

## Marital Rape: Why is it Still Decriminalised

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### Abstract

In India, social practices and legal provisions continue to deny women sexual agency and autonomy over their bodies, making marital rape an unrecognised offence. The Indian Penal Code does not consider "forced intercourse" by a husband as rape, nor is "marital rape" a grounds for divorce under Personal Laws. This violates a woman's fundamental human rights. Marital rape is comparable to other types of rape and should be treated similarly. Recently, the supreme court, while dealing with the petition for criminalising marital rape, has taken a favourable step by looking at its legal aspects and issued a notice to the central government. In fact, it is a good gesture from the highest constitutional court of our country. It's time for the legal system to consider rape within a marriage as a crime. In this paper, the researcher focuses on the rationale for excluding criminalising 'marital rape' as an offence.

**Keywords: Marriage- Spouse- Sexual assault-force-consent-misunderstanding-culture**

### Introduction

Marital rape is a heinous crime that directly undermines women's dignity and contravenes human rights regulations. In contemporary society, many men disregard women's rights and employ coercion to satisfy their unrestrained sexual desires, often without the consent of women. This raises the question: Is marriage a license for rape? Marital rape encompasses not only non-consensual sexual acts or those executed with coercion but also involves psychological and physical torment inflicted upon women. Love, respect, care, devotion, and spirituality are the fundamental motivations for marriage; however, marriage does not permit men to engage in coercive sexual acts under the guise of love. Human rights are limitless, allowing individuals to reject anything detrimental to their physical or mental well-being unequivocally<sup>1</sup>. Marital rape encompasses various acts that directly affect women, including sexual assault, sexual abuse, and domestic violence<sup>2</sup>. All these actions culminate in post-traumatic stress disorder, fear, anxiety, and depression. 'Article 21 of our constitution guarantees the right to life and liberty'; therefore, why do women lack the autonomy to refuse coerced sexual acts? In many instances, women are

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<sup>1</sup> Agnes F, "Section 498A, Marital Rape and Adverse Propaganda," (2015) 50 *Economic and Political Weekly*

<sup>2</sup>Patel K, "The Gap in Marital Rape Law in India: Advocating for Criminalization and Social Change" 42 *Fordham Int'l L.J.* 1519 (2018-2019)

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unaware that non-consensual sexual acts, including coercive sex or sexual abuse by a spouse, violate fundamental human rights. They refrain from voicing their objections due to societal pressures, and no legislation exists to deter such offences.

In India, rape is delineated ‘under Section 375 of the Indian Penal Code, which explicitly states in its exception clause’ that “sexual intercourse by a man with his own wife, provided the wife is not under 15 years of age, is not considered rape”. Marital rape is classified as rape only when the spouse is under 15 years of age; however, there are no legal provisions addressing marital rape for individuals over 15. Under the Indian Penal Code, ‘if marital rape occurs where the wife is aged between 12 and 15 years, the offence is punishable by imprisonment for up to 2 years, a fine, or both. If the wife is under 12 years old, the offence is punishable by a term of imprisonment not less than 7 years, which may extend to life imprisonment or up to 10 years, along with a fine. Rape of a judicially separated wife is punishable by imprisonment for up to 2 years and a fine. Rape of a wife over 15 years of age is not punishable. The definition of rape under the Indian Penal Code excludes marital rape, resulting in the absence of specific provisions for the punishment of marital rape within the Indian justice system’.

In many countries, there is no legislation addressing the crime of marital rape due to insufficient public awareness and the authorities reluctance and outright refusal to prosecute. Many countries, such as Argentina, Armenia, Australia, Belgium, Bhutan and Canada, have declared marital rape as an offence and established penalties for it; however, countries such as India have not. United Kingdom, China, Egypt, Iran, Iraq, North Korea, and several other nations lack legislation prohibiting marital rape<sup>3</sup>. Numerous contemporary and historical issues impede the recognition of marital rape as an offence. Numerous societal norms fail to recognise spousal rape as a violation of human rights. In countries where marital rape is illegal, many individuals remain unaware that it constitutes a punishable offence. It is essential to raise awareness among women globally regarding their rights, ensuring that no individual is permitted to inflict physical or psychological harm upon them. ‘The United Nations has implored nations to eradicate marital rape by rectifying legal ambiguities, asserting that “the home is one of the most perilous environments for women’.

### **Sociological Factors Attribute Marital Rapes**

Historically, men have held positions of power in India, resulting in an unequal social structure. Due to the fact that women typically have less power and say in their marriages, this has led to an

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<sup>3</sup> Ayushi Agarwal, “Why Should the Marital Rape Exception be Removed?” (2021) 56 (35) *Economic and Political Weekly*

increase in the number of cases of rape that occur within marriages. There is a problem of marital rape in the country, which is exacerbated by the fact that some men find it easier to use force and control when women's rights are not respected. In addition to this, every society in the world has its own set of specific social norms that it uses to govern its members. Women face stringent regulations, including the possibility of being labelled lifelong spinsters if they leave the homes of their husbands or if they are victims of rape. Furthermore, the inability to have a male child and the deviation from the norms of society are both factors that lead to rejection by the community<sup>4</sup>. There are a lot of misbeliefs about a 'woman's role in marriage and marital responsibilities'. The belief that 'women engage in sexual relations as one of the chores of marriage has a significant influence on our culture, as evidenced by the fact that the term 'wifely duty' refers to sexual relations by way of linguistic evidence'. A significant number of women who have survived rape as a wife have expressed the belief that their marriage obligates their vows to submit to all sexual acts<sup>5</sup>. As a result, these acts are not considered to be rape, regardless of the nature of the sexual experience'. Some of the victim's beliefs are hereunder in quotes:

*'He was the husband, and I was the wife, and it was my responsibility to satisfy him'.*

*'Every time we had sex, it was unwanted, but I knew I had to do it because I was his wife'.*

*'If I refuse, he will go to other women. Then, it would be my fault and a sin. Whether I like it or not I have to give in'<sup>6</sup>*

Moreover, there is a bit of 'uncertainty about what constitutes 'normal' and 'forced' sexual relations'. A significant number of women who experience sexual assault within marriage possess limited knowledge about the abusive character of their partner. Certain women perceive violent sex as a 'normal' or unavoidable aspect of marriage. One wife rape survivor stated, 'You must simply make the best of it... Who can predict what the next experience will entail' Survivors of spousal rape report that their husbands have labelled them as frigid or sexually deficient for not 'enjoying' coerced intercourse; alternatively, the wives are informed that it is their obligation. Women with limited sexual experience and/or knowledge are more inclined to perceive coerced sexual relations within marriage as normative, thereby rejecting it as 'real rape'<sup>7</sup>.

<sup>4</sup>Torres MG, *Reconciling Cultural Difference in the Study of Marital Rape* (Marital rape Consent marriage and social change in global context 2016).

Available on -

<https://books.google.com/books?hl=en&lr=&id=EJNHDAQAQBAJ&oi=fnd&pg=PA9&dq=how+culture+supports+marital+rape&ots=mj9G7tNDst&sig=tmCr5ysaF9upvkZU6puSJ5XowQs>

<sup>5</sup> Supra 4

<sup>6</sup>Mahoney P, Williams LM, and Family Research Laboratory, University of New Hampshire, "Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape" 2007. Also available in '<https://brockbaker.pbworks.com/f/PartnerViolence.pdf>'

<sup>7</sup>Supra at 3

The source of all this misbelief is gender inequality. As a result of the perpetuation of power imbalances, gender inequality in India has been a contributing factor in the occurrence of marital rape. Norms and attitudes that are discriminatory marginalise women, denying them the ability to exercise autonomy and control. Due to the existence of this inequality, the environment is one in which consent is frequently disregarded. Along with inequality, the prevalence of illiteracy in India has contributed to the perpetuation of gender norms, the restriction of awareness regarding consent, and the obstruction of communication and communication. Certain individuals continue to adhere to traditional cliches that suggest that a woman's partner is of the utmost importance, and they may interpret any criticism of a husband as a rejection of the divine creation that they have created. A lack of education is another factor that contributes to power imbalances. This is because it makes it difficult for individuals to recognise and confront abusive behaviour, which in turn leads to an increase in the incidence of rape within marriage unions<sup>8</sup>.

### **Marital Rape: The physical and psychological effects**

Marital rape has significant and enduring consequences on both the physical and psychological health of a woman. Marital rape may lead to physical consequences, including injuries to the genitalia, tenderness, lacerations, contusions, exhaustion, muscle tears, and emesis. Victims of marital rape who endure physical abuse also experience black eyes, fractured bones, lacerated noses, and stab wounds as a result of the sexual violence perpetrated against them. Victims may experience various gynaecological repercussions, including miscarriages, bladder infections, stillbirths, infertility, and, in some instances, the acquisition of specific sexually transmitted infections<sup>9</sup>.

Women sexually assaulted by their partners are likely to experience significant psychological repercussions due to the violence. Immediate effects encompass shock, anxiety, depression, acute fear, post-traumatic stress, and suicidal inclinations<sup>10</sup>. Marital rape frequently results in enduring psychological consequences, including the emergence of eating disorders, sleep disturbances, difficulties in establishing trust in relationships, depression, and heightened negative self-perception. These effects may endure for an extended duration. Years subsequent to the violence,

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<sup>8</sup>Helen Kruuse "Marital Rape and the Cultural Defence in South Africa" *Stellenbosch Law Review*, 2018.<https://journals.co.za/doi/abs/10.10520/EJC-f5747a271>'

<sup>9</sup>Thornhill, R. & Palmer, C.T., *A Natural History of Rape — Biological Bases of Sexual Coercion* (1st Edn., MIT Press Cambridge Mass., 2000)'.

<sup>10</sup>Patel K, "The Gap in Marital Rape Law in India: Advocating for Criminalization and Social Change" 42 *Fordham Int'l L.J.* 1519 (2018-2019)

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survivors of marital rape endure emotional distress, sexual dysfunction, and intrusive recollections<sup>11</sup>.

### Efforts to Criminalize Marital rape

The *Justice Verma Committee* was established in 2012 to propose amendments to India's criminal laws in response to the national outrage following the *Nirbhaya gang rape* and the deficiencies in progressive legislation addressing sexual assault'. The committee acknowledged 'India's commitments under the *Convention on the Elimination of All Forms of Discrimination Against Women* and advised the removal of the marital rape exception'. Additionally, it asserted that a marital relationship between the offender and the victim could not serve as a legitimate defence against any sexual assault, nor can it be considered a mitigating circumstance warranting reduced punishment. The committee observed that "our view is supported by the judgment of the European Commission of Human Rights in *C.R. v UK*<sup>12</sup>, which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. Importantly, it acknowledged that this change in the common law was in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom..."<sup>13</sup>. However, 'the *Criminal Law (Amendment) Bill, 2012* did not adopt these recommendations of the Verma Committee and retained Exception 2 to Section 375'. Unsurprisingly, 'the *Criminal Law (Amendment) Act of 2013*' embodied this position. Despite the amendment being celebrated for its progressive provisions, it ultimately resulted in disappointment and disillusionment for those who had long campaigned 'for the elimination of the marital rape exception'.

However, the perspective of the *Parliamentary Committee* was quite contradictory to the '*Verma Committee report*'. The '*167th Parliamentary Standing Committee Report on Home Affairs on the Criminal Law (Amendment) Bill, 2012*', recorded the following regarding its stand on marital rape: "The committee felt that if a woman is aggrieved by the acts of her husband, there are other means of approaching the court. In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women. It was, therefore, felt that if the marital rape is brought under the law, the

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<sup>11</sup>Thornhill, R. & Thornhill, N., *The Evolution of Psychological Pain, in Sociology and Social Science*, Edn., Bell, R. & Bell, N. (Texas Tech University Press, 1989)

<sup>12</sup> C.R. v UK Publ. ECHR, Ser.A, No. 335-C; see Palmer Feminist Legal Studies .V 1 [1997] pp. 1-7

<sup>13</sup> Verma, "Report of the Committee on Amendments to Criminal Law" (Government of India 2013) <[https://adrindia.org/sites/default/files/Justice\\_Verma\\_Amendmenttocriminallaw\\_Jan2013.pdf](https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf)>

entire family system will be under great stress and the committee may perhaps be doing more injustice”<sup>14</sup>.

Subsequently, two private member bills have been proposed to eliminate the marital rape exception, introduced by *Kanimozhi Karunanidhi* in 2015 and *Shashi Tharoor* in 2019. However, it lapsed after the failure to garner support from the elected government<sup>15</sup>. Litigation is ongoing in the ‘Delhi High Court concerning the constitutionality of the marital rape exception in *RIT Foundation v Union of India*’<sup>16</sup>, with the central government once more advocating robustly for the retention of the exception.

*The Committee for Reforms in Criminal Law*, established in 2020 by the Ministry of Home Affairs, seeks to propose reforms in India's criminal laws. Under the chairmanship of *Srikrishna Deva Rao*, the initiative seeks to propose reforms that ‘emphasis the constitutional principles of justice, dignity, and the intrinsic value of the individual, along with the supremacy of the Constitution and human rights as fundamental tenets’. The committee's questionnaire for the initial consultation on substantive criminal law included an inquiry regarding the elimination of the marital rape exception. The consultation concluded in October 2020, and the committee submitted its report in 2022<sup>17</sup>. However, the report is not available in the public domain.

### **Judicial approach towards Marital rape**

Though the statutes give marital rape as an exception to rape, the judiciary is always against the practice of sexual assault committed against a wife. ‘Article 14 of the Indian Constitution addresses the Right to Equality, signifying equality among equals’. The concept of Intelligible Differentia posits that classification should be based on the intelligible differentia that differentiates included persons or entities from those excluded, and this differentia must have a rational connection to the objectives pursued by the contested executive or legislative action. Under section 375 of the IPC, 1860, no discrimination occurred, as unmarried and married women are reasonably classified. Distinct provisions and legislation govern married women subjected to rape by their husbands. At the same time, Section 375 applies to married women in cases where the perpetrator is not their husband, as well as to girls aged 18 years or older, regardless of their

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<sup>14</sup>Available on

<[https://sansad.in/getFile/rsnew/Committee\\_site/Committee\\_File/ReportFile/15/15/167\\_2016\\_6\\_16.pdf?source=rajya\\_sabha](https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/15/167_2016_6_16.pdf?source=rajya_sabha)>

<sup>15</sup> Author ( Unknown) “Time to Define the Law on Marital Rape” *The Tribune* (October 18, 2021) >

<sup>16</sup>(2015): WP (C), No 284

<sup>17</sup>Available in

[https://images.assettype.com/barandbench-hindi/2022-04/1e4fa753-dcfc-4999-b008-e63e5e4089b8/STARRED\\_QUESTION\\_380\\_7\\_Apr\\_2022.pdf](https://images.assettype.com/barandbench-hindi/2022-04/1e4fa753-dcfc-4999-b008-e63e5e4089b8/STARRED_QUESTION_380_7_Apr_2022.pdf)

marital status. In the case of the unmarried, the individual who has perpetrated the offence is referred to as 'Any Man' rather than a husband.

Consequently, it can be unequivocally asserted that 'Article 14 of the Indian Constitution does not discriminate between married and unmarried women', as the basis of reasonable classification is warranted. The marital rape exception does not imply that sexual assault occurring within a marriage is exempt from being classified as an offence. Such actions will remain subject to penalties under alternative criminal law provisions, for instance, Section 498A or the offence of inflicting grievous bodily harm. Marital rape indicates that 'sexual assault occurring within a marriage is not legally classified as rape and will not be penalised as such due to the institution of marriage conferring specific reciprocal rights and obligations, including a legal right to anticipate reasonable sexual relations'<sup>18</sup>.

The right to consent is, in some respects, contingent upon the expectation of reasonable sexual relations within marriage and may thus be regarded differently, provided it is not entirely negated. This represents a legal interpretation of the phrase 'having one's cake and eating it too', which means 'while consent is crucial, it is argued that rape within marriage is not truly considered rape'. The recent judgment by the High Court of Delhi, delivered by two benches comprising *Justice Shakder* and *Justice Hari*, resulted in a split decision regarding the constitutional validity of marital rape. *Justice Shakder* has deemed that marital rape under exception 2 under Section 375 is unconstitutional, while *Justice Hari Shankar* has affirmed its constitutionality.

In this instance, it was noted that India adopted the legal framework from the British system. Britain has already abrogated the legislation concerning marital rape; however, India should also endeavour to disrupt the status quo. However, the court's split verdict has not altered the status quo but has initiated a positive progression. It was noted that simply criminalising marital rape may not prevent the offence. India continues to experience a multitude of incidents of rape and domestic violence, notwithstanding the existing legal framework. The Government and the various stakeholders, including civil society, should promote social reengineering to mitigate such threats. In '*Harvinder Kaur v. Harmander Singh*'<sup>19</sup>, the Delhi High Court ruled in 1983 that the constitution cannot intervene in domestic matters between spouses, as such interference would undermine the institution of marriage. The Court has indicated that 'within the confines of the home and marital life, neither Article 21 nor Article 14 is applicable'. It is unnecessary to state that this is merely the perspective of the High Court, which may be partially accepted; however, a

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<sup>18</sup>Gopika., "Consent, Marital Rape, and Social Acceptability an Exploration across Different Cultures" I 3 IJM 2022 'https://heinonline.org/hol/cgi-bin/get\_pdf.cgi?handle=hein.journals/ijlmhs17&section=173'

<sup>19</sup>AIR 1984, Delhi 66.

harmonious approach is essential to achieve justice for the victim. The Supreme Court of India affirmed 'the right to privacy as a fundamental right for all citizens in the case of *Justice KS Puttaswamy v. Union of India*'<sup>20</sup>. Decision-making privacy refers to the capacity to make personal decisions that predominantly pertain to one's sexual or reproductive nature, as well as choices concerning intimate relationships. 'The Supreme Court has affirmed in numerous cases that 'the right to abstain from sexual activity is a fundamental right protected by Article 21 of the Constitution for all women, irrespective of their marital status'.

Consequently, coerced sexual coexistence constitutes a breach of Articles 21 and 14 of the Constitution. 'The marital exception to the IPC's definition of rape was formulated based on Victorian patriarchal norms that failed to acknowledge gender equality between men and women. 'It prohibited married women from owning property and conflated the identities of husband and wife under the *Doctrine of Coverture*'.

The justifications presented for the marital rape exception predominantly include the following: first, that women confer irrevocable consent to sexual relations upon marriage; second, that legal acknowledgement of marital rape will undermine the institution of marriage; third, that women may exploit it as a means to harass their spouses; and fourth, that adequate legal remedies for addressing marital rape are already in place. Regardless of their apparent basis in legal doctrine, the initial two arguments lack validity in light of recent Indian Supreme Court rulings. The cases are *Independent Thought v Union of India*<sup>21</sup>, *K S Puttaswamy v Union of India*<sup>22</sup>, and *Joseph Shine v Union of India*<sup>23</sup>.

One of the important observations made by the Supreme Court in the '*Independent Thought case* by Justice Madan B Lokur is that a wife is no longer the subservient property of her husband', and any theory that advocates such an unconstitutional notion should be thoroughly dismantled. He importantly noted that she cannot be regarded as a commodity devoid of authority over her body, nor can she be denied the right to refuse sexual intercourse with her husband. Justice Lokur emphasised that consent must be obtained anew for each instance of sexual intercourse, including within a marital context. Although originating from a case concerning the marital rape exception regarding minor wives, this rationale undoubtedly extends to adult wives as well.

In *Joseph Shine's case*, Justice Chandrachud observed that the antiquated practice of regarding women as their husband's property is no longer legitimate and fails to comply with Article 14. He

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<sup>20</sup>SCC Online SC, 996

<sup>21</sup>(2017)10 SCC, 800

<sup>22</sup>SCC Online SC, 996

<sup>23</sup>(2018) Indlaw SC, 899



added that marriage, whether regarded as a sacrament or a contract, does not entail the relinquishment of one spouse's autonomy to the other. He asserted that any provision that reinforces structures of gender discrimination stemming from a regressive view of women's sexual agency is incompatible with a constitutional framework that ensures equality, dignity, and autonomy. This rationale, although articulated within the framework of the adultery provision, undoubtedly extends to the marital rape exception as well.

However, the Supreme Court had stressed the right to privacy in a marriage life is beyond the scope of Article 21; later, in *Puttaswamy and Joseph Shine case*, it diluted its approach towards the right to privacy and held it cannot be used as a shield to assert patriarchal mindset. For instance, in *'Harvinder Kaur v Harmander Singh Choudhry'*<sup>24</sup> the Delhi High Court held: *"In the privacy of the home and the married life, neither Article 21 nor Article 14 have anyplace the cold principles of constitutional law will have the effect of weakening the marriage bond"*. In fact, this perspective was corrected by the Supreme Court in the *Puttaswamy and Joseph Shine case*. Justice Chandrachud observed that *"women have an inviolable interest in privacy, and it is important to protect the privacy entitlements of women grounded in the identity of gender and liberty"*. Thus, *'framing privacy as a right within the private spaces of the individual, Justice Chandrachud set the barrier for state intervention as the boundaries of an individual's intimate decisions rather than the boundaries of the institution of marriage'*<sup>25</sup>.

In a bail hearing in 2014, Judge Kamini Lau<sup>26</sup> denied bail to a man charged with the non-consensual sodomy of his wife, a decision that garnered significant public attention. Lau expresses astonishment at the Investigating Agency's failure to invoke the provisions of section 498-A and observes that *"However before I end, I may observe that though our Legislatures are yet to take a serious note of the rampant marital sexual abuse which the women in our country suffer silently as has happened in the present case but that does not mean that a battered wife who has been sexually abused and has invoked the Legal System of our Country is not entitled to any State assistance which help is already available to other victims of sexual abuse? She is the responsibility of the State and is required to be taken care of just as any other victim of aggravated sexual assault and abuse, the State cannot abdicate its responsibility, and she cannot be discriminated against only because she happens to be the wife of the sexual aggressor"*<sup>27</sup>.

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<sup>24</sup>AIR 1984, Delhi 66

<sup>25</sup>Supra at 3 (Ayushi Agarwal, 2021)

<sup>26</sup>Additional Sessions Judge, Rohini District Courts, Delhi

<sup>27</sup>State v Vinod Saini (Bail Application No. 3346; FIR No. 433/13) in the court of Additional Sessions Judge-II Kamini Lau, Rohini [3.3.2014]

### Remedies Under the Law

Since marital rape is not an offence, it becomes a concern with regard to a remedy under such circumstances. The commonly referenced provisions are cruelty under ‘Section 498A of the Indian Penal Code and domestic violence under the Protection of Women from Domestic Violence Act of 2005’. In fact, Section 498A emerged from extended advocacy for justice concerning the ‘accidental’ deaths of women in their marital residences, often attributed to ‘stove bursts’ in the kitchen, typically occurring within months of marriage. Section 498A broadly defines cruelty, extending beyond dowry demands or physical harm to include intentional actions that may compel a woman to commit suicide or cause significant injury to her mental or physical well-being. However, when this provision became the subject of litigation, the women's movement recognised that the threshold for demonstrating the impact of violent conduct on the woman was excessively high, as she was required to prove that she was compelled to consider suicide or that her life was in jeopardy<sup>28</sup>. Moreover, numerous other forms of violence encountered by women in the domestic sphere, including sexual and economic violence, were overlooked<sup>29</sup>

However, the definition of domestic violence, as delineated in Section 3, is sufficiently comprehensive to include sexual, emotional, and economic abuses. The remedies this law provides are civil, whereas the punitive provisions guarantee the enforcement of court orders. This amalgamation of predominantly civil provisions with certain criminal provisions was designed to deter the abuser from perpetrating violence and to safeguard women from being evicted from their residences.

This concise analysis of the origins and characteristics of ‘Section 498A and the Protection of Women from Domestic Violence Act, 2005’, illustrates why sufficient redress for marital rape is unattainable under these statutes. Concerning Section 498A, the elevated standard for an actionable claim renders it improbable that women will prevail in asserting significant harm to their mental or physical health solely on the basis of marital rape. Moreover, it is incongruent with the specific context of the provision aimed at safeguarding women from dowry-related harassment and assault. Regarding remedies under the ‘Protection of Women from Domestic Violence Act, 2005’, although a case can be established due to the expansive definition of domestic violence,

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<sup>28</sup>Ms. Mahima Sharma, and Dr. Mandeep’. “Navigating Legal Recourse For The Survivors Of Marital Rape In India: Exploring Remedies In The Absence Of Criminalization”. *Journal for ReAttach Therapy and Developmental Diversities*, vol. 6, 2023, pp. 492-6’, Available on ‘<http://jrtd.com/index.php/journal/article/view/2324>’

<sup>29</sup>Jaising, Indira (2009): “Bringing Rights Home: Review of the Campaign for a Law on Domestic Violence,” , Vol 44, No 44, pp 50–52.

women will be unable to secure a criminal conviction, even if desired. This is a significant consideration, as the law must allow the victim to choose their course of action based on their assessment of the perpetrator's culpability.

Moreover, addressing marital rape with civil remedies while employing criminal sanctions for stranger rapes conveys the implication that the former is of lesser severity. Ultimately, it is crucial to acknowledge that marital rape constitutes a unique transgression that warrants condemnation and punishment independently. Women experience pressure to engage in sexual activity from their husbands through various means, including threats and physical coercion, often accompanied by explicit threats of harm to themselves and their children<sup>30</sup>. Marital rape constitutes a distinct amalgamation of various forms of female subjugation, psychological and physical abuse, domestic violence, and sexual assault<sup>31</sup>, culminating in a cycle of fear and vulnerability within an environment that a woman ought to perceive as her safest sanctuary. Therefore, women mustn't be compelled to choose remedies that fail to address the essence of their victimisation and do not provide adequate or appropriate punishment<sup>32</sup>.

## Conclusion

The discourse surrounding the criminalisation of marital rape in India is essential for achieving substantive equality for married women. Section 375 of the IPC includes an exception for husbands, resulting in discrimination against married women. This inequity has prompted the consideration of criminalising the offence, as the alternative remedies available do not adequately serve the interests of justice for the victim. The significance of 'Will and Consent in every individual decision is paramount'. 'A woman can safeguard her rights to life and liberty yet cannot protect her bodily autonomy within marriage, which is paradoxical. Women have utilised section 498-A of the IPC, which addresses cruelty, to safeguard themselves against egregious sexual behaviour by their husbands'. However, the courts did not construe this definition of perversion in the 'context of spousal relationships'.

Instead of debating the criminalisation or decriminalisation of marital rape, it is preferable to adopt a harmonious approach to resolving the issue. The aforementioned analysis reveals advantages and disadvantages on both sides. The primary objective is not decriminalisation but rather providing justice to the victim. Rather than incorporating marital rape as an offence 'under

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<sup>30</sup>Finkelhor, David Yllo, Kersti (1985): *License to Rape: Sexual Abuse of Wives*, New York: Free Press'.

<sup>31</sup>Hasday, Jill (2000): "Contest and Consent: A Legal History of Rape," *California Law Review*, Vol 88, No 5, pp 1373–80'

<sup>32</sup>Supra at 3

Section 375 of the IPC' or eliminating the husband's exception, it is preferable to enact new legislation specifically addressing the concept of marital rape. This legislation should offer a clear definition, provide remedies for victims, and impose stringent penalties on both spouses for committing the offence and for misusing these provisions. The Act may be classified as a quasi-criminal statute that specifically addresses the offence of marital rape. Secondly, the law alone is insufficient to address marital rape; societal change is essential and imperative. Thirdly, amendments to the Evidence Act are necessary to facilitate a rigorous examination of marital rape by the legislature. Thus, embracing this conciliatory approach may facilitate the resolution of disputes and achieve justice for the victim. In India, individuals aged 15 to 49 have experienced physical assault, sexual violence, or coercion into sexual acts.

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