

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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EVALUATION OF MARITAL RAPE AS AN UNFORSEEN OFFENCE IN INDIA¹

AUTHORED BY - DEBABRATA PYNE
& SHARMISTHA BANDYOPADHYAY

INTRODUCTION: -

Marriage in **Indian** context is considered as a **social institution** and thus is the pivotal point of family life. It is being stated that subject of **marriage** is completely personal and thus the **state** is hesitant to disturb this delicate space. In order to maintain this privacy of **citizen**, the **state** doesn't want to intrude and disrupt into it either way. It is also noticeable that, with time and again the status of women in the society has become changed from a mere home-maker to a property of the men. The **non-criminalization** of **marital rape** is one of such instances which makes this point clearer.²

Since a long period of time, **marital rape** and its **non-criminalization** is a burning issue in **India**. Unlike other developed nations (**U.S.A.**, **U.K.** etc.), **India** has not criminalized **marital rape** yet. From time and again, **marital rape activists** and **Indian media** have expressed their opinion by stating that it is very much necessary and imperative to criminalize **marital rape** in order to protect **married women** from being subjected to sexual humiliation in the hands of their **husbands**. It is true indeed that **Courts** in **India** can have recourse to various methods to identify **marital rape** and also to provide **punishment** for the same. But unfortunately, in the absence of any specific **legislative provision**, the **Courts** are also unable to define forceful intercourse of **husband** upon **wife** as **marital rape**. Therefore, **judiciary** alone cannot fight for the protection of **rights** of **married women** unless the **legislature** comes forward to bring any suitable **legislative provision** in this regard. The **Indian government** had provided mainly **two** reasons for **non-criminalization** of **marital rape**, i.e., marriage in **India** stands as a sacred institution and criminalizing the same may lead to destabilization of society and **secondly**, it should not be considered as a **crime** because the same may amount to filing of false cases against **husbands**. Nevertheless, such a standpoint of the **government** is not only **unjust** but

¹ Sharmistha Bandyopadhyay & Debabrata Pyne

² *Indian Women: - Yesterday, today and tomorrow;*
<https://www.indiatoday.in/magazine/coverstory/story/19760111-indian-women-yesterday-today-and-tomorrow>:(Last visited **Feb 25,2023**)

unreasonable also and thus it is desirable to state that **marital rape** alike **rape** should be regarded as a **crime** and be penalized with immediate effect.³

MARITAL RAPE & INDIAN PENAL CODE: -

In **India**, offence of **rape** has been described under **Section 375** and the punishment for the same has been laid down under **Section 376**. To **Section 375** a **man** is said to commit **rape** against a **woman** if the sexual intercourse between the **man** and the **woman** takes place without the **consent** of the **woman**. In this connection it is pertinent to explain the meaning of the very term '**consent**': -

Consent means an unequivocal voluntary agreement when the **woman** by **words, gestures** or any form of **verbal** or **non-verbal communication**, communicates willingness to participate in the specific sexual act.⁴

In the light of above stated explanation, it is very much evident that in the absence of the **consent** of a **woman** while having sexual intercourse, a **man** can be prosecuted for **rape**. The same position must have had an application to **marital rape** as well. But unfortunately, the **Indian Penal Code, 1860** doesn't specifically provide for **marital rape** as a distinct offence nor does it explain what constitutes **marital rape**. However, a little bit trace of **marital rape** can well be found under **Exception 2** to **Section 375** as well under **Section 376 B** of **Indian Penal Code, 1860**: -

A. Marital Rape exemption: - "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not a rape".⁵

The said **exception** doesn't make any sense as because the **exception** itself creates discrimination between **married** and **unmarried girl**. It is also to be noted that in **India** for preventing the **child marriage**, there is **Prohibition of Child Marriage Act, 2006**. Here again the said **exception** comes in conflict with the provision laid down under **Prohibition of Child Marriage Act, 2006**. The **Prohibition of Child Marriage Act, 2006** under **Section 2(a)** states that **child** means a person below **21 years** of age if a **male** and below **18 years** of age if a **female**.⁶ Apart from that **child**

³ Prateek Mishra, *Marital Rape and violation of Constitutional Provisions*, IJLMH, 1, (1,3 &6) (2019); <https://www.ijlmh.com/wp-content/uploads/2019/10/Marital-Rape-and-violation-of-Constitutional-Provisions.pdf>

⁴ Explanation 2 to Section 375, Indian Penal Code, 1860

⁵ Exception 2 to Section 375, Indian Penal Code, 1860

⁶ S.2(a), The Prohibition of Child Marriage Act, 2006

marriage in either form has been made punishable under **Section 10** of the said act:

-

“Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage”⁷

Analyzing the **provisions** laid down under both the **laws** one can easily identify that **The Prohibition of Child Marriage Act, 2006** prevents a girl child from getting married unless she completes her **18 years** of age, but, on the other hand, **Exception 2 to Section 375** doesn't even recognize **Child marriage** and provides for remedy only to the group belonging up to **14 years** of age. Herein, the **law on marital rape** stands contradictory as well bad to that of **The Prohibition of Child Marriage Act,2006**.

Very recently, the **Apex Court** has catered a valuable decision in order to remove the conflicting provision of **exception 2 to Section 375**: -

In **Independent thought v. Union of India**⁸, the **apex court** held that the time has come to rethink about **exception 2 to Section 375** of **IPC** and the prescribed age limit of **15 years** should be increased up to **18 years**-

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

B. Marital Rape during Judicial Separation: - Alike **exception 2 to Section 375** of **IPC** another instance of **marital rape** may also be discovered under **Section 376 B**-
“Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine”.⁹

With due reference to **Section 376 B**, it can be stated that the provision laid down thereunder gives protection to a **married woman** only when the **sexual intercourse** takes place without her **consent** during the time she is living separately from her **husband**.

Once after analyzing both the provisions, **i.e., exception 2 to Section 375 & Section**

⁷ S. 10, The Prohibition of Child Marriage Act,2006

⁸ AIR 2017 SC 4904

⁹ S. 376B, Indian Penal Code,1860

376 B, it may thus be summarized that only the following **two** category of **married women** have been given protection against **marital rape**: -

- i. Married woman** below the age of **15 years** (Now **18 years** as per the **precedent** set forth in **Independent thought v. Union of India**)¹⁰.
- ii. Married woman** living separately from **husband**.

It is thus clear that the old aged substantive **criminal law** in **India, i.e., Indian Penal Code, 1860** is still silent about **marital rape** and the protection to be given to the **married women**. Therefore, one must easily say that this is the lacunae still exist in **Indian legal system**.

NON-CRIMINALIZATION OF MARITAL RAPE AS VIOLATION OF FUNDAMENTAL RIGHTS: -

The **Constitution of India** is regarded as the fundamental law of the nation and it ensures the protection of all the **individual rights** with great adherence. Apart from that the **Indian Constitution** organizes and controls power, balances the competing claims of social and individual interests, mirrors the cultures and experiences of the country and operates as a vehicle for national progress and unity.¹¹

As per the **Constitution of India**, each and every **law** of the land shall be enacted with due compliance to the **principles** and **ideas** embodied under the **Constitution** itself. If any of the **law** fails to comply with the same, it shall be deemed to be **ultra vires** and is liable to struck down by the **Courts** and to be declared as **unconstitutional**¹²:-

“(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”¹³

In due consideration of the **Constitutional provision** laid down under **Article 13**, it will now be determined how does **non-criminalization** of **marital rape** affect the

¹⁰ *Supra note 95*

¹¹ *Supra Note 94*

¹² *Ibid*

¹³ Article 13, The Constitution of India, 1950

Fundamental rights of married women.

- a. **Violation of Right to Equality under Article 14:** - The **Constitution of India** has under **Article 14** guaranteed for ‘**right to equality**’ to all concerned. That is to say, unequal treatment in any form is absolutely prohibited and if it is being practiced shall be deemed to be violative of **Article 14**. In furtherance, it can also be stated that if any **law** or **legal provision** contravene the **principle** laid down under **Article 14** shall be deemed to be struck down: -

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”¹⁴

Even though the **Constitution of India** promotes **equality** among all, the **marital rape** exemption is however contradictory in nature as because it discriminates female victims of **rape** perpetrated by their own spouse. It is pertinent to note that, **exception 2** to **Section 375** gives protection only to the **married women** below the age of **18 years** (after the judgment came up in **independent thought** case) and not to others. Such a **legal provision** is violative of **Article 14** and thus unconstitutional.¹⁵

It is true indeed that **Article 14** permits **classification**. But a **classification** in order to be valid must be a reasonable one:

In **Budhan Choudhary v. State of Bihar**¹⁶, the **Apex Court** stated that any **classification** made under **Article 14** of the **Constitution of India** must comply with a **reasonability test** and such a test can only be attributed if the **classification** has a rational context for the claim’s aims.

In **State of West Bengal v. Anwar Ali**¹⁷, the **Apex Court** held that a valid **classification** must comply with the following **two requirements**:

- The **classification** must be based upon an **intelligible differentia**.
- The **differentia** must have a reasonable nexus to the **object** sought to be achieved.

It is thus evident that any **law** or **legal provision** which creates an **unnecessary** or **irrelevant** classification shall be struck down as violative of **Article 14**.

In addition to the discussion made so far, it is also noticeable that **Article 14** provides for “**equal protection of laws**” which means equal law should be applied to all

¹⁴ Article 14, The Constitution of India, 1950

¹⁵ *Supra note 59*

¹⁶ AIR 1955 SC 191

¹⁷ AIR 1952 SC 75

persons who are similarly placed and there should be no discrimination between one person and another.

In **Stephen's College v. University of Delhi**¹⁸, the **Supreme Court of India** held that the expression "**equal protection of laws**" is read as a positive obligation on the **State** to ensure equal protection of laws by bringing in necessary social and economic changes so that everyone can enjoy equal protection of the laws and nobody is denied such protection.

In this context, it is desirable to state that the **Indian Penal Code, 1860** being a general criminal law should have an equal application. But in reality, this is not so and henceforth, the **provision regarding marital rape exception** so appended to **section 375** stands violative of **Article 14** of the **Constitution**.

- b. Violation of different facets of Article 21:** -The **Constitutional** provision so enshrined under **Article 21** is a pivotal one as it ensures '**right to life and personal liberty**' to all individuals:

"No person shall be deprived of his life or personal liberty except according to procedure established by law".¹⁹

The very term '**life**' includes within its ambit many things as expanded by **judiciary** and in this regard, it would be worthwhile to enlighten how the **non-criminalization of marital rape** violates different facets of **Article 21**.

Right to live with human dignity- 'Right to life' doesn't simply mean mere survival. In a greater context it can be said to include within its ambit living one's life with dignity.

In **Francis Corallie Mulin v. Union Territory of Delhi**²⁰, it was held that the concept of **right to life** under **Article 21** of the **Constitution** includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms.

The offence of **rape** violates the **right to life** and the **right to live with human dignity** of the victim of the crime of **rape**.²¹The **Supreme Court** has stated that **rape** is not merely an offence under **IPC**, but is a crime against the entire society. **Rape** is less of a sexual offence than an act of aggression aimed at degradation and humiliation of

¹⁸ AIR 1992 SC 1630

¹⁹ Article 21, The Constitution of India, 1950

²⁰ AIR 1981 SC 802

²¹ The Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988

women.²²Therefore, **marital rape** exemption is also violative of a **woman's** right to live with human dignity. Moreover, any **law** which permits a **husband** to compel the **wife** into having sexual intercourse against her will and without her consent violates the true essence of **Article 21** and thus **unconstitutional**.

Right to sexual privacy- Undoubtedly, the concept of **privacy** has never ever been inserted within the context of **Article 21**. But it is the **judiciary** which from time and again expanded the scope of **Article 21** and held that 'right to privacy' is an intrinsic part of 'right to life'.

In the leading case of **Justice K.S. Puttuswamy (Retd.) v. Union of India**²³, the **Supreme Court** has held that one of the most important **fundamental rights** of all the **citizens, i.e.,** right to privacy also include within its ambit the decisional privacy reflected by an ability to make intimate decisions primarily consisting of one's sexual or procreative nature and decisions in respect of intimate relations.

In **State of Karnataka v. Krishnappa**²⁴, the **Supreme Court** was of the view that, sexual violence, in addition to being a dehumanizing act, is an illegal interference with a woman's right to privacy and sanctity.

Further in the case of **Suchita Srivastava v. Chandigarh Administration**²⁵, it has been held that right to make choices related to sexual activity has equal importance as the rights to personal liberty, privacy, dignity and bodily integrity which are included within **Article 21** of the **Constitution**.

In **State of Maharashtra v. Madhkar Narayan**²⁶, the **Supreme Court** was of the view that every woman is entitled to privacy and it is not open to any and every person to violate her privacy whenever he wished or pleased.

With due consideration of the above cited authorities, it is right enough to state that there is no such hard and fast rule which takes away a person's **right to privacy** whenever the person gets in marital association with another person. That is to say, forced sexual intercourse with any woman whether **married** or **unmarried** without consent is a complete violation of her fundamental right to abstain from sexual activity. Therefore, **non-criminalization** of **marital rape** amounts to violation of a **married woman's right to privacy** and thus **unconstitutional**.

²² Bodhisattwa Gautam v. Subhra Chakraborty

²³ AIR 2017 SC 4161

²⁴ AIR 2000 SC 1470

²⁵ (2009) 9 SCC 1

²⁶ AIR 1991 SC 207

Right to bodily self-determination- The **Constitution of India** doesn't expressly recognize **right of bodily self-determination**. But the same can be said to be an intrinsic part of '**right to life and personal liberty**' guaranteed under **Article 21** of the **Constitution**.

Right of self-determination is based upon the core concept that an individual is the ultimate decision maker in matters closely connected with his or her body or wellbeing. Furthermore, consent to sex is one of the fundamental choices which a woman reserves for herself. It is a form of self-expression and self-determination and any **law** which takes away the right of expressing and revoking such consent definitely deprives a person from the **Constitutional** right of **self-determination**.²⁷

In **Joseph Shine v. Union of India**²⁸, it was noted by **Chandrachud, J.** :

"..... Control over women's sexuality is the key patriarchal assumption that underlies family and marriage....marriage is a significant social institution where this subordination is pronounced, with entrenched structures of patriarchy and romantic paternalism shackling women into a less than equal existence.... Constitutional protections and freedoms permit every aspect of a citizen's life- the delineation of private or public spheres become irrelevant as far as the enforcement of constitutional rights is concerned...the enforcement of forced female fidelity by curtailing sexual autonomy is an affront to the fundamental right to dignity and equality."

It may thus be stated that forceful sexual intercourse without obtaining consent deprives a **married woman** from her **right to bodily self-determination, i.e.,** consent to sexual intercourse and hence is **unconstitutional**.

Right to good health- Marital rape exemption is also violative of **right to good health** which itself is an implicit **right** under **Article 21**. Such a **right** is necessary for the continuous and spiritual well-being of an individual.²⁹

In **CESC Ltd. v. Subhas Chandra**³⁰, the **right to good health** has been recognized as an intrinsic part of **right to life** under **Article 21**.

The **marital rape exemption** violates the **right to good health** of a victim as it inevitably causes serious psychological as well physical harm in the process. It

²⁷ *Supra note 6*

²⁸ AIR 2018 SC 4898

²⁹ *Ibid*

³⁰ (1992) 1 SCC 441

destroys the psychology of a woman and pushes her into a deep emotional crisis.³¹

EXISTING LEGAL REMEDIES FOR MARITAL RAPE: -

One of the biggest lacunae existing in **Indian legal system** is **non-criminalization** of **marital rape**. It is true indeed that the **Indian Penal Code, 1860** did never include **marital rape** as a distinct offence nor talked about for its penalization. Despite of not having any suitable **legal provision**, the victims of **marital rape** can still seek remedy under some of the existing **Civil and Criminal laws**. Some of these instances are as following:

A. Remedies under Civil Law: -

While dealing with the concept of **Civil remedies** available to the **victim** of **marital rape**, one should rely upon **The Hindu marriage Act, 1955**, **The Dissolution of Muslim Marriages Act, 1939** and **The Protection of Women from Domestic Violence Act, 2005**.

The Hindu marriage Act, 1955: In terms of **Section 13 (i-a)** of **The Hindu marriage Act, 1955**, one can seek remedy for **divorce** on the ground of **cruelty**:

“Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-
(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty....”³²

In **Maya Devi v. Jagdish Prasad**³³, it was observed that **cruelty** which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a nature as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

In **Neelu Kohli v. Naveen Kohli**³⁴, it was held that “the expression **cruelty** as envisaged under **Section 13** of the **Act** clearly admits in its ambit and scope such acts which may even cause mental agony to aggrieved parties. Intention to be cruel is not an essential element of cruelty as envisaged under **section 13(1)(a)** of the **Act**. It is sufficient that if the cruelty is of such type that it becomes impossible for spouses to live together.”

³¹ *Supra note 6*

³² S.13(i-a), The Hindu marriage Act,1955

³³ AIR 2007 SC 1426

³⁴ AIR 2004 All 1

Even though **marital rape** has not been included as a sole ground for seeking **divorce**, the same shall come under the purview of **cruelty** and a victim of **marital rape** can easily resort to it.

Very recently, the **Division Bench** comprising of **Justices A. Muhamed Mustaque** and **Kauser Edappagath** of **Kerala High Court** held that merely because the law does not recognize **marital rape** under **penal law** does not inhibit the **Court** from recognizing the same as a form of **cruelty** to grant **divorce**.³⁵

The Dissolution of Muslim Marriages Act, 1939: If a **Muslim** married woman is the victim of **marital rape**, she can be entitled to seek decree for dissolution of her marriage on the ground of **cruelty**:

“A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely: -

(viii) that the husband treats her with cruelty, that is to say, -

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment...”³⁶

The Protection of Women from Domestic Violence Act, 2005: This very **act** under **Section 3** provides for the following:

“Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) 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.”³⁷

In **Ishpal Singh Kahai v. Ramanjeet Kahai**³⁸, the **Bombay High Court** held that **The Protection of Women from Domestic Violence Act, 2005** is enacted to provide **statutory protection** to **victims** of **domestic abuse**.

It may thus be stated that, **the protection of women from domestic violence act, 2005** didn't specifically use the connotation **marital rape**, rather it did consider it as a part of **domestic violence**. Therefore, if a **woman** is subjected to **marital rape**, she can seek remedy under this **act**.

B. Remedies under Criminal Law: -

³⁵ X v. X, Mat. Appeal No. 151 of 2015, decided on 30-07-2021

³⁶ S.2(viii)(a), The Dissolution of Muslim Marriages Act,1939

³⁷ Section 3, The Protection of Women from Domestic Violence Act,2005

³⁸ (2011) SCC Online Bom 412

Undoubtedly, **The Indian Penal Code, 1860** is silent about **marital rape** and its **criminalization**, but the same doesn't disentitle a victim of this unrecognized offence from seeking remedy under any other **legal provision**. In the absence of any suitable **legal remedy**, a victim of **marital rape** can resort to the following **legal provisions**:

“498A. Husband or relative of husband of a woman subjecting her to cruelty. – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”³⁹

The terminology '**cruelty**' so appended to **Section 498A** shall provide a shield to a married woman against the offence of **marital rape**. As because having sexual intercourse against one's will amounts to **cruelty** only and therefore, a married woman can easily prosecute his husband in such a circumstance. More specifically, the terminology **cruelty** has been defined under **Section 498 A** in following manner:

“Explanation- For the purposes of this section, '**cruelty**' means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman.....”⁴⁰

It may thus be stated that imposition of forceful voluntary sexual desire by the **husband** upon his **wife** is nothing but a cruel treatment towards her and which in turn may make her life distressed as well meaningless. Therefore, a silent sufferer of **marital rape** can easily rely upon the provision laid down under **Section 498A** of **The Indian Penal Code, 1860**.

“354. Assault or criminal force to woman with intent to outrage her modesty- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine.”⁴¹

It is to be noted that for prosecuting an offender under **Section 354, IPC** one must prove that the **modesty** of the **victim** has been outraged by the wrong-doer. It is also noticeable that this very **section** provides remedy to **“any woman”** which includes a **married woman** as well. Therefore, a married woman can bring an action under

³⁹ S.498A, The Indian Penal Code,1860

⁴⁰ *Ibid*

⁴¹ S.354, The Indian Penal Code,1860

Section 354 only if she proves that her **modesty** has become outraged. The meaning of the word **modesty** has well been explained by **judiciary** in a number of cases:

Major Singh v. State of Punjab⁴², the **modesty** of a woman was defined as “the essence of a woman’s modesty is her sex. The modesty of an adult female lies on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged.”

Tarakeswar Sahu v. State of Bihar⁴³

“The essence of a woman’s modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.”

In the light of the above cited authorities, one may easily identify that if a **husband** imposes his forceful sexual desire upon his **wife**, the same shall constitute the outraging of **modesty** of a **married woman**.

It is also to be noted that the ultimate test for determining the outraging of modesty lies upon the action of the offender, such as could be perceived as one which is capable of shocking the sense of decency of a woman.⁴⁴

If a married woman can prove that the **husband** has intentionally applied force upon her to have sexual intercourse with him, she can easily seek relief on the ground of outraging the modesty under **Section 354, IPC**.

“**377. Unnatural offences-** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”⁴⁵

Though **marital rape** has no direct connection with the provision laid down under **Section 377, IPC**, the same can be taken as a recourse by a victim of **marital rape** technically. **Section 377** specifically provides for **sexual intercourse** against the nature or in other words it depicts the picture of **unnatural sex**. Sometimes, the **husband** may ask for having anal sex or else for any other unnatural sexual activities for gratifying his lust. The **wife** may not have the consent to such activities and if the **husband** still applies the same to gratify his sexual desire, the victim is free to bring

⁴² AIR 1967 SC 63

⁴³ (2006) 8 SCC 560

⁴⁴ Rupan Deol Bajaj v. K.P.S. Gill (1955) 6 SCC 194

⁴⁵ S.377, The Indian Penal Code,1860

an action under **Section 377, IPC**.

CONCLUSION: -

Once after making a detailed discussion, it may thus be concluded that mere providing additional remedies without having suitable **legal provision** to curb the menace of **marital rape** is not worthy at all. Henceforth, the existing legal provision on **rape** laid down under **Section 375, IPC** should be reconsidered to bring the concept of **marital rape** within its context or else a completely new provision must be brought to tackle the same.

