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**MARITAL RAPE- AN UNRECOGNISED CRIME**- Sakshi Saxena & Tanisha Gawde<sup>1</sup>**Abstract**

Marital rape which is an exception to the crime of rape in India is a topic that attracts lots of debate over its legality. Some reasoning is culture and moral based reasoning that seek to protect the exception of marital rape whereas on other hand some arguments are legal based that rationally protest the existence of this exception. Marital rape is product of India's old cultural beliefs and values that despite suppressing constitutional and legal right of a woman is openly welcomed in penal statute as an exception. Law is not a rule of thumb, its existence is the result of critical and relevant reasoning, therefore this paper besides counting on every legal and constitutional reasoning, also discuss in systematic manner about the history of marital rape as an exception, the effectiveness of current legal provisions for relief from sexual abuse in domestic life, international standing on marital rape and problems that India is presently facing in criminalizing marital rape, to reach to a point that how exception of marital is bad in eyes of laws and why it should be scraped out.

Keyword- Marital Rape, Legal Wrong, Constitutional Wrong.

**Introduction**

Whenever a particular provision of a statute is interpreted, the focus is essentially drawn on the objective with which the legislature has framed it. It is the understanding of such an objective that leads to its effective enforcement. When Section 375 which talks of rape was inserted in the Indian penal code 1860<sup>2</sup> (hereafter referred to as code). The primary objective of the law framer was to protect dignity of a woman, importance of her consent, her willingness, and her decision to indulge in any of the sexual acts so as to protect her from draconian act by men. Rape is a traumatic experience that shatters a woman not only in physical but also in mental capacity<sup>3</sup>.

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<sup>2</sup> The Indian Penal Code 1860, sec 375, No.45, Acts of Parliament,1860(India).

<sup>3</sup> Anirudh Pratap Singh, The impunity of marital rape, Indian Express, (Dec.20,2020,10:37:09 PM IST), <<https://indianexpress.com/article/opinion/columns/the-impunity-of-marital-rape/>>.

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The rape law in India protects a woman not only from being seen as a sexual object whose consent is insignificant for men but also strives to punish such men who dare to encroach the boundaries set by such law. The direction in which the legislature has moved forward till here is highly appreciable but there are some lacunas that exist in the provision of Sec 375 of the code that demolishes the entire objective of the legislature. A crime is a crime and a criminal is a criminal and no stamp of relationship can wrong this saying. The Exception 2 of Section 375 of the code which says “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*”<sup>4</sup>, is a flawed exception that represses the whole objective with which a sexual activity with a woman against her will or consent was criminalized. Whenever a crime is committed the court sees two important principles behind it one is **Mens Rea** which means ‘guilty mind’ and another one is **Actus Reus** which means ‘wrongful act’<sup>5</sup>. Rape is not solely product of sexual desires but many times in fact more than the first reason, it is product of ego and desire to prove one’s masculinity<sup>6</sup>. Here the wrong objective (guilty mind) is to forcefully get involved into sexual intercourse with a woman without her will and the actus reus is manifesting the wrong mental object of getting into forceful sexual relationship with a woman. Now here the point to be understood dispassionately is that whether such wrong intent that occurs in mind and is executed by a man who is not a husband or a man who is a husband is equally wrong, and is wrong in the same way if the same man whether married or not would have committed any other grievous offences under The Code<sup>7</sup>. Rape is a serious offence in eyes of law and should bear no room for such exceptions that not only go against the basic principles of law of rape but also the basic fundamentals of Constitution that guarantees right to equality and rights to live life with dignity, liberty and freedom<sup>8</sup>.

Back to the time of 1860 when The Indian Penal Code was enforced, India was a colony of British Empire and laws made at that time were highly influenced by Victorian norms<sup>9</sup>. This

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<sup>4</sup> Id. at 1.

<sup>5</sup> Prof.T. Bhattacharyya, The Indian Penal Code 36,39, (10th ed.2019).

<sup>6</sup>Rasheeda Bhagat, The rape is about power and not lust, Business Line The Hindu,(Mar.12,2018),<<https://www.thehindubusinessline.com/opinion/columns/rasheeda-bhagat/rape-is-about-power-not-lust/article20544411.ece1>>.

<sup>7</sup> Krishnadas Raj Gopal, Court continue to differ in views on Marital Rape, The Hindu,(Aug.14,2021,14:49 IST), <<https://www.thehindu.com/news/national/courts-continue-to-differ-in-views-on-marital-rape/article35909828.ece>>.

<sup>8</sup>Sarthak Makkar, Marital Rape A Non-criminalized crime in India,34, Harvard Human Right Journal (HHRJ),2021.

<sup>9</sup>Id.

exception 2 of Sec 375 is also one of the end results of the Victorian patriarchal norm where after marriage the identity of a woman was merged with that of her husband. This principle is called 'Doctrine of coverture' where after marriage women and men were not considered as equal, right to own a property was lost and identity of women was merged with that of husband<sup>10</sup>. Unfortunately, India even after seventy-four years of independence supports such laws irrespective of its contravention with basic fundamental rights of equality and right to life provided by the Indian Constitution. Exception 2 of Sec 375 has completely side lined the individuality of a wife's consent and has given husband an upper hand which is against Article 14 of the Indian Constitution which talks about equality before law. Here sexual miseries of a married woman are not being given its due validation. Firstly, consent of husband does not mean consent of wife<sup>11</sup> and secondly the plight of sexual torture does not change with marital status<sup>12</sup>. The institution of marriage cannot give complete autonomy in the hands of man to decide the course of sexual life. This violates the right to equality enshrined in Article 14. Supreme Court in a plethora of cases such as State of Karnataka v. Krishanappa<sup>13</sup>, Suchita Srivastava v. Chandigarh Administration<sup>14</sup> and Justice K.S. Puttuswamy (Retd.) v. Union of India<sup>15</sup> have held that the inhumane act of rape is grave violation of right to live human life with human dignity but unfortunately violation of the same above mentioned right would not be questioned in Indian society if the same unethical act is done within four walls between a wife and a husband, nor would it be considered as an offense of rape because of old baseless belief that considers marriage as a sacrament that bestow upon husband the absolute right over life her wife . In the case of Shri Bodhisattawa Gautam v. Subhra Chakrobarty<sup>16</sup> it was rightfully held by the Hon'ble court that "*rape is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21*". Rape destructs complete psychology of a women, the aftermath of it remains with her throughout her life<sup>17</sup>. According to report by Aashish Gupta of Rice Institute, a non-profit research organization it has been observed that 'in most of the cases of sexual violence the culprit is husband, and act of sexual violence committed by a husband is 40 times

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<sup>10</sup>Id.

<sup>11</sup> United Nation Population Fund, <<https://www.unfpa.org/press/nearly-half-all-women-are-denied-their-bodily-autonomy-says-new-unfpa-report-my-body-my-own>>. , (last visited Aug.19,2021).

<sup>12</sup> Nimeshbhai Bharatbhai Desai v/s St of Gujarat, 2018 SCC Online Gujarat 732.

<sup>13</sup> State of Karnataka v. Krishnappa, AIR 2000 SC 1470, (2000) 4 SCC 75.

<sup>14</sup> Suchita Srivastava v. Chandigarh Administration, (2009) 14 SCR 989, (2009) 9 SCC 1.

<sup>15</sup> Justice K.S. Puttuswamy (Retd.) v. Union of India, (2017) AIR 2017 SC 4161.

<sup>16</sup> Shri Bodhisattawa Gautam v/s Subhra Chakrobarty, AIR 1996 SC 922.

<sup>17</sup> Id at 6.

more than it being committed by any stranger'<sup>18</sup>. According to reports of 'National family health survey [NFHS] based on data of year 2015-2016'<sup>19</sup>, 99.1 per cent of sexual violence cases go unreported and that the average Indian woman is 17 times more likely to face sexual violence from her husband than from others'<sup>20</sup>. Rape is considered as an offence because such act goes on to touch every ounce of wrong that can put the whole society into jeopardy and such act remains a serious offence whether it is committed by a stranger or a husband. Court cannot make one wrong act into right just on the basis of a social norm that considers marriage as sacrament and personal affair between husband and wife. "Making sexual choice is about matter of dignity, liberty, privacy and bodily integrity under Article 21"<sup>21</sup> Besides this Hon'ble SC in case of Justice K.S. Puttaswamy (Retd.) v. Union of India <sup>22</sup> has also recognised that the right to privacy also includes the right to make choices in respect to intimate relationships. Whenever SC has held any of such decisions related to sexual choices on line of fundamental right it has never distinguished such rights on the basis of gender or on the basis of relationship status. Thus, depriving a wife from a say in any sexual act with her husband is grave violation of Article 14<sup>23</sup> as well as Article 21<sup>24</sup>, the rights that are guaranteed to her in the Indian Constitution. Therefore, courts have to rise above the old unjustifiable reasons and look deeply into the wrong in Exception 2 of Sec 375 of the code. Article 13(2) of The Indian Constitution states that The State shall not make any law which infringes the rights conferred by Part three of the constitution and any law made in contravention of this clause shall, to the extent of the contravention, be void<sup>25</sup>, Exception 2 of section 375 of the code is a clause that not only contravenes fundamental right of a married women guaranteed by the India Constitution but also exhaust the whole motive of legislature to criminalize act of rape, hence such exception should be lifted. No justification for marital rape can be bigger than the fundamentals of the Constitution that protects fundamental right provided in part 3 of The Indian Constitution. There have been lot of suggestions made at both national and international level to the Indian

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<sup>18</sup>Ashish Gupta, Reporting and incidence of violence against women in India, Rice Institute, (Last visited Sep.25,2014), <file:///C:/Users/20H2/Downloads/gupta-2014-reporting-and-incidence-of-violence-against-women-in-India.pdf>.

<sup>19</sup> National Family Health Survey (NFHS-4), <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf>, (Aug.21,2021).

<sup>20</sup>Primit Bhattacharya, Tadit Kundu, 99% of sexual assault go unreported, govt data shows, The Live Mint, (Apr.24,2018, 1:30PMIST), <<https://www.livemint.com/Politics/AV3sIKoEBAGZozALMX8THK/99-cases-of-sexual-assaults-go-unreported-govt-data-shows.html>>.

<sup>21</sup>Id at 13.

<sup>22</sup>Id at 14.

<sup>23</sup>Id at 7.

<sup>24</sup> Id.

<sup>25</sup> INDIA, CONST, art 13, cl2.

courts and parliament to criminalize marital rape. Committee of JS Verma that was set in year 2012, post Nirbhaya case did suggest criminalization of marital rape, after looking into the gravity of wrong in it<sup>26</sup>. The same suggestion was made by UN Committee on Elimination of Discrimination Against Women (CEDAW) in year 2013<sup>27</sup>. Existence of this exception not only shows the failure of the court and legislature to protect the basic values of the Constitution but also shows its failure to fulfill its international obligation. Convention on the Elimination of All Forms of Discrimination against Women 1979, a convention to which India is a signatory party<sup>28</sup>, in its Article 1 says that –“*discrimination against women*” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, **irrespective of their marital status**, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”<sup>29</sup>. This convention puts obligation on the legislature as well as judiciary to protect fundamental right of a women by ensuring no discrimination is made that abridges such right, irrespective of marital status. But unfortunately, marriage in India is epitome of implied consent on part of wife and rape is not wrong in marriage. Marital rape has been a very sensitive topic in our country; it’s been so sensitive that it has superseded the fundamental question of rights provided in Constitution. To understand this topic, it is important to flash light on course of legislation till date on topic of sexual abuse in marriage and what are the challenges that has kept exception 2 of sec375 of the code effective.

**i) Legal provision for sexual abuse in domestic violence**

Indian legal system has not completely turned blind to the existence of sexual abuse in domestic violence. Law has provided provisions that help a woman to get out of the violence under question in her domestic life. In year 2005 a new Act of parliament came into force named Protection of Women from Domestic Violence Act 2005<sup>30</sup>(hereafter called as DV Act) to legally protect women from clutches of domestic violence. Before the act came into force

<sup>26</sup>J.SVerma Committee Report,(last visited,Aug.25,2021,18:53 IST)

<[https://www.thehindu.com/multimedia/archive/01340/Justice\\_Verma\\_Comm\\_1340438a.pdf](https://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf)>.

<sup>27</sup>Id.

<sup>28</sup>United Nation Treaty Collection, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4#EndDec)> , (Last Visited Aug.21,2021).

<sup>29</sup>United Nations Human Rights office of the higher commissioner, <<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>>, (last visited date, Jul.30,2021).

<sup>30</sup> Protection of Women from Domestic Violence Act 2005, No.43, Acts of Parliament, 2005(India).

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section 498A of IPC<sup>31</sup> took care of a woman from cruelty at hands of her husband and relatives. This section is still in force but with the course of time the increase in domestic violence the need for a separate statute to deal with such affairs was much needed. The act seeks to protect a woman from all sorts of domestic violence that are prevalent in the society. One of the kinds of domestic violence dealt by this act is sexual violence, which in this act is given menial importance despite ignoble act it is in itself. This act seeks to provide relief in civil law<sup>32</sup> to such women who are subjected to abusive domestic hardships in their marriage and to prevent its recurrence. Further there is Hindu Marriage Act 1955 that under Sec 13(1) (i-a)<sup>33</sup>, gives the wife power to file divorce on grounds of cruelty at hands of husband. The above-mentioned act and the provisions under them are the only statutory relief to wife against marital rape. When we look at cases like Nimeshbhai Bharatbhai Desai v/s St of Gujarat<sup>34</sup> and Sanjeev Gupta v/s Ritu Gupta<sup>35</sup> where the life of wives was tormented at hands of their husbands just to meet their unnatural sexual lust, the above-mentioned legal relief seems to be too insignificant in front of the beastly act of the wrongdoer. These are the cases that have become highlight of the problem like marital rape but there are still lots of cases that have yet not received its recognition. These above-mentioned provisions more than remedy are justification for not making marital rape a crime. The remedies provided by these acts for sexual violence are good to prevent a wife from harm at hands of husband but are not good enough for the sexual act that cause both physical as well as mental damage at great cause. After putting great deal of thought into the sensitivity of the crime that marital rape is, the SC in case of Independent thought v/s UOI<sup>36</sup> struck down the exception 2 of sec 375 of the code to the extent of girl child below 18 and declared it to be further read as “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape*”. SC found this exception to be unfair, unjust, unreasonable and violative of A14, A15 and A21 to the extent of right of a girl child. If the same reasoning is extended in concern of the right of a married woman above 18 years of age, the same exception can still not be all together called fair, reasonable, just and in favour of basic fundamental rights.

## ii) Marital Rape at International Level

<sup>31</sup> The Indian Penal Code 1860, sec498A, No.45, Acts of Parliament,1860(India).

<sup>32</sup> Indra Sharma v/s VKV Sharma, (2013) 15 SCC 755.

<sup>33</sup> Hindu Marriage Act 1955, sec 13(1) (i-a), No.25, Acts of Parliament,1995(India).

<sup>34</sup>Id at 11.

<sup>35</sup> Sanjeev Gupta v/s Ritu Gupta, 2019 SCC Online All 2255.

<sup>36</sup> Independent thought v/s UOI, 2018 CRI.L.J.3541.

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World over the centuries has experienced lots of reforms in various fields like, political, social, economic, agriculture, industrial etc. and with these reforms the world has come closer and has become more interdependent. The progress that all the countries are making today with all the global competition and interaction have made them more conscious about the rights of every individual. Every person today irrespective of gender, sexuality, colour and caste demands their rights. Gender equality is one of the topics that have grasped lots of global attention with passage of time. Gender equality is a desperate need of the hour, which is acknowledged by many countries in the world. Marital Rape is one of the sensitive topics that demanded lots of attention in respect to gender equality all over the world. There are total 36 countries in the world that have yet not criminalized marital rape and India is one of them<sup>37</sup>. Poland was first country to criminalize marital rape in year 1932<sup>38</sup>. Australia in year 1976 criminalized rape in marriage after it experienced second wave of feminism, thus making it first common law country to criminalize marital rape<sup>39</sup>. Post 1980 many common law countries like south Africa, Canada, Israel, Ghana also criminalized marital rape whereas between year 1970 to 1993 total 50 states in United States criminalized the exception of marital rape<sup>40</sup>. In the year 1991 in the landmark case law R v. R the House of Lords in the UK struck down its own common law that was inspired by the old Victorian law and criminalized marital rape<sup>41</sup>. Supreme Court of Nepal in year 2002 acknowledged marital rape to be unjustified and unreasonable in eyes of law held it to be against the basic fundamentals of Constitution that provided right to ensures equality to every person and further issued a directive order to the Ministry of Law, Justice and Parliamentary Affairs to introduce a bill regarding marital rape keeping in mind the sensitive relationship of marriage and position of husband<sup>42</sup>. This directive orders of the SC was executed in recent days when the criminal code bill that introduced proper statutory provisions for marital rape while keeping in mind directions of SC got passed by the parliament<sup>43</sup>. All the above-mentioned countries that have criminalized rape in a marriage have found it against the

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<sup>37</sup> Anusha Agarwal, Only 36 Countries Have Not Criminalised Marital Rape, India Is One of Them, The Leaflet, (Jul.30,2021,10:40PM), <<https://www.theleaflet.in/only-36-countries-have-not-criminalised-marital-rape-india-is-one-of-them/>>.

<sup>38</sup> Shalini Nair, Marital rape a crime in many countries, an exception in many more, The Indian Express, (Aug.31,2021,9:39:06AM), <<https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>>.

<sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> R v/s R, [1991] UKHL 12.

<sup>42</sup> Forum for Women, Law and Development and others v/office of the Prime Minister and the Council of Ministers and others, Special Writ No. 64 of the Year 2061(2004 A.D).

<sup>43</sup> The National Penal (Code) Act 2017, Sec 219, No.36, Act of Parliament, 2017, (Nepal).

basic human right to equality and to live life with human dignity and liberty that has been granted to all of its citizen. The same principle that a crime outside marriage cannot suddenly become a legal act in a marriage is applied and with rational reasoning the other countries have struck down this exception.

iii) **Problem that we face today in criminalizing marital rape**

In India the marital rape is seen more as wrong against cultural and religious sentiment rather than constitutional and legal wrong<sup>44</sup>. Over the years many voices have been raised regarding criminalization of marital rape and with it many reasoning have been put forward for not criminalizing it<sup>45</sup>. Some of the reasoning that both judiciary and parliament have put forward in many instances is that: -

- a) Crime such as rape cannot exist in a sacred relationship such as marriage. Marriage is epitome of pure relationship and by criminalizing rape in marriage or even giving title of rape to the forceful sexual intercourse in marriage would taint the pure institution that marriage is. There can be no such thing as forceful sexual intercourse in marriage because consent of an ideal Indian wife is deemed to be implied whenever it comes on the will of the husband. And lifting of such exceptions will have the wrong effect on society<sup>46</sup>.
- b) India unlike other developed nations is not developed socially, culturally and economically therefore is not prepared for such big change<sup>47</sup>.
- c) If exception of marital rape is lifted then it will be misused by many women for their malicious benefit and thus institution of marriage will be shattered<sup>48</sup>.

In The Chairman, Railway Board v. Chandrima Das it was held by the Hon'ble SC that "*rape is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved, besides this it not only crime against a person but it is crime against the whole society*"<sup>49</sup>. In the course of time people have moulded the old Indian traditions according to their own convenience. Marriage is a sacrament that puts both husband and wife

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<sup>44</sup>Pallavi Prasad, why it's still legal for Indian Men to rape their wives, The Swaddle, (Jan.20,2021),<https://theswaddle.com/marital-rape-inda-decriminalized-crime/>.

<sup>45</sup>Id at 7.

<sup>46</sup> Id at 43.

<sup>47</sup>Id at 43.

<sup>48</sup>Id.

<sup>49</sup>The Chairman, Railway Board v. Chandrima Das, MANU/SC/0046/2000>.



on equal footing. The concept of marriage was made to enable two people to live a better social life and to make society a better place to live in. Marriage was never a concept that gave more attention to the rights, dignity and privacy of one person but was always an institution that thrived on mutual respect, understanding and independence. The determination with which the cultural, tradition and religion is being used as a facade to justify this wrong is in itself against the ethics of Indian culture. As said above, rape is crime against society and marriage that is considered as a divine institution is very important part of the same society. Giving way to such a wrongful act in such a divine relationship is in itself an abuse to this institution. The existence of exception 2 is manifesting the same fear that parliament and judiciary feel will become reality if the same exception 2 from sec 375 is lifted. Secondly the reason that India is not socially, economically and culturally ready to scrap out this law is not a strong enough reason to stop one wrongful act and Nepal is living example of it. Despite being a developing country with the same cultural, social and religious ethics as that of India, the judiciary and parliament took the responsible step of scrutinizing the issue prudently while keeping in mind the sensitivity of the relation of marriage and successfully came up with a strong legal solution. It is important to remember that many extraordinary decisions like abolition of sati in 1829<sup>50</sup> and widow remarriage in 1856<sup>51</sup> were taken at the time when society was not prepared for it. Hence this reason cannot justify any wrongful act. Third reason that this change might lead to misuse of law is not irrational reason like other two reasons mentioned above but still is not strong enough to stop criminalization of marital rape. Many laws that deal with such sensitive matters generally come with high stakes. And it is a saddening reality that many times such laws that are made for empowerment and protection of the vulnerable at many times are misused<sup>52</sup> and we still have those laws because the legislature and the judiciary feels that existence of such laws is vital to take care of the wrong for which these acts were enacted. India has a separate act for dowry prohibition to prevent evil demand of dowry that still is prevalent in our society, and it is usually found that majority of the cases that are filed under this subject matter result in acquittal<sup>53</sup>. Even if we look at rape complaints that are filed, many of them turns out to be fake

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<sup>50</sup>Fish, Jorg. "Humanitarian Achievement or Administrator Necessity? Lord William Bentick and The Abolition of Sati in 1829." Vol. 34, *Journal of Asian History (JOAH)*, 109–134, (2000).

<sup>51</sup> Hemant Singh, what is The Hindu Widows' Remarriage Act, 1856, Jagran Josh, (Jul.20,2020,16:32 IST), <<https://www.jagranjosh.com/general-knowledge/hindu-widows-remarriage-act-1856-1563262916-1>>.

<sup>52</sup> Jyoti Kalra, Misuse of dowry laws and the failure of the system, The Hindu,(Aug,15,2017,18:13 IST),<<https://www.thehindu.com/opinion/open-page/misuse-of-dowry-laws-and-the-failure-of-the-system/article19435399.ece>>.

<sup>53</sup> Id.

which is bad in eyes of law<sup>54</sup>. But we cannot simply suppress the wrong that is happening in society simply because of the fear of law being misused. There can always be steps taken to mitigate such wrongs. Provisions should be made to penalise the act of misusing the provision such as rape so as to create a deterrent effect, further to ensure complete justice the focus should also be directed towards statement given by Justice J.B. Padriwala in case of Nimeshbhai Bharatbhai Desai v. State of Gujarat - *“Let it be stressed that the safeguards in the criminal justice system are in place to spot and scrutinize fabricated or false marital complaints, and any person who institutes untrue and malicious charges, can be made answerable in accordance with the law”*<sup>55</sup>. Focus should always be concentrated on stopping wrong.

## **CONCLUSION**

Marital rape is a very serious issue that needs serious attention. Legislature needs to remove the blind fold of culture and religion that is stopping it from taking some strong steps. The provisions that we presently have are only one-sided solutions that without a doubt help a woman to come out of the clutches of husband but what these provisions do not is to penalise the husband for the actual grave offence committed by him. These provisions only give way to such people to further commit such heinous acts and the case of Sanjeev Gupta v/s Ritu Gupta<sup>56</sup> is a living example of it. Ritu Gupta was second wife of the defendant, who was subjected to rape at hands of her husband. Her husband's unnatural sexual need had put the whole life of hers' as well as her daughter into jeopardy. It is to be noted that this was not the defendant's first marriage that got over with divorce, it was his second marriage. The solution that parliament feels is good enough to deal with problem such as marital rape is actually a big failure of the entire legal system. It is important to understand that the rights that constitution provides to citizens of India and other people do not make any discrimination. Irrational reasoning should not come in the way of justice. Legislature has to look into the wrong in this exception and judiciary has to take its responsibility. A husband will be as much a rapist as any other man who has sexual intercourse with any other woman without her consent. It is important for the legislature to understand that the main highlight of section 375 of the code is

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<sup>54</sup> Soibam Rocky Singh, Delhi High Court expresses worry over 'alarming increase' of false rape cases, The Hindu, (Aug,22,2021,14:57 IST) <<https://www.thehindu.com/news/national/delhi-high-court-expresses-worry-over-alarming-increase-of-false-rape-cases/article36042093.ece>>.

<sup>55</sup>Id at 11.

<sup>56</sup>Id at 34.

‘consent’. Any of the sexual act defined under sec 375 of the code done by any man ‘without consent of a women’ is rape. If our culture considers marriage as sacrament then our culture also respects the dignity of a woman and keeping same thing in mind act such as rape was made crime in India. Marital rape is gross violation of fundamental rights that are provided in the Indian Constitution and thus is gross violation of Constitution. Consent in section 375 is sole factor that makes rape a crime, the term consent defines life changing decisions, it defines right to live with personal liberty and dignity and any exception that fails to fulfill the objective of this term is against the sole purpose with which section 375 was inserted and thus needs to be scraped out. If beating a wife is a crime, demanding dowry from a wife is a crime, mentally and financially abusing her is a crime then forcefully compelling her to engage in a sexual intercourse is also a crime. It is important for India to wake up to the dawn of rationality, reasoning and justice and to dig deep into its conscience to acknowledge the big social evil that marital rape is.

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