

Plight of a Married Woman in India: A Critical Analysis of Laws on Marital Rape

Mansi Chaudhry¹ & Aditi Maheshwari²

Abstract - Violence against women has been increasing at an alarming rate throughout the world. But the one that perpetrates within a family against a woman is the most devastating ever. Marriage has been considered a sacred institution since time immemorial and when a crime takes place within it where the husband is the perpetrator of such an act, the thought of considering it as a sacrosanct becomes unassertive. Through this research paper, the authors want to highlight the plight of a married woman within the institution of a marriage by critically analyzing the marital rape and the need to criminalize it within a country like ours where the constitution itself speaks volumes of equality and liberty of all humans. Laws need to be amended to cater the needs of humans on one side and to ensure justice and equality in the society on the other. Therefore, through this paper the authors has emphasized the need to repeal the exception clause 2 of Section 375 and Section 376 which makes an exemption for the husbands and punishment for rape to be same for rape and marital rape respectively. A comparison has been made between developed nations and India which shows a stark difference in the legislations made for the criminalization of such a heinous crime, where on the other hand in India it is still decriminalized. Such a crime therefore should be decriminalized otherwise it will blemish the very foundation of a marriage which is based on trust and mutual consent.

¹ Mansi Chaudhry, 5th Year, BBA LLB, New Law College, Bharati Vidyapeeth University, Pune.
Email id: mansi.chaudhry21@gmail.com.

² Aditi Maheshwari, 5th Year, BBA LLB, New Law College, Bharati Vidyapeeth University, Pune.
Email id: m.aditi1212@gmail.com.

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Introduction

Marriage is a holy institution. It not only connects two humans but their families too. It is a union of two souls who takes vows commonly known as wedding vows and promises a forever to each other. A commonly accepted and encompassing definition of marriage is the following: a formal union and social and legal contract between two individuals that unites their lives legally, economically, and emotionally. The contractual marriage agreement usually implies that the couple has legal obligations to each other throughout their lives or until they decide to divorce. Being married also gives legitimacy to sexual relations within the marriage.³

Marriage is considered as a sacrament in many countries. When a man and a woman gets married, it is natural that they have expectations from each other, In fact we all have expectations in every relation .But this does not mean that always one has to suffer or has to suppress his or her feelings over the happiness of their partner. Doing something till the time you want to do it and you consent for it is fine but when it is imposed on you and done to you forcefully then it is against the natural laws. And in marriage, which is a pious relationship between a husband and a wife, It not only shackles the foundation of trust that they repose in each other as partners but also develops a feeling of outrage against the person imposing it on you. Thereby, breaching the partnership relationship and transforming it into to that of an ownership.

Violence is as bad as it sounds. Violence against women has been there since time immemorial. It is estimated that 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner (not including sexual harassment) at some point in their lives. However, some national studies show that up to 70 per cent of women have experienced physical and/or sexual violence from an intimate partner in their lifetime. Evidence shows that

³ Sheri Stritof, What Is the Definition of Marriage? , Available at <https://www.thespruce.com/definition-of-marriage-2303011>, Last visited : June 4,2020 , 01:43 AM.

women who have experienced physical or sexual intimate partner violence report higher rates of depression, having an abortion and acquiring HIV, compared to women who have not.⁴

Rape is a heinous crime which should be dealt with strictest punishment. As defined by Oxford dictionary, "*Rape is the crime, typically committed by a man, of forcing somebody to have sex with him, especially using violence.*"⁵ Marital Rape is a rape within the marriage. It is a crime which has not been defined per se. It is a crime which is committed within wedlock by the husband against his wife. It's a barbaric act which agonizes a woman.

Section 375 of The Indian Penal Code, 1860 states that

375. Rape.—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,

⁴ World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council (2013). Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, p.2. For individual country information, see UN Women Global Database on Violence against Women.

⁵ <https://www.oxfordlearnersdictionaries.com/definition/english/rape>.

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.

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.

Historical background of Marital Rape

Marital rape or the spousal rape is the sexual intercourse with one's own wife. Traditionally, the concept of rape is limited only outside the marriage but with the changes in the societal views and the increasing number of crimes against women, marital rape is a crime and many women are affected by it. In common law, husbands were executed from any prosecution because it was not a crime to forcefully have sex with your own wife. Women are treated subordinate to that of the men and they were considered head of the family who will take all the decisions. Society has always given power and control to men and they hold predominately powers. Woman has always been considered the property of a man. It is the sexual abuse by the man and the right to have sexually involved without the consent of his wife. Historically in a view described by Sir Mathew Hale in History of the pleas of the crown, published in 1736 where he wrote that the husband cannot be guilty of rape of his own wife. Also the doctrine which was originated in common law England "Coverture" which explains the authority and protection of women is under the control of her husband. This view was lately criticized by women rights movement in the mid 19th century. In the late 19th century feminist movement started that was against the forced sexual relations with women in the marriage. Bertrand Russell who was awarded Nobel Prize in Literature for his book "Marriage and Morals" depicted the situation of women that the undesired sex in marriage is greater than in prostitution. The issues relating to the rape in marriage is now being considered by various conventions. In India, marital rape is not criminalized and is one of those countries that have not criminalized rape. Marriage in India is a sacramental affair and if it is criminalized it will ruin the conjugal relationship of husband and wife. It is a huge problem in India, 1 in 3 men admit to raping their wives and 1 Indian woman is raped by her husband in every 3 seconds. The Global Rape Epidemic found that India was one of only 10 out of 82 jurisdictions surveyed that still legalizes rape⁶. National Institute of Justice found that the women who are physically assaulted by their partner are also sexually assaulted

⁶ The Global Rape Statistics 2017.

by them. In today's time the social norms are changing and people are getting aware of their rights and sexual intercourse is a right of women to decide, it is a right to live with dignity. It is a human right and the right to equality that should serve justice to the victims in marriage and many legislatives are finding it unacceptable to the society. Rape is the heinous crime that is graver than the murder because not only it damages the body but it leaves permanent mark of scars in victims mind.

Possible Reasons for Marital Rape

Few of the possible reasons of Marital Rape include:

Patriarchal Society: India has been a male dominating society since early ages. Although women have been worshipped as goddesses but are not treated somewhere even close to a man. In fact, they are always seen as someone subordinate to men. As per World Economic Forum's Global Gender Gap Index 2019-2020 India has dropped to four places, from 2018, to take the 112th rank. For striking out the patriarchy and gender inequality Justice Chandrachud said in the case, *Joseph shine v. Union of India* (2018)⁷, he wrote

"The boundaries of that space are defined by what women should or should not be. A society which perceives women as pare and an embodiment of virtue attack to rape, honor killing, sex-determination and infanticide".

Outdated Indian Penal Code: Laws should be such that they can be modified over time with this ever changing dynamic environment. With evolution of human beings law should be such that fits in this evolution too otherwise it will become redundant. Section 375 of IPC which talks about rape and also added to it is the exception clause 2 which exempts male from doing the same with his lawfully wedded wife. With crimes being aggravated in a household where women are subdued because of violence on them by men and the society to condescend them

⁷ Joseph Shine v Union Of India, 2018 SCC Online SC 1676.

thereby treating them less than that of a human, an amendment to the same should be done.

Marriage is a sacrosanct: In India people consider their marriage as a sacrosanct, Women have always been seen to be naive and not raising their voice against any injustice or violence done onto them by their husband because then that would mean breaking their marriage.

Marriage as a license to have intercourse: Many see a marriage as a license to do intercourse with their wife. And they do not think it is important or is even required to take consent of their lawfully wedded wife. This altogether breaks the marriage which is thrived on trust and consent.

Marital Rape violates Fundamental Rights of the Married Women

Marital Rape Violates Article 14 of the Constitution of India⁸

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

This definition is provided in the constitution of India that clearly explains that state shall not discriminate based on any parameter. Thus article 14 uses two expressions “equality before the law” and “equal protection of the law”. The idea that is common in both these phrases is that of equal justice. Exception 2 of section 375 of the IPC does not provide equal protection, because it is making a partial basis between married women and unmarried women. The differentiation between married women and unmarried women is creating an unreasonable nexus between the two. It can be clearly seen that this section is not gender neutral. Hence, exception 2 of section 375 is arbitrary to article 14 of the Indian constitution. Doctrine of equality enshrined in

⁸ Article 14 of the Constitution of India.

Article 14 of the Constitution which is the basis of Rule of Law is the basic feature of Constitution⁹.

In a plethora of cases, the Apex Court and the High Court have dealt in detail. In *Budhan Choudhary v. State of Bihar*¹⁰ and *State of West Bengal v. Anwar Ali Sarkar*¹¹, The Hon'ble Supreme Court held

“that any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that can be passed only if the classification has some rational nexus to the objective that the act seeks to achieve. But Exception 2 frustrates the purpose of Section 375: to protect women and punish those who engage in the inhumane activity of rape. Exempting husbands from punishment is entirely contradictory to that objective. Put simply, the consequences of rape are the same whether a woman is married or unmarried. Moreover, married women may actually find it more difficult to escape abusive conditions at home because they are legally and financially tied to their husbands. In reality, Exception 2 encourages husbands to forcefully enter into sexual intercourse with their wives, as they know that their acts are not discouraged or penalized by law. Because no rational nexus can be deciphered between the classification created by the Exception and the underlying objective of the Act, it does not satisfy the test of reasonableness, and thus violates Article 14 of the Indian Constitution.”

In *Hari Ram v State of Haryana*¹², it was held that equality of citizen's right is one of the fundamental pillars on which edifice of Rule of Law rests. All actions of State have to be fair and for legitimate reasons. If the State leaves the existing inequalities untouched by its laws, it fails in its duty of providing equal protection its laws to all persons

⁹ *IndraSawhney v. Union of India*, AIR (2000) SC 498 (India).

¹⁰ *Budhan v. State of Bihar*, AIR (1955) SC 191 (India).

¹¹ *State of West Bengal v. Anwar Ali Sarkar*, AIR (1952) SC 75 (India).

¹² *Hari Ram v State of Haryana* (2010) 3 S.C.C. 621.

The Criminal Law Amendment 2013 has increased the age of consent from 16 to 18 years which makes it arbitrary according to Sec 375 of IPC¹³. Still if girl is married before 18 years of age it is lawful for a husband to rape her only in the name sake of marriage.¹⁴

Marital Rape violates Article 15 (3) of the Indian Constitution

Article 15(3) of the Constitution of India allows for the State to make special provision for women and children. It follows that "special provision" necessarily implies a "adequate" provision. Therefore, in order to maintain equilibrium and to deliver justice the legislators must decriminalize the heinous crime of Marital Rape.

Marital rape violates Article 21 of the Indian Constitution

It is read as follows:

“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

According to Bhagwati, J., Article 21 *“embodies a constitutional value of supreme importance in a democratic society.”* Iyer, J., has characterized Article 21 as *“the procedural magna carta protective of life and liberty.”* This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.¹⁵

The “right to life” includes a right to live with human dignity¹⁶and thereby forced sexual cohabitation is a violation of that fundamental right.¹⁷In recent years, courts have begun to acknowledge a right to abstain from sexual intercourse and to be free of

¹³ Sec 375 of IPC, 1860.

¹⁴ Independent Thought v. Union of India, 2017 SCC Online SC 1222.

¹⁵ Riya Jain, Article 21 of the Constitution of India, Right to Life and Personal Liberty, available at <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>, Last visited-June 4,2020,02:02 AM.

¹⁶ C.E.S.C. Ltd. v. Subhash Chandra, (1992) 1 SCC 441 (India).

¹⁷ Govind v. State of M.P, AIR (1975) SC 1378 (India); Kharak Singh v. State of U.P, (1963) AIR SC 1295 (India).

unwanted sexual activity enshrined in these broader rights to life and personal liberty . In the case of *State of Karnataka v. Krishnappa*¹⁸, it was held that

“Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour & offends her self-esteem & dignity it degrades and humiliates the victims.”

In *Suchita Srivastava v. Chandigarh Administration*¹⁹, the Supreme Court finds equilibrium between the right to make choices related to sexual activity with rights to personal liberty, privacy, dignity, and bodily integrity under Article 21 of the Constitution.

In *Justice K.S. Puttuswamy (Retd.) v. Union of India*²⁰, the Supreme Court acknowledged the right to privacy as a fundamental right of all citizens and held that the right to privacy includes *“decisional privacy reflected by an ability to make intimate decisions primarily consisting of one’s sexual or procreative nature and decisions in respect of intimate relations.”*

In *Bodhisattva Gautam vs. Subra Chakrobarty*²¹ the apex court held that “Rape destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.

Various Measures taken to Criminalize Marital Rape In India

Justice Verma Committee’s Report on Rape

The report submitted by the Justice Verma committee said that the marriage or any relationship is not a valid defense for sexual crimes like rape. Since from the time

¹⁸ State of Karnataka vs. Krishnappa,(2000) 4 SCC 75.

¹⁹ Suchita Srivastava v. Chandigarh Administration, (2008) 14 SCR 989 (India).

²⁰ Justice K.S. Puttuswamy (Retd.) v. Union of India, (2017) AIR 2017 SC 4161 (India).

²¹ Bodhisattva Gautam vs. Subra Chakrobarty, 1996 SCC (1) 490.

immortal women are fighting for gender neutral laws but the parliament are not passing stringent laws for marital rape. The 3 member panel which was constituted to recommend amendments to the government as there is already outrage among people of Delhi gang rape case. The committee further stated in their report that that the sexual activity with a wife without her consent does not justify that lower sentence for rape should be given. The panel had quoted various judgments of different countries and stated that the exemption of marital rape from the definition of rape is quite outdated and needs to be amended since this prove that women are no more than the property of their husbands. The view was supported by the judgment of the European Commission of Human Rights in *C.R. v. UK* that concludes that rapist remain a rapist regardless of the relationship. The defendant cannot argue that the victims consent was implied because they were in a certain relationship. There is risk that even though marital rape becomes a crime, the judges might take it as a less serious offence as in the case of South Africa. It is important that the legal system should be changed as a whole and the attitude of police officer and the judges should change in this regard. Verma Committee points out that in 2010 a study reveals that 18.8% of women are raped by their partners.

Law Commission Report on Rape

The codification of Indian laws began with the enactment of the Charter Act, 1833 by the British parliament which establishes the first law commission under the chairmanship of Lord Macaulay. Law commission drafts were enacted to improve the legislations prevailing in the country. Since Thomas Macaulay drafted the IPC little changes were been made in section 375 of IPC. Ministry of Home Affairs had put up the proposed criminal law bill. The Indian women movement has been campaigning on the issue of rape.

42nd Law Commission report on Indian Penal Code

The law commission put forward the report and urged to exclude the marital rape from the ambit of section 375 and not call it rape in technical sense. It also suggests that the punishment for the same should be given in some other section. Many women

have been demanding the exception of rape to be removed. One task force has been appointed on Women and Children setup by the Women and child department. The role of task force is to look into all the current laws for the offence. The task force gave recommendations that definition of rape should be broadened and includes all forms of sexual offences and proposed that definition of sexual assault could be adopted in place of the current definition of rape as it is wide and more comprehensive. However, like the law commission, the task force also stopped recommending about inclusion of marital rape.

172nd Law Commission report on Review of Rape Laws²²

This report was passed in March 2000 and had made the following recommendations:-

1. 'Rape' should be replaced by the term 'sexual assault'.
2. Sexual intercourse as contained in section 375 should include all forms of penetrations.
3. In the light of Sakshi v. Union of India and others²³, sexual assault on any part of the body should be construed as rape.
4. Rape laws should be made gender neutral.
5. Marital Rape explanation 2 should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally.

Parliament should replace the present definition of rape and include marital rape as an offence without being bias of the age. Gender neutral laws should be made, but nothing has been done for the marital rape laws.

Comparison of Justice Verma Committee Recommendations and Criminal Law Amendment Act, 2013

Firstly, as per the recommendations of Verma committee the punishment for gang rape should be 20 years and life imprisonment for rape but it didn't use the term death

²² 172nd report of law Commission of India on Review of Rape Laws, March 2000, para 3.1.2.1

²³ Sakshi v Union Of India & others ,2004 (5) SCC 518.

penalty as it was observed that it should be given in rarest of rare cases. But the ordinance imposed strict punishments as 20 years imprisonment for rape and even death sentence in extreme cases.

Secondly, the committee wanted that marital rape should be criminalized and hence repealing Section-375 clause 2 but no amendments were done in this regard.

Thirdly, the definition proposed by the committee by sexual offences was rape but it was replaced by sexual assault by the ordinance.

Fourthly, the committee recommended that the senior police and army officials can be held liable for the sexual offences committed by their juniors. Also, the politicians should be barred from contesting if they have any sexual offence charge levied against them. Both these recommendations were rejected.

Last but not the least the committee wanted recording of statement of the victim through means of videography to be mandatory but the ordinance made it optional.

International Framework of Marital Rape

Overview of the Marital Rape Laws in UK

Rape is an offence in common law that described it as “felony”. Earlier, rape does not extend to raping one’s own wife. It was presumed that when a man is having a sexual intercourse with his wife, consent is implied. It was noted by Sir William Blackstone in his Commentaries in the laws of England by 1769 that even the prostitute could suffer rape if she had not consented for it²⁴. In one of the decisions of the House of the Lords, it was decided that the honest opinion of the man that the woman with whom he was having a sexual intercourse is a defense to rape²⁵. It remained in force until the enactment of Sexual Offences Act, 2003. The definition of

²⁴ Maryland v. Baby, 946 A.2D 463 (Md. 2007).

²⁵ DPP v Morgan [1975] UKHL 3.

rape has been provided in Sec 1 of the Sexual Offences Act, 1976. This definition is given in view of the decision given in *D.P.P. V. Morgan*²⁶

(1) For the purposes of section 1 of the Sexual Offences Act 1956 (which relates to rape) a man commits rape if—

(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and

(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it;

and references to rape in other enactments (including the following provisions of this Act) shall be construed accordingly.

In the landmark judgment of *R v. R*²⁷, it was held that the unlawful does not exclude the word marital rape. In the famous case that turned the marital rape laws in UK. that it is possible to rape a wife by her husband against her will. And the will should not be subsequently implied.

Section 1 of the Sexual Offences Act 1956 was substituted on 3rd November 1994 by section 142 of the Criminal Justice and Public Order Act, 1994 which resulted in a new and a broader definition of the same.

(1) It is an offence for a man to rape a woman or another man.

(2) A man commits rape if -

(a) He has sexual intercourse with a person (whether vaginal or anal) who at the time of the intercourse does not consent to it; and

(b) At the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it.

²⁶ Id.

²⁷ R v R [1991] UKHL 12.

(3) A man also commits rape if he induces a married woman to have sexual intercourse with him by impersonating her husband.

(4) Subsection (2) applies for the purposes of any enactment.

This section was then replaced by section 1 of the Sexual Offences Act 2003, providing a broader definition.

For the act of marital rape to be prosecuted, the prosecution must prove that:

1. Penetration of the anus, mouth or vagina occurred
2. The act of penetration was intentional
3. The complainant did not consent to the act of penetration
4. The defendant did not believe – within reason – that the complainant had consented to the act

If found guilty of marital rape the sentence is likely to be between 4 and 19 years, depending on the specifics of the case, alongside any mitigating or aggravating factors. The maximum possible sentence in the UK is life imprisonment.

A survey commissioned by the End Violence against Women Coalition found that it was revealed there is a stark generational gap in attitudes with more than a third of over-65s believing that in most cases sex without consent with your wife or partner was not rape, compared with just 16% of 16- to 24-year-olds.

These figures are shocking after the laws are made and the society still has to fight against such crimes. Crime against women has increased drastically with the modern era and stringent laws should be made to cope with the problem as a whole.

Overview of the Marital Rape Laws in United States

During the last quarter of the 19th century, few courts found cruelty legally recognizable when a husband subjected his wife to excessive sexual demands and that these requirements endangered her health.

The drafters of the model penal code of the American Law Institute explain that the rule of exemption: *"for so long, the right of rape has only recently been attacked"*. Similarly, it should be noted that *"until 1977, the husband's exemption was not seriously challenged"*²⁸ or that *"until the late 1970s, there was no real examination of the question"*.²⁹

Justice Hale, in his statement stated that *"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 up in this kind unto her husband which she cannot retract."*³⁰

In *R v. L*³¹, the Court held that the marital exemption to rape has ceased to exist at the time of the enactment of s 48 of the Criminal Law Consolidation Act 1935.

Six state legislatures altered their Laws on marital rape between January 1985 and March 1986. By 1993 marital rape was a crime in all 50 states. The laws have been evolved over the 21st century. But there have been states which makes a differentiation when it comes to punishing the offenders of rape and marital rape.

Virginia's new rape laws are complicated instead of providing easy and quick remedies to victims of marital rape. A woman may charge her husband, provided they were not living together or he causes her serious physical injury.³²The **Nebraska Supreme Court** recently upheld state's ban on marital rape. One landmark case had struck down the marital exemption for forcible sodomy, saying that it was not "rationally based." The court found that the arguments advanced in favour of the marital exemption for rape are as irrational and absurd as those used to justify the

²⁸ People v. De Stefano, 467 N.Y.S.2d 506, 511 (Suffolk County Ct. 1983).

²⁹ Warren v. State, 336 S.E.2d 221, 223 (Ga. 1985).

³⁰ 1(629) SIR MATTHEW HALE, HISTORY OF THE PLEAS OF THE CROWN (1736).

³¹R v. L [1991] HCA 48; (1991) 174 CLR 379 at p. 40 and 2.

³² Tal, *marital rape: legislative update*, 16(11) OFF OUR BACKS 1-4 (Dec. 1986).

marital exemption for forcible sodomy. In the New York court's decision in the case of *People v. Liberta*, the court stated the "point by point denial of traditional defences of the marital rape exemption, including the claims that the marriage contract implies consent; that women are the property of their husbands; that prosecution for rape (rather than rape itself) disrupts marriages; that marital rape is too difficult to prove; and that marital rape is "not as serious" as other forms of rape."³³

In State Senate of South Carolina a bill has been passed that strikes down the exemption but here there is a proviso which has been added which says that the men and women shouldn't be living together. In **Maryland** a case can be brought against the offender if the accused uses excess force or does a sexual act without the consent.

In Mississippi, a person can be convicted of sexual battery of a spouse when they are living together only if he engages in "forcible penetration against the victim's will"³⁴

Until 2013, Washington had an exemption preventing a spouse from being prosecuted with third-degree-rape against the other spouse, which is removed after almost 30 years.³⁵

Thus, we can say that today all 50 states of US have criminalized rape but in India many are still unaware about marital rape, decriminalizing it is a long way and a difficult path chosen by few by taking a stand against such brutality.

Remedies Available to Women in Absence of any Law

Although marital rape should be criminalized in India but these are the few remedies which aggrieved women can seek.

Sec 498A of IPC describes cruelty as

498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such

³³People v. Liberta , 62 N.Y.2d 651.

woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

- (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Sec 498A provides penalties for the relatives and husband for any act that amounts to cruelty it describes the recourse that women can get under this section, sec 13 of the Hindu marriage act also make this as a ground for divorce but still it does not classify marital rape as crime. Since it does not provide a ground for marital rape but it does give woman recourse to remove themselves from the dangerous situations.

Domestic Violence Act, 2005

It is a comprehensive definition and captures women’s experience of abuse and includes not only physical violence but also other forms of violence such as emotional / verbal, sexual, and economic abuse. It is based on definitions in international law such as the UN Declaration on Violence against Women and a Model Code.³⁶

The following are the remedies available under the Domestic Violence Act, 2005 to the aggrieved Woman:

Right to reside in the shared household- Every woman has a right to reside in the shared household irrespective of title, right or beneficial interest in the same.

³⁶ Authentic, <https://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>, last visited on- June 4,02:10 AM

Protection Orders- The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favor of the aggrieved person and prohibit the respondent from doing any act which amounts to domestic violence as mentioned in the act.

Residence orders- the magistrate can also pass residence orders where she can order to leave the shared household or made suitable alternate accommodation for the aggrieved. The magistrate can also order restraining the respondent from dispossessing the possession of aggrieved from the shared household or disposing of the same among the other remedies as mentioned in the act.³⁷

Monetary relief- the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence³⁸

Custody orders- the Magistrate can also pass temporary custody orders of children to the aggrieved women if she has children out of their wedlock.

Compensation orders- In addition to the above mentioned orders the magistrate can also pass compensation orders in order to compensate for the damages, mental torture and distress and the agony that a woman has to go through during the heinous crime of domestic violence.

Conclusions and Suggestions

“Justice delayed is justice denied” as rightly said by William E Gladstone, Former British Statesman and Prime Minister in the late 1800's. This holds true in today's world as well. When a woman gets married she repose her faith and trust onto her husband and believes that the marriage will thrust upon trust and mutual consent. But when a crime like that of marital rape perpetrates within such marriage a woman is not left with anything but to succumb her voice in order to save her marriage. The

³⁷ Authentic ,http://chdsla.gov.in/right_menu/act/pdf/domviolence.pdf.

³⁸ Id.

legislators say that if an act like this will be decriminalized in a country like India then chances are that it will be used against husbands every now and then which will eventually would defeat the purpose of considering the marriage as a sacrosanct. But the question here is just to save the marriage in the eyes of the society and getting aggrieved by such barbaric acts often, till how long a woman will be able to suppress such agony within her. One day it has to come out, and then also such an institution will break. In that situation not only the institution but it will forever put a mark deep inside woman after being such submissive to her counterpart.

Amendments such as repealing of section 375(2) can be done which makes an exemption for husbands for doing forceful sex. Also, section 376 should be amended where there should not be difference in punishment for rape and marital rape.

In any society where women are better educated, economically and financially independent, incidents of rape will be much less serious. Abuse of criminalization is not a defence. There is no law that is not misused. Section 498A is one such example. Nowadays where wives misuse the provision to their own advantage it cannot be ignored that there still exist instances where wives are mistreated and burnt in the name of dowry. Just because there is likelihood that one woman might misuse the provision you can't completely remove the provision.

In our country, the punishment for rape is up to death sentence but there are no stringent laws that protect the rape cultures within marriage. It's not wrong to say that home is the most dangerous place for some women. Sec 15 says that there must not be any discrimination on the basis of sex, so it violates the same. It has been found out that only 4 in 10 countries criminalize rape. In 2017, published by United Nations it was found that 60% of female victims of intentional homicide were killed by a family member. A rate of 137 women killed each day. Many countries do not even collect data about marital rape and there are hardly any cases that have been reported. In India, the PIL has been filed by RIT foundation in 2015 to criminalize marital rape and the hearing of the same has been scheduled in the Delhi High Court. So, we can say that marital rape is morally and socially wrong and such offence should be

brutally punished. And it is an eye opener that we have long way to go in terms of legal framework.