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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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ON WHAT GROUNDS MARITAL RAPE SHOULD BE CRIMINALIZED

AUTHORED BY - HARDIK GUPTA,
ROOJHAL JAIN & SHEETAL BHADORIA

MARITAL RAPE

Abstract

This paper presents a comparative analysis of the legal framework surrounding marital rape in India. Marriage is a connection between two families; it establishes the rights and obligations between them, but in the case of Marital rape is a heinous and widespread type of domestic abuse. Rape is committed by the person to whom the victim is married, and the victim suffered emotional, physical, and psychological trauma. Societal stigma has viewed marriage as a contract, and if there is forceful sexual intercourse between couples, it doesn't mean it is violent sexual intercourse; they define that the wife has to fulfill the husband's desires. From a legal point of view, marital rape is a broad issue and has been a complex journey. In India, marital rape is not considered a criminal offense. It is because the wife gives implied consent while entering a married relationship. Marital rape is not only a concern related to women's rights, but it also violates several constitutional provisions simultaneously, and India is the 7th largest country in the world. Due to the complexities of marital rape, heterogeneous strategies must consider its fundamental causes and repercussions. Some factors include comprehensive education and awareness campaigns. This paper contributes to a broader understanding of how cultural, legal, and social contexts shape the response to an issue that intersects with gender dynamics, human rights, and justice. The comparative analysis highlights the ongoing efforts to bridge gaps in legislation and advocacy, ultimately striving for a world where marital relationships are built on consent, respect, and equality.

Key words: India, Marital Rape, Violence against women, Legal Background, forceful sex

INTRODUCTION

“Her friends used to tell her, it wasn't rape if the man was her husband. She didn't say anything, but inside, she seethed. She wanted to take a knife to their faces.” – F.H Batacan

Section 375 of the Indian Penal Code {IPC}, defines rape; it defines that rape is an unlawful activity that says that when there is forceful sexual intercourse with a woman without her consent, it falls under the definition of Rape - Section 375 of the Indian Penal Code.

Marital rape, the non-consensual sexual act perpetrated by one spouse against the other within the confines of marriage, is a mental torture where the woman is unable to give her consent, and it's a distressing violation of personal bodily autonomy and human rights as well. In many cases, it has been witnessed that the idea of a husband forcing himself on his wife was considered a private matter inside the confines of marriage and was not recognized as illegal or a violation of the wife's rights. This intricate issue has attracted considerable attention worldwide, prompting discussions and legal reforms to address the complex interplay between marital relations, gender dynamics, and legal frameworks. Regarding the situation in India, marital rape has always been in the limelight. Section 375 of the IPC protects women and intends to punish those who violate them, and marital rape is in direct conflict with Section 375. So basically, this whole paper would be guiding the readers through those grounds that highlight the fact that we should criminalize Marital rape, as unmarried woman and married woman, both have the same rights, and marital rape is the one of the most heinous violations of a woman's integrity. It's a crime against humanity as a whole.

LITERATURE & REVIEW

1. **Marital Rape:** A Comprehensive Analysis: *Shivani Singh*

Based on the summary of this article:

This article brings out the fact that marriage is not a license to rape one's spouse; a woman is no one's property, regardless of whether she is married or unmarried. In our society, women are taught that adjustments are necessary in marriage. Even when things are tough, women should adjust and not fight or go against their husbands. Even the times have changed. Even now, many women are adjusting to their marriages. Some consider marriage as a responsibility, just because there exists a mutual relation between the families or because they have a child, and some, due

to helplessness, having nowhere to go, and also because the wife's families refuse to accept them as their own's after marriage. Converting the survey, Crime Victim Research and Treatment Centre published the report that 31% of Indian women who were raped, develop PTSD, and 1.3 million females have rape-induced PTSD. It was put forward through the crucial researches, and found that their children had witnessed marital rape at least once. We have progressed in many arenas, but spousal rape is not yet considered a crime in India.

2. **Criminalization of Marital Rape Law in India is still a Taboo - Deepilata Nayak**

This article covers all reviews and legal perspectives of Marital Rape in India and the United States. It states that three kinds of marital Rape are identified as per the legal scholars. Generally, it prevents society's violation of abuse (women frequently face abuse in their relationship and abuse during sexual violence or rape by a violent husband, forcing the wife to have sex against his will). Rape only by force (Generally assaults occur after the woman has refused sexual intercourse) Obsessive Rape (The woman being subjected to sadistic or obsessive rape, which involves physical violence and torture). In India, in the year 2005, according to the survey, more than 6500 women were murdered by their husbands or by their husbands' families, and 2/3rd of the married women between 15 and 50 years old, were beaten up and forced into sexual intercourse. In the United States, marital rape became much more criminalized in 2006.

3. **Marital Rape: A Heinous Crime: Times of India**

This article was published on July 18, 2023 and it highlights subject of marital rape affecting over 30% of married women. The Indian Penal Code (IPC) defines spouse rape as an act of coerced sexual contact without consent, and it is punishable under Section 375. Marriage should not give males the right to control or commit crimes, as rape has many negative effects on mental health and can have serious medical repercussions. Although it is difficult to prove innocence and there is a chance that the legislation may be abused, the case against criminalizing marital rape still stands. Since there are no recognized grounds for divorce in cases of marital rape, appropriate rules and regulations are essential. The Constitution should design stronger remedies for such victims and provide justice to set an example for the future generations; thus this issue needs to be addressed in the right way, without any further ado.

RESEARCH PROBLEM: -

What are the grounds on which marital rape should be criminalized in India?

HYPOTHESIS:

The people of India think it is a women's duty to take pain because of societal pressure and to keep families together. Thus, in this research paper, we will go through the societal views on marital rape, psychological factors, legal frameworks, gender roles all working together as factors influencing marital rape.

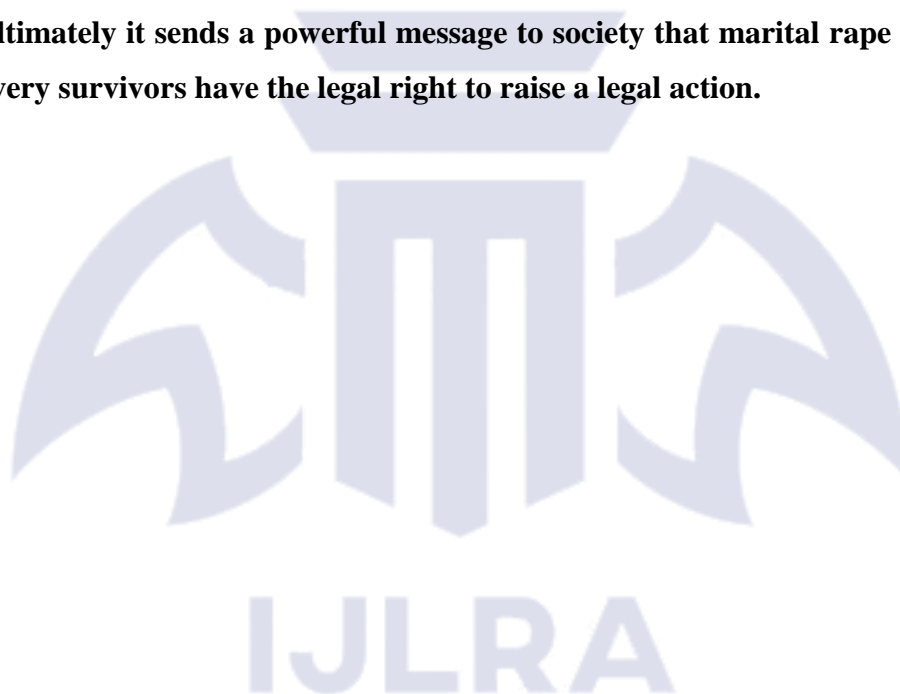
METHODOLOGY:

- Data collection method that has been used in this paper basically is from research paper, journals, Times of India newspaper.
- Specifically has been focused on circumstances that women face in marital rape, why it's that much important to criminalize marital rape.

DATA ANALYSIS:

The Indian Penal Code's lengthy and complex definition of rape, Section 375, comes down to the idea that it is a violent, penetrating sexual assault carried out without the victim's consent. In most countries marital rape considers as crime not only the domestic violence India is among the country in which marital rape is not an offence. In India women considered as goddess but statistics data prove this opposite according to the report from National Crime Records Bureau states that majority of cases of crimes against women under Indian penal code were registered under Cruelty by husband or his relatives. Marital rape violates the rights of a woman under Article 21 of Indian Constitution right to live with dignity forms a part of the right to life. Marital rape should be criminalized as per various factors we can say that **CONSENT** if there is a relation between unmarried couple or husband and spouse consent is very important aspect of sexual intercourse and Criminalization marital rape highlights the idea of consent that must be given freely. **BODILY AUTONOMY** every individual have the right to control their body criminalizing marital rape endorse that no one subjected to sexual act against their will. **HEALTH** survivors of marital rape can face serious physical and psychological effects. Making it a crime encourages victims to get medical and psychological help, which grows their general well-being and reduces the risks to their long-term health connected with such trauma. Some

reasons for low rates of prosecution marital rape due to the societal pressure many woman didn't file the case against husband and low legal awareness, lengthy process of court settlements sometimes lack of evidence. Section 375 exception II talks about non-consensual sexual intercourse by the husband with his wife, if the wife is under the age of 15 years, then only intercourse praise as rape. Mean if the wife is over the age of 15 year than it would not be rape¹ now Indian law affords husband and wife separate legal identities, concerned with the protection of woman. it is high time that the **legislature should take cognisance of this legal infirmity** and bring marital rape within the purview of rape laws by **eliminating Section 375 (Exception 2) of IPC.**² Thus, by **criminalizing marital rape is not only a legal imperative but a vital step forward creating more equitable society it upholds human rights and promotes gender equality, Ultimately it sends a powerful message to society that marital rape would not be tolerated every survivors have the legal right to raise a legal action.**



¹ <https://www.legalserviceindia.com/legal/article-958-whether-the-exception-ii-of-sec-375-of-ipc-1860-constitutionally-valid-or-not.html#:~:text=And%20this%20exception%20of%20section.it%20would%20not%20be%20rape.>

Exception of section 375 of IPC / Accessed on 28.09.2023

² <https://www.drishtiiias.com/daily-updates/daily-news-analysis/marital-rape-in-india-1>

CONCLUSION

Criminalizing marital rape is to protect the values for consent, autonomy in our bodies, and respect for human beings. It reiterates that no one must be exposed to sexual misconduct with no freely given and ongoing consent, regardless of their marriage status. This idea is the foundation of individual freedom and mutual respect in close relationships. Countries that already criminalized marital rape Poland, Australia, UK and there are 36 Nation that have not made marital rape as a crime. Thus, to achieve gender equality it is essential to make a marital rape is a crime also, criminalization provides opportunities to justice as well as assistance for survivors. It gives victims the confidence to speak up, pursue legal action, and get the help they need to recover. As a result, those who survived are no longer required to suffer in silence, which benefits their overall health and serves the interests of justice. Thus, the people of India think it is the women's duty to take pain because of societal pressure and to keep the family together. The governments alone cannot be faulted for this horrific legislative and societal oversight as they are simply a reflection our male dominated cultures, oversights that will continue to occur for as long as we chose to maintain the status quo. Marital rape has more consequences than are visible on the surface level which further violates the sense of safety and freedoms we associate with the such democracies. Rape is the main concern in the Indian legal system moreover many womans facing **MARITAL RAPE** to protect them judiciary must take initiatives married women should not be assaulted and treated as properly.

At last I would like to say **“Rape is rape it should be penalized and Marital rape is not about sex it is considers as violence, marrying someone doesn't mean we consented for sexual intercourse”**