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MARITAL RAPE: EXIGENCY FOR CRIMINALIZATION IN INDIA

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ABSTRACT:

Section 375 of the Indian Penal Code defines rape as an offence. It is the act of having sexual relations with another person without his or her consent. The Indian Penal Code makes an exception in Section375's definition of rape. The Indian Legislature's view point on marital rape in our country is very different. There are no effective laws in India regarding marital rape, which has posed a serious threat and impediment to achieving the goal of gender justice in India. Marital rape is not a lesser crime than rape, rather, it is as grave as an offence of rape. Despite the fact that many countries have passed legislation to protect women's rights, and that some of those countries have criminalized a husband's forced intercourse with his wife, in India we are still waiting for such legislation to be passed. Furthermore, irrespective of the fact that our country is the largest democracy in the world and has the longest Constitution in the world, with a plethora of provisions providing authority to make special provisions for women, it did not criminalize the offence of marital rape. This paper discusses the criminalization of marital rape as well as the reasons why it should be recognized by law for an investigation into rape in any of its forms to be possible. This paper examines the distinction between rape and marital rape, as well as the identification of the former as distinct from the latter. Finally, the paper argues that this offence violates the Indian Constitution and provides evidence to support its claims.

Keywords: Marital Rape, Sexual Intercourse, Indian legislation, Women Rights, Criminalizing.

INTRODUCTION

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The offence of Rape as per Section 375 of the IPC is defined as the sexual penetration or sexual intercourse when there is a clear lack of consent. The term consent becomes an essential ingredient that separates rape from voluntary intercourse. The definition of rape clearly states that the nature of the offence should be against the will of the individual and there should be a lack of consent. As a result proving rape necessitates proving the absence of consent. The term consent does not fall within the institution of marriage as sexual intercourses committed within marriage are justified and are not punishable by any law unless the spouse is less than 18 years, for which the imprisonment can exist to life coupled with additional fine. A major justification for the need for not criminalizing such offence is because such will amount to excessive interference with the institution of marriage and interfering with the same can amount to intrusion into the privacy of citizens.

Throughout history the idea of marriage was attributed to merger of rights between the husband and wife and this practice was based on the premise that once a woman marries, she gives her husband perpetual sexual consent . Additionally, with the patriarchal mindset our society used to operate in, the wives were mostly deprived of such rights and the act of a husband raping his wife were justified. However, with the advancements made in modern times with respect to gender equality, today women cannot be considered subservient to their partner and he should no more enjoy privileges over her body. Additionally, the passing of Protection of Women from Domestic Violence Act recognizes marital rape as a form of domestic violence and a woman is entitled to institute legal proceedings against her husband under this law. Furthermore, section 498A of IPC lays down the offence of cruelty which includes punishment up to three years in addition to fine. With these provisions already in hand there is still a need for a provision that punishes marital rape as the effects of marital rape is more serious as the perpetrator is her own spouse, the effects of which are more severe and enduring for women. Many women are unable to escape the physical and psychological ramifications, and as a result, they remain traumatize throughout their lives.

Therefore, in the present context, rape constitutes a serious breach of a person's fundamental right to life and a mere connection between the victim and perpetrator should not go unnoticed and unpunished. As a result, it is incorrect to assert that marriage grants the husband the privilege to engage in sexual intercourse with his wife and this provision calls for an amendment in the Indian Penal Code.

MARITAL RAPE IN INDIA: HISTORY

Rape is one of the heinous crimes covered under Section 375 of the Indian Penal Code. The definition of rape is quite extensive as it includes sexual intercourse and other forms of sexual penetration under its purview. In exception 2, there is no implementation of this section on any sexual acts betwixt a husband and wife. In short, while considering the Indian Provisions, a wife does not have any possible course of action for the act of her husband raping her under criminal law.

Exception 2 of Section 375 of the Indian Penal Code (Exception Clause) does not specify any valid reasoning for not considering the sexual acts between a husband and his wife as rape. If we see the foundation on which this section operates is the consent of the women, but when it comes to marriage, it is taken into consideration that there exists an incontestable presumption of consent between the husband and his wife. Along with that, the possible reasoning by the legislature not to include marital rape as an offence is that our society considers marriage a sacred relationship, and any unnecessary interference would not be tolerated.

Although the law does not criminalize marital rape, a specific branch is penalized. It is non-consensual sexual intercourse when the husband and wife are not living together due to judicial separation. So if we see the analogy behind the provisions, it is mentioned that if husband and wife are living together, there is no need for consent, as living together implies consent. In contrast, there is no consent if they do not live together. 'Living Together' is a term which is open to many interpretations and is not that clear.

Historically, the concept of marital rape did not exist in Indian law, as the Indian Penal Code (IPC) exempted husbands from being charged with rape if the wife was above the age of 15. This exemption was based on the outdated notion that marriage implied a woman's perpetual consent to sexual intercourse. We can see that this age limit bracket started from 12, then it was changed to15, and now it is 18.

In 1983, the landmark Mathura rape case brought attention to the issue of rape within marriage. Mathura, a 16-year-old tribal girl, was raped by two police officers while in police custody. The Supreme Court acquitted the accused because Mathura had not physically resisted the rape, and the police officers could not have known that she did not consent. This ruling sparked widespread outrage and led to protests calling for changes to the law to address marital rape. If we see, the core issue in this case and the case of the

husband raping his wife is similar; the wife being dominant over her husband even if she tries to resist, she would not be able to hold it for a longtime. Ultimately, she would be exploited by her husband, and communicating this or deal in front of society is similar to making a deaf person listen to music because our society has worn the blanket where they feel that these things are every day in marriage. It is the duty of the wife to satisfy her husband.

The Justice Verma Committee report was a comprehensive document that analyzed the legal framework related to sexual violence in India and made recommendations for reform. The report was published in 2013 in the aftermath of the brutal gang rape of a young woman on a Delhi bus, which sparked widespread outrage and protests nationwide.

The report called for several fundamental changes, including the criminalization of marital rape, the expansion of the definition of rape to include all forms of non-consensual penetration, and the establishment of fast-track courts to ensure speedy justice for survivors of sexual violence.

Although many of its recommendations were neglected, some of them were taken. While India does not currently have a specific law criminalizing marital rape, there have been several recent developments related to this issue:

In 2017, the Supreme Court acknowledged that marital rape is a form of violence against women and that the law needs to evolve to address it. However, the court also stated that it was up to the legislature to decide whether or not to criminalize marital rape.

In 2019, the United Nations Human Rights Committee criticized India for failing to criminalize marital rape and recommended that the country take urgent action to address this issue.

In 2021, the Delhi High Court asked the central government to respond to a petition seeking the criminalization of marital rape. The petition argues that the current exemption for husbands in the rape law violates the principles of equality and dignity enshrined in the Indian Constitution.

In recent years, several state governments, including Maharashtra and West Bengal, have taken steps to amend their laws to criminalize marital rape. However, these amendments have not been adopted at the national level.

Despite these developments, marital rape remains a largely unaddressed issue in India, with many survivors facing stigma, shame, and discrimination when they come forward to report such violence. Advocates continue to push for legal reforms and greater awareness and

support for survivors of marital rape.

NON-CRIMINALISATION OF MARITAL RAPE: INRESPECT TO VIOLATION OF FUNDAMENTAL RIGHTS

Marriage in India is considered as a sacred institution which is viewed to be deeply personal and the state is not obligated to disturb such delicate space. This space is intruded by the state on certain occasions when there exists a legal responsibility to interfered through this private sphere. Nonetheless, the judicial decisions in the past within subjects conceptualized within the private realm highlights the hesitancy of judiciary to bring in fundamental rights within the private sector. In the case of ***Independent Thought vs Union of India***[2] where Justice Lokur held that the rape committed within the facets of marriage, only when the wife is between fifteen to eighteen years will not amount to rape clearly asserts that even courts do not comply in implementing provisions relating to marital rape in line with fundamental rights. This creates a doubt as to whether marital rape is an infringement to fundamental rights. It is important to understand that rape is more than a ferocity committed against women which also serves as a grave violation to her right and individual freedom. The fact that there exists a relation between the victim and the offender shall not serve as a factor in lessening the gravity of the offence committed.

This exception granted within the IPC clearly violates Article 14 by denying them equal protection by distinguishing between the harassments committed against a married or unmarried women. In the case of ***Budhan Chaudhary v. State of Bihar***[3] laid the reasonableness test which could be passed only when it served as a rational nexus coupled with a rational objective. The conduct of rape within marriage clearly acts contrary to such objective as it is challenging for a married woman when compared to an unmarried woman to escape such situations as they are the ones been provided by their husband which enables the husband to enter into a coerced forceful relationship with the wife.

The right to life is provided under Article 21 of the Constitution, this definition of right to life were expanded in various court judgments in the case ***of Maneka Gandhi v Union of India***[4] and

[2] Independent Thought v. Union of India AIR (2017) 10 SCC 800:

[3] Budhan Chaudhary v. State of Bihar AIR 1955 SCR (1) 1045

[4] Maneka Gandhi v. Union of India AIR 1978 SC 597

A.K Gopalan v. Union of India[5] expanded the scope of life within Article21 by stating that life includes more than merely animal existence. Similarly the judgment adopted in the case of ***R.S Puttaswamy v. Union of India***[6], right to privacy was recognized as a fundamental right which included ability to make intimate decisions consisting of sexual nature and with respect of intimate relations. In the case of ***Surjit Singh Thind v. Kanawaljit Kaur***[7], the Punjab and Haryana High Court held that conducting medical examination of a woman to check her virginity will also amount to violation of her right to privacy and personal liberty as enshrined under Article 21 of the Constitution. Similar reasoning was upheld in the judgment of ***Karnataka v. Krishnappa***[8] and Suchitra Srivastava v. Chandigarh Administration where the court held that non-consensual sexual intercourse amounts to sexual violence and a woman has a personal liberty to make choices regarding her reproductive health. The aforementioned rulings do not lay a distinction between a married woman to that of an unmarried one and was passed by solely relying on a women's right to privacy, dignity and bodily integrity. This proves that a forced sexual relation within the institution of marriage clearly implies a violation of fundamental rights. In the recent years, the courts have acknowledged the right of a wife to abstain from unwanted sexual activity or forceful sexual intercourse under the right to life.

To analyze the extent of judiciary to penetrate into the private sphere it is important to define the private sphere and as to whether fundamental rights can and cannot been forced by such intervention. Under normal circumstances, rape is viewed as a violation of fundamental rights of a woman and when it comes to the marital sphere judiciary as well as the legislations are uncomfortable to acknowledge such issue and enact laws for the same. In the case *of* ***Harvinder Kaur v Harmendra Singh***[9], the Delhi High Court upheld the constitutionality of Section 9 of the Hindu Marriage Act by stating that the purpose of law is to protect the institution of marriage and even took a progressive stance by stating that sexual relationships are not the only kind of relationships that encompasses a marriage. Furthermore, the court substantiated that when a women is coerced or forced to live with her husband, they will be forced into sexual relationships and thereby introduction of

[5] AK Gopalan v. Union of India AIR 1950 SC 27

[6] R.S. Puttaswamy v. Union of India (2017) 10 SCC 1

[7] Surjit Singh Thind v. Kanawaljit Kaur AIR 2003 SCC 353

[8] Karnataka v. Krishnappa AIR 2000 SCC 516

[9] Harvinder Kaur v Harmendra Singh AIR 1984 ILR 66

constitutional law in the home is inappropriate which will result in ruining of marriage.

With this judgment, the court turned a blind eye towards the lack of consent acting within the marriage and regarded it as 'marital privacy'. Similar judgments laid down by courts have laid an interpretation that forced sex within marriage is not coexisting with the understanding of marital privacy. A clear definition of marital privacy suggests that a state cannot interfere or cannot force the couple to engage in conjugal relation merely because it invades their privacy. Another drawback with such understanding is that such approaches applied by the court have clearly admonished the violation of Article 21 of the Indian Constitution, where the rights of a woman is given up because of the marital sphere and she no more enjoys protection of her 'Right to life' once she is married. However, on the other hand, time and again the state has interfered between the sexual activities between two consenting adults, a prime example of which could be its reasoning behind decriminalization of Article 377. Similarly, legislations have been made with respect to medical termination of Pregnancy and offences relating to cruelty and domestic violence. The state has The State can criminalize offences relating to adultery or intercourse between consenting adults of the same gender while refusing to criminalize marital rape because it occurs in the private sphere. This clearly implies the state selective approach into interfering within the private sphere of individuals and as a result the entire reasoning behind the creation of a marital sphere is fallacious, as both the state as well as the judiciary have involved themselves and have enacted and reformed legislations with respect to the same.

The interpretation of privacy upheld by courts in various judgments functions upon the understanding that the rights guaranteed by the constitution with regards to equality and personal liberty of individuals in not applicable once a marital sphere has been established. With time, the interpretation of private sphere has been subject to alterations, ranging from the case of Sareetha[10] to the case of Harvinder Kaur Vs Harminder Singh in which the court struck down the unconstitutionality of Section 9 of the Hindu Marriage Act and ignored the relationship between individual autonomy within the marital sphere. Today, there is a clear need to make a shift from privacy to individual autonomy as laid down in the judgment of K.S Puttaswamy v. Union of India, wherein the unanimous and unequivocal judgment ruled that there exists a right to privacy which allows every individual to be left alone in an untouchable sphere. Following this judgment, foundations were laid by the court by

[10] T.Sareetha v. Venkata Subbaiah, AIR 1983 AP 356

recognizing the ground reality of gender-based violence within four walls of a house. The major part of the judgment focused on how a woman's individual autonomy is violated when she is forced to remain with her husband. The judgment presented the ground reality of gender violence by substantiating upon the individual's right to decisional autonomy and by laying privacy as an intrinsic right for every individual.

REMEDIES AVAILABLE IN LAW TO PROVIDE JUSTICE TO VICTIMS OF MARITAL RAPE

There exist a clear lack of remedies in the criminal as well as the civil law when it comes to the offence of marital rape. With the provision of rape post the criminal amendment act, there is a clear need for reform in rape law which can serve as a positive outcome for women to help with their conduct in the society. The motive behind criminalizing marital rape is not only limited to put the offender behind bars but also a proper prosecution as per the legal provision that justifies such punishment. Another reason for criminalizing the aforementioned offence is that rape is associated with the violation of law rather than the victim. The victim made no contribution to the crime, and the perpetrator bears sole responsibility, even if the perpetrator is her husband.

The most relevant provision regarded as an alternative to the offence of marital rape is cruelty which is determined under Section 498A of the Indian Penal Code. This section was inserted to deal with cases of cruelty against women. However, there lies a clear distinction between the offence of cruelty and rape considering the nature of the crime and the difference in the evidence requirements. In the case of ***BommaIliah v State of Andhra Pradesh***[11], the husband engaged in forceful intercourse with his wife coupled with inserting stick or finger in her vagina. The court ruled that such will not amount to cruelty under Section 498A as in order to be convicted under this section, the offence has to be done over a course of a long period of time. This does not take into account the gravity of the offence committed, and has laid a clear emphasis for the act to be constituted over a long period by taking into consideration the matrimonial relationships between the husband and wife and their interaction in their daily life. The major difference in the decree of punishment between the offence of rape and cruelty in itself suggests the reason for enacting a different provisional together.

Civil remedies cannot be as effective a compared to criminal remedies. A crucial reason for

[11] BommaIliah v State of Andhra Pradesh 2003 (1) ALD 965

the same being civil remedies will only serve to aid the public as it makes the violence of such matters not only against the victim but against the state itself. Similarly relying on civil remedies gives women opportunities to rely upon the agency to choose a proper course which in turn will assist the victim move out of the private structures.

In India the relationship of marriage is governed as per family law and it is important to have a corresponding civil remedy to exist other than criminal remedies, such that both the remedies exist hand in hand. It is important to look into this relationship of marriage from a family law perspective as it gives due importance given to sexual relations throughout marriage. For instance, Restitution of Conjugal Rights continues to exist in India, wherein men force their wives into resuming conjugal relationships. Furthermore, despite religious laws recognizing cruelty as a ground of divorce, there is no mention of sexual violence serving as a ground of divorce. It is important for the court to analyze that after what point a husband loses his right to forceful sexual intercourse and whether or not the same will fall within cruelty or not under the law. The offence of sexual violence accepts women as the victim compared to cruelty under which the offence amounts to violation of law and not the victim. The Kerela High Court has already held that marital rape can serve as a ground for divorce and the husband's conviction can serve as a ground for divorce. However, in almost every case, the women do not wish to file charges owing to family and in-laws pressure. Therefore, it is critical for the court to emphasize the relevance of criminalizing marital rape rather than considering alternative remedies to ensure that the wife receives maintenance and protective orders.

Since we have instituted that the idea of the private sphere is completely distorted and that in marriage, there is a significant role of constitutional rights, in this particular part of the paper, our main motive is to establish the unconstitutionality of the exception clause. After going through the case laws of Harvinder Kaur Vs Harmendra Singh and T. Sareetha Vs T. Venkata Subbiah, which had contrasting decisions, we can see the stand of the apex court in the case of Saroja Rani Vs Sudarshan Jumar Chada[12], where it was tried to get done with the issue. The constitutionality of the Restitution Conjugal Rights was upheld when the court considered the decision in the Harvinder Kaur case. However, if we read in-depth, we see that the purpose of restitution of conjugal rights is to protect the marriage. Therefore when it is looked at from that angle, it does not violate Article 14 of the Indian Constitution because

[12] Saroja Rani v. Sudarshan Kumar Chada, AIR 1984 SC 1562.

the main objective of the law mentions the need for a separate law for married women. Since there is an adequate amount of reasonable classification, it was valid.

Now if we just take the reference of what we discussed above, the potential argument that could be made in the context of marital rape would be that the difference made by the law concerning married and unmarried women concerning their rights would not tick the violation of the Article 14 because there is a reasonable classification of marriage. In this, it is not that rape is not unconstitutional. However, since the marriage satisfies the rubrics mentioned under the reasonable classification, it does not violate Article 21 of the Indian Constitution, even though it violates the same. However, it is justified if it is marital rape as it takes shelter in reasonable classification. To counter it, we would establish how the whole foundation of marriage has evolved legally, where both spouses are put on an equal pedestal. Considering this, we would show how the exception of marital rape would not comply with the requirements of Article 14. The overall perspective of marriage has transformed significantly in Indian laws, where people have required personal laws to govern their marriage, or they can consider a religion-neutral law. The overall picture of the relationship between spouses has changed to an extent because of the codification of marriage laws. If we consider the archaic understanding of the term marriage, it was seen that women were considered as the property of women; if not that, then she is someone who is not given an equal pedestal to the husband, where society expects them to perform the irrespective roles.

We can see in Mahabharata only how Draupadi was kept as a bet, justifying the above ideology, but after the codification of laws, there is no such ideology. It is because now they give equal stand to both of them; we can see in any personal religion laws, for instance, Islamic Personal Law, where the religious scholars and numerous case laws treat husband and wife equally; the best example of that is triple talaq, which was abolished. The right of women to file for a divorce or alimony shows that they are allowed to save their respective interests, and now they do not consider women as the 'chattels' of their husbands.

Apart from this, the argument that being married gives you the right to have sexual relationships with women without their consent is also not appropriate. Now we can look at this from two point of view: marriage gives you the freedom to have sexual relations with the spouse whenever you want, and second, being married does not give you the right to have a sexual relationship. Now both of these viewpoints are at the extreme ends. We could not consider the latter as a complete solution because the reason for many divorces is the

absence of an adequate amount of sexual activity; on the other hand, being married does not give you the consent of the spouse to have sexual activity per your choice. If we consider this as a contract, which is in contravention to public policy and is not clear, and where the woman's consent is assumed to all sexual activity without any adequate consideration of hers to its physical requirements would make that contract invalid.

Another valid point would be that the state considers its duty to protect and preserve the marriage to maintain society's stability and decorum. However, women's harm would be much more intense than a broken marriage. The state has also considered making laws concerning domestic abuse and cruelty, which clearly shows their intent that only the preservation of marriage is not the ultimate goal and creates tension in the uncalled society.

So after considering all this, we could maintain that there is no requirement for treating women in terms of their marital status concerning the offence of rape. If we see the requirements under Article 14, it not only considers a rational nexus that ought to be achieved between the purpose and law but also at the same time stresses the fact that it should not be arbitrary. We can see in the Protection of Children from Sexual Offences Act, 2012 ('POCSO') that it is illegal to have sexual intercourse with a child below the age of 18 years. However, an exception mentions that if she is married and is between the age bracket of 15-18 years, then it is not violative. The court took into consideration this particular treatment of a girl differently. It struck it down as they mentioned it is entirely unconstitutional, but the court also mentioned that it does not apply to marital rape in adults. However, this shows that courts do consider it wrong to an extent.

After considering all of this, we can take that there is no pre-assumed consent in the marriage, and just protecting the marital relationships at the cost of violating personal and constitutional rights is not valid; moreover, other forms of violence that have been criminalized are valid. Thus, it shows that the exception clause is not valid and unconstitutional because it does not pass the test under Article 14 of the Indian Constitution.

ROLE OF CULTURE INCRIMNALIZATION OF MARITAL RAPE

If we see history, there has been an intensive study into the relationship between the law and the culture of society. There has been a collegial relationship between law and culture where they are co-extensive and have been thoroughly studied on the jurisprudential front. This is separate from the arguments we present in our research paper because of the two-fold reasons. First, the criminalization of marital Rape is related to the fundamental rights

enshrined in the constitution. Second, if we have any law that goes against deep-rooted cultural ideas, that does not give us the backing for not making such laws because many have been passed in our history. If the laws would not stand against these established cultural ideas, then the laws related to marginalized communities and gender-specific laws could not have passed, but that is not the case.

For instance, if we see Article 19(2), there is a restriction on the freedom of speech and expression, which is 'morality'. As per the apex court's interpretation of 'morality', they consider it as 'public morality'. This mainly means that if there is any act/speech considered immoral by the public, they could also deem it immoral in nature. The primary contention is that if the public considers something moral, it will conflict with what the constitution considers moral (Constitutional Morality).The concept of equality and individual bodily autonomy is considered under constitutional morality.

In contrast, it might conflict with public morality; also, it is highly unreasonable to consider public morality for viewing constitutional morality. For instance, if public morality subsists with the Caste System, which is also supported by statistics, in such a case, the lower castes would be restricted from availing benefits from the required laws following public morality and which is detrimental to the constitution. Public morality heavily relies on the public culture, beliefs and preconceived notions.

In the case of Marital Rape, it would sound like a dichotomy if we saw the reference to society's perception. However, if something is in contrast with society's beliefs and ideas, it does not make the exception clause unconstitutionality insignificant. This type of contention can be seen in those countries where there is a significant difference between the societal structure and the constitutional moralities taken by the country, and India is one such country. We can see that the Dowry Prohibition Act of 1961 was brought into the picture because of its cultural practice in India; Sati, which was practiced, was also criminalized. This does not mean that anything which is accepted by society cannot be considered a crime. If something practiced in our country is a crime, it cannot have the protection of the veil of society's culture and system. So irrespective of whether society considers marital Rape significant or not, if it violates individual fundamental rights and moral rights, then the judiciary and the legislature should take appropriate steps to make legislation to solve it to an extent.

SUGGESTIONS AND CONCLUSION

The J.S. Verma Report is a fundamental report that has recently rekindled the discussion over marital rape. The committee proposed a four-pronged approach to successfully criminalizing marital rape. It called for the exemption language to be removed, for it to be explicitly stated that it is not a defense, for there to be no presumption of consent, and for the sentence to be the same. In contrast, the 42nd Law Commission Report proposed that marital rape be classified as a separate crime, not named "marital rape," and be punished differently. In this section, we will examine the model that we feel works best.[13]

According to the J.S. Verma Report, just removing the exclusion language in 375 is insufficient to ensure that the unusual circumstances in cases of marital rape are addressed. This is due to the fact that it will result in an excess of judicial discretion.

For example, in some states marital rape is legally criminalized, it is not specifically stated that the marriage relationship is not a defense, it allowed the judiciary to build its own frame work for dealing with such instances. It is conceivable for the judge to consider cases of marital rape differently, for as by requiring more evidence or presuming permission. This will have unforeseen repercussions. Second, it is critical that the exemption be explicitly stated in legislation. This is especially true when there is substantial cultural hostility to the regulation, as the reader may be unaware that the behavior is illegal.

According to the J.S. Verma Report, the existence of a marriage does not give rise to a presumption of consent. In practice, however, the judiciary will undoubtedly look at some level of coercion to address questions of consent. There are three approaches to dealing with consent while criminalizing marital rape. The first approach would be to assume permission and place the burden of proof on the victim. This condition is to infer absence of permission, and the accused must prove consent. The final step would be to design a system specifically for cases of marital rape, which would necessitate a revision of existing evidence law concepts.

The most ideal of them would be to treat permission in the same way we would in other situations. It is exceedingly difficult to establish the presence of consent in a marriage since rebutting it would be nearly impossible given the nature of spousal rape and abuse that occurs inside the constraints of the private sphere. The opposite extreme of presuming consent is that if the wife testifies in court that she was raped, a presumption of lack of consent will be applied against the accused. Both of these will be ineffective in evaluating

[13] JUSTICE J.S. VERMA COMMITTEE ,Report of Committee on Amendments to Criminal Law (January 23, 2013).

the existence of 'consent' in situations of marital rape. Force is not required under current law to demonstrate a lack of consent.[14]

The biggest issue we would have is that proof of sexual intercourse would be ineffective in situations of marital rape. This is due to the implied underlying belief that married couples are supposed to engage in sexual intercourse with each other. As a result, proving lack of consent is more difficult than in stranger rape instances. Thirty-three states in the United States of America have certain restrictions on the degree of force necessary to prove marital rape.

In some instances, the common rule that force is not a qualification may not be applicable. However, the situation is not as dire as it appears since, statistically, most occurrences of marital rape occur along side symptoms of physical harm or other types of abuse, including mental cruelty. As a result, the common rule that absence of force is not a factor will be challenged in situations of marital rape.

Because of the private nature of the crime, the wife's testimony is sometimes the sole proof. In such cases, it is critical to hunt for additional types of evidence to support rape claims. This implies that if the spouse has a history of cruelty or domestic abuse, it will be considered while evaluating whether he committed rape. It does not have to be an essential component, but it must play a role. This is contrary to sections 53 and 54 of the Indian Evidence Act of 1872, which provide that prior poor character is irrelevant. In situations of marital rape, however, this may be the sole important piece of corroborative evidence to indicate a history of abuse.

Furthermore, established case law recognizes that the woman's previous sexual acts are not necessary to demonstrate the presence of consent. This is couched, however, in terms of the woman's sexual past with another male. However, in these circumstances, this ratio can still be used, i.e., without taking into account whether the woman has previously had sexual relations with that guy. This is especially important in the case of marital rape, because the woman may have had a consensual sexual connection with her husband prior to the incident or incidents of non-consensual intercourse, i.e. rape. Expert witness, notably doctor testimony, will also be significant since such evidence can prove the victim's mental distress and psychological trauma.

[14] IMPUNITY OF MARITAL RAPE, ANANDITA PATRA (https://www.legalserviceindia.com/legal/article-8256-impunity-of-marital-rape.html)

CONCLUSION

In order to achieve absolute equality for married women who are otherwise confined to their homes in public and legal discourse, the discussion of marital rape is essential. It is vital to acknowledge that there is currently a significant legal gap that undermines the constitutional protections for women's equality and autonomy. As we have repeatedly shown, there have been strong political, legal, and cultural reasons against criminalization. We have closely examined these arguments, which are laced with ideas about the family, marriage, and the place of women in society, to determine their viability. We have demonstrated how every objection to criminalization lacks any basis in law. We have contended that the exemption provision in Section 375 of the IPC is unconstitutional in its current form.

It fails the equality standard outlined in Article 14 for this reason. Additionally, we have shown that there are no workable legal alternatives and that we should concentrate on criminalizing options instead of focusing on options. We also emphasized that just because our society does not view marital rape favorably does not mean that it should not be made a crime. Because of this, we suggest a framework for making marital rape a crime. First, we suggest getting rid of the exception phrase. Second, we suggest emphasizing that the accused's and the woman's status as husband and wife will not be a factor in the case. Third, we suggest maintaining the current sentencing guidelines. In order to ensure that the Evidence Act considers the difficulties of prosecuting cases of marital rape, we suggest several amendments.