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"A COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORK AND SOCIETAL PERCEPTIONS OF MARITAL RAPE IN INDIA AND OTHER COUNTRIES"

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ABSTRACT

The phenomenon of marital rape is a prevalent but insufficiently examined matter in present-day society, distinguished by a multifaceted interaction of legal, cultural, and social elements. This research article aims to perform a complete comparative analysis of the legal frameworks and public perspectives pertaining to marital rape in four unique jurisdictions, namely India, the United Kingdom (UK), the United States of America (USA), and Australia.

This study examines the historical progression of legislation pertaining to marital rape across several countries, emphasizing significant legislative landmarks and modifications. Through a comprehensive analysis of legal laws, this study reveals discrepancies in the conceptualizations, criminalization, and sentencing of marital rape, thereby illuminating the heterogeneous strategies adopted by different countries in tackling this particular manifestation of sexual violence inside the institution of marriage.

Moreover, this study delves into the cultural attitudes and beliefs surrounding marital rape throughout the aforementioned countries. It accomplishes this by utilizing an extensive array of qualitative and quantitative sources, such as surveys, interviews, and public opinion data. This study examines prevalent myths, assumptions, and cultural norms that play a role in the continuation of marital rape and impede survivors' ability to seek legal recourse.

The conducted comparative research highlights significant differences among the nations under study, demonstrating varied levels of legislative safeguards and cultural understanding pertaining

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to the issue of marital rape. This statement highlights the significance of implementing legal reforms, educational programs, and awareness campaigns as means to challenge existing societal standards and enhance the assistance available to survivors. This research seeks to contribute to a global discourse on the eradication of marital rape and the promotion of gender equality and human rights globally by examining the merits and limitations of each country's approach.

KEYWORDS- Marital Rape, Legal Framework, Societal Perceptions, Comparative Analysis, Gender-based Violence, Sexual Assault, Consent in Marriage, Human Rights, Gender Equality and Human Dignity.

INTRODUCTION

Marriage is often considered one of the most sacred and intimate bonds between individuals, founded on love, trust, and mutual respect. However, hidden beneath this idealized concept of matrimony lies a stark reality that has long evaded the spotlight – the issue of marital rape. This deeply contentious and sensitive topic, shrouded in societal perceptions and legal intricacies, has become a focal point of discourse and activism in numerous countries around the world. In the context of intimate relationships, marital rape refers to the act of sexual intercourse without the explicit and voluntary consent of one's spouse. It is a violation that transcends borders, affecting countless lives and provoking debates on individual rights, gender equality, and the very essence of marriage itself.

The term 'Rape' finds its origins in the Latin word 'rapio,' which translates to 'to seize.' Its literal interpretation can be described as a forcible seizure. Furthermore, it can be defined as the non-consensual or coerced violation of a woman, obtained under duress, deceit, fear, or through forced sexual intercourse.³ Marital Rape is not a newly coined term; its existence can be traced back to the inception of marital unions between men and women. In earlier times, when societies were predominantly male-dominated, women had minimal rights to safeguard their dignity and integrity. They were often perceived as objects meant solely to fulfill the sexual desires of men.

This ideology persisted in numerous parts of the world, including India, where marital rape remains uncriminalized due to the perception that the husband-wife relationship somehow

³ Bhupinder Sharma v. State of Himachal Pradesh, AIR 2003 SC 4684

exempts it from legal consequences. India is among the countries that have yet to criminalize marital rape, even years after enacting Penal Codes that classify rape as a criminal offense.

The concept of marital rape gained recognition when it was realized that it falls within the parameters outlined for rape. Some countries, such as England, Poland, Canada, Australia, and the USA, have subsequently criminalized marital rape. In India, this issue has sparked a contentious debate. The conflict revolves around two opposing viewpoints regarding Marital Rape.

One perspective asserts that marriage itself implies consent for sexual intercourse, while the opposing viewpoint contends that rape should be treated as such regardless of the relationship between individuals. According to this perspective, consent plays a pivotal role in defining rape, even within the confines of marriage.

Throughout this paper, we will delve into this ongoing conflict, discussing what should be deemed legally acceptable within the current framework of Indian law and order.

EVOLUTION OF RAPE LAWS:

The historical origins of rape laws can be traced back to approximately 1900 BC in the ancient city of Babylon. According to the Hammurabi Code, engaging in non-consensual sexual intercourse with a married lady or a virgin under the protection of her father would result in the imposition of capital punishment upon the perpetrator. From a historical standpoint, it becomes evident that women were perceived as objects owned by either their fathers or husbands, with rape being regarded as an affront to a man's reputation rather than a direct harm inflicted upon the lady in question. Historically, women who experienced rape were frequently stigmatized and perceived as morally compromised, rendering them undesirable for marriage. This perception can be attributed to the prevailing notion that rape was comparable to the act of appropriating or defiling another man's possession.

Significantly, within this particular paradigm, the act of engaging in non-consensual sexual intercourse with one's own spouse was not considered to meet the legal definition of rape. The redefinition of rape in English law as non-consensual sexual intercourse with any woman above the age of 10 years occurred throughout the 1600s. Likewise, within the United States, the act of

rape was delineated as the engagement in non-consensual sexual intercourse with a female individual who was not the perpetrator's spouse, accomplished through the exertion of force and in direct opposition to the victim's volition. The aforementioned legal modifications highlight the prevailing perception of rape as primarily constituting a criminal offense in cases where it transpired beyond the bounds of matrimony. In order to establish a case of rape, it was imperative to provide evidence demonstrating both the presence of force and the lack of consent. In the context of legal proceedings, the woman bore the burden of proof, and her recognition as a victim was contingent upon the unmistakable establishment of the accused man's guilt in relation to the charge of rape.⁴

The second wave of the feminist movement was essential in enabling women to address the various forms of injustice they encountered, so fostering their empowerment. Commencing in the latter part of the 1960s, women initiated a process of open dialogue regarding their encounters with sexual assault and other distressing occurrences within intimate assemblies commonly referred to as consciousness-raising groups. Furthermore, they orchestrated public demonstrations and processions as a means to address the issue of sexual assault, while also establishing specialized facilities known as rape crisis centers to offer comprehensive assistance and therapeutic services to individuals who have experienced rape.

One of the key aims of feminists advocating against sexual assault was to initiate legal changes. Consequently, a collective of individuals advocating for gender equality, spearheaded by the National Rape Task Force, undertook a steadfast endeavor to reframe the legal understanding of rape as an act of violence. The diligent endeavors of individuals yielded positive outcomes in 1974, as Michigan and subsequently other states undertook revisions to their rape legislation. These revisions aimed to provide a more comprehensive and encompassing definition of rape, encompassing the prohibition of marital rape as well.⁵

In past, the concept of rape was legally defined as non-consensual sexual intercourse with someone other than the accused's wife, the phenomenon of marital rape did indeed exist in the past. However, it remained largely unacknowledged by both society and the victims themselves. During earlier periods, prevailing societal norms often regarded a wife as the property of her

⁴ Brooke Flagler, A Brief History of rape law, The Feminist Poetry Movement (Dec 13, 2019),

⁵ ibid

husband, and it was commonly expected that she fulfil her marital duty by engaging in sexual intercourse with him. Consequently, wives often did not recognize or acknowledge instances of sexual coercion or violence within marriage as rape. Even if husbands forced themselves upon their wives or resorted to physical abuse, many women believed that they were obliged to endure such treatment. So, while the concept of marital rape did exist historically, it went largely unrecognized due to prevailing social ideologies of the time.⁶

HISTORY OF RAPE LAWS IN INDIA:

In the annals of Indian history, the occurrence of rape is not a recent development. This heinous crime against women has existed for ages, with its roots extending deep into the past. The notion of holding rapists accountable for their actions can be traced back to ancient times, as evident in the narratives of the Ramayana and Mahabharata. Similarly, within the framework of Islam, rape has been deemed a serious transgression, with penalties ranging from death to the harsh punishment of stoning for the offender.

Throughout ancient and medieval epochs, society acknowledged the existence of rape and established mechanisms for its retribution. As the modern era dawned, it saw the adoption of legal norms, notably those instituted by the British under the Indian Penal Code of 1860, designed to prosecute and penalize those guilty of rape.⁷

The status of married women was not always unfavorable. In fact, during the Vedic Era (approximately 4000 BC to 1000 BC),⁸ newly wedded women held a respected position in their new households, as seen in the Rigveda. However, as time passed, their dignity and respect began to erode. They came to be expected to unquestionably obey their husbands and assume a subordinate role.

During the Smriti Period (600 BC to AD 200), conditions further deteriorated, with the emergence of harmful practices such as sati pratha, dasi pratha, polygamy, and child marriage. Additionally, during the medieval period, women were often required to wear veils, and there were strict

⁶ Gelles, Richard J. "Power, Sex, and Violence: The Case of Marital Rape." 26.(4.) The Family Coordinator 339, 339-347 (1977).

⁷ Pamini Kasera, A Historical Analysis of Rape Laws in India, SSRN (June 5, 2020), <https://ssrn.com/abstract=3619807>.

⁸ Rigveda. X.85.49.

controls imposed on their sexuality to maintain caste purity.

Under Muslim Law, marriage was treated as a civil contract that could be dissolved, and divorce procedures were relatively straightforward. This constant fear of divorce made women subservient to their husbands, who exercised complete authority over their autonomy.

As a result, there persists a perception that marriage grants the husband perpetual consent for sexual intercourse at his discretion, while the wife is sometimes viewed as merely a means for producing children, with her own willingness and rights regarding bodily integrity and reproductive consent often disregarded and dismissed as unfounded.⁹

MARITAL RAPE PROVISIONS IN INDIA AND OTHER COUNTRIES

ENGLAND

India has exclusively adopted its Penal Code from England. Under UK law, marital rape is classified as a form of sexual assault, in violation of the Sexual Offences Act of 2003. Prior to 1992, marital rape was not deemed illegal, allowing husbands to enforce conjugal rights on their wives without their consent. However, in 1991, the case of *R v. R*¹⁰ prompted a pivotal question in the House of Lords, composed of five lords: Can a man rape his wife?

In the case of *R v. R*, the appellant had married on August 11, 1984, but due to matrimonial disputes, his wife left the marital home and moved in with her parents on October 21, 1989. She expressed her intention to divorce through a letter upon leaving. Later, the appellant also indicated his desire for a divorce. On November 12, 1989, the appellant entered his wife's residence and attempted to engage in sexual intercourse against her will and without her consent. He further assaulted her when she continued to refuse. This raised the fundamental question before the court: Does marriage imply consent to sexual intercourse, even without further explicit consent? Can a husband be held accountable for raping his wife?

The court ruled that there had never been an exemption for marital rape in English common law, nor did it exist in English law. Consequently, the appellant was convicted of raping his wife. He received a three-year prison sentence for attempted rape and an additional eighteen-month sentence for sexual assault.

⁹ Anjali Kant, *Women and the Law*, 26-27 (1997)

¹⁰ *R v. R*, 1991 1 AC 599.

Prior to the R v. R judgment, husbands were not prosecuted for marital rape.¹¹ This landmark ruling exemplifies the evolution of the common law system, adapting to developments in social, cultural, and economic realms. Before this judgment, husbands could subject their wives to sexual servitude, much like in cases involving prostitutes. Marital rape is also considered a form of domestic violence. Today, individuals found guilty of marital rape face imprisonment ranging from four to nineteen years, depending on the specifics of the case. The maximum penalty that can be imposed in such cases is life imprisonment.

Australia

During the 1970s, a number of Australian states initiated a series of reforms with the objective of examining and modifying existing legislation pertaining to sexual offenses, specifically focusing on rape. The Mitchell Committee¹² was founded in 1975 with the primary aim of lobbying for reforms in sexual offenses and rape legislation. The report issued by the committee made a significant comment, stating that the concept of consent within the context of marriage, once granted, should not be considered permanent. This viewpoint was perceived as disconnected from current intellectual trends. In contemporary society, it is widely acknowledged that it is no longer considered socially acceptable to maintain the belief that a wife is obliged to participate in sexual intercourse with her husband solely based on his desires, without taking into consideration her own wishes and permission. In cases where a wife experiences victimization due to her husband's sexual cravings, it is imperative that family law provides her with the necessary safeguards, enabling her to pursue separation from her spouse and establish a life free from harm and disturbance. In situations where a woman has chosen to separate from her spouse and is residing separately, engaging in non-consensual sexual intercourse should not absolve the offender from being legally charged with the crime of rape.

In October of 1976, legislation was proposed by Mr. Peter Duncan¹³, representing a noteworthy advancement in accordance with the suggestions put out by the Mitchell Committee. The aforementioned legislation effectively eliminated the previously existing provision that provided legal protection to husbands, so rendering them immune from prosecution in cases of spousal rape.

¹¹ S v. HM Advocate, 1989 S.L.T. 469; R. v J [1991] 1 All E.R. 759 Independent, January 3, 1991, Guardian, January 18, 1991

¹² Criminal law and penal methods reform committee of south australia, Special Report – Rape and Other Sexual Offences (1976, Government Printer, Adelaide, South Australia)

¹³ South Australia Legislative Council, Parliamentary Debates, Peter Duncan, Attorney-General (9th November 1976) pp 1942-1943

There has been a contention advocating for the abolition of laws that see a wife as the property of her husband, and instead, advocating for the universal entitlement of every adult individual to exercise the right to give or withhold consent for engaging in sexual intercourse, regardless of marital status.

Subsequently, rape cases that involved violence, threats of violence, acts of gross indecency, and other related offenses were incorporated within the purview of rape laws. Initially, this change was confined to South Australia, but ultimately, it was adopted across all jurisdictions in Australia. Australia, being comprised of seven distinct federal states, each having its own set of federal laws, led to variations in punishments for different types of criminal activities occurring within their respective states. Marital rape, meeting all the criteria of rape, was penalized with varying degrees of severity, contingent upon the gravity of the offense. The maximum imprisonment term for such cases was set at 15 years, except in instances where the victim was under 15 years old, in which case a 20-year sentence could be imposed. Perpetrators whose actions resulted in the death of victims faced imprisonment for up to 30 years.

U.S.A

In the United States, prior to the 1970s, there was a legal exemption for Marital Rape, which excluded it from the scope of rape legislation in certain states. The United States of America is composed of fifty individual federal states, each possessing its own unique set of federal laws. During the seventeenth century, Chief Justice Matthew Hale put out the legal argument that the concept of rape inside the institution of marriage was legally untenable, as it was often considered to involve agreement that could not be retracted. The concept of irrevocable consent suggests that males held an unrestricted authority over their wives in terms of sexual encounters within the institution of marriage, so establishing a loophole that exempted marital rape from legal consequences.

In 1857, a significant event transpired in Massachusetts whereby a legal case¹⁴ marked the initial recognition and handling of Marital Rape as an exemption within the framework of rape legislation in the United States. During that period, it was widely considered to be extremely difficult to conceive of a scenario where a spouse would face legal prosecution for the heinous act of rape inside the confines of a marital relationship. The aforementioned viewpoint was perceived

¹⁴ Weishaupt v. Commonwealth, 315 S.E. 2nd 847 (Va. 1984)

as significantly more disruptive than the actual action. The women's movement that emerged in the 1970s played a major role in effecting legislative changes, although encountering significant challenges inside male-dominated legislative bodies. The movement first focused on the repercussions of non-consensual sexual activity within marriage resulting in pregnancy. Nevertheless, this viewpoint received backing from both ethical and legal perspectives, and gradually developed to underscore women's inherent entitlements to possess and govern their own physical beings¹⁵.

In 1976, Nebraska became the first among the fifty states to criminalize Marital Rape. By 1993, Marital Rape had been criminalized in all 50 states of the United States of America. Many states made no distinction, as they rightly shouldn't, between marital and non-marital rape, regardless of the relationship between the accused and the victim. After Nebraska's groundbreaking move, other states followed suit, either through the passage of bills in favor of criminalizing marital rape, recognizing women as independent individuals, or through court cases that ruled in favor of women and set a precedent for subsequent marital rape cases.

For instance, in South Carolina, those convicted of first-degree rape, including marital rape, faced a maximum sentence of thirty years in prison. Meanwhile, individuals found guilty of first-degree assault and battery received a maximum sentence of ten years' imprisonment. Notably, the punishment for rape and marital rape remained the same, irrespective of the relationship between the man and the woman involved.¹⁶

INDIA

In India, Marital Rape is not considered a criminal offense, and it is allowed for anyone to engage in non-consensual sexual intercourse with their spouse, as per the current legal framework. This situation is profoundly ironic when we consider how society focuses on ensuring women's safety in public spaces like streets and malls but often neglects the equally pressing issue of violence against women within their homes. Despite the existence of the Domestic Violence Act of 2005, which offers some protection to women facing abuse in their households, Marital Rape is conspicuously absent from its scope.

¹⁵ Free Speech: Report of Ezra H. Heywood's Defence Before the United States Court in Boston, April 10, 11 and 12, 1883, at 16

¹⁶ S.C. Code § 16-3-652, criminal sexual conduct in the first degree; S.C. Code 16-3-600(C)(1), assault and battery in the first degree

According to the United Nations Population Fund, more than two-thirds of married women between the ages of 15 and 20 in India are subjected to various crimes within their marriages, including forced sex, physical abuse, and dowry-related demands. Many countries have recognized the gravity of Marital Rape as a crime and have criminalized it independently of the marital relationship. However, India has not followed suit. Instead, Indian law erroneously maintains that marriage itself implies perpetual consent to sexual intercourse, effectively denying women the right to refuse it. This distinction between rape and consensual intercourse hinges on the crucial factor of consent.

It is imperative to emphasize that while marriage may imply consent to sexual relations, it should not strip women of their right to say no. Denying women this fundamental right shields husbands from being held accountable for non-consensual and unwelcome sexual acts within marriage.¹⁷ Under Section 375 of the Indian Penal Code, sexual intercourse by a man with his wife, provided she is not below 15 years of age, is not legally considered rape. Consequently, Marital Rape remains an exception under the Domestic Violence Act of 2005, leaving women without legal recourse.

One of the most alarming trends is the increasing number of Marital Rape victims, yet the legislative framework remains indifferent by failing to criminalize this offense. There persists a misguided belief that women may falsely accuse men of rape, a heinous crime that tarnishes the accused's reputation, causing humiliation and distress. If false allegations were the primary concern, then adultery should also remain a criminal offense.¹⁸ In general, no woman would willingly tarnish her own dignity, and prosecuting a victim can have detrimental effects on her reputation.

In the case of *Saretha v. T. Venkata Subbaih*¹⁹, it was established that the rights and duties within a marriage are not merely the terms of a private contract between two individuals; instead, they represent the creation and dissolution of a union. Privacy should not be forfeited within the bounds of marital association. Unfortunately, this perspective has led to the absence of punishment for Marital Rape, perpetuating a system where women are considered mere property of their

¹⁷ KI Vibhute, Rape within Marriage in India, 27 Indian Bar Review 167 (2000).

¹⁸ Narendra Kumar v. State (NCT of Delhi), AIR 2012 SC 2281

¹⁹ AIR 1983 AP 35

husbands, devoid of rights within the marriage beyond fulfilling their spouse's sexual desires.²⁰

THE PROGRESS MADE SO FAR AND THE CURRENT POSITION OF LAW RELATING TO MARITAL RAPE IN INDIA.

The legal law pertaining to marital rape in India, namely Section 375, Exception 2²¹, establishes differential treatment based on the marital status of the victim in relation to the perpetrator. According to the provisions outlined in this section, the act in question does not meet the criteria for being classified as rape if the victim is legally married to the accused. Furthermore, this component of the study distinguishes between an adolescent female, aged 15-18, who is married to the alleged perpetrator and another adolescent female within the same age range who is not married to the alleged perpetrator.

According to Clause 6²² of Section 375 in the Indian Penal Code (IPC), the perpetration of any conduct coming within the purview of Clause (a) to (d)²³ of Section 375, by a male individual in relation to a female individual below the age of 18 years, is deemed to constitute an instance of rape, irrespective of the consent provided by the female individual. In such instances, it is established that the permission of a female individual who is below the age of 18 holds no significance, resulting in the classification of the conduct as rape. Nevertheless, it is important to note that in certain contexts, the act of sexual intercourse between a married girl aged 15-18 is not legally classified as rape, regardless of her level of consent.

The resolution of this debate occurred in a recent ruling by the Supreme Court of India, namely in

²⁰ To Have and To Hold, The Marital Rape Exemption and Fourteenth Amendment, 99(6) Harvard Law Review 1256 (1986)

²¹ (Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

²² (Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation. - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

²³ 375. Rape. - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following de-scriptions: -

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

the case of *Independent Thought v. Union of India*²⁴. The court rendered a verdict declaring that Exception 2 contravened Articles 14, 15(3), and 21 of the Indian Constitution, in addition to Clause 6 of Section 375. Furthermore, it was discovered that the aforementioned action was incongruous with both the Hindu Marriage Act of 1955 and the Protection of Children from Sexual Offences Act of 2012. As a result, the aforementioned clause was invalidated, leading to a reinterpretation of Exception 2. The revised interpretation states that engaging in sexual intercourse or sexual actions between a man and his spouse is not considered rape if the wife is beyond the age of 18. Nevertheless, the aforementioned case failed to tackle the matter with adult women, aged 18 and above, who experience sexual assault perpetrated by their spouses.

In the year 2022, the High Court, in the case of *RIT Foundation v. Union of India*²⁵, rendered a decision declaring the provision of exemption 2 to section 375, which previously provided immunity for marital rape of kids aged 15-18, as unconstitutional. Consequently, the age limit specified in the exemption, originally set at 15 years, must now be interpreted as 18 years. Presently, the absence of legal sanctions exists in cases of marital rape involving adult wives.

Currently, a husband can only be guilty of raping his wife if she is under 18 years of age. Apart from this, under the IPC, there is a provision that states sexual intercourse by a husband upon his wife who is living separately, whether due to a separation decree or other reasons, without her consent, shall be punishable with imprisonment ranging from 2 to 7 years.²⁶ This provision applies when the husband and wife are living separately. In all other cases, when they are married and living together, and the wife is above 18 years of age, husbands are exempt from being held guilty of raping their wives.

India remains among the select few nations globally where marital rape remains uncriminalized²⁷. Regrettably, despite multiple amendments to criminal law aimed at safeguarding women's rights, the status of women concerning marital rape within our country raises doubts about their dignity and bodily autonomy. Under the current framework, women are assumed to have granted

²⁴ writ petition W.P.(C) 382/2013

²⁵ 2022 SCC OnLine Del 1404...

<https://www.sconline.com/blog/post/2023/01/06/analysing-the-delhi-high-courts-approach-towards-presumption-of-constitutionality-in-marital-rape-case-rit-foundation-v-union-of-india-a-case-comment/>

²⁶ Indian Penal Code, 1860, s. 376B.

²⁷ Marital Rape in india, Drishtiiias (Dec 22, 2020) <https://www.drishtiiias.com/daily-updates/daily-news-editorials/marital-rape-in-india>

perpetual consent to sexual activity with their husbands upon entering the institution of marriage, implying an inherent consent. It is indeed disheartening that our nation is one of the minority in the world where a married woman lacks control over her own body and sexual independence.

CONFLICTING ATTITUDE AND OPINIONS OF THE INDIAN JUDICIARY:

In the case of *Nimesh Bhai Bharatbhai Desai v. State of Gujarat*²⁸, the High Court of Gujarat affirmed that a husband does not possess ownership rights over his wife's body. She retains her inherent human right to exclusive autonomy over her own body even after marriage. Consequently, she has the legal authority to give or withhold consent for marital intimacy at any time.

However, it is noteworthy that in our country, the only recourse available to victims of marital rape is the civil remedy provided by the Protection of Women from Domestic Violence Act or Section 498A of the Indian Penal Code, which deals with subjecting a woman to cruelty by her husband or his relatives. In contrast, several countries worldwide, such as Sweden, Norway, Denmark, Poland, and the Czech Republic, have criminalized marital rape and established stringent laws addressing this issue²⁹. While some nations are actively amending their laws to address this concern, India seems hesitant to embrace change in this regard.

In the case of *Arnesh Kumar v. State of Bihar*³⁰, the judiciary expressed concerns that criminalizing marital rape could potentially disrupt the social and family structures. Consequently, the judiciary occasionally exhibits a progressive stance on this issue, but at other times, it appears conservative in its approach.

The Delhi High Court³¹ issued a divided verdict regarding the criminalization of marital rape inside the nation. Justice Rajiv Shaktiher invalidated the prevailing legislation on grounds of unconstitutionality, noting that the fundamental right to revoke consent constitutes the essence of women's entitlement to life and personal freedom. Justice C. Harishanker declined the petition to

²⁸ 2018 SCC OnLine Guj 732, [104] 62.

²⁹ The Current Legal Framework on Marital Rape in India, Helpline Law, <https://www.helplinelaw.com/family-law/CLFM/the-current-legal-framework-on-marital-rape-in-india.html> Last Accessed July 3 2021

³⁰ Cr. Appeal No. 1277 of 2014 (SLP(CRL.) No. 9127 of 2013)

³¹ Supra Note 25

criminalize marital rape, emphasizing that the responsibility for amending the law lies with the legislature, as the matter necessitates a comprehensive examination of multiple dimensions, encompassing social, cultural, and legal considerations. The constitutional bench of the Supreme Court, consisting of Chief Justice D.Y. Chandrachud, Justice P.S. Narasimha, and Justice J.B. Pardiwala, will now preside over the case.

Even the executive branch often appears reluctant to criminalize marital rape. The Union government has expressed fears that such a move could destabilize and undermine the institution of marriage and may be susceptible to misuse.

As of now, the available legal remedies for women who are victims of marital rape in India are Section 498A of the Indian Penal Code and the Domestic Violence Act of 2005.

THE DATA IS CONCERNING.

The lack of legal safeguards against marital rape in India is a pressing issue pertaining to women's rights. This concern is underscored by data from the third (2005-06) and fourth (2015-16) iterations of the National Family Health Survey (NFHS), which indicate that the incidence of Intimate Partner Violence (IPV) against women varies between 3% and 43% across different states within the nation. The survey's fifth iteration, conducted over the 2019-20³² period, encompassed a substantial sample size of around 637,000 households across 707 districts in 28 states and eight union territories in India. The findings indicate that a significant proportion of women aged 18-49, specifically one in three, encounter spousal abuse. Moreover, a minimum of 5%-6% of these women disclose instances of sexual assault. The survey conducted by the National Federation of High Schools (NFHS) revealed a significant correlation between sexual and physical violence, leading to the inclusion of marital sexual violence under the broader category of spousal violence. An analysis of the results reveals that 5.6% of married women experienced non-consensual sexual intercourse with their spouses due to physical coercion, 2.7% of women were subjected to unwanted sexual activities through physical force, and 3.7% of women were coerced into engaging in sexual activities against their will by means of threats of physical harm.³³

³² https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf

³³ https://www.equalitynow.org/news_and_insights/a-ruling-on-marital-rape-in-india-is-coming-up-heres-why-you-should-be-watching-closely/

CONCLUSION

Hence, it is evident that the criticism and demands for the repeal of the marital rape exemption have persisted for an extended period. Various efforts have been undertaken by feminists, organizations, and at times even the judiciary. However, it remains disheartening that this exemption still endures. While much rhetoric surrounds women's rights, bodily autonomy, sexual self-determination, dignity, and self-respect, the actual implementation of substantial change is perpetually postponed for the future. Numerous justifications are put forth to maintain the exemption, while the relentless efforts and appeals of feminists and women's rights activists persist.

Marital rape stands out as one of the most heinous crimes against women, wherein a woman's body is treated as the property of her husband and exploited according to his whims. Many countries around the world have already criminalized it, focusing on the critical element that distinguishes rape from consensual sexual intercourse: consent. In countries like the USA, and England, this simple fact is enough to render a husband guilty of rape.

In the context of India, marriage is traditionally regarded as a sacred bond deeply ingrained in societal consciousness. Unfortunately, marital rape, despite fulfilling all the essential criteria of a crime, continues to evade classification as such. Here, the sanctity of the marital relationship is prioritized over human dignity, the inhumane nature of such acts, and even legal principles.

The time has come for a broader understanding of marriage, one that redefines the meaning of marriage as perceived by husbands. Indian jurisprudence must expand its horizons and address crimes that run counter to the principles of Indian Constitutional Jurisprudence.