

Unveiling The Silent Suffering: A Comprehensive Exploration Of Marital Rape In Indian Society

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Abstract

The legal and sacramental institution of marriage establishes and recognizes the socially acceptable individual rights and responsibilities. Marriage is a prerequisite for acknowledging sexual interactions in many cultures. But the harsh reality is that there are crimes like domestic abuse and sexual violence in the sacred bond of marriage. In India, there is currently no legal sanction for punishing sexual violence within marriage which is known as "Marital Rape". This has created a legal impunity for men or husbands who sexually assault or compel their wives to engage in sexual activity with them. The author, through this research paper, attempted to condemn the discrimination women experience regarding marital rape. Further, this paper also focused on the legal provision of impunity rape within marriage that is mentioned under Section 375 exception 2 of penal law of India along with its historical background. The offence Marital Rape is a heinous crime that takes place inside a house's four walls and has long term impact on women's health: physical and psychological both. Rape is considered as a Rape whether it is carried out by an acquaintance of the victim, "here husband," or by a complete stranger. Indian Judiciary has come forward to protect the rights of women and they are also concentrating on defending a married woman against her rapist husband. The Indian judiciary has emphasised the need to criminalise marital rape in a number of cases, seeing it as a serious breach of an individual's human rights. The need of hour is that society, legislature and judiciary should work together to eradicate this crime from the sacred bond of marriage.

Keywords: Marriage, Marital Rape, Indian Penal Code, Human Rights, Indian Judiciary.

I. INTRODUCTION

There are two pillars of humanity one is man and the other is woman. In the growth and development of both men and women, they should be provided equal status in the society. But what is unfortunate in our Indian society is that women are not treated as equal as men and they are always subjected to cruelty, disrespect, discrimination and atrocities and the rape offence is the most appropriate examples of offences against women. The most horrible crime done against women is rape.² This has exposed the failure of institutions of society which were established for the wellbeing and betterment of their subjects. In addition to failing to defend the people against such horrible crimes against their privacy and dignity, these institutions have also validated them by either granting them legal legitimacy or failing to delegitimize them. Due to the fact that marriage is a private matter which is closed for any kind of interference, these institutions have frequently granted legal

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² Ayush Choudhary, Marital Rape: A Crime Undefined, ACADEMIKE 1.

sanction to rapes that occur during marriages or have explicitly prohibited them from making it a crime.³

Marital rape is a widespread issue and is an arguable issue. It is argued that marital rape is more common than rape outside of marriage and also has more disastrous effects on the victims or survivors of the marital rape. Marital Rape has not only affected the health and psychology of the victim, but also has destroyed the sanctity of the sacred bond of marriage between individuals.⁴ Marital rape is a complicated issue because the fundamental nature of marriage is personal which has arisen a difficulty for victim to even identify herself as a victim. Also, it has discouraged the victim from reporting similar assaults to the concerned authorities. This explains why incidences of marital rape are not being reported as often. If a woman consider herself as a victim of such offending act, even though such woman is unwilling to approach the authorities for reporting because of the fear of the society and also because she is financially independent upon her husband and reporting the matter could expose her to the humiliation by the society and leaving of financial support of her husband.⁵

India is the world's seventh-largest nation. With more than 1.42 billion people living there, it is the world's most populous democracy. This nation is home to a wide variety of languages, cultures, religions, customs, and usages. Ironically, in Indian society where women are worshipped as Goddesses, the crime against them is increasing by leaps and bounds. National Crime Record Bureau's annual report has revealed that there has been a drastic surge in crimes against women in India. The number of cases registered in 2022 has shocking figures i.e. 4,45,256 cases which is equivalent to nearly 51 FIRs every hour. As per the said report, the rate of crimes against women per lakh population was observed to be at 66.4%.⁶ It's been said accurately that a country's value can be determined by the treatment of its women. In India, women have never been valued and their status is still below what it ought to be. India has always grown as a nation with dominant ideals held by men since women are seen as inferior to men. India is a country where women are exposed to numerous criminal atrocities including forced prostitution, sexual harassment, domestic abuse, and rape. This is but a tiny portion of the countless offences against women that exist. Crimes against women constitute grave human rights violations that call for severe punishment together with a deterrent to stop like-minded individuals from committing the same crimes in the future.⁷

As of present scenario, marital rape is illegal in a large number of countries worldwide and these countries have made no distinction between rape outside marriage and rape within the purview of marriage and granted married women protection and equality under the law. For instance, in 1932, Poland became the first nation to outlaw marital rape. Other Scandinavian nations, including Sweden, Norway, Denmark, and the former Soviet Union, subsequently followed the same step to criminalise marital rape.⁸ Furthermore, Australia became the first common law nation to enact laws in 1976 regarding the punishment of rapists who use their own wives as a weapon. This has happened due to the feminist movement of the 1970s. During the 1980s, laws in several prosperous commonwealth

³ Vidhik Kumar, Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India, 6 A JOURNAL OF ANALYSIS OF EXPLOITATION AND VIOLENCE, <https://doi.org/10.23860/dignity.2021.06.03.06>.

⁴ *Id.*

⁵ Dr. Bhavish Gupta & Dr. Meenu Gupta, Marital Rape: - Current Legal Framework in India and the Need for Change, 1 GJLS 16.

⁶ NCRB, CRIME IN INDIA 2022.

⁷ JUSTICE JS. VERMA; JUSTICE LEILA SETH, GOPAL SUBRAMANIAM, "Report on Amendments to Criminal Law," (2013).

⁸ Vijay P Singh, Judicial Approaches to the Criminalisation of Marital Rape, 29 IJGS 7.

countries, including South Africa, New Zealand, Malaysia, and Ghana, as well as Ireland and Canada, eliminated the immunity granted to spouses in cases of marital rape.⁹

The UK House of Lords ruled in the matter of *R. v. R.* that the common law doctrine known as the "Marital Rape Exemption" was invalid or unconstitutional.¹⁰ Further, by 1993 marital rape has been made a criminal offence in each of the 50 states in the United States.¹¹ This data of both the Asian as well as other countries indicate that it is now acknowledged that marital rape is a serious violation of human rights. But the harsh reality of Indian society is that marital rape has still not been illegitimised and is still impunity for husbands for having forceful sex with their wives. Therefore, as per UN Report data till 2018, there are just 42% of countries which have criminalised marital rape and three billion women and girls still live in nations where their rights to privacy and personal freedom have been compromised.¹²

In India, numerous laws and enactments pertaining to violence against women within the four walls of her house have been passed like Dowry laws, Domestic Violence laws, Cruelty by husband or relative laws & Female Infanticide. However, the legislators have failed to recognize the biggest and most pathetic wrong of our Indian Society i.e. when a husband takes advantage of his wife without getting her permission and views it as his marital prerogative.¹³

II. CONCEPT & MEANING OF MARITAL RAPE

Even if the perpetrator is a stranger or someone the victim knows, a rape is still regarded a rape. However, it is astonishing to learn that a woman's rape by her husband is not considered a rape.¹⁴ Husbands raping their wives are likely to rape them many times. These victims of marital rape undergo oral as well as anal rape in addition to vaginal rape. They often become prey to this terrible crime when they are asleep, or it may be perpetrated against them physically or by coercion.¹⁵ When the word "marital" is prefixed with "rape," it serves to de-stigmatize the offence and avoids the legal and social repercussions that it would otherwise have. Rape is the worst human rights violation that can occur to a woman, as it defiles both her body and soul, regardless of whether it occurs within or outside of the institution of marriage. However, husbands are free from criminal culpability under Indian law from accusations of raping their wives who are older than eighteen. Hence, we can consider Marital Rape as "Ubiquitous yet obscure".¹⁶

The exception for rape committed during marriage originates from an antiquated concept of marriage that considered wives as their husbands' property. A wife was considered to have given her consent at the moment of marriage to have sex with her husband whenever he pleased, as per the common law of covertures. Furthermore, this consent was non-revocable.

⁹ Id.

¹⁰ *R. v. R.*, UK 1991 HL 12

¹¹ Vijay P Singh, *supra* note 8.

¹² Heena Sharma, *Marriage a License to Rape? India's Top Court to Hear Pleas on Marital Rape; These Countries Criminalise It*, Mar. 28, 2023, <https://www.wionews.com/india-news/marriage-a-license-to-rape-indias-top-court-to-hear-pleas-on-marital-rape-these-countries-criminalise-it-576588>.

¹³ Dr. Bhavish Gupta & Dr. Meenu Gupta, *supra* note 5.

¹⁴ Vijay P Singh, *supra* note 8.

¹⁵ Dr. Bhavish Gupta & Dr. Meenu Gupta, *supra* note 5.

¹⁶ Dr. Vageshwari Deswal, *Marital Rape: Ubiquitous yet Obscure*, (Feb. 12, 2022), 3/30/22, 7:27 AM *Marital Rape: Ubiquitous yet obscure* <https://timesofindia.indiatimes.com/blogs/legally-speaking/marital-rape-ubiquitous-yet-obscure/>.

The concept of this exception originated with Sir Matthew Hale, the Lord Chief Justice of the Court of King's Bench, in a paper titled "History of the Pleas of the Crown," which was released in 1736, sixty years after his passing.¹⁷ Sir Matthew Hale said that a husband could not be accused of raping his legitimate wife on his own because the woman had given herself up to her husband in this way by their mutual matrimonial consent and contract, which she could not take back.¹⁸ The below two general presumptions form the basis of this exemption:

CONSENT IN PERPETUITY: This is the presumption that a woman gives her husband her irrevocable permission at the time of marriage, which she cannot take back. The outdated notion that a woman is her man's property is the source of this term in colonial-era law.

EXPECTATION OF SEX: This is the belief that since having children is the primary goal of marriage, a woman has a duty to complete her sexual obligations. Under the rule, it is implied that a woman cannot refuse sex because the husband has a legitimate expectation of it in a marriage.

Meaning of Marital Rape

When a man and woman who are legally recognised as husband and wife engage in sexual activity without the woman's consent, it is referred to as marital rape. As already stated, marriage is an unbreakable tie in which a man and a woman promise to accept each other's flaws and live together through both happiness and sorrow. The right to lawfully consummate a marriage is conferred upon a husband and wife at marriage. Consummation is seen as a prerequisite following the solemnization of the marriage. In a stable relationship such as marriage, a man and a woman are socially allowed to produce children, which imply that they have the right to engage in sexual activity.

It is not acceptable for a man to force sex on his wife because he is married. The right to participate in sexual activity must be voluntary and not imposed upon the wife. The wife shouldn't be forced to have sex by her husband; instead, she should be free to reject. At the present time, marital rape is not considered a crime in India according to the legal system. It's a contentious matter on which no consensus has been formed until this point. Marital rape, sometimes referred to as spousal rape or inmate partner rape is when one spouse commits rape against the other. Morton Hunt states that a man who still thinks that men should control their wives is the classic marital rapist. He further stated that "This extends, he feels, to sexual matters: when he wants her, she should be glad, or at least willing; if she isn't, he has the right to force her. But, in forcing her he gains far more than a few minutes of sexual pleasure. He humbles her and reasserts, in the most emotionally powerful way possible, that he is the ruler and she is the subject."¹⁹

III. TYPES OR FORMS OF MARITAL RAPE

The three types of marital rape listed below are considered to be the most common in society:

- **Battering rape:** Women who are victims of battering rape encounter both physical and sexual violence in their relationships, and husbands do so in different ways. Some suffer physical abuse in the midst of sexual assault, or rape may occur after a physically violent incident in which the husband tries to force his wife to have sex against her will. This is the case for most victims of marital rape. Previously referred to as "anger rapes," these incidents involved husbands humiliating and

¹⁷ RIT Foundation v. Union of India, W.P.(C) 284/2015 & CM Nos.54525-26/2018 (Judgment: 11.05.2022)

¹⁸ Sir Matthew Hale. History of the Pleas of the Crown, 1 Hale PC (1736) 629. See further S. Fredman Women and the Law (OUP, 1997) pp. 55-57.

¹⁹ Morton Hunt, "Legal Rape," Family Circle (January 9, 1979), p. 38.

retaliating against their wives.²⁰ These acts caused extreme pain and injury to women. This type of rape is the continuation of the abuse and the physical abuse is an ongoing process during the intercourse.²¹

- Force-only rape: Husbands who commit what is known as "force-only rape" only use as much force as is required to compel their wives; these marriages may not typically involve abuse. Usually, the attacks occur after the woman has declined to have sex. Continuous disagreements over sexual activities are the main characteristics of marriages with force only rapes. The perpetrators of these kinds of rapes often resort to sufficient physical force to satisfy their cravings for sexual actions.²²
- Obsessive rape: Some women are victims of what has been called obsessive or sadistic rape, which is characterised by physical violence and torture as well as strange sexual practices.²³ Unusual sexual practices, like bondage or the use of pornography, are involved in this rape. "Sadistic rape" is another name for this type of rape.²⁴

IV. EFFECTS OF MARITAL RAPE

It is an illusion that a woman will experience fewer traumas if she is raped by her partner, despite the fact that marital rape has a profound impact on women. According to research, women who experience marital rape suffer more severe and enduring consequences than other types of sexual assault since the perpetrator is typically their partner, with whom they had high hopes of a future of bliss. The following categories pertain to the impacts of marital rape:

1. Physical effects – Marital rape can cause a variety of physical effects, such as fractures, lacerations, torn muscles, bruises, and injuries to the private parts. In addition to rape, women who experience physical abuse often experience various consequences such as blacked eyes, fractured bones, and wounds from any kind of weapon used during sexual assault. These effects are a result of the rape's physical assault.²⁵ Due to marital rape, women also have various gynaecological issues such as infections, infertility, miscarriages, and an increased risk of acquiring HIV and other STDs.
2. Psychological effects – It is impossible to adequately describe the agony a woman experiences when her own spouse rapes her more than once. The psychological impacts outweigh the physical ones by a wide margin. Some of the short-term psychological effects include suicidal thoughts, shock, terror, and post-traumatic stress disorder. Eating disorders, depressive disorders, sexual dysfunction, and other issues are long-term impacts. The most commonly acknowledged psychological impact of marital rape among them is depression.²⁶

The primary cause of the widespread gender disparity that undermines the status of women in society is our patriarchal, male-dominated societal structure. In our society, women have never been accorded the same importance or status as males; in fact, they do not even share

²⁰ Elaine K. Martin , Casey T. Taft, Patricia A. Resick, A Review of Marital Rape, 12 *AGGRESSION AND VIOLENT BEHAVIOR* 329.

²¹ Brisa Victoria, The Effects of Marital Rape on a Woman's Mental Health, 11 *THEMIS*.

²² Elaine K. Martin , Casey T. Taft, Patricia A. Resick, *supra* note 20.

²³ Ayush Choudhary, *supra* note 2.

²⁴ *Id.*

²⁵ Elaine K. Martin , Casey T. Taft, Patricia A. Resick, *supra* note 20.

²⁶ *Id.*

the same set of rights. Because of this, men have an unfair advantage over women, who are often taken advantage of.²⁷

The customary role that women are expected to play, regardless of their preferences, is another factor. The role of a pativrata stri, or a chaste, devoted, and compliant wife, is considered as the responsibility of women. The role of a woman in our society has been reduced to that of a daughter who belongs to her father, a mother who belongs to her children, and a wife who belongs to her husband. The function of a woman has been gradually diminished to the point that she only has to belong to someone else and lacks her own identity.²⁸

V. LEGAL PROVISIONS AS TO EXEMPTION OF MARITAL RAPE IN INDIA

The legally defined concept of rape²⁹ covers every kind of sexual assault on a woman that involves non-consensual sexual contact. Exception 2 is the reason why marital rape is not illegal in India.³⁰ This exception shields unwilling sexual relations between a husband and a wife (who is over 18) from prosecution by removing it from section 375's definition of rape. Upon the initiation of marital relations, a wife is deemed to have given her husband her perpetual consent to engage in sexual relations. In India, the idea of marital rape is the perfect example of "implied consent". Here, marriage between a man and a woman indicates that both have given their consent to sexual relations; this cannot be otherwise.

Therefore, as long as the woman is not less than eighteen years old, non-consensual sex between a man and his spouse does not qualify as rape, according to exception 2 to this provision.³¹

VI. INDIAN JUDICIARY ON MARITAL RAPE

In a nation where gender inequality affects practically every aspect of society, the Indian judiciary has always been crucial to establish gender-neutral justice and defending the rights of women. In a society dominated by men and patriarchy, the legislature cannot empower women exclusively. The legislature may draft laws with beneficial provisions, but it is up to the court to carry them out in a way that upholds the values of equity, justice, and morality and allows every person to get justice. The judiciary's role is to interpret and enforce the provisions specified in the constitution. The main goal of the legislative laws is to give justice to the injured. All legislative provisions are carefully examined by the judiciary, which then interprets them to accomplish the intended results and implements them in the appropriate locations to further the advancement of society.³²

Through its court rulings, the Indian judiciary has assisted women in obtaining what is rightfully theirs, and it has demonstrated that married women's rights violations will not be accepted in Indian society at all. Though the Indian judiciary has been crucial in safeguarding women's rights in society, including those related to property and protection from sexual harassment in the workplace, it has also regularly maintained a close eye on women's rights within the home, particularly in marriage and family ties.

²⁷ Ayush Choudhary, *supra* note 2.

²⁸ *Id.*

²⁹ Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India).

³⁰ *Id.* § 375 exception 2.

³¹ *Id.*

³² Sreenath. M.S and Vennila. T, The Unconstitutional Immunity to Marital Rape: Judicial Perspective, 4 IJLMH.

Judgments against Doctrine of Coverture

The idea known as the "doctrine of coverture" holds that since the husband and wife are seen by the law as a same entity, neither may be held accountable for the offences committed by the other. This demonstrates unequivocally that one side has no ability to commit a crime against another. The main justification for the non-criminalization of marital rape is this idea. This notion has been undermined by a number of court rulings, led to change in people's perspectives, and developments in jurisprudence. The remains of this ideology can still be found in several laws, such as S. 375 of the IPC, which exempts marital rape. Examining a series of court rulings about the infliction of severe harm on a wife by her husband in the *Queen Empress*³³ case, noted that, in the case of married women, the law of rape does not apply between a husband and wife after the age of fifteen. This means that, even if a wife is over fifteen, her husband cannot disregard her physical safety, for example, if there are circumstances in which having sex with her could result in her death. The husband in this case was found guilty of rupturing his wife's vagina, producing hemorrhage that ultimately resulted in her death under section 338 of the Indian Penal Code. The court has found the accused husband guilty solely of the offence of causing grievous hurt by endangering the life or personal safety of others through rash and negligent act under S.338 of the IPC, even though it is evident that the husband committed rape in this case and that it does not fall under the exception. Nevertheless given that it is the 19th century, the husband's conviction is praiseworthy and might be seen as the initial move against the notion of coverture.

In leading case of *Emperor*³⁴, The husband was found guilty under Section 304A of the Indian Penal Code of killing his child-wife by careless or reckless sexual relations. Since the spouse was found guilty of a more serious violation under S.304A of the IPC, which deals with causing death by negligence, rather than the less serious charge under S.338 of the IPC, the decision in this case can be considered as an improvement over the prior one.

The right to privacy about one's body has been mentioned by the apex court, in *State of Maharashtra* case³⁵, it was decided in this case that a prostitute had the right to refuse sexual activity. The unfortunate truth is that all rapes by strangers are now illegal, and all women—apart from spouses—have the right to the privacy of their bodies, which gives them the freedom to decline sexual relations and withhold consent. The fact that a married wife cannot exercise the same rights as a prostitute illustrates how little society values and respects married women.

The idea that a woman can be saved from the stigma of her rape by marrying the perpetrator, or that rape cannot occur within a marriage, appears to have been entirely relegated to the court's convenience. The issue arises from the widespread belief that marriage is essentially inviolable. Instead than forcing the wife to submit to her husband's every whim—especially sexual ones—mutual respect and trust are meant to flourish. Being raped by a known someone, such as a family member, and having to live with them is much more painful.³⁶

Judgment on Age Limit for Marital Rape Exception

³³ *Queen Empress v. Haree Mythee*, (1891) ILR 18 Cal. 49

³⁴ *Emperor v. Shahu Mehrab*, AIR 1917 Sind 42

³⁵ *State of Maharashtra v. Madhukar Narayan Mandikar*, AIR 1991 SC 207

³⁶ *Ms. Bhavya choudhary & Mr. Nitish chandra*, Wake up before It's Too Late: Marital Rape and Criminal Law, 1 LAW AUDIENCE JOURNAL, <https://www.lawaudience.com/wake-up-before-its-too-late-marital-rape-and-criminal-law/>.

The apex court in the landmark judgment of *Independent Thought*³⁷, read down exception 2 of section 375 which is now defined as “Sexual intercourse by a man with his wife, the wife not being 18 years”.³⁸ Before the 2018 amendment this age was formerly set at 15 and now it has changed to 18 years. According to the Supreme Court, early marriage and sexual activity have a negative impact on a girl's health; therefore, it is better for society and the female child to abandon the custom of early marriage as soon as possible. The Apex Court further stated that, in accordance with Article 21, a girl child has the right to a life of dignity. The young girl who experiences sexual assault becomes less confident in herself. Despite her body not being fully prepared for childbirth, she has a high chance of becoming pregnant due to her early marriage and frequent sex. The Court further ruled that the POCSO Act's prohibition on sexual acts by anybody with women under the age of eighteen (18) is directly violated by the marital exception, which is limited to married women under the age of sixteen. The Apex Court therefore limited Exception 2 of Section 375 by raising the age limit to 18 years old in accordance with the Court's harmonious interpretation of the POSCO Act, which would take preference over other laws like IPC because it was a special Act.

Recent Case Laws on Marital Rape

In *Nimeshbhai Bharatbhai Desai*³⁹ case, A woman filed a complaint accusing her husband of rape during their marriage and engaging in unusual behaviour. The Gujarat Honourable High Court held that a husband cannot violate his wife's dignity by engaging in sexual activity or having intercourse with her without her permission. The Honourable High Court also observed that legislative action on the issue of marital rape is now the need of hour. The wife can lodge a complaint under section 377 of the Indian Penal Code, 1860, for any unnatural offence or unnatural sexual conduct, as there is currently no law that forbids marital rape.

The Honourable Punjab and Haryana High Court in *Suchita Srivastava & Ors. Case*⁴⁰ held that the woman with a mental disability should have her foetus aborted, but the court did not obtain her consent and the case was then appealed to the Supreme Court. The Indian Apex Court upheld women's reproductive rights, citing safeguards granted by Article 21 of the Indian Constitution. They have the option of procreating or not. The Court further declared that women's rights to privacy, self-respect, and physical integrity must be safeguarded. Ultimately, the court ruled that women ought to have unrestricted access to reproductive options and the freedom to decline engaging in sexual activity. In turn, a woman's right to privacy and her capacity to refuse sexual intercourse are violated by marital rape. Consequently, it is easy to see how the infringement of her reproductive rights and marital rape are related. For this reason, the authors are in favour of making marital rape a crime.

In a recent development in the matter of *Hrishikesh Sahoo*⁴¹, the Honourable High Court of Karnataka noted that no exception can be absolute. The husband's exemption from committing such an assault or rape cannot be absolute under the particular facts and circumstances of this case, the High Court further noted, since no legal exemption can be so broad as to permit the conduct of crimes against society. In the current case, the wife was kept as a sex slave by her husband and endured years of severe sexual abuse at the hands of him. The judge did not dismiss the husband's accusations under section 376 of the Indian Penal Code. A single judge bench of Justice M Nagaprasanna said, "The Constitution, a fountainhead of all statutes depicts equality. The Code practices

³⁷ *Independent Thought v. Union of India*, (2017) 10 SCC 800

³⁸ Indian Penal Code, 1860, § 375 exception 2, No. 45, Acts of Parliament, 1860 (India).

³⁹ *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, 2018 SCC Online Guj 732.

⁴⁰ *Suchita Srivastava & Ors. Vs. Chandigarh Administration*, (2009) 9 SCC 1.

⁴¹ *Hrishikesh Sahoo vs. State Of Karnataka*, 2022 LiveLaw (Kar) 89 (decided on 23rd March 2022)

discrimination. Under the Code every other man indulging in offences against woman is punished for those offences. But, when it comes to Section 375 of IPC the exception springs. In my considered view, the expression is not progressive but regressive, wherein a woman is treated as a subordinate to the husband, which concept abhors equality."

The Apex Court in a significant judgment of X.⁴² on September 29th, 2022 ruled that it is not constitutional to discriminate between married and single women when it comes to permitting the termination of a pregnancy on certain extraordinary grounds when the foetus is between 20 and 24 weeks gestation. It further stated that married women are included in the category of survivors of sexual assault or rape. It is made clear that although though the finding does not invalidate the Indian Penal Code's exception for marital rape, it does allow women who have experienced marital assault to fall under the purview of the Medical Termination of Pregnancy Act and her pregnancy may be ended between 20 and 24 weeks. According to the court's "purposive interpretation," "a change in a woman's material circumstance" is the common thread in Rule 3B. Although the decision acknowledges unmarried women's rights, it leaves it up to individual cases to determine how those rights should be implemented.⁴³ It is also ruled by the court that the legislature and the courts are unable to enumerate all possible situations that could be considered a change of material circumstances. To sum up, each case needs to be evaluated in light of this criteria while taking into account the particular facts and situations that each pregnant woman faces.⁴⁴

This implies that the registered medical professional will make the final judgment, and if the woman is not happy, she may go to court.⁴⁵

VII. CONCLUSION

Marital rape is a disease with no cure that is characterised by patriarchal norms. The only physicians in society who can ease this suffering are the legislators and the courts. There is no alternative treatment that can help fix scars that are buried in the victim's spirit unless they come up with interpretations and abolish the exemption of marital rape in s.375. The Patriarchal mindset of our society has been cited as one of the main reasons why marital rape is not criminalised. Other effects of non-criminalization of marital rape include violations of national laws, international treaty obligations, and constitutional guarantees.⁴⁶

Securing the institution of marriage is necessary because it is the cornerstone of the family, which in turn forms society and without which civilization cannot exist. Married women should not be considered as the property of their husbands. They must have their right of being living in dignified environment. Our Indian society fails to understand that a husband's marriage should not be seen as a green light for him to rape his wife brutally without facing consequences. Married women have the same autonomy over their bodies that single women have.

We are required to guarantee equality for women and freedom from all forms of discrimination by the national and international commitments under articles 14, 15, 19, and 21 of the Indian Constitution as well as by international conventions and declarations like the United Nations Charter and the Universal Declaration of Human Rights. Our Indian constitution majorly focuses on equality and freedom. Constitution, being the Grundnorm

⁴² X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and anr. Civil Appeal No 5802 of 2022 (Arising out of SLP (C) No 12612 of 2022)

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Apurva Vishwanath "Supreme Court's Abortion ruling" Indian Express (Explained), September 29, 2022

⁴⁶ Sreenath. M.S and Vennila. T, supra note 32.

of the country, provides that every person should be treated equally, without any discrimination and has the right and freedom to live their life in dignified manner.

The absence of legal consequences for marital rape may lead to husbands believing that these horrible acts are socially acceptable and bearable, which feeds into the so-called patriarchal attitudes and perpetuates a terrible cycle of violence against married women. The criminalisation of marital rape in India was emphasised by the "Justice Verma Committee," which was established in the wake of the horrifying Nirbhaya occurrence. All societal reform laws, such as the Dowry (Prohibition) Act, the Prohibition of Child Marriage Restraint Act of 2005, and the Abolition of Sati Act, were against the accepted norms of the time. Rather than using the prevailing attitude as an excuse, it is the government's duty to curb discriminatory practices in our society. It must be recognised that a woman has right to privacy⁴⁷ and personal freedom and is not her husband's property. She also has the right to refuse sexual activity if she doesn't feel like it. If her spouse presses her to have sex against her will or by using violence, this is coercion rather than consent⁴⁸ and it must be protected under law. Marital rape occurs when a wife is coerced into having sex against her will, and this is not distinct from other rape cases in which the victim is not married.⁴⁹ In view of the Justice Verma committee's recommendations⁵⁰, the exception provision⁵¹ protecting husbands' acts ought to be removed.

The Indian Judiciary, being the interpreter of the legislations has been successful in defending women's rights. The Indian judiciary has always helped women in achieving social equality through its rulings. Judiciary has always adopted a progressive approach for providing justice to every aggrieved. In the coming few days, we can expect another landmark pronouncement regarding the criminalizing of marital rape and removal of marital rape exception from our Indian laws and thereby extending the rights of Indian married women.

It is therefore the time for India to acknowledge the widespread prevalence of marital rape in its society and the necessity of making it a crime. Ultimately, "NO means NO," regardless of whether it occurs inside or outside of a marriage.

VIII. SUGGESTIONS

From the above conclusion drawn, following are some of the suggestions.

➤ **Specific Provision for Marital Rape**

The particular provision that criminalises marital rape should be included in our Indian Penal Code, and the section 375 exception for the same should be deleted. For example, we have a provision under section 376B of IPC that punishes husbands who commit rape on their wife when judicially separated. Similarly, there should be a provision specifically mentioning that a husband who commits a rape upon her wife or who does sexual intercourse with her wife without her consent or against her will shall be punished. The exception to marital rape under section 375 is unconstitutional and has to be removed. Instead, marital rape should be made a crime that applies to everyone, regardless of age or marital status.

➤ **Removal of Implied Consent**

⁴⁷ Justice K.S. Puttuswamy (Retd.) v. Union of India, (2017) AIR 2017 SC 4161

⁴⁸ Vaishali, Marital Rape - A Justified Crime In India,

<http://www.legalserviceindia.com/legal/article-551-marital-rape-a-justified-crime-in-india.html>

⁴⁹ *Id.*

⁵⁰ JUSTICE JS. VERMA; JUSTICE LEILA SETH, GOPAL SUBRAMANIAM, *supra* note 7.

⁵¹ The Indian Penal Code, 1860, *Supra* note 30

The notion of 'Implied Consent' must not be applied in today's scenario. India being a democratic country provides equal protection of laws to every person irrespective of any fact with regard to age, status or gender etc. This concept of Implied Consent is bad in today's gender neutral ecosystem. Every person is free to do whatever he likes to do. So, definition of 'consent' should be made clear by the legislators so that the perpetrators must not consider the consent to be implied consent.

➤ **Effective Ground for Divorce**

In every personal law, it is appropriate to make marital rape an adequate ground for divorce. Whether it is done by a husband or a stranger, it is still rape. So, it is very difficult for the victim of rape to live with her husband who is the one who has committed rape upon her wife without her consent and by force or coercion. This makes her life horrible. Therefore, it is suggested that every personal law should make such effective provisions through an aggrieved woman can have recourse to.

➤ **Providing Education**

In order to solve problems in society, education is crucial. If the society has the educated persons then there are rare chances of any social evil or social offence. Therefore, it is suggested that every women should be provided with such resources which are helpful in imparting them knowledge about their rights and their freedoms. Women who are victims of such atrocities should be informed and encouraged to come forward. According to Wolfgang & Schaffe, "A person who silently bares the violence is also equally wrong".⁵² Thus, it's crucial to educate women on their fundamental rights.⁵³

➤ **Severe Punishment and Effective Justice**

In cases of marital rape, the victim's and the accused's marital status should not influence the verdict or the sentence imposed.⁵⁴ The Punishment for such heinous crime should be severe and judiciary should impart effective and speedy justice to every aggrieved person.

➤ **Proper Redressal Mechanism**

It is recommended that the government establish grievance redressal cells to handle incidents of marital rape. Since most women rely on their husbands for financial support, the government should take steps to offer these women financial aid, maybe in the form of compensation.⁵⁵

On a concluding note, it is asserted by Dr. Patti Feuereisen that "Rape does indeed happen between girlfriend and boyfriend, husband and wife. Men who force their girlfriends or wives into having sex are committing rape. The laws are blurry, and in some countries marital rape is legal. But it still is a rape", which completely applies to India.⁵⁶

⁵² Marvin E. Wolfgang & Simon I. Singer, *Victim Categories of Crime*, 69 J. CRIM. L. & CRIMINOLOGY.

⁵³ *Supra* note 9

⁵⁴ Saurabh Mishra & Sarvesh Singh, *Marital Rape — Myth, Reality and Need for Criminalization*, 12 PL WEBJOUR.

⁵⁵ Why marital rape should be criminalised, (September 12, 2017, 10:26 IST), <https://www.rediff.com/news/interview/why-marital-rape-should-be-criminalised/20170912.htm>

⁵⁶ http://www.harvard.com/book/invisible_girls_speaking_the_truth_about_sexual_abuse/