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Marital Rape in India: The Intersection of Law, Society, and Structural Inequality

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ABSTRACT

Rape is a serious crime which violates the body and spirit of the victim. Marital rape remains an issue in India where the legal framework fails to protect women from the physical, emotional, and psychological trauma attempted by the husband. After the Nirbhaya Case, there was a lot of media attention on the topic of rape which further led to the implementation of the Criminal Law (Amendment) Act, of 2013. But marital rape is still a problem as the law states specific circumstances in which the husband can be held accountable for committing the crime of raping his wife without consent. This research paper aims to explore and elaborate on the legal framework in place to protect women from the horrific crime of spousal rape. For example, how the constitution has laws that contradict themselves, how the sacred bond of marriage and the sanctity of the family is more important than a woman facing abuse from her husband, how the law undermines marital rape reports and lets the perpetrator (husband) walk off free, how rape affects a women's body and mind. This paper will answer all these questions and also aim to unfold all the harsh realities that many women in India face every day in the name of marital rape.

KEYWORDS: Rape, Specific Circumstances, Consent, Sanctity of Family, Sacred Bond of Marriage.

INTRODUCTION

Marriage is a contract between two people that symbolises trust, love, and comprise but sometimes all of these combine into silence and pain. Marital rape against a woman not only violates her fundamental rights but also her dignity and self-respect with those exact four walls that she considers home. It objectifies a woman's body and her emotions. Rape is a heinous crime that destroys the woman's mental health, her self-esteem and shatters her soul. 16th December 2012 marked an important date in India, it was when the *Nirbhaya case* took place but when the light is shown towards marital rape, Indian society tends to walk away. Marital rape is not protected by Indian law. It is a much more concerning issue than the rape itself considering India has not legalized it and the victim has to live with her perpetrator in the same house along with the trauma and the pain. The conviction rate of rape cases in India is about 26% leaving 74 offenders who escaped unpunished. (The Economic Times) But what about the women who are victims of marital rape? What justice are they getting? What actions can she take against the perpetrator when all the sections such as Section 375, Section 376, and Section 509 are laid down in the constitution but the Indian penal code decriminalizes marital rape to a certain condition?

India contradicts its laws and being a nation that does not take any action against the crimes that are happening in the society, take section 10,12 of "The Prohibition of Child Marriage Act, 2006" and section 375 of the Indian penal code. "The Indian Constitution has given the **Marital Rape in India: The Intersection of Law, Society, and Structural Inequality**.

Indian legislature has the difficult responsibility of passing laws for the nation's protection, security, and progress. However, the legislature has little interest in making marital rape a thing of the past." (Jain et al. 8180) This research paper will unfold all the flaws and the actual truth about the importance of marital rape laws in India and the urgent need to emphasize them.

UNDERSTANDING MARITAL RAPE

It is a type of sexual assault that involves sexual intercourse or other forms of abuse such as sodomy, sexual penetration, or penal penetration against a person's will. When we talk about rape, the idea of the husband being the perpetrator is not the first thing that comes to our mind, it is usually a stranger. This is because Indian society believes that once married the husband avails his conjugal rights of having sexual intercourse and that it is his right to have sexual intercourse with or without the consent of the wife. Many females in the rural area have this same belief and hence stay silent, without realizing that this is a form of domestic violence.

“While the legal definition varies, marital rape can be defined as any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when the wife is unable to consent” (Gupta and Gupta. 17).

Marital rape is so baffling because of the personal relations between the victim and the perpetrator that the victim fails even to see her husband as the offender and does not file a case, hence marital rape is one of the most underreported forms of abuse. The women who realize that they are victims still go about living with the same person as they are financially dependent on him. The act of rape within marriage is not legalized as the women are often perceived as the man's property and how can he violate his properties? Is marriage a license to rape? Rape within marriage is a big issue although many countries have criminalized marital rape like Mozambique, Ecuador, Luxembourg, New Zealand, Greece, Argentina, and Monaco and many more the situation in India has hardly changed.

In layman's language marital rape is usually when a wife is forced or has not given the consent to have sexual intercourse with her husband. Why usually women? This is because the chances of men experiencing marital rape are 1.7% whereas the percentage of a woman getting raped is 5.6%. Women who have been raped by their husbands are most likely to be raped multiple times, the husbands not only force but also coercion and object to having nonconsensual sex with them. These women not only face vaginal rape but also anal and oral rape. “There are different types of rape such as

Penetrative rape: The vagina is penetrated by penis, finger, or other objects

Statutory rape: The penis is touched on the vagina but no penetration takes place. This type of rape does not exist in Indian statutes yet.

Marital rape: When rape occurs within a marriage. This is not yet recognized in Indian law.

Date rape: When rape occurs during an exploratory platonic romantic meeting between a man and a woman, where often an intoxicating agent is mixed in the food or drink of the victim

Gang rape: When more than one person rapes the victim

Male rape: When man-on-mann rape takes place”(Sarkar).

Why is it that women are facing so much trouble, and are suffering, is because of laws? Well yes, most of the women don't go to court not because they are scared, but because there aren't enough laws in India to protect against marital rape especially due to Exception 2.

LEGALITIES FOR MARITAL RAPE IN INDIA

The Nirbhaya case sparked a massive public outrage demanding more steadfast laws against rape however marital rape continues to remain a taboo in Indian society. “According to the National Crime Records Bureau's 2020 data, almost all rape offenders in India (95.6%) are people who are known to the victim.” (Roy)

Does a piece of paper with a legal seal give the man his “conjugal rights” of crossing the boundaries, not asking for consent, and deciding the fate of the woman's body, objectifying it? The new BNS that replaced IPC in July 2023 also stands with this exemption meaning that marital rape is still not recognized and the legal provision has been shifted to Section 63 under the new BNS. In India, rape laws are governed under Section 375 of the IPC however Exception 2 of Section 375 does not recognise marital rape. The new laws under the BNS “Whoever has sexual intercourse with his wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine” (Bharatiya Nyaya Sanhita (BNS))

1,248 laws in total with the Statue of Justice representing the morality of the justice system and yet it is so concerning to see that the Indian constitution laid down only 13 laws for a woman's protection, her survival, and her safety.

Statistics have shown that 82% of married men were sexually violent with their wives. Marriage is turning into a trap in disguise for the women who are victims of these offenders. The Ministry of Women and Child Development has implemented various acts such as “The Protection of Women from Domestic Violence Act, 2005”, ‘The Dowry Prohibition Act, 1961’, ‘The Indecent Representation of Women (Prohibition) Act, 1986’, ‘The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013’, and ‘The Prohibition of Child Marriage Act, 2006” (Press Information Bureau). However, instead of having acts and more laws for marital rape the government goes against its (already implemented laws such as the child marriage act) basic idea (protection) and decides that the laws passed under sections like 375 should have exceptions and special conditions for them to be implemented. These conditions are: -

A medical procedure or intervention is not considered rape

Sexual intercourse between a husband and wife is not considered rape if the wife is over 15 years old,

But it is ironic because the government has passed the Child Marriage Act, of 2006, and yet these are the exceptions and special conditions.

The IPC along with section 375 was framed in the 19th century, when women were unconsidered to be property of men, not guaranteed civil rights or civil identity. The Constitution has more laws laid down for offences relating to property than rape (13 laws for marital rape & 116 related to property).

Under the new law, section 375 had a provision that the husband is not subjected to punishment if the victim was his wife and above the age of 18 and marital rape is still not criminalized.

The major reason for not criminalizing marital rape as it would “question” the “sanctity” of the family and would break the bond of marriage which again is a major issue in Indian society (HT News Desk). Have these “safeguarding laws helped people when they went to court?

CASES AND OTHER REPORTS ON MARITAL RAPE

One would like to believe that rape is rape, regardless of who the perpetrator(s) is/are. In India it is thought that once married, it's the woman's job to keep the family together, maintaining the sanctity. Historically, societal norms have heavily leaned on gender roles that dictate a woman's place and behaviour, creating an archetype of the “nice girl” who is always accommodating, selfless, and devoid of conflict or strong personal desires. A report from the government of India, Ministry of Home Affairs, stated that The Ministry of External Affairs and Ministry of Women and Child Development has reported that the UN Committee on Elimination of Discrimination against Women has recommended to India inter alia, to criminalize marital rape. The Law Commission of India, while making its 172nd Report on Review of Rape Laws, on the other hand, did not recommend criminalization of marital rape by amending the Exception to section 375 of the Indian Penal Code, and hence presently there is no proposal to bring any amendment to the BNS in this regard and it is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors e.g. level of education/illiteracy, poverty, myriad social customs and values, religious beliefs, the mindset of the society to treat the marriage as a sacrament, etc. (Government of India)

In the judgement of Independent Thought vs Union of India, the Supreme Court gave out a verdict that a sexual act with a wife of under 18 years was rape and neglected to make any observations upon the subject of marital rape of women of age 18 years and above. The Court said that Exception-2 of Section 375 did not create a reasonable classification and hence violated Article 14 of the Indian Constitution. It was also observed that Exception 2 was a clear infringement of the right to live a dignified right with basic autonomy and safety, as enshrined in Article 21. Furthermore, the court noted that the provision of Section 375 exception did not align with the POCSO and Juvenile Justice Act wherein any person below the age of 18 years has been declared a child The effect of allowing present exception-2 to Section 375 permits than-consensual intercourse by a husband with a wife between the ages of 15 to 18 years (Khopkar).

In Dilip Pandey and Ors v. State of Chhattisgarh, the Chhattisgarh high court discharged a man from facing trial for raping his wife. Indian law does not recognize marital rape if the wife is above the age of 15 and this factor played a key role in the decision making, the court charged him under Section 377 for unnatural sex instead of revoking Section 375- rape, although the charges related to sexual misconduct. (Dilip Pandey vs State Of Chhattisgarh)

After the Nirbhaya Case in 2012, the Justice Verma Committee suggested that marital rape should be criminalized and that marriage is not an irrevocable consent to sex but the Indian Government neglected this suggestion.

KERALA HIGH COURT- ISSUES AND ANALYSIS ISSUES

Whether the divorce granted by the Family Court valid?

Whether marital rape falls within the ambit of cruelty as grounds for divorce?

ANALYSIS

The Court in the case of Kerala High Court laid down marital rape as a ground for divorce and hence conferred the status of legal recognition to the same. It said that *"Sex in married life is the reflection of the intimacy of the spouse. Marital rape occurs when the husband is under the notion that the body of his wife owes to him."* The court herein suggested that women are not the property of men after marriage, the marriage doesn't take away women's right to have consensual Marital relationships do not justify non-consensual sex; their sexual sanctity cannot be taken away in any case. Furthermore, in a marriage, both partners are at an equal level and the husband cannot claim any superior right over a woman in respect to her body or individual status. The court emphasised that *"Treating a wife's body as something owing to husband and committing sexual acts against her will is nothing but marital rape."* In marriages also is an intrinsic right to privacy that every human being possesses. This right to privacy cannot be violated by any person, not even by the marriage. The court in the present case has held that the husband has subjected the wife to inhumane sexual intercourse which has been sufficiently established and hence this amounts to marital rape. The court said that *"Merely for the reason that the law does not recognise marital rape under penal law, it does not inhibit the court from recognizing the same as a form of cruelty to grant divorce. We, therefore, are of the view that marital rape is a good ground to claim divorce."* The court also held that unsubstantiated claims of illicit relationships by the husband also amount to cruelty (Khopkar).

The Kerala High Court stated that marital rape can be considered ground divorce but cannot be an grounds nullity of marriage as Indian law does not criminalise marital rape. The court is ignoring Article 14- right to equality, Article 15(1), Non-discrimination and Article 21 right to privacy, here the court is differentiating between a married woman and a woman.

BRIEF OF ARTICLE 14,15(1) AND 21.

“Article 14 – Right to Equality: MRE creates an arbitrary distinction between married and unmarried women, violating the principle of equal protection. This classification fails the test of reasonable differentiation as it denies married women legal protections against sexual violence afforded to unmarried women.

Article 15(1) – Non-discrimination: The MRE perpetuates gender-based discrimination by specifically disadvantaging married women. It reinforces harmful stereotypes about women’s autonomy within marriage and denies them equal rights to bodily integrity and sexual autonomy based on their marital status.

Article 21 – Right to Privacy and Bodily Integrity: The MRE infringes upon a married woman’s right to make decisions about her body and sexual choices, violating her privacy and bodily integrity” (Lukmaan IAS)

UNITED NATIONS RESPONSE TO MARITAL RAPE IN INDIA

The United Nations has advised India to criminalize marital rape, a UN official states that marital rape is an issue of consent, not culture. In 2013 the UN Committee on Elimination of Discrimination Against Women (CEDAW) advised India to abolish the impunity of marital rape. Committee’s General Recommendation 35 urges the state to define marital rape, rape, sexual assault, violence, etc as a crime against humanity and dignity.

“On 25th June 2019, the UN urged nations to discontinue marital rape & dissolve legal lacunas. The house is amongst the most perilous spots for females, the United Nations said on 25th June 2019, as examination demonstrated just four out of ten nations condemn the conjugal assault. Twelve nations permit offenders to evade indictment by tying in a marital alliance with their victims, as stated by UN Women their leader yearly "Progress of the World's Women report". (Saptarshi)

India has ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and is obligated to criminalize marital rape under international human rights law. India’s Constitution also includes the right to privacy and the right to equality. While talking about rape or marital rape, we mention section 375 a lot, so let’s see what exactly is it.

RUN DOWN OF SECTION 375

What is section 375? What role does it play in our constitution? What is the significance of this section? How has it helped our society? Is it a good law or bad? What are the changes in section 375? What are the exceptions to this section? What is the difference between Sections 375 and 376? The answers to these questions are as follows:

A man is said to commit rape if he-

“penetrates his penis to any extent into the vagina, anus, mouth, or urethra or forces the woman to do so with him or any person against her will; or

If he inserts an object or a part of the body, not the penis into the vagina, anus, mouth, or urethra or forces the woman to do so with him or any person against her will; or

Manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her so with him or any other person; or

Applies his mouth to the vagina, anus, or urethra of a woman or makes her do so with him or any other person,

Given that it was done,

- I. Without her consent
- II. Against her will
- III. With or without consent, if she is below the age of 18 years
- IV. With her consent if it has been taken by the act of extortion
- V. With her consent if at the time she is intoxicated or if the man himself gives her an unwholesome substances
- VI. When she is unable to communicate consent
- VII. 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” (India Code).

Before 2013, section 375 was not amended, it did lay out criteria and the punishment for rape but still did not help out in any way for marital rape cases due to its exception 2. Maneka Gandhi said that marital rape can not be considered in India as it is understood internationally due to illiteracy, poverty, values, and social beliefs (India Today). However,, it is not only the illiterate people but also many educated women who have experienced spousal rape but couldn’t raise their voices due to multiple reasons such as - financial dependency, family ties, social norms or just maybe because e rape of a wife who is above the age of 15 is not considered rape? But the question arises, why can’t we consider it as a crime, the law is clearly there, and the punishment is there, so why not protect the of rights the women who face Exception 2 of Section 375? Section 376 and Section 377 is also a major topic of discussion in the context of marital rape. The Indian government has had some interesting opinions on the criminalization of marital rape s well.

INDIA’S CULTURE V.S LAW

Culture is as important as laws, especially in a country like India. The culture of *satipratha* was a part of the Indian tradition but gradually with time it became illegal in India similarly, the idea of criminalizing marital rape should not correlate with words such as “taboo” or “breaking the sacred bond of marriage”. “The husband demands sexual intercourse. Wife resists.

She is wrongfully confined. She is threatened and criminally intimidated. The wife finally succumbs [to pressure]. So all the preliminary acts make offences under the law, but the act of forced sexual intercourse alone is not a crime?"

Justice J.B. Pardiwala asked. Recently on 4th October 2024, India's government formally opposes the bid to criminalize marital rape. India's government has told the country's Supreme Court that criminalizing marital rape would be "excessively harsh," as it opposes petitions with the court seeking to amend a British colonial-era law that says a man cannot be prosecuted for rape within marriage (Zargar). "CPI(M) leader Brinda Karat described the government submission in the Supreme Court as "regressive". "It is retrograde and regressive because it essentially sees a woman's body as part of a marriage contract in which the husband has full rights over her body. This is essentially what the government's statement means despite all the ifs and buts it has added to it. It is saying a woman's body is not her own but her husband's," Karat said. The Congress's Adhir Ranjan Chowdhury, who had earlier batted for the criminalisation of marital rape, was more measured. "The issue is sensitive. It has to be dealt with very comprehensively. Opinions of all stakeholders should be taken so that a comprehensive view can be taken. It is very difficult to differentiate what is marital rape and what is conjugal cohabitation. It is a delicate matter. It should be left to the judiciary to take a call. It needs a wide discussion among all sections of the society. We are a diverse culture," Chowdhury told *The Indian Express*" (Tiwary).

Traditional roots of our culture have always intervened in our laws, it is time to either change laws or the culture of our society. Why is it that the Indian government in opposing to criminalize marital rape? Is it because they might lose votes and won't win seats in the parliament because if marital rape were criminalized lottoof people would be against them? No one knows the answer to thquestionsstion. Still, India's Interior Ministry has given a response to the statement where they argued that the man should face "penal consequences" and criminalising the act may seriously impact the conjugal relationship. It may lead to serious disturbances in the institution of marriage. The Indian government has argued that there are already sufficient legal protections for married women against sexual and domestic violence. Indian constitution goes against its laws, the government claims one law but then goes against the principles of that law.

TWO SIDES OF A COIN

A word, a statement, a sentence, an object, or any saying- everything has two sides, two opinions, two different perspectives, for example:-

"Against her will", the word 'will' implies the faculty of reasoning power of the mind that determines whether to do an act or not. There is a fine distinction between an act done 'against the will' and 'an act done without consent.' Every act done 'against the will' is obviously 'without the consent.' But every act 'without the consent' is not 'against the will.' Clause (1) of this section applies where the woman has her senses and therefore, is capable of consenting (Chauhan)

Similarly,, Indian law is like a coin, it also has two sides, one side being the *Constitution* and the other being *Culture*. One is where we are imposing various laws to protect children from child marriage, sexual assault, and harassment, and on the other hand, we have punishments for the perpetrators of marital rape *only* if the victim is a minor. Section 9 and 12 of The Prohibition of Child Marriage Act, 2006 first-Punishes anyone who performs, conducts, or abets child marriage with up to two years in prison and up to one lakh rupees in fine and Makes a child's marriage void if the child was:

Enticed away from their lawful guardian, Forced or deceived to leave a place, Sold for marriage, Married to be sold or trafficked for immoral purposes, whereas section 375 of IPC defines rape and the circumstances that constitute it along with the punishment. However, due to exception 2, marital rape is not criminalized and has given specific conditions for the perpetrator to be punished. Under the Indian Penal Code (IPC), a spouse can face criminal prosecution for marital rape under these circumstances:

- I. If the wife is under the age of 12 years then, the crime is punishable by imprisonment for a minimum of 7 years, up to 10 years, or life, and a fine.
- II. If the wife is between 12 and 15 years old, the crime carries a maximum sentence of 2 years in prison, a fine, and both.
- III. If the wife is above the age of 15, then it will not be considered marital rape and won't be criminalized or punishable.
- IV. Raping a judicially separated wife carries a 2-year prison sentence and a fine.

Interestingly both laws contradict themselves and have a very vague definition of what constitutes a 'wife' for the law. *The law's definition of a wife in one case states she should be 18 years and above, while the other law states that she must be 15 years and below.* With differences in both laws like these is it correct to assume that no matter what, no matter where, and, no matter who the wife/female/ is not safe? Passing the judgment of life imprisonment with court trials and procedures is fine but is it giving justice to the victims?

MENTAL RAPE

When we talk about the most heinous crimes in law, most people seem to think it's murder, rape on the other hand comes fourth in the ranking after felonies such as grievous injury, or destruction of property. Most people would like to argue that rape is much more torturous and painful yet the Indian law has given more importance to the "destruction of property" as a heinous crime. Indian courts have a very predictable approach when it comes to punishments, after looking through all the criteria and factors that are needed to consider *unwanted sexual intercourse* as rape, they then decide whether the perpetrator gets a life sentence or a minimum of ten years.

In cases like these at least the criminal is getting charged, but in a family where the wife has to live with her perpetrator/ husband, keep quiet, not break the family bond, suffer with all the pain alone and bear with her low self-esteem, and low confidence, and low self-worth and repeat the same things day and night, and when she finally decides to speak up, ask for help, go to the law, only to be told “you are the wife, you must keep the family together”, “a wife has to bare these things in a marriage” “you are no longer below the age of 15, the law won't help you”?

A woman who is getting raped regardless of whether her being a minor or an adult, in a marriage or not, is not just physical, she is being affected in all ways possible- mental, emotional, psychological, spiritual, and sociological. The human being is not just the body but the mind, body, and soul. A woman's body is her temple and the abuse of her body is the abuse of her soul. In a survey conducted by Dr Malmuth, it was shown that the majority of men who sexually force their wives or girlfriends have a need to be in control and that women are supposed to be subjugated. Sex offenders derive pleasure from the pain of another human being, they are called sadomasochistic. Most rape survivors have experienced PTSD, anxiety, and depression. It is quite difficult for a woman to recover from the trauma and the pain, the fact that most victims lose their confidence and are often scared to be with a man again. Women are mostly the victims although men experience sexual abuse and the same pain and experience as well. Immediately post-assault, most victims will experience shock, intense fear, numbness, confusion, feelings of helplessness, and/or disbelief, in addition to self-blame, hyperarousal and high levels of anxiety (Campbell, Dworkin & Cabral, 2009; Jewkes & Dartnall, 2008; Chen et al., 2010; Vickerman & Margolin, 2009). In many cases, blame is cast on the victims rather than the perpetrators, with the victim suffering dishonour and shame sometimes thought to extend to the whole family (Kohsin Wang & Rowley, 2007; Jewkes et al., 2002; Jewkes, Penn-Kekana & Rose-Junius, 2005). Lack of disclosure is associated with more severe psychological consequences, particularly in children, and it is therefore of great importance that societal perceptions of rape are changed so that victims may feel safer in revealing assault (Stevens, 2007; Ruggiero et al., 2004). Many of the harmful and lasting psychological impacts of sexual violence may be prevented or minimized with structured interventions and the provision of psychological support post-rape (Astbury & Jewkes, in press). Whilst many people will recover spontaneously from the psychological aftermath of rape, the identification and treatment of psychopathology can be of great benefit to survivors (US National Center for PTSD, 2007).

INDIAS OVERVIEW

Throughout the world, sexual violence remains highly stigmatised, with 53 countries yet to legally define marital rape as a crime, other countries such as Albania, Algeria, Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, Mauritania, New Zealand, Norway, the Philippines, Scotland, South Africa, Sweden, Taiwan, Tunisia, the United Kingdom, the United States have either enacted marital rape laws, repealed marital rape exceptions or have laws that do not distinguish between marital rape and ordinary rape. India competes with countries like China, the USA and other European countries, competes with the USA, China, Germany, and Japan in terms of GDP yet it is among the 53 countries that have not criminalized marital rape. Countries such as Pakistan have criminalised marital rape despite the statistics being- 28% of women aged 15-49 have experienced physical violence, and 6% have experienced sexual violence. 34% of ever-married women have experienced spousal physical, sexual, or emotional violence. Five per cent of women have experienced spousal sexual violence (UNFPA). Meanwhile in India, the law still believes that criminalizing marital rape would question the institution of marriage. In contrast, the real question that should arise is whether protecting a family bond in the face of society is more important than women's rights. Supreme court lawyers such as Karuna Nundy have filed petitions and have argued that rape is an offence, and only the husband is excluded from its ambit and said that declaring the exception as unconstitutional may not create a separate offence. “The Chief Justice asked senior advocate Karuna Nundy, who represented the All India Democratic Women's Association and opened the case for the petitioners, about the government's argument that the removal of the marital rape exception would destroy the institution of marriage. “Protecting a married woman from rape would not destroy the institution of marriage. Marriage is personal and not institutional... Sexual choices and consent are essential attributes of autonomy,” Ms. Nundy responded.” (The Hindu). The Constitution of a country is the text that reflects the soul of the nation. The Indian Constitution organizes and controls power, ensures human rights, balances the competing claims of social and individual interests, mirrors the cultures and experiences of the country and operates as a vehicle for national progress and unity (Gupta and Gupta 24).

CONCLUSION

Marital rape refers to the sexual intercourse with a spouse without her or his consent. It is a form of sexual abuse and domestic violence. It is a heinous crime followed by coercion, threat, harm, and physical force. Marital rape remains a widespread problem in many countries that have not been criminalized including India. It is important to address the situation because it violates the human body, exploits fundamental rights, and destroys the mental and psychological health of the victim, to bring equality and gender justice. This research will provide an overview of the Indian legal system, its constitutional provisions, and its judicial precedents. The paper will also discuss the need for the amendment of the Indian Penal Code. It also discusses various topics such as what marital rape is, why it is important, what are the legalities, different cases of marital rape, how the United Nations respond to it, what exactly is section 375, how culture intervenes in between laws, how the Indian constitution contradicts itself, how marital rape affects the mental health of a victim, and what is Indian outlook on marital rape.

To talk about marital rape in India is like a taboo. It is considered so shameful that the Indian government has laid out exceptions in the law regarding rape. It says that a married woman is not a victim of sexual rape until and unless she is below the age of 15 years old. There are different punishments for the perpetrator according to the age of the victim (wife). The constitution has implemented various laws for women's safety yet about 95% of rape offenders are known to the victim.

Many women don't speak up for fear of society and family, but even the ones that do have no luck with the Indian government, all the cases that have been filed regarding marital rape are either pending or when taken to court, the perpetrator (usually the husband) is left off free or with very minimum punishment.

The United Nations have a very strong opinion on the subject of marital rape in India and the urge to criminalise it. After the Nirbhaya case in 2013, the Verma committee recommended that the exception from section 375 be removed pointing out that a marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation.

Section 375 of the Indian penal code defines marital rape. It outlines the punishments for the offence, along with the exceptions to the offence and states the exception 2. The ruling party in India recently stated that criminalising marital rape would be an "excessively harsh" offence. Even while living in the 21st century, the constitution worries about society and "what will people say" instead of the rights of women.

Many reports on marital rape have stated that culture plays an important role in our law and government, it also plays an important role in the case of spousal rape. Women have to keep quiet to avoid the shameful gaze of people.

After the crime is committed, the effects of it torment the mental health of the victim. The victim may suffer from anxiety, depression, and post-traumatic stress disorder.

In conclusion, marital rape remains a massive issue that ignores the rights and dignity of individuals within the institution of marriage, regardless of the acknowledgement and addressing of sexual abuse worldwide. Many countries continue to see marriage as a personal bond that cannot be disturbed, even if one of the partners is getting sexually abused and suffering from domestic violence, it not only shows gender inequality but also patriarchal norms and denies fundamental rights and implementing acts for women, safety alone is not enough. Criminalising marital rape in the Indian constitution is urgent and important as it is not only a legal necessity, but also the moral principles that align with equality, justice, and human dignity.

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