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# THE CRIME THAT NEEDS RECOGNITION: MARITAL RAPE

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## ABSTRACT

Marriage in India is regarded as a '*pavitra*' (sacred) institution. When a woman marries a man, she places her trust in him, and marriage traditionally binds her to fulfill his wishes. However, this sacred bond loses its essence when it becomes a vehicle for sexual assault and an attack on a woman's sexual autonomy. Rape is recognized globally as a heinous crime, and the law treats it with utmost seriousness. Yet, within the sacred institution of marriage, a form of rape often goes unreported because it is shielded by the marital relationship between the victim and the perpetrator. Marital rape occurs when a husband forces his wife into sexual intercourse, whether through physical force, threats, or in situations where she is unable to consent. Disturbingly, the Indian Penal Code (IPC) legalizes this act through an exception in Section 375/ Section 63 of Bhartiya Nyay Sanhita (BNS), which states that rape within marriage is not considered rape. This exception is not only discriminatory but also a direct violation of basic human rights. A literal interpretation of this clause suggests that once a woman is married, she has implicitly given her husband a license to satisfy his sexual desires, regardless of her consent. This reflects the deep-rooted male dominance in society and echoes the ancient Doctrine of Covertures.

Marital rape often goes unreported due to the desire to protect the sanctity of marriage and fear of societal judgment. According to the National Family Health Survey (2015-2016), 10.4% of women worldwide reported experiencing spousal sexual violence. Despite years of advocacy from activists, civil society, and the general public calling for the criminalization of marital rape, progress has been slow, largely due to government reluctance. However, it is crucial to criminalize this violent act as soon as possible.

This paper seeks to analyze the factors contributing to marital rape, the exemption clause in the IPC, relevant legal provisions, the constitutional

validity of Section 375, the status of marital rape in other countries, and propose measures to achieve justice by recognizing marital rape as a criminal offense.

**Keywords:** Rape, marriage, justice

## Introduction

Marriage in India is regarded as a *pavitra* (sacred) institution, where a woman enters into matrimony with trust in her husband, binding herself to fulfill his wishes. However, this sacred bond loses its sanctity when it turns into a vehicle for sexual assault and an attack on the wife's sexual autonomy. It's alarming to think that rape, in a certain form, remains legal in our country—this form is marital rape. While cases of rape are reported and discussed, marital rape, which is just as heinous, often goes unheard. Under Section 375 of the Indian Penal Code (IPC)/Section 63 of Bhartiya Nyay Sanhita (BNS), rape is criminalized, but the law does not recognize or criminalize rape within marriage, allowing it to remain legally permissible.

Marital rape occurs when a man forces his wife into sexual intercourse, either through physical force, threats, or in situations where she cannot consent. This brutality is often justified by social norms that grant men dominance, allowing them to act with impunity. The patriarchal structure of Indian society elevates men to a superior position, reducing women to a subordinate role and treating wives as their husband's property. India is one of only 35 countries in the world where marital rape remains legal, largely due to the cultural belief that a woman implicitly consents to sex with her husband upon marriage. Section 375 of the IPC/Section 63 of Bhartiya Nyay Sanhita (BNS) criminalizes rape but includes an exception for husbands, exempting them from prosecution as long as the wife is over 15 years old.

Rape, whether committed against an unmarried or married woman, is a degrading and violent act. The argument that marital rape is somehow different from other forms of rape is flawed. For years, activists and civil society have called for the criminalization of marital rape, but progress has been slow. The government has resisted these calls, arguing before the Delhi High Court that criminalizing marital rape could "destabilize the institution of marriage" and might be misused to harass husbands. However, this reasoning is deeply flawed. The institution of marriage is already destabilized when it becomes a platform for forced sexual intercourse without consent. By not criminalizing marital rape, the government effectively licenses men to rape their spouses.

While many major democracies worldwide have criminalized marital rape, India's Parliament remains unwilling to recognize it as a crime. The government's affidavit argues that criminalizing marital rape could lead to misuse, similar to how Section 498A of the IPC/Section 85 of Bhartiya Nyay Sanhita (BNS), which addresses cruelty to wives by their husbands or in-laws, has been misused. This argument was presented in response to a petition filed by the RIT Foundation, the All India Democratic Women's Association, and a survivor of marital rape, challenging the exception in Section 375.

The Justice Verma Committee has also recommended the criminalization of marital rape and the removal of the exception in Section 375. A study conducted by the International Centre for Research on Women and the United Nations Population Fund in 2014 across eight Indian states found that every third man admitted to having forced their wives or partners into a sexual act. Additionally, the third National Family Health Survey revealed that most reported cases of sexual violence occurred within marriage.

These statistics underscore the urgent need to address marital rape, a silent crime often hidden behind closed doors. The societal stigma and reluctance to acknowledge marital rape contribute to its underreporting, allowing this grave violation to persist unchecked.

## **Review of Literature**

**V. Vigneswar and M. Kannappan (2018)** have explained in their research paper the laws regarding rape in India, concentrating on the position of marital rape and its recognition as an offence, by referring to the attitude of the society and the Courts towards Marital Rape and to check Constitutional validity of Section 375 of IPC/Section 63 of Bhartiya Nyay Sanhita (BNS). The authors have well explained the legal scenario of Marital Rape regarding the position of USA and other countries.

**Saif Rasul Khan (2015)** in his paper examines the issue of marital rape, addressing its complexities and exploring it from a human rights standpoint. He analyzes various proposals put forth by different segments of civil society to criminalize marital rape through amendments to the Indian Penal Code (IPC). The paper also reviews two significant committee reports: the 172nd Law Commission Report and the Justice Verma Committee Report. The author provides an analysis of these reports, emphasizing the persistence of marital rape and the urgent need for its eradication.

**Prof. Kshitij Naikadel & Dr. Garima Pal (2018)** in their paper have made a deep analysis on study the magnitude of marital rape in India, the national and international legislative measures regarding marital rape. The authors have also suggested measures and remedies to strengthen the existing sociological, psychological & legal mechanisms regarding marital rape.

**Raveena Rao Kallakuru & Pradyumna Soni (2018)** the authors have represented how various arguments advanced to not criminalise marital rape are incorrect, through analyzing Article 14 of Indian Constitution. The authors have also suggested several amendments to criminal law as well as noting the changes required in civil law, particularly the law relating to divorce.

**Deborah Kim (2017)** in his paper examined the legal position India holds today with respect to marital rape. Firstly it studies how India's criminal law has been shaped over the years: starting with its colonial common law inheritance from England, and with the development of the criminal law through its inclusion in Macaulay's Code and continued retention in the *Indian Penal Code 1860* (IPC). Outside the IPC, the law has not stood still. The author has highlighted the recent reforms seeking to advance women's rights to be free from family violence, such as *The Protection of Women from Domestic Violence Act 2005* (PWDVA). After tracing the history of India's legal responses, the paper closely investigates the influence of broader Indian culture (claims supported by patriarchy and religion) on rape law reform, finally making a case for abolition of the immunity supported by the fundamental principle of equality, drawing on arguments from the human rights guarantees included in the Constitution of India, and India's international legal obligations under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

## Objective

- To analyze the Factors responsible for Marital Rape
- To study the exemption of Marital Rape in India
- To analyze the legal provisions
- To analyze its Constitutional validity
- To suggest measures and remedies for ensuring justice by getting rid of such crime.

## Meaning of Marital Rape

Marital Rape also famously known as Spousal Rape is defined as rape committed by a person to whom the victim is married or in other words, Marital Rape is when a man imposes sexual intercourse on his wife with force or with threat of force or when the wife is not able to consent. Central to this definition is the concept of 'consent' that means in every sexual intercourse if there is no consent of any of the two persons than it is referred to as Rape. India continues to not consider sexual violence or sexual abuse which is taking place within the ambit of marriage as a crime. Supreme Court had also refused to entertain an individual petition regarding marital rape, as they will consider only a larger number of Public Interest Litigation. A study by the *RISE Institute* based in the *United States of America* found that the number of women in India who are brutally sexually assaulted by their husbands is 40 times the number of women who suffer such violence by others. A survey in 2011 in India revealed that one in five men have forced their wives to have sex.<sup>1</sup> According to a different study by United Nations, more than two-third of married women in India between the ages of 15-49 are beaten or forced to provide sex.<sup>2</sup> The world has entered into a new century, but from the dawn of civilization till date, the lady of the patriarchal society of India continues to be oppressed and ill-treated.

## Causes

Major causes behind this heinous exercise against women in the cover of marriage behind closed doors include several circumstances. Some of the reasons that activates the mentality of spouse to commit this crime are as follow -

- The first and foremost reason of spouse rape is connecting physical intimacy with marriage.
- The societal norms emphasis directly or indirectly that it's a women's responsibility to fulfill her man's desire
- If a woman married to an autocratic man who view them as property
- When women are in physically violent relationships

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<sup>1</sup> The International Men and Gender Equality Survey, 2011.

<sup>2</sup> The United Nations Population Fund Survey, 2000

- The mindset of society towards marriage and sex.
- If the woman is separated or divorced
- Lack of provisions regarding Marital Rape in Indian Penal Code

Beside these reasons there are several others, such as in a male dominant relationship and even in male dominant society many husbands use sexual assault as a weapon for maintaining their autocracy, lack of family support also led to the activation of these kinds of brutal exercises. A woman faces several situations in her life in which she is raped by someone to whom she got married, by someone who is the closest to her, a situation where she is all alone as no one supports her sometimes not even her own father-mother, despite of these circumstances if she rises her voice for her dignity, no one stands to help her not even Indian Judiciary as there is already an exception given to Marital Rape under Section 375 of IPC/Section 63 of Bhartiya Nyay Sanhita (BNS). Is this the Equality before Law, or Equal Protection of Law as enshrined in the Indian Constitution? It's 2020 and some countries are still making this Marital Rape as an exception.

### **Case Study<sup>3</sup>**

A 31 year old graduate, Smithy (name changed) was a tolerant, soft spoken, gentle and humble personality. Her social and economic background was not so good and they lived a life of poverty. Her father and mother were daily wage workers. She was the eldest among the 3 siblings. Her younger brother, for supporting the family just completed his 10th standard and started working as a labour in private sector and her younger sister was carrying forward her Higher Education. Smithy's Parents decided to get her married and they searched a bridegroom with 35 years of age for her who was a mechanical engineer in a private company, Smithy agreed to enter into the new phase of life and getting married as per the choice of her parents without any questions. Her Parents believed that bridegroom's family had reputed social status and good economical background as compared to their background. Hence they bind their daughter in wedlock with lots of faith and hope in the bridegroom that their daughter would now have a better quality of life than what they could afford to give her. Smithy too had this new ray of hope in her eyes.

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<sup>3</sup> P. Kavipriya, "Incidence of Marital Rape in Tamil Nadu- A case Study", Vol. 8 Issue 1, (2018)

All things were going good and she was living a happy married life but after sometime she started realizing that her husband is not a gentlemen rather he is inhumane person with merciless heart. He was an alcoholic and mentally disturbed personality who treats her as his personal property. All the dreams in the eyes of innocent smithy lost their hopes and started diminishing. She was not able to think of any other option besides moving ahead. So, she decided to tolerate it and tackle problems till the end of courage but unfortunately her courage lasted no more as now her husband torturing her for no better reasons and indulges her forcibly in sex. Even during menstrual cycle when a female is suffering from intense pain and body needs relaxing rest, in those days also her husband forced her to have sex with him. She was fed up with such horrible and hated acts of her husband and decided to get back to her Parent's home as level of tolerance was crossed and now she cannot afford to live with such monstrous personality. She returned back to her Parental house and narrated them the torture done by her husband. As usual the stigma attached with the societal norms and fear of image in the society, her parents assisted her to return back to her husband's house and live with him and explained her that this society has patriarchal set up so she needs to adjust herself in it. After relying on her Parents saying she returned back to her husband with no other choice. Situations did not changed at all her husband started torturing her physically as well as mentally and he continuously forced her to have sex with him and never seek her consent rather he take her for granted and treat her on his own whim and fancies. After 3 years she entered into the phase of pregnancy and thought that her husband would treat her with love and care but this time also every belief went in vain as he was not at all changed. He consumes excessive alcohol and tortures her physically and psychologically for sex which created such circumstances that she had to get her child aborted. After this also, he developed no humanity but smithy after couple of years gave birth to a child and soon after some years god gifted her one more child. Even after becoming the mother of two children she was not successful to stop her husband from physically torturing her. Every night was a horrible night for her when her husband comes drunken and attacking her sexual autonomy and having force sex with her. In case of smithy, she was educated so she decided to step out of her doorstep and independently take care of her children, she filed divorce under Domestic Violence Act, 2005 but her husband denied giving her divorce but then also she fought against him. Legal system made her feel vulnerable by not protecting her sexual autonomy and choice of having consummation with her husband. Despite such harsh ruckles she fought against the monster of her life.

Like smithy there are many more women who are the victim of their husband's sexual torture everyday inside the closed doors. The bond of Husband and wife in which both are considered as each other's strength, it shocks the inner conscience while listening to the story of smithy who never experienced the love of a spouse but continually faced the torture just to protect the vague norms set up by the society. Her story highlights the condition of society that lifestyle of our society is progressing, people's living standards are increasing but there is still a big question mark on mentality.

Nation urges to protect their daughter's outside the homes but what about the daughters of nation who are facing sexual assault inside the four walls and everyday they are raped by their own partners. They all fear to shout out and stand against such act just to protect the institution of marriage but in 21st century we need empowered Matrashakti's who step out of the cage of society and give voice to the crime known as Marital Rape and then only Legal system as well society will trace the path of modern mentality rather than Patriarchal mentality.

### **Legislative Provisions**

Even after 72 years of Independence the women in India either married or unmarried are not safe in one way or the other, they are not truly free or independent, and are continuing their life under darkness and fear. In India, marital rape exists *de facto* but not *de jure*. Section 375 of Indian Penal Code defines 'Rape'. Rape is a crime that not only hurts someone for the moment but it shatters an entire life. The section is extremely archaic in case of the exception mentioned to Section 375 which reads as, "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape." Indian Penal Code in Section 376 provides provisions of punishment for rape. According to Section 376, "the rapist should be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine unless the woman raped is his own wife, and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both".

Section 375 IPC/Section 63 of Bhartiya Nyay Sanhita (BNS) - A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances fall in under any of the six following description:-



1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under eighteen years of age

If a person is falling under any of these circumstances and having a sexual intercourse with a woman, then that man is said to have committed the offence of rape according to Section 375 of IPC.

Exception given under Section 375 of IPC/Section 63 of Bhartiya Nyay Sanhita (BNS) states that- "Force Sexual intercourse by a man with his own wife who is not under the age of 15 i.e. the marital rape, is not a rape". The age was earlier eighteen years; this has been brought down to 15 years by an amendment in a landmark judgment in the case *Independent Thought of India v. Union of India*.<sup>4</sup>

Under Section 375 -

A man is said to commit "rape" if he -

1. Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

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<sup>4</sup> Independent Thought v. Union of India, A.I.R 2017 SCC 800(India)

2. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

In *Bodhisattwa Gautam v. SubhraChakraborty*<sup>5</sup> the court held that rape is a crime that is against the human rights and violation of Article 21 of the Constitution i.e Right to Life and Personal Liberty.

In the case of *The Chairman, Railway Board v. Chandrima Das*<sup>6</sup>, the Hon'ble Court held that rape is not only a matter of violation of an ordinary right, but it is the violation of Fundamental Rights. Rape is a crime not only against the woman, but it is a crime against the entire society.

By going through the judgments by the courts in the above cases it is ample clear that the exception to Section 375 i.e. Marital Rape above the age of 15 years, is also the violation of Fundamental Rights, basic human rights of the woman, and furthermore a crime against entire society.

## 172nd LAW COMMISSION REPORT

This Law commission report has laid down various recommendations for evolution of outdated conditions given in Law with regard to Rape in India. These recommendations are stated below-

- Replacement of word "RAPE" with "SEXUAL ASSAULT".
- 375 of IPC which talks about definition of sexual assault should include with given forms, all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal,

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<sup>5</sup>Bodhisattwa Gautam v. Subhra Chakraborty, A.I.R. 1996 S.C. 922(India)

<sup>6</sup> The Chairman, Railway Board v. Chandrima Das, A.I.R. 2000 S.C.C. 0046(India)

finger/anal and object/vaginal.

- By referring to the judgment of Supreme Court in the famous case of *Sakshi v. Union of India*<sup>7</sup>, It was said that "sexual assault on any part of the woman's body would be construed as Rape"
- Crime of Rape should be neutral for all the genders because the IPC has not recognize the Rape of young boys.
- Report recommended for a new offence, namely section 376E with the concept of 'unlawful sexual conduct' should be added.
- Amendment to section 509 of IPC/Section 79 of Bhartiya Nyay Sanhita (BNS) was proposed with regards to provision of higher punishment in case of offence committed with sexual intent under this said section.
- Exception laid down in section 375 of IPC/Section 63 of Bhartiya Nyay Sanhita (BNS) for Marital Rape should be removed and be made a penal offence. The of force sexual intercourse by husband with his wife should be treated same as the penal offence in case of physical violent by husband against wife. On this same ratio it was recommended in the Report to strike down Section 376A of IPC.

### Justice Verma Committee

Justice Verma Committee was constituted for proposing amendments to criminal law in matter of quick trial and increase in punishment of criminals accused of sexual assault against woman. Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India were members of the committee along with Justice Verma. On 23 January 2013 Committee submitted its report with foremost demand of criminalizing the Marital Rape. Indian Government did not pay heed to it and took back the step as it has "potential to destroy the institution of marriage" and place the "entire family system under great stress".

The Panel of the Parliament declined to give Marital Rape the status of Rape by making the statement that it could "disturb the family". They said that Sexual assault by husband during

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<sup>7</sup> Sakshi v. Union of India and Others, A.I.R 2004 S.C. 518(India)

Judicial separation would amount to a criminal offence and husband would be penalized for the same.

The major findings of the committee was focused on different classification of Rape made under section 375 of IPC i.e. with respect to woman's who are married and unmarried. IPC prohibits non- consensual Sex. However, Exception given to Marital Rape provides immunity to non- consensual Rape committed by Husband. The Committee highlighted this issue in its report and demanded to criminalize Marital Rape by removing the exception given under Section 375 of IPC regarding Marital Rape and made a point that in case of inquiry about the presence of consent of complainant or not, the nexus between Complainant and accused is not a matter of relevance.

### **Constitutional Perspective**

- **Straight violation of Article 14**

Article 14 enshrines Right to Equality which provides Equality before Law and Equal Protection of Law<sup>8</sup>. Our Indian Constitution guarantees Right to Equality to everyone but still in today's developing and modern era criminal Law of our nation which is Indian Penal Code is expressly violating Article 14 of the Constitution by discriminating against the females who are raped by their husbands. Isn't this law providing Immunity to Husbands to rape their wives? Isn't this law dividing rape victims into two categories? Isn't it a grave violation of fundamental Rights?

These all questions strike our mind while reading Section 375 of IPC/Section 63 of Bhartiya Nyay Sanhita (BNS) in light of the Constitution and answers to all these questions are affirmative that Yes , Section 375(2) of IPC lacks constitutional validity.

If we look back to the colonial times when India was a colony of British during the 19th century, the English laws and Victorian norms dominated and influenced all the Indian Laws<sup>9</sup>. Victorian Norms which were Patriarchal in nature were kept into consideration while framing section 375 clause 2, which provides an exception to the Marital Rape falling under the category of Rape. These norms, that did not recognize men and women as equals, did not allow married

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<sup>8</sup>V.N. Shukla, Constitution of India 131, Eastern Book Co.

<sup>9</sup>Jill Elaine Hasday, *Contest and Consent: A Legal History of Marital Rape*, University of Chicago Law Occasional Paper, No. 41 (2000).

women to own property, and merged the identities of husband and wife under the “Doctrine of Covertures” were the basis of the definition of Rape given under IPC .

Exception given in clause 2 is based on the doctrine in which wives identity is merged with the identity of their husbands and this is the reason that definition of Rape excludes the married women getting raped by husbands who are perpetrators of such crime along with this, the time when IPC was drafted in 1860s woman was not considered as an independent legal entity but today the society has evolved and jurisprudence behind formulation of laws has been moulded towards the feminist approach, now woman are considered as independent legal entity, and state is more focused to protect the women from violence and harassment. So, the state also needs a reformative approach in making IPC neutral.

Clause 2 hampers the privilege to maintain a balance with Article 14 to the extent that it oppresses wedded women by denying them equivalent protection from assault and inappropriate behavior. The exception makes two classes of women depending on their conjugal status and vaccinates the activities executed by men against their spouses. In doing as such, the exception makes it conceivable that the exploitation of married women for reasons unknown, other than their conjugal status while shielding unmarried women from those acts.

In the case of *State of West Bengal v. Anwar Ali Sarkar*<sup>10</sup> it was held that any classification made under Article 14 must pass the test of reasonableness and it can only happen wherein the classification made has rational nexus with the objective sought to be achieved.

As far as exception given under section 375(2) is concerned, it classifies the rape victim into two categories of married and unmarried woman and this classification has no reasonable nexus with the objective sought under Section 375 of IPC.

The purpose of Section 375 is to protect the women and punish the accused who commit the inhumane act of Rape but the underlying exception to this Section is frustrating the very sole purpose and objective of Section 375. If we deeply analyze the exception to Section 375 it is encouraging husbands and providing them license to enter into forceful sexual intercourse with their wife because they are well versed with the fact that their forceful sexual intercourse has no de jure recognition and Law is not going to penalize them for this inhumane Act.

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<sup>10</sup> *State of West Bengal v. Anwar Ali Sarkar*, A.I.R.1952 S.C. 75(India).

As no rational nexus can be traced between classifications put forward by exception and objective sought by Section 375, this classification does not qualify the test of reasonableness and thus it is the clear violation of Article 14 of Indian Constitution.

- **Grave Violation of Article 21**

Exception provided under clause (2) of Section 375 is also violating the Article 21 of the Constitution which contains one of the most important provisions regarding Fundamental Rights. It states that “No Person shall be deprived of his life and personal Liberty except according to the procedure established by Law”. Our Honorable Supreme Court has interpreted this Article beyond its literal meaning and laid down various aspects under the umbrella of Life and Personal Liberty like rights to health, privacy, dignity, safe living conditions, and safe environment etc.

In recent times the Court has widened the scope of Life and Personal Dignity by acknowledging the Right to abstain from unwilling sexual Intercourse and to be free from unwanted sex under the heading of protecting the dignity of person. In the case of *State of Karnataka v. Krishnappa*<sup>11</sup>, it was held by the SC that sexual violence is an inhumane act and is destroying the privacy and sanctity of a female. In this same case it was also held that sexual intercourse without consent amounts to physical and sexual violence.

Under Article 21 Right to Privacy is a fundamental Right of all citizens, it was stated by Hon'ble Supreme Court in the case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*. In this same case it was held by the SC that Right to Privacy within its ambit includes “decisional privacy reflected by an ability to make intimate decisions primarily consisting of one’s sexual or procreative nature and decisions in respect of intimate relations.”<sup>12</sup>

Thus, from various Judgments given by the Apex Court regarding the increasing horizon of Article 21 it is explicitly declared that sexual cohabitation which is by force and without consent is clearly violative of Fundamental Right Enshrined under Article 21 of the Indian Constitution.

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<sup>11</sup> The State of Karnataka v. Krishnappa, A.I.R. 2000 S.C.919(India)

<sup>12</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, A.I.R. 2017 S.C. 4161(India)

These judgments are also clear on the grounds that both unmarried and married women are on the same ladder of rights as a woman does not lose her sexual autonomy and choice of cohabitation after getting married.

Moreover, Exception 2 given under section 375 of IPC deprives a woman of her Right to privacy, Right to protect her sexual autonomy and Right to live life happily with dignity So, It is a grave violation of Article 21 as this exception clause detains a women within her husband's whims and fancies for satisfying his sexual needs and destroying the dignity of her life.

### **Scenario of Marital Rape in U.S.A and U.K**

It is notable that women often face discouragement in reporting marital rape because of the social stigma and the cultural norms attached to rape, due to that prosecution becomes very rare in some countries.

**U.S.A.** - The customary definition of Rape in United States was “the forced sexual intercourse by a male with any female except his wife” clearly states that in U.S.A. too there was an exception to marital rape. The exception was again repeated in Model Penal Code 1962, but later in the mid of 1970s the Reforms in Marital Rape laws came up with criminalizing the marital rape. Even initially the laws of 1970s refrained a wife to live with her husband for several years for not indulging and being a victim of marital rape. Several states were still involved in making differences amongst marital and non- marital rape, the only states that did not made any distinction were Colorado, Delaware, Florida, Georgia, New Jersey, New Mexico, etc. *Oregon v. Rideout*<sup>13</sup> was the first case filed in the U.S.A. in 1978 challenging cohabitation. In this case John Rideout was accused of raping her wife Greta Rideout, he was the first person in U.S.A. to be charged with marital rape. By 1993 marital rape was criminalized in all 50 states.

**United Kingdom-** Under U.K. law marital rape is a form of sexual assault. The law states the definition of marital rape as “an individual commits a sexual intercourse without the consent of their spouse, or ex-spouse, or against their will”. Lord Mathew Hale stated that under Common Law a husband could not be convicted of raping his wife, and until 1949 this rule was widely accepted that no husband can be punished on that ground that he had raped his

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<sup>13</sup> Schiff AF. State of Oregon v. Rideout--can husband rape wife? Medical Trial Technique Quarterly.;26(1):49-56(India).

wife. In 1949 it was the first time when the law evolved with the case of *R v. Clarke*<sup>14</sup>, the case was extremely important with the virtue of its fact changing course of law. In this case the facts were that the husband was convicted for forceful sexual intercourse with her wife during the period when they were living apart under Judicial Separation. The court said that under such circumstances the wife's consent to have sex is must. This case made an effort to bring out the interpretation that whether the consent is the matter of fact in the situation like Judicial separation, or also when the husband and wife are in fact separated. U.K. 1991 stated a new or modified definition of Rape by removing the exception of marital rape.

Except United States of America, and United Kingdom there are several other countries such as Nepal, South Africa who have got success in criminalizing Marital Rape, and on the other side women of India despite being the citizen of the largest democracy in the World are still fighting against marital rape. Marriage is a sacrament and to maintain it as same such inhumane crimes of rape should be criminalize, so that the dignity and sexual autonomy of spouse is maintained. Rape is Rape and consent is consent no matter one is married or unmarried. Now society needs to recognize the Women's Right to say NO. Here we would like to quote the words of Justice Verma that – “The achievement of empowerment and equality of women has to be necessarily a conjoint effort of individual and state.” It is the high time so, let's not romanticize the idea of marriage to the extent of overlooking the matters of grave concerns, and let marriages not turn into a state sanctioned license to rape women and take away their sexual autonomy.

## Reports

- **ICRW and UNPFA-** The International Centre for Women (ICRW) and United Nations Population Fund's (UNPFA) conducted a study in some states of India such as Punjab, Haryana, Uttar Pradesh, Rajasthan, Gujarat, Maharashtra, Madhya Pradesh and Odisha regarding societal expectations of masculinity, son preference and the impact on violence against women. The data mainly focused on sexual violence within relationships. The study covered around 9,000 men and 3,200 women. The main questions focused were<sup>15</sup>-

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<sup>14</sup>R v. Clarke, HCA 47, 40 CLR 227(1927).

<sup>15</sup>Rukmini S., Marital rape: the numbers don't lie, The Hindu, (November 11, 2014) , <https://www.thehindu.com/data/statistics-on-marital-rape/article6586829.ece>



1. Forced wife to have sex with you when she did not want to
2. Had sex with your wife when you knew she didn't want it, but you believed she should agree because she was your wife
3. Forced your wife to watch pornography when she didn't want to
4. Forced wife to do something sexual that she didn't want to

The report stated that every third men in the states admitted to have forced sexual intercourse with their wives without their consent at some point in their lives.

- **NFHS-** The data from the National Family Health Survey (NFHS-4) should have prompted the Centre to reconsider its stance on the issue of forced sexual intercourse within marriage. According to the NFHS-4, 31% of married women—almost one in three—have experienced physical, sexual, or emotional violence at the hands of their spouses. Although the percentage of married women enduring physical and sexual violence from their husbands has decreased from 37% in 2005-06 to 29% in 2015-16, the figure remains alarmingly high.<sup>16</sup>
- **United Nations-**A 2017 United Nations study revealed that about 60% of women who are victims of intentional homicide were killed by a family member, with an estimated 137 women losing their lives each day due to such violence. The report also highlighted that every six hours; a newlywed woman is either burned or beaten to death. Additionally, one in five women globally, aged 15 to 49, has experienced physical or sexual abuse from a current or former partner. The report described violence against women as "serious and widespread." While marital rape is considered a crime in many countries, including the United States, Nepal, Britain, and South Africa, this is not the case in much of Asia, where activists are advocating for legal reforms.
- **181 ABHAYAM-** Data from 181 Abhayam reveals that marital rape is far from uncommon, with around 25% of domestic violence calls involving sexual violence. However, authorities at the women's complaint redressal service note that many callers are reluctant to discuss their situation openly. Roma Jamshed, the project head for 181

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<sup>16</sup> National Family Health Survey(2015-2016)

Abhayam, explained that most women don't perceive it as wrong when their husbands demand sex. "When we inform them that they have the right to consent or refuse, the response we often hear is, 'pati ki baat manni padti hain na,'" Jamshed added. She emphasized that societal norms dictate that women should be submissive and not voice complaints, while men are often granted full control over their wives' sexual autonomy. Legally, if a wife is over 16 years old, forced intercourse is not considered a criminal offense, Jamshed pointed out.<sup>17</sup>

### **Suggestive Measures-**

- Exception given under section 375 of IPC with regard to marital rape should be removed.
- Marital Rape should be criminalized as Penal Offence under the Criminal Law because the legislature, in drafting the Bharatiya Nyaya Sanhita (BNS), has notably failed to address the critical issue of marital rape, leaving a significant gap in the protection of individual rights within the sanctity of marriage. The IPC was quoted to be a colonial law so while curbing the colonial mindset one very major issue of marital rape is still left unaddressed.
- Laws must be framed by taking into consideration gender neutrality.
- Divorce of grounds must include marital rape as an independent ground for divorce. So, that wife has an independent option of getting decree of divorce after allegations of marital rape are proved against husband.
- The punishment of Marital Rape should be similar to Rape and it should not be light in nature merely due to relation of Marriage.
- Society should be made aware of existence of marital rape by writing on the issue of Marital Rape and discussing on it.
- Women must be empowered to raise their voice against such crime taking place behind closed doors.

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<sup>17</sup>The Times of India , 25% of helpline calls about marital rape,(April 5, 2015)

These are some suggestions that we would like to add on for the evolution of Indian Criminal Laws and eradication of existing loopholes in the same. Along with this society should be addressed with certain awareness campaigns regarding protection of women against the patriarchal crime that are accompanied the sanction and fear of society.

## **Conclusion**

India is on a path of development, embracing modern lifestyles to align with global standards and compete with other advanced nations. While we are rapidly advancing and accepting changes, there remains a critical issue that has not evolved—the societal mentality towards women. Despite the progress, Indian society continues to discriminate against women, imposing restrictions and teaching them to live as subordinates to their husbands. Although our legal system offers protections against discrimination, it falls short in recognizing and addressing the issue of marital rape.

Marital rape is a harsh reality that society must confront by shedding patriarchal norms and critically examining its impact. Marriage is more than just an institution; it is a union of two individuals bound by trust, love, and shared expectations. While sexual relations are a vital part of marriage, they must be consensual and free from coercion. When force or violence is used to compel sexual intercourse, it violates the marital bond and the dignity of the wife. This forced act not only shatters her dignity but also erodes the emotional connection she has with her partner, with whom she shares a sacred bond. A woman enters marriage willingly, but this does not grant her husband unrestricted rights over her body.

Although Indian law theoretically empowers women to seek legal recourse against sexual, physical, and mental abuse by their husbands, it remains silent on the issue of marital rape, effectively granting husbands immunity for forced sex within marriage. This immunity is based on the flawed reasoning that the act was committed within a marital relationship, thereby denying the victim fair justice and violating her basic human rights.

Currently, India is one of 36 countries that do not criminalize marital rape. Considering the severe consequences of marital rape, such as anxiety, depression, and trauma, there is growing pressure for legal reforms. Social activists, feminists, human rights advocates, and various organizations are raising their voices against this societal ill. As India progresses, it must address these legal gaps that hinder justice and call for the protection of human rights. Our

fundamental rights must be safeguarded, which can only be achieved by criminalizing marital rape and subjecting offenders to the same penalties as those imposed under the Indian Penal Code (IPC) for rape, thereby eliminating the exception in Section 375 of the IPC.

India can overcome this challenge by changing societal attitudes and fostering a mindset that treats all genders equally, with no bias in the definition of equality. The debate over marital rape must end by penalizing the perpetrator, regardless of marital ties with the victim. While marriage is a sacred bond, it is preserved only when both spouses are free from coercion. We must move beyond outdated notions and recognize husband and wife as independent entities. India must win this fight by striking down the marital rape exception in the IPC, as consent is paramount, and rape remains a crime regardless of marital status.

In light of the above, we propose the following changes: first, criminalize marital rape; second, eliminate marriage as a defense for the accused; and third, ensure that those accused of marital rape receive the same penalties as those for rape under the IPC.