



LAWS ON MARITAL RAPE IN INDIA- A CRITICAL ANALYSIS

Apoorva Jaiswal

Abstract

“That night our husbands took us quickly...

They took us flat on our backs on the bare floor of the Minute Motel...

They took us in the best hotels...

They took us for granted and assumed we would do for them whatever it was we were told.

Please turn towards the wall and drop down on your hands and knees...

They took us violently with their fists, whenever we tried to resist.

They took us even though we bit them...

They took us as we stared up blankly at the ceiling and waited for it to be over,

Not realizing that it would not be over for years.” - Julie Otsuka, The Buddha in the Attic

The stereotypical notion that marriage is sacrosanct and a wife is duty bound to please her husband so her consent to sexual intercourse is impliedly deemed to be given, has been a huge barrier due to which marital rape has still not been considered as a crime in India. This research paper deals with marital rape in depth and talks about the concept of marital rape, what was the position in the past and what is the present position in India, the position of marital rape in USA and UK and the stand of judiciary regarding the issue whether marital rape should be recognized as a crime or not. Furthermore, this research paper critically analyses the laws on marital rape in India which creates a difference between married and unmarried woman thereby violating article 14 and 21 of the Indian Constitution and also states the lacunae and suggestion for improvement.

Introduction

In India, the institution of marriage is believed to be sacrosanct. It is the holy union of two people and two souls. This leads to a notion that the consent of wife for having sexual intercourse is implied and deemed as she is duty bound to please her husband and fulfil all of his wishes. Consequently, it is believed that wife cannot be raped.

Rape originating from the Latin term “*raptus*” which implies violent theft of a property or a person is the most heinous, brutal and shameful crime that completely destroys a woman’s dignity, chastity and pride and gravely impacts a woman in so many ways; be it physically, mentally, or emotionally, whether it is done to an unmarried woman by any person or done to a married woman by her own husband. The victims who suffer from it are left traumatized in unimaginable ways for the rest of their lives.

Marital rape, also recognized as spousal rape can be defined as an unwanted intercourse or penetration (vaginal, anal, etc.) by the husband to the wife obtained through verbal, coercion, threat of coercion, or force if the wife does not consent to it. A very special implication of the narrowly restricted definition of rape is that rape cannot be perpetrated by the offender against a specific group of women that is married women who cannot be raped by their husbands since their consent is believed to be impliedly given. Moreover, the implication of this loophole is that violent and unwanted sex does not necessarily define rape rather it is illegal sex that is sexual assault by men who have no legal rights to women. In other words, from a legal point of view, violence in legal sexual intercourse is permissible, but sexual relations with women, to whom the man is not legally married to is not.

Marital Rape has been criminalized in many countries globally but since this sacrosanct institution of marriage that prevails in Indian society recognizes an eternal implied consent of wife for having sexual intercourse with the husband irrespective of her actual will, it hides the heinous crime of marital rape suffered by married women in India behind the curtains of marriage. Consequently, this crime has still not been criminalized in India and India still falls within the list of those countries who do not recognize marital rape as a crime, leaving married women vulnerable with no recourse to justice or any sort of remedy for the crimes committed against their bodies.

Review of Literature

Book

Mamta Rao in her famous book¹ has talked about marital rape wherein she stated that in the exception to Section 375 of Indian Penal Code, 1860, sexual harassment by a man with his own wife under 15 years of age is not rape. The author stated that the wife’s “consent” is based on the common-law rule of marital exemption. However, this concept has undergone a change and marital rape is now an offence in the UK, USA, Sweden, Denmark and Australia. She also talked about the famous case of *R. v. R.*², where, the House of Lords widened the scope of criminal liability by stating that a husband could be charged as the principal offender in the rape of his wife. The author stated that this decision has seemed to obliterate the protection of the husband from such prosecution under the doctrine of marital exemption. This exemption was based on a belief under which the wife was regarded as

¹ MAMTA RAO, LAW RELATING TO WOMEN AND CHILDREN, 120-121 (EASTERN BOOK COMPANY, 4TH ed. 2022).

² *R. v. R.* [1991] UKHL 12 (23 October 1991).

husband's chattel. She was supposed to have given general consent to her husband as a natural implication of marriage which has now become an outmoded view of marriage.

Journals

Dr. Vandana in her journal³ explaining the concept of marital rape, the author defined it as, "Any unwanted sexual intercourse or penetration (vaginal, anal or oral) obtained by force, threat of force or when the wife does not consent." The author also talked about the incidence and causes of marital rape and stated that it is vastly unrecognized by the legal system in many countries worldwide and this legal reluctance is the product of social notion that the wives are properties of their husbands. The author, in her journal also discussed in detail, the legislative developments with respect to marital rape, the present legal position of marital rape in India and the laws concerning marital rape in different foreign countries. The author also threw light upon the recent debate before judiciary concerning marital rape and also discussed the famous Supreme Court judgement, *Independent thought v. Union of India*.⁴

Pranay Dayalu and *L.K.Swaraj* in their journal article⁵, stating Judith Lewis, "In practice the standard for what constitutes rape is set not at the level of women's experience of violation but just above the level of coercion acceptable to men." discussed the concept of marital rape as a crime, its statistical data, its legal position in Indian law, its legal position in other countries, the lacunae in Indian law and also stated various arguments on why it marital rape should be criminalized and also discussed arguments against it that is why marital rape should not be criminalized.

Ritvika Thakur and *Sanskriti Singh* in their journal article⁶ stating the fact that the institution of marriage in India is considered sacrosanct discussed how this concept binds a wife to her husband in such a way that she is duty-bound to please her husband which establishes a norm that in a marriage a woman impliedly consents for having sexual-intercourse due to which this heinous crime of marital rape is always covered with curtains of institution of marriage and is not criminalized in India till date. The authors also stated that, though women are treated equally as that of a man under the Indian Constitution and is recognized as a separate legal entity, not criminalizing marital rape defeats the entire intention of the legislature. The authors also analyzed why marital rape in India is not a crime, what the major reasons behind marital rape, its types, how it effects a woman, its legal position globally and in India, discussing in detail whether it should be criminalized in India or not.

³ Dr.Vandana, *Marital Rape-Exemption under Indian Penal Code: Quest for Recognition and Reality*, ILI Law Review, Vol.II, Winter Issue, (2017).

⁴ Independent thought v. Union of India, W.P. (Civil) No. 328 of 2013, decided on 11 Oct. 2017.

⁵ Pranay Dayalu & L.K.Swaraj, *Marital Rape: A Crime*, 3 IJTSRD. 181-188, Nov-Dec. 2018.

⁶ Ritvika Thakur & Sanskriti Singh, *Reality and Need for Criminalization of Marital Rape: Does the Right of Husband Overshadow that of Wife?* 20th International Academic Conference, Madrid, 490-506, 20 Oct. 2015.

Articles

Saurabh Mishra and *Sarvesh Singh* in their research article⁷ have talked about how marital rape is the most common and repugnant form of masochism in the Indian society and is hidden behind the iron curtain of marriage. The authors threw light upon the discrimination, shortcomings and fallacies of criminal justice system in India with respect to marital rape. The authors also discussed the physical and psychological effects of marital rape which destroys a woman both mentally and physically. The authors also talked about types of marital rape and legal position of marital rape in other countries and in India wherein they stated that marital rape in India exists de facto and not de jure simultaneously throwing light upon why marital rape should and should not be criminalized and also stated the lacunae in Indian law and suggestions for recommendations.

Anudha Singhai in her article⁸ quoting Sol Wachtler, “A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity” briefly analyzed the exclusion of marital rape as a crime in any statute in India and discussed the validity of the exception to Section 375 of Indian Penal Code, 1860 which was addressed in 172nd Law Commission report but was rejected as it would result in “excessive meddling with the issue of marriage”. The article also stated that Indian Penal Code, 1860 does not defines consent clearly and also discussed how marital rape violates women’s rights, throwing light upon how it is a subject to misuse by the husband.

Statement of Problem

The heinous offence of marital rape has not been given legal protection under any law in India except if the wife is below 18 years of age for which there is provision in Indian Penal Code, 1860 under the exceptional clause of Section 375. This lacunae in Indian Law which do not have any provision for the protection of women from marital rape creates a difference between a married and unmarried women and discriminating between them and thus violates Article 15 and 21 of the Indian Constitution.

Hypothesis

There is a presumption of consent impliedly deemed to be given by the wife to have sexual intercourse with her husband so a wife can never be raped. Therefore marital rape is not recognized as a crime under Indian Penal Code, 1860 or under any statute in Indian Law.

⁷ Saurabh Mishra and Sarvesh Singh, *Marital Rape-Myth, Reality and Need for Criminalization*, EASTERN BOOK COMPANY, CrLJ 2003.

⁸ Anudha Singhai, *Marital Rape-An Analysis*, THE GUARDIAN, (Apr.21, 2022), <https://theguardian.com/marital-rape-an-analysis>.

Research Methodology

The researcher intends to adopt doctrinal method of study. The nature of research is intended to be descriptive and analytical. Data for study will be gathered from both primary sources such as, statutes, legislations, government policy documents, case laws, etc.; as well as secondary sources such as textbooks, journals, articles and relevant international instruments, both online as well as offline.

What is marital rape?

Rape originating from the Latin term “*raptus*” which implies violent theft of a property or a person is the most heinous, brutal and shameful crime that completely destroys a woman’s dignity, chastity and pride and gravely impacts a woman in so many ways; be it physically, mentally, or emotionally, whether it is done to an unmarried woman by any person or done to a married woman by her own husband. The victims who suffer from it are left traumatized in unimaginable ways for the rest of their lives.

Rape must be acknowledged as the most severe form of sexual violence against any woman completely negating her rights and thereby stripping her off of her dignity and chastity.

According to Judith Lewis, “*In practice the standard for what constitutes rape is set not at the level of women's experience of violation but just above the level of coercion acceptable to men.*”⁹

According to Section 375 of the Indian Penal Code, 1860, A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

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.

⁹ Judith Lewis, Trauma and Recovery: Aftermath of Violence- From Domestic Abuse to Political Terror, (1992).

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 lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—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:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

But the above definition does not recognize the concept of marital rape which is one of the very peculiar implications of the narrow and restricted definition of rape that is it cannot be committed against a particular set of women wherein a married woman who cannot be raped by her own husband.

There is no law, act, code or statute in India that recognizes the heinous crime of marital rape. In India, the institution of marriage is sacrosanct and is a holy union between a husband and a wife and it is one of the major reasons why the heinous offence of marital rape has not been given legal protection under any law in India except if the wife is below 18 years of age for which there is provision in Indian Penal Code, 1860 under the exceptional clause of Section 375. The presumption that it is the duty of the wife to please her husband and so she has consented to sexual intercourse without actually taking consent of the wife for sexual intercourse in the main problem which leads to marital rape. Any unwanted sexual interaction or penetration (vaginal, anal, or oral) by the husband that is obtained by force, threat of force, or when the wife does not consent to it is considered marital rape. In other words, marital rape is any non-consensual sexual activity that takes place between spouses in an intimate relationship. This includes sexual intercourse, oral sex, and other forms of sexual activity. This can happen whether a couple is married when one partner coerces the other to have sex or engage into any sexual activity against their will or under undue influence.

Legal Position in India with respect to marital rape

Past Position

In India, rape of a married couple is not considered rape. India adopted the English common law exemption for marital rape, which was first articulated in 1736 by English Chief Justice Matthew Hale in History of the Pleas of Crown wherein he stated that, “*The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.*”¹⁰

The marital rape exemption gained further support when Blackstone put forth the Unities Theory, which viewed the husband and wife as becoming one on marriage.¹¹ In Blackstone’s Commentary on the Laws of England (1765), he wrote, “*Husband and wife are legally one person. The legal existence of the wife is suspended during marriage, incorporated into that of the husband. If a wife is injured, she cannot take action without her husband’s concurrence.*”¹²

After the IPC's 1860 enactment, the rape law remained unchanged for thirty years. A number of instances occurred in Bengal wherein the minor wife died as a result of the consummation of her marriage which led to the subsequent change. The one that stands out the most is the case of Queen Empress v. Haree Mohan Mythee¹³ which states Phulmonee Dasse's tragic story who was eleven years and three months old when her husband raped her. She died as a result. According to the medical evidence, Phulmonee had died of bleeding from a ruptured vagina. In this case, raping a child wife was severely punished, and the court ruled that the husband did not have the right to enjoy his wife's person without considering her safety.

The Indian Criminal Law (Amendment) Act of 1891¹⁴ was introduced by Sir Andrew Scoble in 1891. This act raised the consent age for both marital and extramarital rapes to 12 years. The Act's objective was humanitarian: to protect female children from immature prostitution and pre-maturity cohabitation". Pre-maturity cohabitation typically harmed the girl's health and the health of her offspring. It also caused the girl great pain, sometimes even death.

At the turn of the 20th century, there was a rise in public concern about the improvement of the nation's body and the lowering of the factors that contributed to the abnormal mortality of young people.

In 1922, Rai Bahadur Bakshi Sohan Lal, an MLA, requested permission to introduce a bill in the Assembly to amend section 375 of the Indian Penal Code, 1860 (IPC) by raising the age of consent in both marital and extra-marital cases¹⁵. Although this attempt to legislate was unsuccessful, as people became more aware of the harmful effects of early marriage and consummation, agitation for a change in the law steadily increased.

¹⁰ HALE MATTHEW J, HISTORIA PLACITORAN CORNAE: THE HISTORY OF PLEAS OF THE CROWN, R.H.SMALL, Pg.628, (1736).

¹¹ Ritvika Thakur & Sanskriti Singh, *Reality and Need for Criminalization of Marital Rape: Does the Right of Husband Overshadow that of Wife?* 20th International Academic Conference, Madrid, 490-506, 20 Oct. (2015).

¹² WILLIAM BLACKSTONE, COMMENTARY ON THE LAWS OF ENGLAND, CLAREDON PRESS, OXFORD, (1765).

¹³ Queen Empress v. Haree Mohan Mythee, ILR 1891, Cal 49.

¹⁴ Act No. X of 1891, published in Gazette of India, Pt. V, (1891).

¹⁵ Report of the Age of Consent Committee, Calcutta, Government of India, 11 (1928-29).

Hari Singh Gour introduced a bill in 1924 to amend section 375 of the Indian Penal Code, raising the age of consent in both marital and non-marital cases to 14 years. The Bill was referred to a Select Committee, which made a significant change by lowering the age of consent in cases of marital rape from 14 to 13 years old. On September 1, 1925, Sir Alexander Muddiman introduced a bill that made the age of consent in cases of extra-marital rape from 14 to 13 years old. This amendment in 1925 was the first to make a distinction between cases of marital rape and cases of extra-marital rape by making Section 376 added the phrase "unless the woman raped is his own wife and is not under twelve years old" to emphasize the distinction even more. In that case, the sentence was reduced to a maximum of two years. As a result, the diluted punishment provided by amended Section 376 significantly mitigated the goal of raising the consent age to 13 years.

In 1927, Hari Singh Gaur introduced a new bill to raise the age of consent in marital and extra-marital cases to 14 and 16 years, respectively, as the issue was not considered to be resolved. The Age of Consent Committee was appointed to review the situation and make a few suggestions for improvement.

Due to the nature of the offense, the committee was of the opinion that the amended law was ineffective, particularly in the case of marriage, where consummation requires privacy. The majority of awakened members of society held the belief that it would be better to restrict marriage to girls under a certain age than to raise the age of consent for sexual activity. The dissident members of these classes held the opinion that the law was partially pointless because it did not protect girls over 13 years old, who are in need of protection because of their young age. In cases involving marriage, the Committee suggested substituting the term "rape" for "marital misbehavior." A husband would be guilty of marital misbehavior if he had sexual relations with his wife under the age of 15. The Committee suggested that the offense of marital misbehavior be included in Chapter XX of IPC, and that sections 375 and 376 of the IPC should only cover rape that occurs outside of a marital relationship. When the wife was between 12 and 15 years old, the Committee also recommended the maximum punishment of either type: ten years in prison and a fine, or up to one year in prison and a fine, or both.

Present Position

Unfortunately, the current status of marital rape laws in India is *de facto* and not *de jure*. In contrast to other nations, where either the legislature has criminalized marital rape or the judiciary has actively recognized it as a crime, the judiciary in India appears to be working against the law. According to the Supreme Court's ruling in *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁶, "rape is a crime against basic human rights and a violation of the victim's" most cherished fundamental rights, specifically the right to life enshrined in Article 21 of the Indian Constitution. However, by not recognizing marital rape, it contradicts this very declaration.¹⁷ Only two categories of married women are included in the rape legislation: those under the age of 15¹⁸ and those who are divorced from their husbands.¹⁹

¹⁶ Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 SSC 490.

¹⁷ Tandon, N. & Oberoi, N., Marital Rape — A Question of Redefinition, Lawyer's Collective, Pg. 24, March (2000).

¹⁸ Exception to Section 375 of the Indian Penal Code, 1860.

¹⁹ Section 376-A of the Indian Penal Code, 1860.

Some progress toward making domestic violence against the wife a crime was made in 1983 when Section 376-A was added to the Indian Penal Code, 1860. This section made it a crime to rape a wife who had been judicially separated from her husband. Based on the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 and the Law Commission of India's recommendations, it was an amendment. The contention that marriage authorizes rape was rejected by the Committee. As a result, a husband can now be charged and face up to two years in prison if, first, he has sex with his wife without her consent, if she lives with him, or if she does so in accordance with law, custom, or any other usage. In any case, this is just a piecemeal regulation and substantially more should be finished by Parliament as respects the issue of conjugal assault. A glimmer of hope was the Law Commission's recommendation in its 42nd Report to make sexual intercourse between a man and his minor wife an offense.²⁰ However, the Joint Committee that looked at the proposal rejected the recommendation. The Committee argued that no matter how old a woman was, a husband could not be found guilty of raping her.

The exception clause in Section 375 of the Indian Penal Code, which states that "*sexual intercourse by a man with his own wife, the wife not being under fifteen years old, is not rape*" has been called out by numerous women's organizations and the National Commission for Women. The Task Force on Women and Children, however, which was established by the Woman and Child Department of the Government of India, was of the opinion that there should be a larger debate on this topic.²¹ Of the four recommendations that the Task Force made regarding rape under the Indian Penal Code, the most significant one relates to the definition of rape. It held the view that all forms of sexual abuse should be included in the definition of rape. The Law Commission's proposed definition of "sexual assault" could be used in place of Section 375 IPC's rape definition because "*it is wide, comprehensive, and acceptable*," according to the recommendation. In any case, as the Law Commission, the Team additionally avoided suggesting the incorporation of marital rape in the new definition. In terms of supporting women's rights to sexual autonomy and bodily integrity, Indian law is completely inadequate at this time.

In its report, the 172nd Law Commission of India recommended making significant changes to the law regarding rape. It was suggested that explanation (2) of section 375 of the IPC regarding marital rape should be removed. As with any form of physical violence committed by a husband against his wife, forced sexual encounters between husband and wife should be treated as crimes. On a similar thinking, segment 376A was to be erased.

The Domestic Violence Act of 2005 (DVA), which had been anticipated, has also been a disappointment. While continuing to ignore the issue of marital rape, it has provided civil remedies for what the cruelty provision had previously provided criminal remedies for. Sexual abuse in a domestic relationship, such as a marriage or a live-in, is acceptable only when it is seriously harmful or life-threatening.

²⁰ Law Commission of India, 42nd Report, Indian Penal Code, para 16.115, pg. 277, (1977).

²¹ Report on Socio-Economic & Educational Background of the Victims of Domestic Violence in India, Sponsored by Ministry of Women & Child Development, Govt. of India (2009).

One of the most frequently cited reasons for keeping the exemption is the possibility of fabricated complaints; nonetheless, the risk of fraudulent allegations is well-suited to emerge with regards to any legal wrongdoing.

Legal Position in U.K. with respect to marital rape

In the past, men in England were generally not held liable for raping his wife as a principal because the wife typically cannot revoke her consent to sexual activity, which is a part of the marriage contract²². However, in 1991, the marital rape exemption was completely eliminated. The House of Lords held in *R. v. R.*²³ that the standard that a spouse couldn't be at legitimate fault for assaulting his significant other assuming he constrained her to have sexual intercourse despite her desire to the contrary was a chronologically misguided and hostile custom-based regulation fiction, which as of now not addressed the place of a spouse in present-day society, and that it ought to no longer be applied. Comparing correction to the legal regulation was made through Area 147 of the Law enforcement and Public Request Act, 1994. In the case of *SW v. UK*²⁴, the European Court of Human Rights also upheld this decision.

Legal Position in U.S.A. with respect to marital rape

According to estimates from researchers in the United States, 10% to 14% of married women have been raped in their marriage. When researchers looked at how common different kinds of rape are, they found that about 25% of all rapes happen in marriage.²⁵ Social scientists, practitioners, the criminal justice system, and society as a whole have paid relatively little attention to the issue of marital rape despite its prevalence. In fact, society did not begin to acknowledge the possibility of rape in marriage until the 1970s.

Until recently, prior to the 20th century, the general rule was that a husband could not be convicted of raping his wife because the marriage contract gives him the right to have sexual relations with his wife²⁶. It was first articulated by English jurist Matthew Hale in the 18th century and reached its turning point in the New York case of *People v. Liberta*²⁷, where it was finally decided that there was no need to distinguish between rape that occurs outside of marriage and rape that does. "A marriage license should not be viewed as a license to forcibly rape wife with impunity," the court said, striking the marital exemption from the disputed statute because it violated the state and federal Constitutions. In 1993, at least one section of the sexual offence codes made marital rape a crime in each of the fifty states²⁸. However, it is remarkable that only a small number of states have eliminated the marital rape exemption in its entirety and that the remaining states still have it in some form or another. Resistance requirements remain in place in the majority of American states²⁹. Husbands are not exempt from rape prosecution in seventeen states and the District of Columbia. However, husbands continue to be exempt from rape prosecution in thirty-three states.

²² Halsbury's Laws of England, 4th Edition, Vol. 11(1), para 495.

²³ *R. v. R.* (1991) 4 All ER 481 (HL).

²⁴ *SW v. UK*, (1996) 21 EHRR 363.

²⁵ National Violence Against Women Survey, NCJ 172837, Washington, DC: US Department of Justice.

²⁶ 65 Am Jur 2d, Rape, § 527.

²⁷ *People v. Liberta*, 64 N.Y.2d 152 (1984).

²⁸ National Clearinghouse on Marital and Date Rape, 1996.

²⁹ SCHULHOFER, S.J., UNWANTED SEX: THE CULTURE OF INTIMIDATION AND THE FAILURE OF LAW, P. 30, HARVARD UNIVERSITY PRESS, CAMBRIDGE, (1998).

At the point when his significant other is generally helpless (for example she is intellectually or truly hindered, oblivious, sleeping and so on.) A husband is exempt from prosecution in many of these 33 states if he is legally unable to consent. Most states still have some spousal exemptions, indicating that rape in marriage is still considered a lesser crime than other forms of rape. Importantly, any spousal exemption indicates acceptance of the antiquated notion that marriage contracts grant sex rights to wives and that wives are husbands' property.

International Covenants with regarding marital rape

There are several international covenants which have been drafted and has also been adopted and ratified by various countries all over the world for the protection of women from the heinous crime of marital rape. The international covenants regarding marital rape are-

1. **UNIVERSAL DECLARATION OF HUMAN RIGHTS**³⁰: Human Rights Declaration of the United Nations: The right to be free from torture, cruel, inhuman, or degrading treatment or punishment, including sexual violence which includes marital rape, is affirmed in the Universal Declaration of Human Rights, which was ratified by the General Assembly of the United Nations in 1948.

Article 1 of Universal Declaration of Human Rights states that, “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*”

Article 2 Universal Declaration of Human Rights states that, “*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*”

Article 3 of Universal Declaration of Human Rights states that, “*Everyone has the right to life, liberty and the security of person.*”

Article 5 of Universal Declaration of Human Rights states that, “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

³⁰ United Nations, Universal Declaration of Human Rights, 1948, available at [https://www.ohchr.org/en/universal-declaration-of-human-rights#:~:text=The%20Universal%20Declaration%20of%20Human%20Rights%20\(UDHR\)%20is%20a%20milestone,rights%20to%20be%20universally%20protected.](https://www.ohchr.org/en/universal-declaration-of-human-rights#:~:text=The%20Universal%20Declaration%20of%20Human%20Rights%20(UDHR)%20is%20a%20milestone,rights%20to%20be%20universally%20protected.)

Article 7 of Universal Declaration of Human Rights states that, “*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*”

Article 8 of Universal Declaration of Human Rights states that, “*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*”

2. **THE UNITED NATION’S CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**, of which India is a signatory has viewed that this sort of discrimination against women violates the principles of equality of rights and respect for human dignity. CEDAW, at its eleventh session, took the important step of formally including under gender-based discrimination gender-based violence, “*that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats such as acts, coercion, and other deprivation of liberty. Gender-based violence may breach specific provisions of the Convention, regardless whether those provisions expressly mention violence*”. Women's rights are conceptualized as human rights and a “non-discrimination” model is adopted.

Article 1³¹ of the Convention defines discrimination against women as, “*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.*”

3. **THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)**³², which was approved by the General Assembly of the United Nations in 1966, affirms the right to be free from torture and other forms of cruel, inhuman, or degrading treatment. This includes safeguards against rape in marriage.

Article 2 of The International Covenant on Civil and Political Rights (ICCPR), states that,

“*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without*

³¹ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 1979, available at, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

³² United Nations, The International Covenant on Civil and Political Rights, 1966, available at, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

Article 17(1) of The International Covenant on Civil and Political Rights (ICCPR), states that, “*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*”

Article 17(2) of The International Covenant on Civil and Political Rights (ICCPR), states that, “*Everyone has the right to the protection of the law against such interference or attacks.*”

Article 26 of The International Covenant on Civil and Political Rights (ICCPR), states that, “*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*”

4. **DECLARATION ON ELIMINATION OF DISCRIMINATION AGAINST WOMEN (DEDAW)**³³: On 7 November, 1967, the Convention on the Elimination of Discrimination against Women was adopted by the United Nations General Assembly to do away with the discrimination faced by women all over the world.

Article 2 of Declaration on Elimination of Discrimination Against Women (DEDAW) states that, “*All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:*

³³ United Nations, Declaration on Elimination of Discrimination Against Women, 1967, available at, <https://www.refworld.org/docid/3ae6b38734.html>.

(a) *The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;*

(b) *The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.”*

Article 3 of Declaration on Elimination of Discrimination Against Women (DEDAW) states that, “*All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.*”

Article 7 of Declaration on Elimination of Discrimination Against Women (DEDAW) states that, “*All provisions of penal codes which constitute discrimination against women shall be repealed.*”

UK Judiciary

In U.K. the immunity of marital rape given to husbands wherein a wife cannot be raped by her husbands started with the famous case of R. v. Clarke.³⁴ Wherein Justice Byrne, the presiding judge observed that husband cannot generally be guilty of raping his wife. This view was held in almost all cases arising thereafter until the landmark case of R. v. R.³⁵ which was a turning point wherein the court stated that rape has forever been basically a wrongdoing of brutality and exasperated attack and questioned assuming it was at any point pondered by the customary regulation that that a spouse agreed to intercourse despite her desire to the contrary and got by the power.

R. v. R.³⁶

Facts of the case:

In August 1984, the defendant wed the plaintiff, his wife. On the failure of their marriage, she moved out in October 1989 and brought her son to live with her parents. They were not legally divorced when the incident occurred in November 1989, but they were separated at the time. The defendant attempted to have sexual intercourse with the plaintiff without her consent after breaking into her parents' house. Under Section 1(1) of the Sexual Offences (Amendment) Act 1976, the defendant was accused of attempting to rape and of assault resulting in actual bodily harm under section 47 of the Offences Against the Person Act 1861. The defendant filed an appeal of his conviction under section 1(1) of the Sexual Offences (Amendment) Act 1976 for consent and attempted rape. He argued based on the marital rape exemption in English common law and the idea that a husband could not rape his wife because the marriage contract gave him irrevocable consent.

³⁴ R. v. Clarke, (1949) 2 All E.R. 488 (Assizes 1949).

³⁵ R. v. R. (1991) 93 Cri App R 1.

³⁶ R. v. R. (1991) 93 Cri App R 1.

Judgement:

His attempted rape conviction was upheld by the court. The court stated that this was a “Common law fiction” because English law did not have an exception for marital rape. In the modern era, the idea that a wife's consent to her husband is irrevocable was considered an unacceptable one; in a marriage, both are regarded as equal partners. It has no bearing on the raping parties' relationships; assault is assault. According to the Sexual Offences (Amendment) Act 1976, the term "unlawful" in the definition of rape includes marital rape.

R v. C³⁷

This is the second landmark judgement after R. v. R. It was heard by Justice Simon Brown.

Facts of the case:

Although there was no formal separation agreement, the husband and wife were living separately. During their separation, the spouse was claimed to have taken an interest with others in kidnapping and physically attacking his better half. The husband was accused of participating in the kidnapping and sexual assault of his wife with others while they were apart.

Judgement:

Justice Simon Brown perceived Justice Owen's holding in R. v. R.³⁸ as growing the strategies through which a wife could revoke her implied consent, yet was not fulfilled. He disapproved of the space R. v. R. provided for a man to legally coerce his wife into having sex.

Consequently, Justice Simon Brown declared that "there is no marital exemption to the law of rape" in a "radical" approach that had already been implemented in Scotland.

Since R v. R., the Sexual Offences Act of 1956 was revised and the marital rape exemption was removed from the Act in 1994. The legal precedent for judicial intrusion into marriage's private sphere was established in this case. In this instance, Lord Keith stated that, “*Hale’s proposition on the marriage contract reflected the state of affairs in these respects at the time it was enunciated. Since the status of women... has changed out of all recognition... marriage is in modern times regarded as a partnership of equals.*”

The judge concluded that Hale's proposition was no longer the law in the subsequent case of R. v. C³⁹. In this instance, he stated that, “*in my judgment, the position in law today is, as already declared in Scotland, that there is no marital exemption to the law of rape. That is the ruling I give.*”

³⁷ R. v. C. (1991) 1 All E.R. 755, Crown Court (1990).

³⁸ R. v. R. (1991) 93 Cri App R 1.

³⁹ R. v. C. (1991) 1 All E.R. 755, Crown Court (1990).

USA Judiciary

The role that the judiciary has played in the fight against marital rape in the United States has changed a lot over time.

By and large, marital rape was not acknowledged as a crime in majority of states in U.S.A. as it was accepted that a wife's marriage suggested her agree to sexual relations with her husband. However, as women's rights activists and legal scholars began to argue that spousal rape was a form of sexual violence and a violation of a woman's autonomy and bodily integrity in the 1970s, this perception began to shift. The first ever case convicting the accused for the commission of marital was People v. Liberta⁴⁰ which became a huge turning point in criminalizing marital rape in U.S.A.

People v. Liberta⁴¹

This was the first case in which a man was found guilty of raping his wife in the United States. The court rejected the defendant's claim that he could not be found guilty of rape because he was married to the victim, and it found him guilty of first-degree sexual assault. In North Carolina, where the law still permitted husbands to use force or threats to have sex with their wives, David Liberta was charged with raping his wife in 1978.

Liberta's defense argued that because he was married to the victim and marriage implied consent to sexual activity, he could not have been guilty of rape. However, Liberta was found guilty of first-degree sexual assault after the trial court rejected this argument.

The appeal was sent to the Supreme Court of North Carolina, which upheld the conviction and overturned the state's marital exemption law. The court ruled that the law violated the state constitution's equal protection clause because it was based on outdated assumptions about marriage and sexuality.

The Court of Appeals affirmed the judgment of the Appellate Division, finding Section 130.35 was unconstitutional due to the marital exemption provision. *“Where a statute draws a distinction based on marital status, the classification must be reasonable and must be based upon ‘some ground of difference that rationally explains the different treatment.’”* The court found that there was no rational basis for distinguishing between marital rape and non-marital rape and thus declared the marital exemption unconstitutional. The court reasoned that the marital rape exemption denies married women equal protection of the laws guaranteed by the New York and United States Constitutions. Further, the court stated, *“Rape is not simply a sexual act to which one party does not consent. Rather, it is a degrading, violent act which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and psychic harm. To ever imply consent to such an act is irrational and absurd. A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman.”*⁴²

⁴⁰ People v. Liberta, 64 N.Y.2d 152 (1984).

⁴¹ People v. Liberta, 64 N.Y.2d 152 (1984).

⁴² LII Legal Information Institute, People v. Liberta, available at,

https://www.law.cornell.edu/women-and-justice/resource/people_v_liberta#:~:text=People%20v.-Liberta,convicted%20of%20raping%20his%20wife.

The decision in *People v. Liberta*⁴³ marked a significant turning point in the fight to make marital rape a crime in the United States. It was the first time a man had been found guilty of raping his wife in the country, and it helped other states follow suit. The idea that marriage implies consent to sexual activity is widely rejected by the legal system and society as a whole, and marital rape is now illegal in at least one state.

Commonwealth v. James K. Chretien⁴⁴

The landmark Massachusetts case of *Commonwealth v. James K. Chretien* dealt with marital rape. In 1986, James Chretien was accused of raping his wife. There was still a "marital exemption" law in place in Massachusetts at the time that prevented husbands from being prosecuted for raping their wives.

The prosecution argued that it was unconstitutional to exempt husbands from rape laws, while Chretien's attorneys argued that this law should apply to his case. In its decision, the Massachusetts Supreme Judicial Court noted that the marital exemption law was based on an outdated idea that marriage was an institution where women were subservient to their husbands. The court noted that this conception of marriage was at odds with the equality and autonomy tenets of contemporary social and legal norms.

The court then ruled that the marital exemption law was unconstitutional because it broke the state constitution's equal protection clause. The court stated that this was a form of gender discrimination because the law treated married women differently than unmarried women.

Women's rights advocates, who had long argued that the marital exemption law was discriminatory and unjust, won a significant victory in *Commonwealth v. James K. Chretien*. It helped clear the way for other states to recognize marital rape as a serious crime and repeal similar laws. The idea that marriage implies consent to sexual activity is widely rejected by the legal system and society as a whole, and marital rape is now illegal in at least one state.

Indian Judiciary

When it comes to the interpretation of judiciary with respect to the criminalization of marital rape, the stand of judiciary is very uncertain. The reason being that in many of the decisions, the Indian judiciary has taken a stand in the favour of criminalizing marital rape but on the other hand it has delivered plethora of judgements against criminalizing marital rape.

⁴³ *People v. Liberta*, 64 N.Y.2d 152 (1984).

⁴⁴ *Commonwealth v. James K. Chretien*, 383 Mass. 123, 417 N.E.2d 1203, (1981).

JUDGEMENTS IN FAVOUR OF CRIMINALIZING MARITAL RAPE

Even though marital rape laws in India exist de facto and not de jure the Indian judiciary has in its numerous judgements asserted that marital rape should be criminalized and no distinction between married and unmarried women.

In *Suchita Srivastava v. Chandigarh Administration*⁴⁵ the court stated that according to Article 21 of the Constitution, the right to choose a reproductive method was equated with personal liberty, privacy, dignity, and bodily integrity. It includes the right to not have children. The topic of a girl's bodily integrity and her reproductive options is important to bring to light the fact that she cannot be treated as a commodity with no control over her body or as someone who has no right to deny her husband sexual contact. Women's human rights are the same whether or not they are married, and they are deserving of recognition and acceptance. Because it is unreasonable to differentiate between a married woman and an unmarried woman for the offense of rape, the right to equality that is guaranteed by Article 14 is also violated. The definition of rape in Section 375 of the Indian Penal Code of 1860 remains the same: sexual intercourse or sexual penetration without consent. Rape, with the exception of it, is a grave violation of women's fundamental rights. In other words, rape is a crime against any woman who violates her dignity and self-respect; assault is assault insignificant of whether it is committed by her husband or a third individual.

In State of *Maharashtra v. Madhulkar Narayan*⁴⁶, the Hon'ble Supreme Court held that, every woman has the right to privacy when it comes to her sexual activities, and no one has the right to invade her privacy at any time. Every woman has the right to defend her body in the event of an attempt to violate it against her will, and that right must extend to this situation as well. It is also argued that a woman is not a man's toy and that he cannot exploit her in order to satisfy his lust and desires by tricking her into having sexual relations just because he wants to.

In the case of *State of Punjab v. Gurmit Singh*⁴⁷, it was determined that the rapist not only violates the privacy and personal integrity of the victim but also unavoidably causes severe psychological and physical harm. The personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing must be protected by any right to privacy.

In the case of *Shayara Bano v. Union of India*⁴⁸, the Hon'ble Supreme Court held that marriage does not grant the husband the right to physically or sexually abuse his wife at any time. This construction is in direct opposition to the notions of the right to individual liberty. The protection afforded by Article 14 of the Constitution is violated because the exception provided by section 375 of the I.P.C. is not a reasonable classification. It effectively denies

⁴⁵ Suchita Srivastava v. Chandigarh Administration, AIR 2010, SC 235.

⁴⁶ State of Maharashtra v. Madhulkar Narayan, AIR 1991, SC 207.

⁴⁷ State of Punjab v. Gurmit Singh, 1996 CriLJ, SC 1728.

⁴⁸ Shayra Bano v. Union of India, AIR 2017, SC 4609.

a woman her bodily autonomy and personhood and takes away her right to choose. As a result, the classification fails the test of classification in accordance with Art because it is unnecessary and unintelligible. A woman's right to consent to sexual activity is also part of her personal liberty. Assent as a demonstration of reason went with consideration, the brain gauging, as in an equilibrium, the great and evil on each side also assent guesses three things an actual power, a psychological power and a free and serious utilization of them. Art. 21 includes the guarantee of human dignity. It is important to note that personal autonomy and self-realization are linked to dignity.

In *Maneka Gandhi v. Union of India*⁴⁹, the Hon'ble Supreme Court held that it was stated that the "right to live" encompasses more than just physical existence. It also encompasses the "right to live with human dignity." A woman's freedom includes her right to choose what she wants to do with her body and her right to consent to sexual activity. Therefore, consent obtained through intimidation, force, meditation, imposition, circumvention, surprise, or undue influence is considered delusion rather than a free and deliberate mental act.

In *Aman Kumar v. State of Haryana*⁵⁰, it was held that direct and circumstantial evidence must be taken into account in cases of marital rape. When proving marital rape, reports from the jury and the forensic team are crucial. In addition, the court may look for evidence that would support her testimony if it is not satisfied. Likewise, the exemption under the part ensures the husband away from conviction when he has a sex with his legitimately married wife against her assent. Because he is exempted from the entire act and cannot be convicted of any of the other offenses, including insulting a married woman's modesty and causing her harm during a sexual encounter, this makes it easier for the husband to avoid being prosecuted for those offenses. This goes against the woman completely, making her even weaker and going against natural justice.

JUDGEMENTS AGAINST THE FAVOUR OF CRIMINALIZING MARITAL RAPE

In many of the judgements the judiciary is of the opinion that the legal union of a couple as spouses with the legal ability to marry each other by consent is a social institution of great significance known as marriage. Regarding what is marital rape and what might be agreed intimate intercourse should be characterized exactly before a view on its criminalization is taken. If all sexual acts between a man and his wife are considered to be marital rape, the wife alone will be responsible for determining whether or not the relationship is a rape. It is against the law for a husband to rape his own wife in a marriage. By mutual matrimonial consent and contract, the wife has already given her consent in this kind to her husband, which she cannot retract, so the husband cannot be guilty of rape under common law for having sexual intercourse with his lawfully wed wife. This means that the husband cannot be prosecuted if he has sex with his legally married wife while they are still married, whether he has sex with her or not.

⁴⁹ Maneka Gandhi v. Union of India, AIR 1978, SC 597.

⁵⁰ Aman Kumar v. State of Haryana, AIR 2000, SC 1497.

Art. 14 clearly states that like things should be treated the same, not that unlike things should be treated the same. According to this, it appears that section 375 of the Indian Penal Code's distinction between married women and unmarried women is neither arbitrary nor unreasonable. All wedded ladies are dealt with similarly in this regard and thus there is no class regulation. The very exception itself has not been categorized in a way that is discriminatory. There is a connection between the classification and the goal. Women who are married and unmarried cannot be treated equally. By passing a law that is ambiguous in nature, the goal is to protect the institution of marriage and prevent law abuse, so the law is not arbitrary in nature.

In **Chiranjit Lal Chowdhuri v. Union of India**⁵¹, the Supreme Court held that, the presumption is always in the favour of the constitutionality of the enactment and the burden of proof lies in the favour of the party contending otherwise that is a transgression of the Constitutional Principles.

In **The City v. Jan Mohammed Usmanbhai**⁵² the Supreme Court ruled that it must be presumed that the legislature comprehends and correctly recognizes the needs of its own people, that its laws are directed at problems that have become apparent through experience, and that its discriminations are justified. The authors of India's constitution have considered every circumstance and requirement of its own people, drafted every law clearly and discriminated appropriately. As a result, making rape a crime perpetuates a culture of intolerance and the stigma associated with marriage. When a statute's meaning is clear, unambiguous, and the legislative intent is apparent, reading the provisions down cannot be used. Therefore, it is reasonable that the primary goal of exempting marital rape from this classification was to safeguard the sacredness of marriage. As a result, the law cannot be invalidated as a violation of Art. 14 as a result of the creation of various classes of people.

In **Ashok Kumar v. Province of Uttar Pradesh**⁵³, it was held that proof of assault can't be on the sole declaration of the investigator, with no certification can't be depended upon. Without medical reports, uncontested evidence will not be admissible in a court of law, and the collection of such evidence presents numerous practical challenges that will result in legal abuse. In support of the arguments, it is stated that, in the absence of evidence, it is frequently supported that allegations of marital rape are typically made by resentful women seeking financial gain from their husbands.

⁵¹ Chiranjit Lal Chowdhuri v. Union of India, 1951 AIR, SC 41.

⁵² The City v. Jan Mohammed Usmanbhai, AIR 1958, SC 1205.

⁵³ Ashok Kumar v. State of Uttar Pradesh, AIR 1989, ALL, 109.

RECENT CASES OF INDIAN JUDICIARY WITH RESPECT TO MARITAL RAPE**Independent Thought v. Union of India⁵⁴, 2017**

In a writ petition filed in public interest by a society – Independent Thought, the Supreme Court has considered the scope and viability of exception 2 to section 375 IPC. The issue before the court was to consider the recognition of marital rape when the husband has sexual intercourse with the wife when she happens to be between 15-18 years of age. This is a landmark decision of Supreme Court whereby the court has held: ⁵⁵

Exception 2 to Section 375 of the Indian Penal Code answers this in negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child and has no rational nexus with any unclear objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and definitely not in the best interest of the girl child.

The court further held that the artificial distinction is contrary to the philosophy and ethos of articles 15(3) and 21 of the Constitution as well as the International conventions. It certainly violates the bodily integrity of the girl child and her reproductive choices. The petitioner society pointed out that any person who has sexual intercourse with a girl child below 18 years will be liable for statutory rape even if it is with the consent of the minor girl and the situation is very absurd when the offender happens to be her husband because in such case the marital exemption applies and the husband goes Scott free and escapes the punishment completely. It is because of her marriage, the right of such girl child to her bodily integrity and to decline sexual intercourse with her husband is snatched away. Just because of her marriage she does not become mentally or physically fit for such decisions.

Pointing out the obligations of the Indian government under Convention on the Rights of the Child, 1990⁵⁶ to undertake all appropriate measures to prevent the sexual exploitation and sexual abuse of any person the court observed that the Indian government has persuaded the legislature to legitimize an activity which is otherwise a heinous offence when occurs without marriage. The duality of the marital exemption clause is that it comes in sharp conflict with the provisions of POCSO and JJA. The POCSO defines “penetrative sexual assault”⁵⁷ which becomes aggravated when the offender is related to the victim.⁵⁸ Since the Act has got overriding effect, a very complex and peculiar legal position emerges whereby the husband is exempted from any offence under IPC and he becomes liable to be punished for aggravated sexual assault under POCSO. Similarly, under JJA, a married girl child below the age of 18 years requires care and protection as she is prone to exploitation.

The Supreme Court has pointed out the legislative scheme as is deducible from various legislations that a child is a person below 18 years of age who is entitled to the protection of her human rights; unfortunately if gets married

⁵⁴ Independent Thought v. Union of India, (2017) 10 SSC 800.

Dr. Vandana, Marital Rape-Exemption under Indian Penal Code: Quest for Recognition and Reality, ILI Law Review, Vol.II, Winter Issue, (2017).

⁵⁵ Madan B. Lokur, J in 2017 SCC OnlineSC 1222 [Writ petition (C) no.382 of 2013] at 2.

⁵⁶ Convention on Rights of the Child, Arts 1 and 34.

⁵⁷ POCSO, S-3.

⁵⁸ POCSO, S-5 penalizes the act and provides for a rigorous imprisonment of not less than 10 yrs.

while a child. Her marriage is in violation of law and voidable at her instance⁵⁹ and the accused husband is liable to be punished under POCSO. The only jarring note is the exemption granted to him under the IPC.

The court took note of the fact that the Committee on Amendments to Criminal law, headed by Justice Verma has also pointed out that the age old notion of a wife being a subservient chattel of the husband is no longer a viable proposition. The Committee has recommended the deletion of the marital rape exemption under the IPC while making the reference that a rapist is a rapist irrespective of his relationship with the victim.

With a view to harmonise the provisions of the IPC, the POCSO Act, the JJA and the PCMA, the court has tried locating a resolution, which they feel, is best found in the Karnataka Amendment to the PCMA, 2006.⁶⁰ The state legislature has inserted a sub section (1-A) in section 3 of the PCMA⁶¹ declaring that every marriage henceforth will be void ab initio, if violative of the age requirements specified. Therefore, the husband of a girl child will be held liable for the offences under POCSO if the husband and the girl child are living together in the same household.

The court has observed that *“it would be wise for all state legislatures to adopt the route taken by the Karnataka legislature to void child marriage and thereby ensure that sexual intercourse between a girl child and her husband is a punishable offence under the POCSO Act and the IPC.”*

The court has considered various options to lessen the turmoil of the girl child and observed: *...[W]e are left with absolutely no other option but to harmonise the system of laws relating to children and require exception 2 to section 375 IPC to now be meaningfully be read as: “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.” It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of the Constitution can be preserved and protected and perhaps given impetus.*

Nimeshbhai Bharatbhai Desai v. State of Gujrat⁶², 2018

The question was examined by the Court: whether a husband who compels his wife to engage in oral sex is guilty of rape, as defined by IPC section 376?

The court was of the opinion that marital rape has not yet been made a crime in our country because the Parliament is concerned that it could undermine the status of marriage. A deceitful spouse might involve it as an integral asset or weapon to torture her better half by documenting misleading and pointless protests against him. However, the criminal justice system has safeguards in place to identify and examine fabricated or incorrect marital complaints, and anyone who files erroneous or spiteful charges can be held liable under the law. Because of this fear, marital rape cannot be ignored. Women in India have the right to life and liberty, but not to their bodies when they are married. Under the Indian Penal Code (IPC), a husband can be convicted of assaulting his wife,

⁵⁹ The Prohibition of Child Marriages Act, 2006, s.3.

⁶⁰ Presidential assent to the amendment was obtained on April 20, 2017.

⁶¹ The Karnataka amendment reads as follows: (1-A) Notwithstanding anything contained in sub s. (1) of sec of PCMA, every child marriage solemnised on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio.

⁶² Nimeshbhai Bharatbhai Desai v. State of Gujrat, 2018 SSC Online Guj 732.

but he can't be convicted of rape because there is a valid marriage. On the other hand, if the husband makes his wife have sexual relations with someone else, he can be punished for assault.

The court talked about three types of marital rape that are common in society:

Rape by battering: This is a form of marital rape in which women are subjected to both physical and sexual violence throughout the relationship. In some cases, the wife is beaten up during the sexual barbarism, and in others, the rape occurs after a physically violent incident in which the husband wants to reconcile with his wife and makes her have sex against her will. The victims typically fall into this stated category.

Rape by force only: In this kind of marital rape, husbands only use the amount of force necessary to put their wives under pressure. Although women who deny having sex are frequently subjected to such assaults, battering may not be a characteristic in such instances.

Sexual obsession: Assaults in obsessive rape typically take the form of brutal torture and/or perverse sexual acts. Sadistic rape is another name for this kind.

RIT Foundation v. Union of India, 2022⁶³

This is a very recent case on marital rape. The Division Bench of the Delhi High Court in the case of **RIT Foundation vs Union of India⁶⁴** consisting of Justices Rajiv Shakdher and C. Hari Shankar held two different views regarding marital rape. The case was decided on 11th May, 2022.

Facts

This petition was filed by RIT Foundation, All India Democratic Women's Association (AIDWA) and two individuals. The poser before the court was if a husband should be held criminally liable for raping his wife who is not under 18 years of age. The moot point as per Justice Rajiv Shakdher whether MRE (Marital Rape Exception i.e., Exception 2 to Section 375 IPC) should remain on the statute. Those who wanted the striking down of MRE, in consonance with the arguments advanced qua the said provision, also wanted Section 376B to be struck down, which concerns sexual intercourse by a separated husband with his wife, albeit, without her consent. Consequently, prayer was also made for striking down Section 198B of the Code of Criminal Procedure, 1973 ('Code') which prohibits a court from taking cognizance of an offence punishable u/s 376B IPC except upon satisfaction of the facts which constitute the offence once a complaint is lodged by the wife against her husband.

Contentions Made

Those who support the proposition that the MRE should be struck down, broadly, contended that it is an archaic provision which represents the most abhorrent vestiges of colonialism while those who argue that the provision

⁶³ RIT Foundation v. Union of India, (2022), W.P.(C) 284/2015 & CM Nos.54525-26/2018.

⁶⁴ Latest Laws.com, Justices Rajiv Shakdher and C. Harishankar record split verdict on the criminalization of Marital Rape [Read Verdict], available at, <https://www.latestlaws.com/case-analysis/justices-rajiv-shakdher-and-c-harishankar-record-split-verdict-on-the-criminalization-of-marital-rape-read-verdict-185587>.

should be retained on the statute, contended that striking down the provision is fraught with the danger of disrupting marital and familial relationships, triggering misuse of law and transgression of the Constitutional periphery within which the courts are obliged to function.

Observations of the Court

Justice Rajiv Shakdher

Justice Rajiv Shakdher observed that whether the differentia between married and unmarried couples has a rational nexus with the object of Section 375, that is protecting a woman from being subjected to a sexual act against her will or her consent, should be seen. MRE does not meet the nexus test as it grants immunity to an act which would otherwise fall within the offence of rape only for the reason it is committed within the bounds of marriage. **The classification, is unreasonable and arbitrary as it seems to convey that forced sex outside marriage is “real rape” and that the same act within marriage is anything else but rape.** It is a moral right of a woman to refuse unwanted, forcible sexual intercourse. If one were to strike down MRE, it would create a new offence, was misconceived due to various reasons, the crucial one being that if MRE was excised, all that would happen is, it would extend the ambit of Section 375 to even offending husbands. The fact that the rapist is the husband of the victim does not make the act of sexual assault any less injurious, degrading or dehumanizing, thereby violating Art. 21. MRE violates Art. 15 since it triggers discrimination against women based on their marital status. It is also violative of Article 19(1) (a) as it violates the guarantee given by the Constitution concerning freedom of expression, amongst others, to married women who are citizens of this country. Section 376B deserves to be struck down as these are acts which deserve the same punishment, as prescribed by the legislature, irrespective of who the offender is. Section 376B of IPC and Section 198B of the Code provide not only a different procedure for triggering the offence but also mandates a lower minimum sentence without being able to demonstrate how a rapist who falls in this category is different from a husband who is not separated or even a person who is a stranger to the victim.

He held as follows:

- That the impugned provisions [i.e., Exception 2 to Section 375 (MRE) and Section 376B of the IPC as also Section 198B of the Code], insofar as they concern a husband/separated husband having sexual communion/intercourse with his wife (who is not under 18 years of age), albeit, without her consent, are violative of Articles 14, 15, 19(1) (a) and 21 of the Constitution and, hence, were struck down.
- The aforesaid declaration would, however, operate from the date of the decision.
- The offending husbands do not fall within the ambit of the expression “relative” contained in Section 376 (2)(f) IPC and, consequently, the presumption created under Section 114A of the Evidence Act will not apply to them.
- Certificate of leave to appeal to the Supreme Court was granted under Article 134A (a) read with Article 133(1) (a) & (b) of the Constitution as the issue involved in this case raises a substantial question of law which, in his opinion, requires a decision by the Supreme Court.

- The writ petitions were disposed of in the aforesaid terms. W.P. (Crl.) No.964/2017 (*Farhan v. State & Anr.*) was kept apart and was to be listed for appropriate orders on 26.08.2022.

Justice C. Hari Shankar

He observed that Section 376B IPC is obviously predicated on the fact that, when separated, the demographics that otherwise apply to a subsisting and surviving marriage between the couple are absent. This provision treats the act of non-consensual sexual intercourse by the man with the woman, in such a situation as a distinct and different offence altogether, with a different punishment stipulated for its commission:

“Where marital ties have severed, even if short of an actual divorce, then, absent consent, the husband has no reasonable conjugal expectation of sex with his wife. The unique indicia that apply to a healthy, subsisting and surviving marriage, therefore, have ceased to apply. This, again, is a situation which is qualitatively distinct from a situation of sex between strangers, as also from one of sex between a husband and wife who are cohabiting with one another. While, therefore, it cannot be equated with sex between strangers, it is, nonetheless, also not alike to sex between a couple who stay and cohabit together. An advisable middle path has, therefore, been carved out by the legislature to cater to such cases, and I see no reason to interfere with the dispensation. Of course, it would be for the court to see, in every case, as to whether the couple is, in fact, “living separately”. As the marriage is, nonetheless, subsisting, though the couple is not together, the legislature has chosen to prescribe a suitable lesser punishment for the offence. The exercise of legislative discretion is entirely in order, and, to my mind, the challenge to the vires of the provision has no legs, whatsoever, to stand on. Section 198B merely sets out the procedure to deal with complaints filed under Section 376B. No occasion, therefore, arises, to strike down the provision.”

He held the petitions, as well as the challenges laid by the petitioners to the constitutional validity of Exception 2 to Section 375 and Section 376B of the IPC, and Section 198B of the CrPC had to fail and the petitions were dismissed.

Critical Analysis

The marital rape laws in India as stated earlier is based de facto and not de jure but the reason behind it is the set stereotype that the Institution of marriage is sacrosanct, a holy union between two souls. When a woman is married to a man, she is duty bound as a wife to please her husband which leads to the notion that there is an already implied consent deemed to be given by the wife to have sexual intercourse with her husband as she has consented to contract a marriage and now she is duty bound so whether she is willing to do it or not, she does not have a right to say no and even if she says no and the husband still performs any sexual activities it will still not come under the purview of rape because a husband can never rape his wife because sexual intercourse between the two is always an intimacy, an act of love or a holy union.

When comparing the marital rape laws with many other countries of the world including U.K. and U.S.A. it can be seen that India is very far behind. There was a time when the position of marital rape was same in almost majority of the countries all over the world but from that time till the present their laws have evolved massively finally criminalizing the heinous crime of marital rape but even with the growth and advancement of the society, the position of married women in India is still the same. Even now there not a single statute that expressly criminalizes marital rape. Even the judiciary has failed to take a clear stand when it comes to the criminalization of marital rape. There many arguments for and against the criminalization of marital rape. The arguments in favour of criminalizing marital rape are as follows:

- 1) One contention is that non-consensual sex inside a marriage is an infringement of an individual's real independence and sexual independence, and it is a type of abusive behavior at home. Even though marriage is a social contract between two consenting adults, neither partner has the right to compel the other to have sex. Victims of marital rape may suffer psychological and physical harm, as well as trauma and harm to the relationship.
- 2) Another argument is that making marital rape a criminal offense would help India fulfill its responsibilities under international human rights law, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Convention urges states to take steps to prevent and respond to violence against women and acknowledges that it is discrimination.
- 3) Additionally, there have been arguments that making marital rape a felony would send a clear message that such conduct is unacceptable in society and would act as a deterrent. Additionally, it may encourage victims to come forward and report such incidents, resulting in increased accountability for the criminals.

There are numerous arguments proposed by the legislature, various legal practitioners and renowned judges as to why marital rape should not be criminalized-

- 1) One of the major arguments for not criminalizing marital rape is if all sexual acts between a man and his wife are considered to be marital rape, the wife alone will be responsible for determining whether or not the relationship is a rape. It is against the law for a husband to rape his own wife in a marriage. By mutual matrimonial consent and contract, the wife has already given her consent in this kind to her husband, which she cannot retract, so the husband cannot be guilty of rape under common law for having sexual intercourse with his lawfully wed wife. This means that the husband cannot be prosecuted if he has sex with his legally married wife while they are still married, whether he has sex with her or not.
- 2) Another argument for not criminalizing it because many legal practitioners and many judges in plethora of judgements are of the opinion that Article 14 of the Indian Constitution clearly states that like things should be treated the same, not that unlike things should be treated the same. According to this, it appears that section 375 of the Indian Penal Code's distinction between married women and unmarried women is neither arbitrary nor unreasonable. All wedded ladies are dealt with similarly in this regard and thus there is no class regulation. The very exception itself has not been categorized in a way that is discriminatory.

There is a connection between the classification and the goal. Women who are married and unmarried cannot be treated equally. By passing a law that is ambiguous in nature, the goal is to protect the institution of marriage and prevent law abuse, so the law is not arbitrary in nature.

- 3) One of the primary goals and controlling objects of marriage is the husband and wife's sexual activity, which is recognized as an essential component of the union. The main object of marriage is culmination. Fulfillment or intimate intercourse or procreation is the principal agenda of marriage. The contractual terms of a marriage contract, which are presumed to give rise to irrevocable consent to sexual relations, are the primary focus. The wife's consent is spelled out in the marriage contract, and she is considered to have consented to all sexual activities during the marriage. This consent will remain in effect throughout the marriage. Therefore, the wife's consent is not obtained for every sexual encounter with her husband.
- 4) Another popular argument is that Indian law already covers all of a woman's rights. Some of the most severe penalties for any man who commits crimes against a woman are outlined in the Domestic Violence Act of 2005, which includes penalties for sexual abuse under sections 3, 304B, and 376B of the Indian Penal Code 1860. The Indian Divorce Act, 1961²⁹ gives the cure of separation to ladies when she is physically manhandled, and savagery is utilized against her by her husband. Additionally, the Demonstration regards the freedoms of the ladies and it safeguards her inclinations against brutality utilized by her significant other. Thus, condemning the spouse for having strong sex by bringing him under the expression "attacker" is nonsensical. In general, this undermines the sacredness of the marriage. If raping a spouse is made a crime, the husband would also lose his right to be married.

If one were to read these arguments, it would become abundantly clear that they are nothing more than fanciful, meaningless justifications for a society dominated by men that lack any kind of legal basis or moral force. It is not difficult to refute the aforementioned arguments. Despite its prevalence, marital rape is underreported. According to a study conducted by the Non-Governmental Organization Joint Women Programme, one out of every seven married women had experienced at least one rape by their husband.⁶⁵

As regards the first and the third argument, it completely discriminatory and futile. Although it is true that a wife implicitly consents to having sexual relations with her husband after marriage, she does not consents to forced sexual intercourse or any sexual activity against her will. Sexual intimacy is not the same as forced sex. On the other hand, forced sexual intercourse or any sexual activity against the wife's will undermines the very foundation of marriage, regardless of whether it is a contract or a sacrament. It is impossible to imagine that a person would consent to harm or violence through marriage, and neither does the law allow anyone to give such consent.

⁶⁵ Subsequent research finds that more women are raped by their husbands each year than by strangers, acquaintances, or other persons. Over a third of the women in our country's battered women's shelters report being sexually assaulted by their husbands.

When a husband rapes his wife, the marriage is already over. Endeavor to keep intact relationships might be one of the goals of wedding regulations. However, it cannot override the fundamental goal of law in general and criminal law in particular, which is to safeguard an individual's bodily integrity. As a result, preserving marriages by denying equal protection and justice is, at best, an improper legal objective. A raping husband should not be protected by the law, and forced cohabitation should not be encouraged.

As regards the second argument that Article 14 says that likes should be treated alike, all the women are same regardless of their marital status and every woman has a right towards their body integrity and a contract of marriage can never override it whatsoever. If a woman whether married or not says no to sexual intercourse then any man including a husband cannot force himself upon the woman just because she is wife because no wife consents to any sort or harm to their body integrity or any sexual activity against her will so this argument is absolutely baseless as not criminalizing marital rape does violates Article 14 of the Indian Constitution creating a class legislation between the married and unmarried woman.

As regards the fourth argument, it is true that there are several acts to protect a woman's right and protect her from any sort of discrimination, violence or cruelty but there is no expressed provision in any act, code or statute which protects a married woman from marital rape or forced sexual intercourse which is a huge lacunae in itself. The reason being, it provides room to all the husbands to commit marital rape or force themselves upon the wives and engage them in any sort of sexual activity against their will and then easily get away from it on the sole ground that she is a wife and she is "duty-bound" to please her husband and when she contracted a marriage with him she impliedly consented to all of this which absolutely discriminatory. Since there is no expressed provision, they can never be convicted for such a horrendous act.

Lacunae in the law

- 1) The Indian Constitution's Article 21 now encompasses the "right to live with human dignity"⁶⁶, which has been greatly expanded by judicial interpretation. This exception provided by Section 375 of the Indian Penal Code, 1860 is in violation of Article 21 of the Constitution because marital rape clearly violates a married woman's right to live with dignity.
- 2) The fundamental right that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" is protected by Article 14 of the Constitution. Therefore, a person is shielded from State discrimination by Article 14. However, the protection from rape exception provided by Section 375 of the Indian Penal Code, 1860 discriminates between married woman and an unmarried woman and puts a class legislation between them which is completely unjustified and violative of Article 14 and 21 of the Indian Constitution. Subsequently, it is presented, that with this impact, exemption gave under Segment 375 of the Indian Reformatory Code, 1860 is certainly not a sensible order, and consequently, disregards the security ensured under Article 14 of the Constitution.

⁶⁶ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
Maneka Gandhi v. Union of India, AIR 1978, SC 597.

- 3) The Constitution obligates every citizen "to renounce practices derogatory to the dignity of a woman," despite the fact that protecting women's dignity is a fundamental duty; It would appear that marital rape do not fall under the definition of dignity of a woman
- 4) India is a signatory to the "United Nations Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW), which holds that this kind of discrimination against women is against the principles of equality of rights and respect for human dignity. Additionally, the fifty-first session of the Commission on Human Rights adopted Resolution No. The 1995/85 of August 3, 1995, titled "The Elimination of Violence Against Women," suggested making marital rape a crime but still there is no statute, law, act or provision for the same.
- 5) Because consent to marriage presupposes consent to sexual activity, a husband cannot be prosecuted for raping his wife. This suggests that having sex at any time, place, or form is an implied term of the marriage contract, and that the wife cannot break that term which puts married woman at a very vulnerable position because they cannot oppose against it even they want to.
- 6) The Indian Penal Code of 1860 says that even if the girl gives her consent, it is still considered rape if she is not the man's wife and is below 18 years of age. However, if she is a wife and is older than 18 and does not give her consent, it is not considered rape.
- 7) Despite the fact that advocates for women's rights were successful in securing a provision in 1983 that made it against the law for a man to have sexual relations with his separated wife while they are waiting for a divorce, the courts are reluctant to sentence husbands in spite of the law.

Suggestions to do away with the Lacunae

- 1) The Indian Penal Code ought to make marital rape a criminal offense, as should be recognized by Parliament.
- 2) According to Section 376 of the Indian Penal Code, marital rape should carry the same penalties as rape. The parties' marriage shouldn't make the sentence any shorter.
- 3) The accusation that the wife did not respond with force, resisted, or screamed or she was silent or there was an implied consent should not be used as a defense.
- 4) If the husband is found guilty of raping his wife, the wife should be able to get a divorce decree. Even though a case of marital rape could be grounds for divorce under "cruelty" or "rape," it's best to know what the law says. The wife may choose to file for divorce, but if she does not want to do so and wants to stay in the marriage, the marriage should be allowed to continue.
- 5) The laws governing marriage ought to be modified accordingly.
- 6) Victims of marital rape ought to receive therapy and counselling.

Conclusion

It is acknowledged that changing the law on sexual offenses is a difficult and delicate task. This is especially true in a country like India, where personal and religious laws can change at any time and could conflict with the new changes to the statutory criminal law. The prompt need is criminalization of marital rape under the Indian Penal Code. The real goal of criminalizing marital rape is only possible if society acknowledges and challenges the prevalent myth that rape by one's spouse is insignificant. As a result, it is necessary to educate the general public about this crime. Primarily, we need to raise awareness about this crime, as the true goal of making rape in the marital relationship a criminal offense is only possible if society confronts and acknowledges the prevalent myth that rape by a spouse is insignificant.

According to the United Nations, *“taking legal steps to protect women's human rights are just as important as educating boys and men to view women as valuable partners in life, in the development of society, and in the attainment of peace.”* To combat all forms of gender discrimination, men have a social, economic, moral, political, religious, and social responsibility. Globalization must swiftly alter the spirit of the law in a nation plagued by rape myths, deeply ingrained cultural and religious stereotypes, and shifting social values. The right of the spouse doesn't eclipse that of the wife, and violating his limits ought to prompt criminal results.

Bibliography

Primary Sources

1) Statutes

➤ Indian Instruments

THE CONSTITUTION OF INDIA, 1950

THE INDIAN PENAL CODE, 1860

➤ International Instruments

THE UNITED NATION'S CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN (DEDAW)

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

UNIVERSAL DECLARATION ON HUMAN RIGHTS (UDHR)

2) Case Laws

- Sri Bodhisattwa Gautam v. Miss. Subhra Chakraborty, 1996 AIR, 922
- R. v. Clarke, (1949) 2 All E.R. 488 (Assizes 1949).
- Maneka Gandhi v. Union of India, AIR 1978, SC 597
- Francis Coralie v. Union Territory of Delhi, 1981 AIR, SC 746
- People's Union for Democratic Rights v. Union of India, 1982 AIR, SC 1473
- RIT Foundation v. Union of India, (2022) 3 HCC (Del) 572

- People v. Liberta, 64 N.Y. 2d 152 (1984)
- Suchita Srivastava v. Chandigarh Administration, AIR 2010, SC 235
- State of Maharashtra v. Madhulkar Narayan, AIR 1991, SC 207
- State of Punjab v. Gurmit Singh, 1996 CriLJ, SC 1728
- Shayara Bano v. Union of India, AIR 2017, SC 4609
- Aman Kumar v. State of Haryana, AIR 2000, SC 1497
- The City v. Jan Mohammed Usmanbhai, AIR 1958, SC 1205
- Chiranjit Lal Chowdhuri v. Union of India, 1951 AIR, SC 41
- Ashok Kumar v. State of Uttar Pradesh, AIR 1989, ALL, 109
- Commonwealth v. James K. Chretien, 383 Mass. 123, 417 N.E.2d 1203, (1981)
- Queen Empress v. Hari Mohan Mythee, ILR 1891, Cal 49
- Nimeshbhai Bharatbhai Desai v. State of Gujrat, 2018 SSC Online Guj 732.
- R. v. C, (2004), Cr App R. 15
- Independent Thought v. Union of India, (2017) 10 SCC 800

Secondary Sources

1) Books

- Dr.J.N.PANDEY, CONSTITUTIONAL LAW OF INDIA, CENTRAL LAW AGENCY, 57th ed, 2020.
- M.P.JAIN, INDIAN CONTITUTIONAL LAW, LEXISNEXIS, 8th ed. Reprint 2020.
- S.N.MISHRA, THE INDIAN PENAL CODE
- MAMTA RAO, LAW RELATING TO WOMEN AND CHILDREN, 120-121 (EASTERN BOOK COMPANY, 4TH ed. 2022).

2) Journals

- Dr.Vandana, *Marital Rape-Exemption under Indian Penal Code: Quest for Recognition and Reality*, ILI Law Review, Vol.II, Winter Issue, (2017).
- Independent thought v. Union of India, W.P. (Civil) No. 328 of 2013, decided on 11 Oct. 2017.
- Pranay Dayalu & L.K.Swaraj, *Marital Rape: A Crime*, 3 IJTSRD. 181-188, Nov-Dec. 2018.
- Ritvika Thakur & Sanskriti Singh, *Reality and Need for Criminalization of Marital Rape: Does the Right of Husband Overshadow that of Wife?* 20th International Academic Conference, Madrid, 490-506, 20 Oct. 2015.

3) Articles

- Saurabh Mishra and Sarvesh Singh, *Marital Rape-Myth, Reality and Need for Criminalization*, EASTERN BOOK COMPANY, CrLJ 2003.
- Anudha Singhai, *Marital Rape-An Analysis*, THE GUARDIAN, (Apr.21, 2022), <https://thedailyguardian.com/marital-rape-an-analysis>.

Vaibhavi Patel, *Marital Rape in India: An International Human Rights Law Violation*, BJIL, Jan 10 2021,

<https://www.berkeleyjournalofinternationalallaw.com/post/marital-rape-in-india-an-international-human-rights-law-violation>

- Gautam Bhatiya, *Marital Rape: Indian Constitutional Law and Philosophy*, May 11, 2022, <https://indconlawphil.wordpress.com/category/equality/marital-rape/>
- Shalu Nigam, *The Social And Legal Paradox Relating to Marital Rape in India: Addressing Structural Inequalities*, SSRN Electronic Journal, (2015) https://www.researchgate.net/publication/314516963_The_Social_and_Legal_Paradox_Relating_to_Marital_Rape_in_India_Addressing_Structural_Inequalities
- Vaishali Bansal & Soumali Roy, *All You Need To Know About Marital Rape*, Aug 9, 2020, <https://blog.ipleaders.in/need-know-marital-rape/>
- Vageshwari Deswal, *Marital Rape: Ubiquitous yet obscure*, THE TIMES OF INDIA, (Feb.12, 2022), <https://timesofindia.indiatimes.com/blogs/legally-speaking/marital-rape-ubiquitous-yet-obscure/>
- Harman Grover, *Criminalization of Marital Rape in India*, <https://www.legalserviceindia.com/legal/article-2872-criminalization-of-marital-rape-in-india.html>

4) **Blogs**

- Rajat Singhal, *Marital Rape*, A and S Jurisprudentia, June 9, 2020, <https://www.a-and-s-jurisprudentia.com/post/marital-rape>
- Shrushti. S. Kekre & Udisha Surana, *Marital Rape Through the Lens of Judicial Activism in India*, CCLSNLUJ, Jul.20, 2022 <https://criminallawstudiesnluj.wordpress.com/2022/07/20/marital-rape-through-the-lens-of-judicial-activism-in-india/>
- *Marital Rape in India*, Oct.29, 2021, <https://www.ilms.academy/blog/marital-rape-in-India>
- Tanvi Srivastava, *Importance and Need for Marital Rape Laws in India*, Jus Corpus Law Journal, Feb.9, 2022, <https://www.juscorpus.com/importance-and-need-for-marital-rape-law-in-india/>
- Archana Pandey, *Marital Rape*, Probono India, Oct.2, 2020, <http://probono-india.in/blog-detail.php?id=179>
- Ananya, *Marital Rape in India: Perpetuating the Patriarchy through Law*, CRLRR Blog, Oct.4, 2021, <https://crlreview.in/2021/10/04/marital-rape-india-perpetuating-patriarchy-through-law/>