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MARITAL RAPE: A NON-CRIMINALIZED CRIME IN INDIA- Divya Singh¹**ABSTRACT**

In India, marriage is considered as a sacred relationship between spouses built on the basic foundations of trust and consent. It is said that in a marriage the couple vows to keep each other happy, to support, respect and treat each other equally. But the Indian patriarchal system doesn't treat women as equal to men. The society presumes that women are subservient to men and thus can be treated as per the whim and fancy of their husbands. In a marriage, women are meted out to various forms of violence and marital rape is one such heart-wrenching crime negating the concept of equality and consent. The term "marital rape" refers to rape committed by the victim's spouse. The Indian Legal System excludes from its ambit rape committed by a husband with his wife, wife being more than 15 years of age. Exception 2 of Section 375 IPC shields these criminals from being punished for this heinous crime.

This paper attempts to peruse the concept of marital rape and the justifications given in its support. It further explores the evolution of the marital rape exception clause along with its current status and sheds light on the legal position of marital rape in India. Stating the types and effects of this heinous crime on women, it concludes in support of the criminalization of marital rape exception clause by suggesting amendments to the criminal law for penalizing this atrocious crime.

Keywords

Marital rape, criminalization, marital exemption, consent

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INTRODUCTION

“The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.”²

- Lord Matthew Hale

Indian society has a patriarchal structure where women are treated as chattels and numerous horrifying crimes scarring their dignity and piercing their soul are committed on a daily basis.³ One such crime sheltered by the India Legislative system is marital rape. It refers to "unwanted sexual intercourse committed by a man with his wife through force, threat of force, or physical violence, or when she is unable to consent." It is a non-consensual act of violent perversion committed by a husband against his wife in which she is physically and sexually abused.⁴ Exception 2 of Section 375 of Indian Penal Code, 1860 states- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.⁵ It gives immunity to a man having forceful sexual intercourse with his wife, when she is not below fifteen years of age. The basis of this exception is to protect the institution of marriage which appears to be arbitrary in nature as this is a despicable crime that disrupts the basic pillars of trust, confidence and respect in the institution of marriage. The non-criminalization of this offence has disproportionately impacted women.

Although many countries have criminalised marital rape, India is one among those 36 countries which hasn't penalised this atrocious crime yet. India along with other 35 countries base its philosophy for non-criminalization of marital rape on the grounds of implied consent, potential for misuse and excessive interference with marital relationship.⁶ It is presumed that after marriage there is an irrevocable consent between the husband and the wife leaving no ground for the wife to seek remedy for this shameful act committed upon her. Further, it is said that criminalisation of marital rape would lead to interference in the matrimonial relationship between the husband and the wife and would further tarnish the

²1 MATTHEW HALE, THE HISTORY OF PLEAS OF THE CROWN (SollomEmlyn 1736).

³BasantaNirola, *Patriarchy and the status of women in the society*, YKA (Jan. 4, 2022, 12:36 AM), <https://www.youthkiawaaz.com/2017/12/role-of-patriarchy-and-status-of-women-in-indian-society/>.

⁴NEWS 18, <https://www.news18.com/news/india/complete-absence-of-motive-weighs-in-favour-of-accused-says-acquitting-a-man-sentenced-to-life-over-murder-4815707.html>. (last visited Jan. 4, 2022).

⁵INDIAN PENAL CODE, 1860, Exception 2 of S. 376(3), No. 45, Acts of Parliament, 1860 (India).

⁶Rebecca M. Ryan, *The sex right: A legal history of the marital rape exemption*, 20 LAW SOC INQ 941, 944 (1995).

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sanctity of marriage.⁷ Criminalization of marital rape is further looked upon as a tool for misuse by the women as there are no grounds which proves the innocence of the husbands when they are falsely implicated.

HISTORICAL EVOLUTION OF MARITAL RAPE EXCEPTION AND ITS STATUS TODAY

In 1860, when the IPC was being drafted, married women were not accorded equal rights as compared to their partner. India being a colony of the British, all the laws enacted during the British colonial rule were deeply persuaded by Victorian norms.⁸ One such law was the marital exception clause which did not punish a husband who committed rape with his own wife, wife not being less than 10 years of age. This marital exception clause was drafted based on the Victorian patriarchal norms that neither gave equal rights to men and women nor allowed married women to own property.

In 1890, a brutal incident took place in the Eastern region of India. PhulmoniDasi, an 11 years old girl died on the first night after her marriage to a 30-year-old man called Hari Mohan Mait.⁹ The cause of her death was excessive bleeding due to ruptured vagina. Her husband was charged under sections 304, 304A, 325 and 338 IPC.¹⁰ The accused was convicted under Section 338 and sentenced to 1 year imprisonment and was acquitted from the other three charges. The jury stated that as his minor wife was of legal age and wedded to her husband, this case fell under Exception 2 of Section 375 IPC and hence cannot be treated as rape.

After this flawed judgement, the judiciary was mocked upon as incompetent to deliver justice and triggered concerns regarding the age to give consent.¹¹ The then Viceroy of India, Lord Lansdowne, introduced the "Age of Consent Bill"¹² before the Council of India on January 9, 1891. The bill attempted to amend Section 376 of the Indian Penal Code (IPC), which had previously set the age of consent at ten years in 1860. After the bill was ratified on March 29,

⁷RaveenaRaoKallakuru and PradyumnaSoni, *Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact*, 11 NUJS L REV, (2018).

⁸SarthakMakkar, *Marital Rape- a non-criminalized crime*, 34 HARV. HUM. RIGHTS J., (2021).

⁹THE DAILY STAR, <https://www.thedailystar.net/opinion/news/rape-child-bride-laws-locked-time-warp-1996057>. (last visited Jan. 5, 2022)

¹⁰ Ibid

¹¹THE ASIA DIALOGUE, <https://theasiadialogue.com/2020/03/08/marital-rape-no-excuse-for-the-inexcusable/> (last visited Jan. 6, 2022).

¹² Age of Consent Bill, 1891

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1891, Section 376 defined rape as having sex with a girl under the age of 12, even if the person is the perpetrator's wife.¹³ Furthermore, the age to give consent was extended to 13 years in 1925 and 15 years in 1949 and it has stayed unchanged since.

The 42nd Law Commission Report was the first report to deal with the issue of marital rape. It called for two main recommendations. Firstly, in case of judicial separation, the husband would have no legal protection if he committed the offence of raping his wife.¹⁴ This suggestion although praiseworthy excluded from within its ambit rape committed by the husband upon his wife when the spouses are living together. Secondly, it put forward the need to exclude marital rape from the scope of Section 375 of the Indian Penal Code, emphasising that it should not even be referred to as "rape" in the technical sense.¹⁵ By suggesting to exclude marital rape from Section 375 IPC, it emphasized the reluctance of the commission to consider marital rape as equal to rape and thus elucidating that the former is a less serious offence.¹⁶

Thereafter, came the 84th Law commission report which advocated similar suggestions in terms of marital rape as compared to 42nd Law commission report. The only change advocated was to raise the age of implied consent in case of a married woman to 18 years which wasn't adopted into the Indian Penal Code.¹⁷

In March 2000, the Law Commission of India issued its 172nd report¹⁸ guided by the Supreme Court in a PIL filed by a non-governmental organisation. The law commission in the very first place was faced with the constitutional validity of the marital clause exception. The argument put forth for the same was when a husband causes some physical injury to his wife, he should be punishable under the appropriate offence and the fact that he is the husband of the victim

¹³HISTORY OF YESTERDAY, <https://historyofyesterday.com/a-10-year-old-was-raped-to-death-on-her-wedding-night-by-her-30-years-old-husband-cc7c190a80de> (last visited Jan. 8, 2022)

¹⁴Law Commission of India, Indian Penal Code, Report No.42, 2, (June 1971), available at <https://lawcommissionofindia.nic.in/1-50/Report42.pdf> (Last visited on January 9, 2022).

¹⁵ Ibid

¹⁶ Id

¹⁷Law Commission of India, Eighty-fourth report on Rape and Allied offences: Some questions of substantive law, procedure and evidence, Report No. 84, (1980),<https://lawcommissionofindia.nic.in/51-100/report84.pdf>. (Last visited on January 9, 2022).

¹⁸Law Commission of India, One hundred and seventy second report on review of rape laws, Report No.172, (March 2000), available at https://lawcommissionofindia.nic.in/old_reports/rpt172.pdf. (Last visited on January 10, 2022).

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should not be an extenuating circumstance recognised by law.¹⁹ However, the law commission did not agree and recommend the same as it was of the view that deletion of this exception clause would amount to excessive interference with the marital relationship.

On December 23, 2012, a three-member Committee chaired by Justice J.S. Verma, former Chief Justice of the Supreme Court, was formed to recommend changes to the Criminal Code that would allow for faster trials and harsher punishment for criminals accused of sexual assault against women.²⁰ One such suggestion was to criminalise marital rape. In this regard, the committee made two recommendations. First, it proposed removing the exception for marital rape. Second, it stated that a marital relationship between the perpetrator or victim is not a valid defence against rape or sexual violation crimes, and that the fact that the accused and victim are married may not be regarded as a mitigating factor justifying lower rape sentences.²¹ The committee took into consideration the judgments of various countries while making recommendations. It relied on the judgment of the European Commission of Human Rights in the case of *C.R. v UK*²² which concluded that “a rapist remains a rapist regardless of his relationship with the victim”. Further, it relied on the judgement given by the Canadian Supreme Court in the case of *R v. J.A.*²³ which highlighted that the nature of the inquiry into whether the complainant agreed to the sexual activity is unaffected by the accused's relationship with the complainant. The perpetrator cannot claim that the complainant's consent was implied by the accused and complainant's relation.

Later, this issue was raised in 2014 when DMK MP Kanimozhi, proposed a Private Member Bill suggesting amendments to criminal law by eliminating the marital rape exemption clause but it got rejected.²⁴ The denial was based on two reasons: firstly; “marriage is treated as a sacrament” secondly; “the matter is already under consideration by law commission and no decision will be taken before the report is out”.²⁵

In January 2018, congress MP Dr. ShashiTharoor introduced “The Women’s Sexual, Reproductive

¹⁹ Ibid

²⁰ Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law (January 23, 2013).

²¹ Ibid

²²(1992) 1A.C.599

²³[2011] 2 SCR 40

²⁴VageshwariDeswal, *Marital Rape: Ubiquitous yet obscure*, TIMES OF INDIA (Jan. 12, 2022, 10:00 AM), <https://timesofindia.indiatimes.com/blogs/legally-speaking/marital-rape-ubiquitous-yet-obscure/>.

²⁵Tanish Gupta, *Marital Rape as a ground for divorce*, 4 INT. J. LAW MANAG 793, 796-797 (2021).

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and Menstrual Rights Bill".²⁶ The bill embodied a proposal attempting to criminalise marital rape and grant women "inherent right" to their sexual and reproductive choices. The bill attempted to do away with the exception clause. It was stated that when a woman marries a man, she loses her sexual liberty. Women's autonomy must be rightly restored by giving them control over their sexual and reproductive rights. To prevent the loss of a woman's sexual independence after marriage, marital rape must be deemed illegal."²⁷ However, the bill lapsed after failing to garner support from the elected administration.²⁸

As a result, up until now the state had taken a firm stance against the criminalization of marital rape. They had also requested the court to avoid judicial overreach and not interfere with the legislature's ability to make legislation. But recently, a judicial debate concerning the constitutionality of Section 375, IPC, Exception 2 was initiated by a batch of petitions filed in the Delhi High Court. As a result, the Centre has agreed to engage in a consultative process and reassess its position on the issue of marital rape. It is the case of RTI Foundation v Union of India²⁹ where the petitioners include the RTI foundation, the All-India Democratic Women's Association (AIDWA), and a marital rape survivor.³⁰ The NGO, RTI Foundation first petitioned the Delhi High Court in 2015, challenging the legality of the "marriage exception."

Following the Supreme Court's decision in 2017 that the marriage exception does not apply if the wife is under the age of 18, petitions were filed by the All-India Democratic Women's Association (AIDWA) as well as three individual petitioners, one of whom is a victim of domestic and sexual violence.³¹

The issue is currently being heard by the bench of Justice Rajiv Shakti and Justice C. Hari Shankar. The petitioners argued that the marital exception is unconstitutional and violates

²⁶ Dr. Shashi Tharoor, The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018, Bill No. 255, (2018), available at <https://164.100.47.4/billtexts/1sbilltexts/asintroduced/2271as.pdf>. (Last visited on January 12, 2022).

²⁷ Shemin Joy, *Make marital a crime: Tharoor's Bill in Parliament*, DECCAN HERALD (Jan. 13, 2022, 9:30 PM), <https://www.deccanherald.com/national/make-marital-rape-a-crime-tharoor-bill-in-parliament-710844.html>.

²⁸ Prem Chowdhry, *Time to define the law on marital rape*, TRIBUNE INDIA (Jan. 14, 2022, 7:00 PM), <https://www.tribuneindia.com/news/comment/time-to-define-the-law-on-marital-rape-325943>.

²⁹ Writ Petition (Civil) 284 of 2015

³⁰ Akshita Saxena, *Marital Rape- Striking off exception to S. 375 IPC won't amount to court creating a new offence: Amicus to Delhi HC*, LIVE LAW (Jan. 14, 2022, 10:30 PM), <https://www.livelaw.in/top-stories/marital-rape-delhi-high-court-section375ipc-delhihc-189785>.

³¹ Anesha Mathur, *Marital Rape: Legal issues and debate*, INDIA TODAY (Jan. 20, 2022, 9:45 AM), <https://www.indiatoday.in/law/story/explainer-the-debate-over-marital-rape-1903050-2022-01-22>.

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married women's constitutional rights under Articles 14, 15, 19, and 21.³²

In addition, the Men's Welfare Trust has intervened in the lawsuit opposing the petition and alleging that under various legislation, a married woman has been provided special status that entitles her to maintenance, alimony, and other such remedies.³³ Therefore, the need to criminalize marital rape doesn't arise.

The Delhi government has also claimed that a woman who has been subjected to sexual abuse by her husband has various other criminal remedies, and that amending the IPC section is unnecessary.³⁴ It stated that "as to what constitutes marital rape and what would constitute marital non-rape needs to be defined precisely before a view on its criminalization is taken," and that "Apart from being an easy weapon for harassing husbands, it may destabilise the institution of marriage."³⁵

While the hearing of the RTI Foundation's PIL is still ongoing, it would be fascinating to witness the proceedings before the Hon'ble High Court of Delhi, which will go down in history as a watershed moment in India's recognition of women's rights.³⁶

EFFECTS OF MARITAL RAPE

Contrary to the general belief, marital rape has long term implications on the victim. It scares not only the body of the victim but also her soul, shattering it into millions of pieces over and over again. Marital rape has numerous emotional, physical and psychological impacts on the victim.³⁷

The psychological impacts include self-guilt, depression, lower self-esteem, self-hatred, hatred towards opposite gender, improper diet, lack of sleep, bad eating habits, PTSD, fear of intimate relationship and rape trauma syndrome. Rape trauma syndrome (RTS) is a type of PTSD that affects victims of rape (PTSD). In this, victims of sexual assault exhibit predictable and consistent behaviours, thoughts, and feelings.³⁸ Sexual assault victims may feel one, some, or

³² Ibid

³³ Id

³⁴ THE INDIAN EXPRESS, <https://indianexpress.com/article/cities/delhi/criminalise-marital-rape-should-not-allow-absurdity-prevail-delhi-high-court-7732240/>. (last visited Jan. 20, 2022).

³⁵ Ibid

³⁶ Dr. Ramesh Kumar & Vinayaka Raina, *Societal issues relating to marital rape in India: An overview*, 32(3) Turk. J. Physiother. Rehabil. 10835, 10850 (2022).

³⁷ Janelle N. Robinson, *Marital Rape perception and impact of force*, CUNY ACADEMIC WORKS (Jan. 20, 2022, 8:30 PM), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1014&context=jj_etds

³⁷ Ibid

³⁸ Ariane Resnick, *What is Rape Trauma Syndrome?*, VERY WELL MIND (Jan. 20, 2022, 10:00 PM), <https://www.verywellmind.com/what-is-rape-trauma-syndrome-5199374>

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all of the RTS symptoms, which can last for months or years after the rape or assault. In the days, weeks, and months following a traumatic experience, a set of feelings, thoughts, and behaviours emerge.³⁹ Anxiety, mood swings, shame, nightmares, withdrawal, and disorientation are some of the most exhibited symptoms of RTS.⁴⁰

The most traumatizing truth about marital rape is that it is not even looked upon as an offence. The lawmakers need to understand that forced sexual intercourse resulting in physical injury is not the only form of rape but sexual intercourse under the pretext of threat is also a form of rape. In the case of *RTI Foundation v Union of India*,⁴¹ the court stated that: “Force is not a precondition for rape. A man can put his wife under financial duress to force her to have sex. It further stated that marriage does not always imply that the wife consents to physical relations with her husband.⁴²” These incidents have a negative impact on the mental well-being of the victim thereby causing psychological trauma.

Marital rape has severe physical impacts. Painful intercourse, vaginal pain during intercourse, bruising, bladder infections, vaginal haemorrhage, menstrual cycle delays, miscarriages, stillbirths, and sexually transmitted infections are all occurrences of this offence.⁴³

Thus, there are a lot of negative impacts on the physical and mental well-being of women when they are raped by their spouses and still have to live under the same roof as them. It scares them for lifetime and non-criminalisation of such a disgraceful offence forces women to accept such inhuman treatment as their fate and submit themselves to the desires of their husbands.

LEGAL POSITION OF MARITAL RAPE IN INDIA

Marital rape has yet not been criminalized in India. Perpetrators of this immoral act, commit this heinous crime in the garb of implied consent due to matrimonial relationship and roam scot free. Section 375 IPC, 1860 mentions marital rape as an exception. It reads:

“Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”⁴⁴

Marital rape is considered as rape and is penalised either when the wife is below 15 years of age

³⁹ Ibid

⁴⁰ Id

⁴¹ Supra Note 28

⁴² Manasvita Tejsi & Mridull Thaplu, *Marital Rape: Need for its Criminalisation in India*, 2.1 VSLR 242, 247 (2020).

⁴³ Supra Note 36

⁴⁴ INDIAN PENAL CODE, 1860, S. 375, No. 45, Acts of parliament, 1860 (India).

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or in cases where the spouses have been judicially separated and the husband commits the offence of raping his wife. However, the Indian Penal Code, 1860 does not provide any security or remedy in cases where the wife is above 15 years of age.

According to Section 376AB, IPC⁴⁵, when the wife is below 12 years of age, the offence is punishable with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life imprisonment with fine or death penalty. As per Section 376(3), IPC⁴⁶, when the wife is between 12 to 16 years of age, the offence is punishable with rigorous imprisonment for not less than twenty years, but which may extend to imprisonment for life, and shall also be liable to fine and Section 376B, IPC⁴⁷, punishes the spouse(husband) for raping his judicially separated wife with imprisonment for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

So far, the only remedy available to women is under Section 498A of Indian Penal Code, 1860 which talks about cruelty meted out to women by her husband or his relative. Such offenders are punished with imprisonment for a term which may extend to three years and fine.⁴⁸

JUDICIAL PRONOUNCEMENTS

1) Independent Thought v Union of India⁴⁹

Sexual intercourse with a girl below 18 years is rape regardless of whether she is married or not. The exception carved out in IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child.

2) Nimeshbhai Bharatbhai Desai v State of Gujarat⁵⁰

While examining the laws related to sexual offences, it was noted that husbands need to be reminded that marriage is not a licence to rape their wives. By virtue of marriage, a husband does not own his wife's body, and she does not become an object of ownership in any way. She does not give up her human right to exclusive autonomy over her own body by marrying, and

⁴⁵ INDIAN PENAL CODE, 1860, S. 376AB, No. 45, Acts of Parliament, 1860 (India).

⁴⁶ INDIAN PENAL CODE, 1860, S. 376(3), No. 45, Acts of Parliament, 1860 (India).

⁴⁷ INDIAN PENAL CODE, 1860, S. 376B, No. 45, Acts of Parliament, 1860 (India).

⁴⁸ Sangamithra Loganathan, *Marital Rape*, LEGAL SERVICES INDIA (Jan. 21, 2022, 11:48 AM), <https://www.legalservicesindia.com/article/2369/Marital-Rape.html>.

⁴⁹ (2017) 10 SCC 800

⁵⁰ 2018 SCC OnLineGuj 732

she is therefore perfectly within her rights to give or withhold her permission to marital coitus at any time. Marital rape is a heinous crime that has entirely shattered people's trust and belief in the institution of marriage.

3) Bodhisattwa Gautam v. Subhra Chakraborty⁵¹

Rape is a crime not only against a woman, but also against society as a whole. It devastates a woman's entire psychology and sends her into a serious emotional crisis. It is a crime against basic human rights and a violation of right to life, which includes the right to live with human dignity under Article 21.

4) State of Haryana v. Janak Singh⁵²

Rape is an affront to womanhood. It violates a woman's dignity, diminishes her honour, dwarfs her personality and undermines her self-esteem. It is a violation of her right to life as guaranteed by Article 21 of the Indian Constitution.

5) State of Punjab v. Ramdev Singh⁵³

Sexual violence is an illegal invasion on the right to privacy and sanctity of a female. It is a serious affront to her supreme honour, as well as an insult to her self-esteem and dignity. It degrades and humiliates the victim, destroys a woman's entire psychology, and sends her into a deep emotional crisis.

KINDS OF MARITAL RAPE

The following three kinds of marital rape, generally prevalent in the society;

* Battering rape: Women in this type of marital rape are subjected to physical and sexual violence in a variety of ways. Some cases involve the wife being battered during the sexual violence, or the rape occurring after a physical violent episode in which the husband wants to make amends and coerces his wife to have sex against her will.⁵⁴

⁵¹ (1996) 1 SCC 490

⁵² (2013) 9 SCC 431

⁵³ (2004) 1 SCC 421

⁵⁴ Nimeshbhai Bharatbhai v State of Gujarat, 2018 SCC OnLineGuj 732.

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* Force only rape: Husbands employ only as much force as is necessary to coerce their women in this sort of marital rape. Battering may not be a trait in such instances, and women who refuse sexual intercourse are more likely to be assaulted.⁵⁵

* Obsessive rape: Assaults involving horrific torture and/or deviant sexual practises are the most typical form of obsessive rape. Sadistic rape is another term for this form of rape.⁵⁶

SUGGESTIONS

Following changes should be made in order to eradicate this menace of marital rape:

- 1) Marital rape should be penalised under Indian Penal Code, 1860.
- 2) Gender neutral laws should be enacted in order to prevent women from misusing the law.
- 3) The marital rape exception clause should be deleted and marital rape should be treated at par with the offence of rape. Hence, it should be covered under S. 376, IPC, 1860 imposing similar punishments to either of the offences.
- 4) Women must be educated to raise their voices against this atrocious crime rather than submitting to it due to societal pressure.
- 5) Marital rape should be made a valid ground for divorce under all personal laws.⁵⁷

[In a hearing for an appeal of a husband against divorce, the Hon'ble Kerala High Court in 2021 held that: "Marital rape is a valid reason for divorce. If the law does not recognise marital rape as a criminal offence, that does not prevent the court from recognising it as a form of cruelty for granting divorce. The court went on to say that treating a wife's body as though it belonged to her husband and performing sexual acts against her will constitute marital rape."⁵⁸

CONCLUSION

"It is time to jettison the notion of implied consent in marriage. The law must uphold the bodily autonomy of all women, irrespective of their marital status."

-J.B. Pardiwala, J.

⁵⁵ Ibid

⁵⁶ Id

⁵⁷ Supra Note 17

⁵⁸Shaju Philip, Marital rape a good ground to claim divorce, says Kerala HC, INDIAN EXPRESS (Jan. 22, 2022, 12:4 PM), <https://indianexpress.com/article/india/marital-rape-a-good-ground-to-claim-divorce-says-kerala-hc-7442347/>.

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Despite the fact that India is expanding in all spheres and establishing itself on a global scale, the laws that govern the Indian people are outdated. The laws fail to provide adequate protection for women, and as previously stated, women are still treated as the property of their husbands, with full rights to exploit her and no recourse available to her. Although, a wife may bring a criminal assault or matrimonial relief action against her husband's non-consensual act of sexual intercourse, the need of the hour is the incorporation of the principle of marital rape liability into our penal laws.⁵⁹ All wives, not just child brides, require legal protection from rape within the marriage. It is high time that the dignity and freedom of a woman over her body and person must be recognized.

It has to be understood that a wife is not a chattel and a husband having sexual intercourse with his wife is not merely using a property, he is fulfilling a marital duty with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing his wife to engage in a sexual act without her full and free consent. Total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanized treatment of women will not be tolerated and that the marital rape is not a husband's privilege, but rather a violent act and an injustice that must be criminalized.⁶⁰

⁵⁹ShambhaviPandey, *Marital Rape: A crime, not criminalised*, 1 IJLMH 1, 6 (2018).

⁶⁰Supra Note 53