**<sup>53</sup> The Supreme Court refused to rule on whether or not marital rape is a crime. In reality, the bench flatly refused to address the issue and passed responsibility to Parliament, claiming that the crime of marital rape cannot be regarded a crime by us since the legislature has already debated the issue and concluded that it cannot be called rape. In response to the petition, the age under section 375 exemption 2 was raised to 18 years old.

In the case of **Joseph Shine v. Union of India**<sup>54</sup> The five-member bench of the Supreme Court was in favor of striking down Section 497 of the IPC, which criminalizes adultery. In this case, Justice Chandrachud questioned that “does a man or a woman lose their degree of sexual

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<sup>52</sup>NimeshbhaiBharatbhai Desai vs State of Gujarat, 2018 SCC Online Guj 732

<sup>53</sup> Independent Thought v. Union of India, 2017 SCC Online SC 1222

<sup>54</sup> Joseph Shine v. Union of India, 2018 SCC Online SC 1676

autonomy after marriage. I think 'no'. He further stated that "the right to say no to sex should be there after marriage also"<sup>55</sup>

When looking at the history of legal judgements on a husband's infliction of significant injury on his wife, the court in **Queen Empress vs. HareeMythee**<sup>56</sup> The law of rape does not apply between husband and wife after the age of 15 in the case of married women; even if the wife is over 15, the husband has no right to neglect her bodily safety, for example, if the conditions are such that intercourse is likely to result in death. In this instance, the husband was found guilty under section 338 of the Indian Penal Code for rupturing his eleven-year-old wife's vagina, resulting in hemorrhage and death.

In **Sareetha vs. T. VenkataSubbaiah**<sup>57</sup> "There can be no doubt that a decree of restitution of conjugal rights thus enforced offends the inviolability of the body and mind of the person subjected to the decree, offends the integrity of such a person, and invades the marital privacy and domestic intimacies of such a person," the Andhra Pradesh High Court said.

Delhi High court in the case of **RIT foundation v UOI**<sup>58</sup> held that relationship cannot put the offense of rape in a different pedestal as women remains women.

## BRILLOPEDIA

### RECOMMENDATIONS OF VARIOUS COMMITTEES

We are aware of many law commission papers advocating for the criminalization of marital rape, but there is currently no legislation in place. The courts and legislators must take a position against criminalizing marital rape as a horrible crime that should not be protected as a consenting conduct inside the realm of marriage. It's ironic that a woman has the right to defend her right to life and personal liberty, but she doesn't have the right to defend her body in a marriage. The court declared in 2012 that it is a form of sexual abuse<sup>59</sup> if a woman denies having sexual intercourse with her husband. Later, the Delhi High Court supported the verdict, stating that

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<sup>55</sup> ibid

<sup>56</sup>[(1891) ILR 18 Cal. 49].

<sup>57</sup>[AIR 1983 AP 356].

<sup>58</sup> W.P.(C) 5858/2017 & CM No.45279/2021

<sup>59</sup> Denying Sex to Your Husband for a Long Time is Grounds for Divorce: Delhi HC, The Wire, (October 12, 2016), <https://thewire.in/law/denying-sex-to-your-husband-for-a-long-time-is-grounds-for-divorce-delhi-hc>

refusing sex to one's husband can be grounds for divorce because the wife is denying him happiness by denying him sex. A lady filed a rape lawsuit against her husband in 2015, but the court dismissed her petition, arguing that a statute cannot be modified just for the benefit of one individual. The Supreme Court of India recently ruled a number of cases in which citizens' individual rights were upheld. Now India requires a law for marital rape, which would allow a victim of marital rape to bring a rape case against her husband.

- **Justice Verma Committee Report**

On January 23, 2013, the committee submitted its report. After the Delhi gang rape on December 23, 2012, this committee was constituted to recommend changes to Indian laws dealing with violence against women. It was made up of three people: J.S. Verma, Justice Leila Seth, and Gopal Subramanian. The committee debated whether section 375's exception (2) to marital rape should be deleted, and recommended that it should be done so. This has been the most significant suggestion made by any committee on marital rape to date. Marriage should never be regarded as definitive consent to sexual actions, according to the committee. The relationship between the accuser and the accused should be irrelevant for determining whether the accuser agreed to the sexual intercourse or not.

- **Pam Rajput Committee Report (National Women Policy)**

Pam Rajput Committee was a 14-member committee constituted by the Ministry of Women and Child Development in February 2012 and led by Pam Rajput, a professor at Panjab University. In 2015, it submitted its recommendations. Based on the current needs of women, this committee made a number of policy proposals. This committee suggested that marital rape be made a crime regardless of the wife's age or the accuser-acquired connection. The Criminal Law Amendment Act of 2013 was criticized by the committee because it did not classify marital rape as a crime. It further chastised the legislature for failing to criminalize and recognize the problem in the case of marital rape in the.



- **42nd Law Commission Report**

In its 42nd report, the Law Commission of India argued that marital rape should be excluded from Section 375's scope. Naturally, charges for this offence are extremely rare, according to their words. We believe that this offence should be removed entirely from the scope of Section 375, and that it should not be referred to as rape in any technical sense. This offense's punishment may be specified in a separate section.<sup>60</sup> The repeal of the exemption clause in Section 375 of the Indian Penal Code, which stipulates that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape," has been demanded by many women's organizations including the National Commission for Women. However, the Task Force on Women and Children, established by the Government of India's Woman and Child Department, believes that this subject should be debated more widely.

- **172nd Law Commission Report**

This report on review of rape laws was submitted on March 25th 2000, to the then Minister of Law and justice, Ram Jethmalani. The committee, headed by Former judge of the Supreme Court, Justice B.P. Jeevan Reddy, recommended modifying the rape laws to be gender neutral, but it did not recommend removing the exception clause from the IPC, stating that removing the exception clause from section 375 will lead to excessive interference in the matrimonial relationship<sup>61</sup>.

The commission recommended that the word "rape" be replaced with "sexual assault" in Section 375 of the IPC, and that sexual intercourse between a husband and a wife without consent can be covered under the category of sexual assault, but that the onus of proving that the wife did not consent should fall solely on the wife. This committee also proposed that the age of marriage be changed from 15 to 16 years, which means that those who are 16 years old can marry.

If they force sexual intercourse on their wife under the age of 16, they will be prosecuted with marital rape.

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<sup>60</sup> [http://www.siu.edu.in/Research/pdf/Shaila\\_Daware.pdf](http://www.siu.edu.in/Research/pdf/Shaila_Daware.pdf)

<sup>61</sup> Law Commission of India, One Hundred and Seventy Second Report on Review of Rape Laws, March, 2000

**LEGAL PROVISIONS FOR MARITAL RAPE IN INDIA**

When the subject of marital rape is brought up, the first question that comes to mind is whether a man can truly rape his own wife, because marriage entails the wife's implied permission to everything, including sexual intercourse, even if she is not willing.<sup>62</sup> Rape is a criminal offence in India under sections 375 and 376 of the Indian Penal Code, 1860. When the term 'rape' is used within a marriage, however, instead of considering how a man can do such a horrible act on his own wife, the focus is on explaining how such an activity is permissible, with the only rationale being that they are married. The rape laws in India exclude marital rape from being a criminal offence and exception 2 to section 375 of the IPC states explicitly that sexual intercourse by a man on his own wife is 'not a rape' if the wife is above 18 years<sup>63</sup>.

Marital rape is not considered as a criminal offence as per the IPC. However, there are few provisions on which the marital rape victims can resort to:

**Section 498A of the Indian Penal Code, 1860**

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, non-compoundable and non-Bailable”<sup>64</sup>

**Section 354 of the Indian Penal Code, 1860**

“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”<sup>65</sup> This section can help victims of marital rape because it punishes anyone who uses force to violate or outrage a woman's modesty. Until recently, it was unclear what exactly was meant by "outraging

<sup>62</sup> Rahul Kanaujia, Marital Rape in India, (November 14, 2018) <https://blog.iplayers.in/marital-rape-india/>

<sup>63</sup> Indian Penal Code, 1860, Section 375, exception (2)

<sup>64</sup> Indian Penal Code, 1860, Section 498A

<sup>65</sup> Indian Penal Code, 1860, Section 354

modesty." In the case of **RajuPandurangMahale v. State of Maharashtra**<sup>66</sup>, the court further stated that

“The essence of a woman's modesty is her sex and the accused culpable intention is the crux of the matter. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman”<sup>67</sup>

### **INTERNATIONAL LEGAL PROVISIONS RELATED TO MARITAL RAPE.**

Until the twentieth century, both American and English laws agreed to coverture, which entails a woman's legal rights being consolidated into her husband and her legal life being absorbed into her husband<sup>68</sup>. With the passage of time, however, these jurisdictions have enacted substantial revisions to their rape laws in marriage.

### **MARITAL RAPE LAW IN UK**

Marital rape was not a crime in the United Kingdom until 1991, due to a centuries-old statute that stated that a husband could never be held responsible for raping his own wife. This law is based on the views of Mathew Hale, a 17th-century judge and lawyer, who stated that a husband cannot be charged with rape if he has sexual intercourse with his wife without her consent because the moment she agreed to marry, she gave her husband permission to have sex with her whenever he wanted<sup>69</sup>. When a couple marries, the husband gains the right to demand sexual intercourse from his wife at any moment, even if she refuses. Accordingly, in the case of **R v Clarence**<sup>70</sup>, the principle of Mathew hale was formulated as an exemption to the England rape

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<sup>66</sup> (2004) 4 SCC 371

<sup>67</sup>ibid

<sup>68</sup> BEARD, M.R, WOMAN AS FORCE IN HISTORY, p.89 (1946)

<sup>69</sup>JONATHAN HERRING, FAMILY LAW: A VERY SHORT INTRODUCTION, (2014) p. 35

<sup>70</sup> R v Clarence 1889 22 QB 23

laws. Later, with the 19th century feminist movement this exception was challenged by the group of feminists worldwide.

In the case of **R. V. R**<sup>71</sup>, the husband pled not guilty to attempted rape on his wife, citing section 1 of the Sexual Offences Act 1976, which said that raping one's own wife is not considered "unlawful." The court, however, found him guilty of rape, arguing that there is no exception for married rape in English law, and that the word "unlawful" in the definition of rape in section 1 includes marital rape. The term "unlawful" was later dropped from the definition of rape.

The Sexual Offences Act of 2003 establishes the current definition of rape in the United Kingdom. This term also includes spousal or marital rape, as well as the crime of marital rape.

The current definition of rape in UK is defined under the sexual offences act of 2003. This definition also covers spousal rape or marital rape and for the offence of marital rape the prosecution should prove the following:

- a.) Penetration of vagina, anus, or mouth occurred.
- b.) The penetration was intentional.
- c.) There was no consent from the side of the complainant to the act of penetration.
- d.) The defendant knew about the fact that the complainant has not given consent for it<sup>72</sup>.

### **MARITAL RAPE LAW IN US**

Marriage was exempt from rape laws in all 50 states until the early 1970s. The exception was derived in part from the 17th century English rape laws, which were later transferred to the British-American colonies. The Model Penal Code (MPC) is a set of rules that govern (1962)<sup>73</sup> contained exemption for marital rape and states "that a male who has sexual intercourse with a

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<sup>71</sup> R v R [1991] UKHL 12

<sup>72</sup> Sexual Offences Act 2003, section 1

<sup>73</sup> Model Penal Code, 1962

female not his wife is guilty of rape if he has sexual intercourse with a woman without her consent”<sup>74</sup>

In the case of **Oregon v. Rideout**<sup>75</sup> The husband was charged of raping his wife in Marion County Circuit Court in 1978. Despite the fact that he was later acquitted by a jury, he was the first man in the history of the United States to be charged with marital rape while cohabiting with his wife.

Later in the case of **People v. Liberta**<sup>76</sup> The court ruled that marital rape is unconstitutional, stating that a married woman has the same right to regulate her body as an unmarried woman, and that marriage should not be interpreted as a permission for a husband to rape his wife. As a result, in Alabama, marital rape exemptions from the sodomy legislation have been implemented. (**Williams v. State**<sup>77</sup>) and the rape law (**Merton v. State**<sup>78</sup>) were declared as unconstitutional.

By 1993, all 50 states in the United States had made marital rape illegal, with North Carolina becoming the final state to do so on July 5, 1993. However, the punishments for this offence differ from state to state. In many states in the 1990s, rape laws were defined on the basis of the victim's classification as follows<sup>79</sup>:

1. Unmarried women: These were fully covered by the laws.
2. Married and living with her husband: These were not treated as severe cases of marital rape, and the punishment for the rapist in such cases was often less.
3. Married and not living together/divorced: Although in many states the women were treated just as the first category of unmarried women but some states treated them in an intermediate way between the previous two categories. Currently, there is no exemption from marital rape in

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<sup>74</sup> Ibid

<sup>75</sup> Oregon v. Rideout, Marion County Circuit Court, (1978)

<sup>76</sup> People v. Liberta 64 NY 2d 152, 474 NE 2d 567, 485 NYS 2d 207(1984)

<sup>77</sup> Williams v. State 1959, 110 So 2d 654

<sup>78</sup> Merton v. State 1986, 500 So. 2d 1301

<sup>79</sup> RAQUEL KENNEDY BERGEN: MARITAL RAPE, NATIONAL ELECTRONIC NETWORK ON VIOLENCE AGAINST WOMEN, (1999)

the majority of states in the United States, but the punishment varies. Some states have less severe punishments, while others have monetary fines of up to \$50,000 if convicted.<sup>80</sup>

## **CONCLUSION AND SUGGESTIONS**

### **CONCLUSION**

So, in the end, it can be reasonably argued that, like rape, marital rape is a serious threat and impediment to attaining gender justice in India. If India is to become a prosperous nation, marital rape must be entirely eradicated since it is one of the most significant barriers to growth. However, in order to achieve that goal, Indian culture, the Indian legislative, and the Indian Executive must modify their primitive worldview. Marital rape can only be criminalized in India if the Indian culture, legislature, and government take a proactive stance. The Indian judiciary must also exert sufficient pressure on the Indian legislature and government to outlaw marital rape the country by its foresighted decisions as a result, Indian society, the legislative, the administration, and the judiciary must band together to combat the atrocity of marital rape, and only then can such a hideous evil be removed from the country.

### **SUGGESTIONS**

With the above research, the researcher suggests the following steps to be taken to protect the victims of marital rape:

- Marital rape should be criminalized under the IPC, 1860. For example, we have a provision under section 376B of IPC to punish husbands who commit rape on their judicially separated wife. Similarly, a provision should be created for married women who are getting raped by their husbands. The exception (2) of section 375 of the IPC which is unconstitutional should be deleted and marital rape should be made a crime all together without discriminating on the basis

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<sup>80</sup> Monica Steiner, Rape—any nonconsensual sexual intercourse— between non-spouses has always been illegal, CriminalDefenceLaws, <https://www.criminaldefenselawyer.com/marital-rape-laws.html>.



of age and marital status. There should be no separate rule for marital rape victims and other victims of rape.

- There should be a clearly stated definition of ‘consent’ to differentiate between actual consent and coercion. Coercion includes such acts where the consent is not free and is obtained as a result of force or threat.
- Under all personal laws, marital rape should be considered as one of the important grounds for divorce.

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