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**CRIMINALIZING MARITAL RAPE: A COMPARATIVE AND
CONSTITUTIONAL CRITIQUE OF THE MARITAL RAPE
EXCEPTION IN INDIA**

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Abstract

The present paper critically explores the legal as well as social implications of the phenomenon of marital rape in India, questioning the patriarchal belief that has been deeply entrenched in society that refuses the married woman her body liberation. It looks into the historical and legislative background of the marital-rape-exception provision of section 375 of the Indian Penal Code that intellectualizes the sexual violence as it occurs in marriage. Based on constitutional principles, international human rights obligations, and comparative jurisprudence, this paper contends that the marital rape exception is inconsistent with a woman's basic rights of equal treatment, dignity and personal autonomy under articles 14, 15, and 21 of the Indian Constitution. This research also considers the psychological, emotional, and physical trauma of victims exacerbated by society's silence and legal apathy. Through the prism of judicial interpretations as well as recommendations of law commissions and civil society groups, this research supports the long necessity of legal reform to criminalize marital rape. In addition to the legal critique, this study also delves into the social stigma, institutional apathy, and psychological trauma faced by victims, which collectively silence survivors and deter legal reform. Ultimately, the paper calls for the recognition of marital rape not only as a criminal offence but as a violation of the very core of human dignity and constitutional morality and a need for rights-based, victim-centered

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system of law that strikes down the presumption of marital consent which is irreversible, and restores the faith in a non-biasgender based justice system within the constitution.

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(hereafter referred as the 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 capacity⁴. 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', 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'⁵. 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.⁶ 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

⁴ Anirudh Pratap Singh, 'The impunity of marital rape' Indian Express (Delhi, 20 December 2020) <<https://indianexpress.com/article/opinion/columns/the-impunity-of-marital-rape/>> accessed 1st September 2021

⁵ Prof. T. Bhattacharyya, The Indian Penal Code (10th edn, Central Law Agency 2019)

⁶ Rasheeda Bhagat, 'The rape is about power and not lust', Business Line The Hindu (Delhi, 12, March 2018) <<https://www.thehindubusinessline.com/opinion/columns/rasheeda-bhagat/rape-is-about-power-notlust/article20544411.ece1>> accessed 25th August 2021

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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 Indian Penal Code 1860.

⁷Rape is a serious offence in the eyes of law and there should be no room for such exceptions that not only go against the basic principles of law of rape that emphasis on right to 'consent' of a woman but also the basic fundamentals of Constitution that guarantees right to equality and rights to live life with dignity, liberty and freedom. ⁸

STATUS OF MARITAL RAPE IN INDIA

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. This exception 2 of Sec 375 of The Indian Penal Code 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. 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 of The Code has completely side lined the individuality of a wife's consent and has given husband an upper hand which is against the 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 a husband does not mean consent of a wife ⁹and secondly the plight of sexual torture does not change with marital status¹⁰. The institution of marriage cannot give complete autonomy in the hands of man to decide the course of sexual life nor can it provide immunity to any wrong done by husband which can be covered under sec 375 of the Code. Besides this it is also important to understand that change in relationship status of a woman with her rapist does not deprive a woman from her

⁷ Krishnadas Raj Gopal, 'Court continue to differ in views on Marital Rape', The Hindu (Delhi), 4 August, 2021) <<https://www.thehindu.com/news/national/courts-continue-to-differ-in-views-on-maritalrape/article35909828.ece>> accessed 25th August 2021

⁸ Sarthak Makkar, 'Marital Rape a Non-criminalized crime in India' (2021) 34(1) Harvard Human Right Journal <<https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india>> 1st September 2021

⁹Eddie Wright, 'My body is my own' (United Nation Population Fund, 14th April 2021) <<https://www.unfpa.org/press/nearly-half-all-women-are-denied-their-bodily-autonomy-says-new-unfpa-reportmy-body-my-own>> accessed 15 August 2021.

¹⁰ 2018 SCC Online Gujarat 732

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right of 'consent', thus putting a married woman in a dark spot and irrationally differentiating wrong done with her with that of an unmarried woman gravely violates the right to equality enshrined in the Article 14 of The Indian Constitution. The Supreme Court in a plethora of cases such as case of *Karnataka v. Krishnappa*¹¹, *Suchita Srivastava v. Chandigarh Administration* and *Justice K.S. Puttaswamy (Retd.) v. Union of India*¹²¹² 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 the life of her wife. In the case of *Shri Bodhisattawa Gautam v. Subhra Chakrobarty*¹³ 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 of The Indian Constitution'. Rape destructs complete psychology of a women, the aftermath of it remains with her throughout her life. 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 more than it being committed by any stranger'. According to reports of 'National family health survey [NFHS] based on data of year 2015-2016, 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'. 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 of The Indian Constitution "Besides this Hon'ble Supreme Court in case of *Justice K.S. Puttaswamy (Retd.) v. Union of India* has also recognized that the right to privacy also includes the right to make choices in respect to intimate relationships. Whenever Supreme Court has held any of such decisions related to sexual

¹¹ (2000) 4 SCC 75

¹² (2009) 9 SCC 1

¹³ AIR 1996 SC 922

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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 not only grave violation of Article 14¹⁴ but also is grave violation of Article 21¹⁵, 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. 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 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. The same suggestion was made by UN Committee on Elimination of Discrimination Against Women (CEDAW) in year 2013. 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 fulfil its international obligation. Convention on the Elimination of All Forms of Discrimination against Women 1979, a convention to which India is a signatory party, 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.*¹⁶

¹⁴ibid

¹⁵ ibid

¹⁶ United Nations Human Rights office of the higher commissioner (18 December 1897)

<<https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>> accessed 29 August 2021

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This convention puts obligation on the legislature as well as on the 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 The Indian 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.

MARITAL RAPE AS A FORM OF DOMESTIC VIOLENCE

Indian legal system has not completely turned blind to the existence of sexual abuse in domestic violence. Law has provided with the provisions that help a woman to get out of the violence under question in her domestic life. In 2005 a new Act of parliament came into force named Protection of Women from Domestic Violence Act 2005(hereafter called as DV Act) to legally protect women from clutches of domestic violence. Before the act came into force section 498A of Indian Penal Code,1860 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 with 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 ¹⁷to 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), gives the wife power to file divorce on grounds of cruelty at the 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 *NimeshbhaiBharatbhai Desai v/s St of Gujarat*¹⁸and *Sanjeev Gupta v/s Ritu Gupta*¹⁹where 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

¹⁷ Indra Sharma v/s VKV Sharma, (2013) 15 SCC 755

¹⁸ 2018 SCC Online Gujarat 732

¹⁹ 2019 SCC Online All 2255

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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 the hands of husband but are not good enough penalize a person for committing sexual crime that cause both physical as well as mental damage at great level. After putting great deal of thought into the sensitivity of the crime that marital rape is, the Supreme Court in case of Independent Thought v/s UOI²⁰ struck down the exception 2 of sec 375 of The Indian Penal 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'. The Supreme Court found this exception to be unfair, unjust, unreasonable and violative of Article 14, Article 15 and Article 21 of The Indian Constitution 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 favors of basic fundamental rights.

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 was enacted by the parliament of India with the objective to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and other related incidents.

The term domestic violence is defined as “domestic violence in case it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.” The Protection of Women from Domestic Violence Act, 2005 recognizes domestic violence as a human rights violation.

It's interesting to note that this act includes the following abuses as under the category of domestic violence:

- Physical abuse – It means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or

²⁰ 2018 CRI.L.J.3541

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development of the aggrieved person and includes assault, criminal intimidation and criminal force.

- Sexual abuse – It includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman.
- Verbal and emotional abuse – It includes Insults, ridicule, humiliation, name-calling and insults or ridicule especially with regard to not having a child or a male child; and Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- Economic abuse – It includes activities such as not providing money for maintaining the woman or her children, not providing food, clothes, medicines, etc., deprivation of all or any economic or financial resources, forcing the woman out of the house, preventing from accessing or using any part of the house, preventing or obstructing one from carrying on employment, etc.

SALIENT FEATURES OF THE PREVENTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

- Recognizing that a woman requires assistance with legal procedures and other forms of support, the PWDVA allows for the appointment of Protection Officers, and recognizes the role of Service Providers in providing medical, shelter, legal, counselling and other kinds of support services.
- This act provides only temporary and emergency relief. It is a law in response to the needs of the woman. It has certain crossovers from civil to criminal law – so when the protection order or Magistrate's order is violated, the criminal law will start. The shelter homes and the medical facility are under a legal obligation to provide shelter or medical facility to the aggrieved person.
- The Act does not make any changes in the existing personal law regime on family matters. The reliefs under the Act are in addition to existing laws and have been recognised with the objective of empowering a woman to tide over an emergency situation. Having obtained relief under the law, a woman can still go for relief under other laws later.

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- The Act includes provisions for making Domestic Incident Reports, which will serve as important records at the stage of evidence taking. The manner in which the applications for orders under the Act have also been mentioned in the Act.

Finally, the Act provides that the breach of an order obtained is a criminal offence.

JUDICIAL VIEW ON MARITAL RAPE

Recently On 12 May 2022, the Delhi High Court's split verdict on marital rape, came in which one of the judges observed that "*the offence of rape remains the same irrespective of who the offender is*", the other Judge Stated that "*sex between a wife and a husband is...sacred*".

The two-judge bench comprising *Justices Rajiv Shakdher and C. Hari Shankar*²¹ delivered the split verdict, when petitions were filed challenging the **constitutional validity of an exception in the Indian Penal Code (IPC)** that exempts a man from being prosecuted for forcibly having sexual intercourse with his wife.

Were **Justice Shakdher** favoured striking down the exception, other side to it **Justice Shankar** wanted to uphold it as constitutional, He also rejected the contention that the exception in the IPC compromises on the wife's right to consent, observing that the exception "does not treat the offence as condonable; it merely disapproves the use of the 'rape' vocabulary in the context of marital sexual relations."

Judges View from the factor of Consent of Wife

Judges pointed out that the woman has other remedies under provisions like Section 498A of IPC. Also even if the exception is found to be unconstitutional, the court would still not be able to strike it down because doing so would create a new offence. Courts have ruled that only the legislature can create a new offence.

Also The judges went on to highlight that if a wife alleges lack of consent, "it may conceivably become extremely difficult, if not impossible, for the husband to discharge the

²¹ Apoorva Mandani, High Court Judges Differed On Marital Rape, 2 May, (2022 04:38 pm IST), <<https://theprint.in/judiciary/how-hc-judges-differed-on-marital-rape-one-said-rape-is-rape-other-saidspouses-sex-sacred/952809/>>.

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onus cast on him...to prove existence of consent, as the act has taken place within the confines of the bedroom”.

Justice Shankar observed that “Absent a subsisting and surviving marriage, neither would have learned counsel have been here to argue the matter with the proficiency they exhibited, nor would we be here to pass judgment thereon.”

Justice Shakti’s opinion examined the language used in Section 375. “He observed that every female victim, except a married woman, has the right to initiate criminal proceedings against the offender if she is subjected to forced sexual activity. Further he then went on to opine that this classification between married and unmarried women is “unreasonable and manifestly arbitrary” and violates the equality clause under Article 14 (equality before law) of the Constitution. He rejected the argument that a married woman can take recourse to other provisions like Section 498A of the IPC, which criminalizes subjecting a woman to cruelty, and the Protection of Women from Domestic Violence Act, 2005.” These arguments, he said, “hedge around the main issue, which is, to call out the offence of rape for what it is”.

The Delhi High Court had allowed the petitioners for second appeal before the Supreme Court as it contains a Substantial Question of Law in this matter and There is a need of the opinion of the Apex court regarding Marital Rape offences as its of public interest.

COMPARISON BETWEEN INDIA AND USA

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, color 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.

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Poland was first country to criminalize marital rape in year 1932²². 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. 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. 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.²³ Supreme Court of Nepal in year 2002 acknowledged exception of marital rape to be unjustified and unreasonable in eyes of law and held it to be against the basic fundamentalsof the Constitution that provided right to ensure 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. This directive orders of the Supreme Court of Nepal was executed in recent days when the criminal code bill that introduced proper statutory provisions for marital rape while keeping in mind directions of Supreme Court of Nepal got passed by the parliament.²⁴ All the above-mentioned countries that have criminalized rape in a marriage have found it against the basic human right to equality and to live life with human dignity and liberty that has been granted to all of its citizens. 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.

The researchers concluded that the Indian legislature stills hold an old mentality is very clear from the legal provisions of IPC. Section 375 of IPC defines what constitutes as rape and this section is pretty clear and a correct definition except of “Exception 2” 22 which says that if the husband commits a forceful intercourse with his wife and if she is younger than 15 years of age then only it will be considered as a crime of rape. Now this means that if the girl is above 15 years her consent is not required or it presumed that she gave her consent because according to the old beliefs the mutual matrimonial ceremony is taken as a permit to have

²² Anusha Agarwal, ‘Only 36 Countries Have Not Criminalised Marital Rape, India Is One of Them’ The Leaflet(Delhi,30July2021)<<https://www.theleaflet.in/only-36-countries-have-not-criminalised-marital-rapeindia-is-one-of-them/>> accessed 1 September 2021

²³ Shalini Nair, ‘Marital rape a crime in many countries, an exception in many more’The Indian Express (Delhi,31August2021)<<https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-anexception-in-many-more-4821403/>> accessed 1 September2021

²⁴ Forum for Women, Law and Development and others v/s office of the Prime Minister and the Council of Ministers and others, Special Writ No. 64 of the Year 2061(2004 A.D)

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sexual intercourse by man and what is not taken into consideration is the “Consent” of the wife. Also Article 21A and 23 of the Indian constitution guarantees Right to Life and Liberty along with Right to Privacy but still the courts and the legislature tends to forget or ignore about these fundamental rights when it comes to prescribing the laws from criminalizing marital rape.

While in USA, marital rape is **a crime in all the 50 states**. It has been a crime since a couple of **decades** now. There is not any national law in USA for the crime as such but all the states have their separate laws regarding marital rape and in some states **they have differentiated between rape and marital rape in different sections**.

Some of the laws of some states are stated below:

- **California** – California have a separate section for marital rape and a separate for rape in general in their penal code which is section 262 and section 261 is about rape in general.²⁵
- **Mississippi** – According to their penal law, the offence of sexual battery requires the husband and wife to be living together at the time of incident and the accused must commit a coerced sexual intercourse and must penetrate the victim without their consent.
- **Nevada** – The defence of marriage can only be applicable if there was no threat or force at the time of the incident but if the intercourse was done with any kind of threat or force then the defence of marriage cannot be availed.²⁶

So, it can be seen that the marital rape is a crime in all the above mentioned states and just like these three states it is a crime in all the 50 states of America. Yes, many states have excluded the situation of being under the influence of drugs or other substance for the marital rape while others consider it a crime in all the situations.

SUGGESTIONS & CONCLUSIONS

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

²⁵California Penal Code, 1872, Sec 261,262, United States of America.

²⁶ Sneha Mohanty, Marital Rape, RG (2019),

<https://www.researchgate.net/publication/336170675_Paper_on_Marital_Rape>.

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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 penalize a 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*²⁷ 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 The Indian Constitution provides to citizens of India and other people does not make any discrimination. Irrational reasoning's 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 '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 The Constitution. Consent in section 375 of The Code 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 fulfil the objective of this term is against the sole purpose with which section 375 of The Indian Penal Code was inserted and thus needs to be scraped out. Scraping out exception 2 from section sec 375 of the code is not one-day task for the legislature, the doubts and the problem that stands on the way of criminalizing marital rape is an old deep rooted cultural belief that needs to be tackled with mind with rational reasoning. criminalizing marital rape is a gradual process that primarily begins with mind acknowledging that rape in marriage is crime.

Law is not a rule of thumb, its existence is result of critical and relevant reasoning, therefore to conclude rightness and wrongness of a particular provision of any statute it is imperative to

²⁷ 2019 SCC Online All 2255

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dig deep into laws of a state rather than relying on flimsy reasoning, therefore before discussing on the social and rightness and wrongness of marital rape, legal and constitutional rightness and wrongness should be discussed. One wrong cannot be blindly accepted in order to avoid another wrong. Wife is not a person who should be blindly expected to give in to the sexual needs of husband therefore 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. Bringing changes in law for marital rape does not necessarily means to bring strict penalizing provisions for marital rape at once but it is to take small steps towards understanding the scenario of marital rape in India and to come up with reasonable provisions that takes care of rights of both side of the party i.e., is husband and wife. 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 and to justify the meaning of justice to which every person is entitled.

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