

MARITAL RAPE: STIGMA FOR INDIAN SOCIETY

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ABSTRACT

Marital Rape has been prevalent to talk about, where the harsh reality is no imagination, the reality that you cannot picture; I write it down and you might not even concern it, the norms have changed lately and it has become a voice probably, a married woman who's been drowning in the fear of her life, her children's lives and her beloved ones where threatening barriers of society are telling her to adjust but the changes are not taboo today; what's taboo today is her voice, which is being put out on a platform and being brought up on the gates of the Judiciary. As it is rightly said -

"Her friends used to tell her it wasn't rape if the man was your husband. She didn't say anything, but inside she seethed; she wanted to take a knife to their faces." - F. H. Batacan

With relation to the above quote, the idea of the institution of marriage dished out by mainstream Indian cinema and contrary to women's perception of reality.

The article explores the status of marital rape under the Indian Penal Code, 1860, in India. Rape law's provisions and their relation with the constitution of India, the international obligation for criminalizing marital rape, current status of marital rape and legal development till date argue for the elimination of the marital rape exception.

The issue with our systematized rape laws, the judiciary, etc. are that the aims and worries of our legal executives are regularly confused. The courts, throughout the years, discussed the changing forms of the due steadiness of the survivor to maintain a strategic distance from victimhood, and the impact of the general population/private talk on the wrongdoing, on the person put into question.

INTRODUCTION

India, today, is a progressive democracy where all sorts of movements are held, justice provided and pending, conduct against women being taken care of at home, after marriage, protection at workplace, economic, social, political rights recognized, but one thing, even in today's modern society remains unacknowledged; **Marital Rape**. "The most common form of violence experienced by women globally is intimate partner violence" including "a rage of sexually, psychologically and physically coercive acts."¹

Marital rape, in simple words, can be described as "a sexual assault committed by a husband to his wife without her consent, or by use of force, coercion and intimidation of force and where the women are not in place to give her consent. It can be vaginal, oral, and anal though the definition can differ, lack of consent is essential element".

The accusation of rape on husband in our society is hard to believe because firstly, we as a society think marriage as a sacramental bond and women as subject and husband has all rights to use her, since marriage is considered as consent. Secondly, according to family laws, he is using his conjugal rights in marriage. Defending marital rape is equivalent to saying that the perpetrator of the rape was the spouse of the victim, so, it's acceptable. Is consent guaranteed because two people are married? Non-consensual sex, including when 'no' is ignored or the victim is not able to say no, is still rape.

When we think about rape, the idea of sexual assault against women comes into our minds, regardless her marital status, age, etc. Then why the scenario and our idea of rape changes when we get to know that the accused is married to the victim? Why we consider that a husband can't rape his wife? Why does the status of marriage limit women's rights as an individual, and change it into an object of satisfaction?

Using sex to subjugate women is simply not talked about enough, at homes, educational institutions, in India certainly and elsewhere too. Using marriage as a shield, women are raped

¹ Secretary General, In-depth study on all forms of violence against women, paras. 112-113 UN Doc. A/61/122/Add.1 (July 6, 2006) (emphasis added) [hereinafter UNSG VAW Study]. See also Human Rights Council Res. 23/25, UN Doc. A/HRC/RES/23/25 (June 25, 2013).

regularly. The notion of sexual intercourse being pleasurable for both members do not exist. It's an alien concept when our judicial system places man's physical needs on top and denies married women autonomy of their own body, irrespective. If a father is having sexual intercourse with his daughter without consent count as rape, so should Marital Rape. It becomes hard to fight when the person who is responsible for assault lives in the same house as you. Yet, we are failed by our judiciary to perceive women beyond her husband's property and provide adequate measures in such scenarios. The exclusion of marital rape from penal legislation is also an exclusion of women from equal rights, equal status of citizenships and enjoyment of life, right to liberty, autonomy, self determination, and bodily security creates a class of women with lesser legal right and recognition.

LEGAL PROVISIONS & DATA ON MARITAL RAPE

Rape is defined under Section 375 of the Indian Penal Code, which lays down that "Rape includes all kind of sexual assault involving non-consensual intercourse with a woman. However, sexual assault with a married woman by husband over the age of 15 years is exempted under the ambit of rape provisions".²

The Exception under Sec 375(2) IPC, creates an unnecessary demarcation between a girl below the age of 18 years on the basis of her married status in cases of rape which is contrary to the article 14 of the Constitution of India. In the case of Independent Thought v. UOI - The Supreme Court held that sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not³. India is one of 36 countries where the status of marital rape is still not recognized thus the prosecution in such a scenario is immune and hence because of lack of such stringent law, cases of assault are not reported.

According to one of the surveys conducted by **NATIONAL FAMILY HEALTH SURVEY (NFHS)**, "data collected from married women aged between 15-49 years, five of every 100 women in India reported their husbands physically forcing them to have sexual intercourse against their consent". AsAs per another report by NFHS "around 78.6% of married women in the age group of 15-49 years never reported about their sexual violence.12.3% of them sought help from any

² Indian Penal Code [45 of 1860], Section 375

³Independent Thought v. Union Of India[2017] SSC 1222 (SC).

source, out of which 48.2% are from their family, 25.8% are from their husband's family 32.8% are from their friends and only 0.9% are from police, 0.5% are from a lawyer and 1.3% are from a social organization".⁴

The data of Annual Crime Report by **National Crime Record Bureau (NCRB)**, reveals that 34,000 rapes registered in India in which 94% of cases are committed by the person known to the victim. Also, Live Mint stated that "99.1% of rape cases go unreported, which in most cases the husband was the offender. Thus, an average Indian woman face sexual violence from her husband 17 times more than from others."⁵

The Domestic Violence Act No. 43 of 2015 lays down the provision that "for the protection of women from sexual abuse and domestic violence as the name of the act suggests only provides for civil remedies to the victim and she can apply for judicial separation, not for penal remedy like it is for other cases of sexual assault cases on the basis of married status of women".

Hence, lacks of legal remedies turn out to be a major concern regarding Marital Rape. The obligation of the state to combat gender discrimination and discrimination between the same class of gender, require adequate atonement to laws for women who are subject to sexual and physical violence under any kind of circumstance, involves creating a legal mechanism that ensures both criminal and civil remedies. But criminalization requires more than the removal of the exemption for assaults perpetrated in the context of marriage, it also needs to ensure that, the idea of a legal presumption of continuous consent to sex in marital rape also change.

RELATION WITH INDIAN CONSTITUTION AND IPC

Section 375, IPC provides provision regarding Rape which states that "A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six descriptions given". The provision also provides an

⁴ NATIONAL FAMILY HEALTH SURVEY (NFHS), 2014.

⁵<https://www.livemint.com/Politics/2On0uNbW6uftrjabfKZwPnM/Marital-rape-Survey-takes-lid-off-sexual-violence-by-husban.html>

exception where a man is immune from charges of rape when the woman not under the age of 15 years is the wife of the offender.

Though the question regarding age of consent was raised from section 16 to section 18 by the Criminal Law (Amendment) Act of 2013 where Sexual intercourse with a woman with or without her consent when she is below 18 years of age amounts to rape. In 2017, the Supreme Court held demarcation between the rape of minors between the age of 15-18 unconstitutional. and recognized rape against minors irrespective of marriage under the exceptional clause, but failed to recognize the rapes committed by husbands when women are above 18 years.

Section 376 IPC lays down the provision regarding Punishment for Rape⁶ where, remedy available to victim is way narrow than normal rape cases. Punishment differs as per different situations. There are limited options available for a woman to protect her modesty and liberty in a marriage since women have to experience such horrific acts every time. Marriage is not a consent for sexual violence. New amendments increased punishment provisions for different categories for

⁶ [376. Punishment for rape.—

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—“Women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

rape cases and the offence are made gender neutral, still provision for marital rape are not introduced.

“The Constitution of India is the text that reflects the soul of the nation. It organizes and controls power, ensures human rights, balances the competing claims of social and individual interests, mirrors the culture and experiences of the country and operates as a vehicle for national progress and unity”.⁷ Sexual violence perpetrated against intimate partners is a violation of Fundamental Rights and interferes with or entirely undermines the enjoyment of all other rights.

Article 14, of Indian constitution lays provisions regarding “Right to Equality” and with reference to it marital rape laws should also be protected. Since, article 14 provision clearly states, “Every law passed by parliament should be according to the Constitution of India, and if any provision of such law contradicts the constitution, then it is ultra vires and should be held invalid” and provides for equality before the law or equal protection of the laws within the territory of India.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.⁸ Interpretation of which is that “the equals within a society are not treated unequal and the unequal are not treated equally. There should be valid ground for a classification and there should be rational objects behind such classification”.⁹

Section 375 and Section 376 IPC, criminalises the offence of rape and provides for punishment for the same, to protect a woman against sexual intercourse without her consent. It works as a shield to protect women’s liberty and modesty from such horrific acts by the State. Therefore, women have the right to choose for allowing right over their bodies as an individual they want.

But these sections make a classification between women as individuals on the status of marriage. Exception to section 375 withdraw the protection from rape if it is committed by the husband of the women whereas the Section 376 also differentiates in punishment provision for such cases.

⁷ Roy, Sudhanshu & Jain, Iti, “Criminalizing Marital Rape in India: A Constitutional Perspective”, (2008) Criminal Law Journal, Apr 2008, p. 81-92.

⁸The Constitution of India, 1950’ Universal’s Bare Act, 2016, Article 14.

⁹State of West Bengal v. Anwar Ali Sarkar [1952] AIR 75, 80(SC).

Considering age as a ground among these women, is irrational and contradicts the purpose of article 14. Thus, after marriage a woman no longer required protection from the state else she lost her individual status. Whereas Other provisions of this section, lays provision relating to the protection from sexual assaults irrespective of gender, age of the victim from states.

Anybody, whether married or unmarried, man or woman, old or child have rights over their body. Everyone has the right to choose. Married women also need protection exactly like unmarried ones regarding their choices and rights. Providing exemption to husband, contradicts the whole purpose of law. Even married women are in worst situation when we think husband as perpetrator of the crime of rape, because they have to suffer again and again, mostly women are dependent on their husbands financially, and lack of availability of such legal remedies also make them more vulnerable and victim to such inhuman treatment and eventually becomes hard for them to escape. Thus, the difference created by these sections or creation of these classes is not reasonable and violates the Test of Classification under Article 14.

Article 21 of Indian Constitution provides that “no person shall be deprived of his life and personal liberty, except according to the procedure established by law”.¹⁰ Therefore, Section 375 IPC clearly violates the soul of this article. Right to life possesses wide interpretation to right to life which means “Right to Health, Right to Live with Dignity, and a safe environment”. The Supreme court held in the judgment that life means ‘something more than mere animal existence’¹¹ where a woman is being treated way worse than an animal's existence or similar to it as she is regarded as a subject to her husband and The Right to life and Personal Liberty also includes Right to Privacy.¹²

By the term, Right to Privacy it means the “right over an individual's body, whether it is the husband or any other person” if they are violating it or going against it, then, there should be similar punishment for both the scenarios but why is there a special treatment for the husband? The Supreme Court decided that “right to privacy including the Right to make choices related to sexual activity with rights to personal liberty, privacy, dignity, and bodily integrity are under Article 21 of the Constitution”¹³ and “forcefully engaging in sexual intercourse is a violation of fundamental

¹⁰ The Constitution of India, 1950 Universal's Bare Act, 2016, Article 21.

¹¹ Bandhua Mukti Morcha v. Union of India [1984] AIR 802, 811 (SC).

¹² Kharak Singh v. State of Uttar Pradesh [1964] SCR 332 (SC).

¹³ Suchita Srivastava v. Chandigarh Administration, [2008] 14 SCR 989 (SC).

rights”.¹⁴ as it was also stated by **the Andhra Pradesh High Court** that “Right to Privacy is not lost by marital association and that there can be no doubt, that a decree of restitution of conjugal rights thus enforced offends the inviolability of the body and mind subjected to the decree and offends the integrity of such a person and invades the marital privacy and domestic intimacies of a person”¹⁵

Marital rape can have distinct health consequences harbouring right to life implications, such as miscarriages, fistulas, and the contraction of potentially fatal sexually transmitted diseases including HIV.¹⁶ Indian courts on various occasions gave such rulings and such decisions for which I am sure they considered every individual and not classified them on the basis of marriage. This special right to a husband violates the right to privacy over a woman's own body, compromises her health, and harms her dignity and self-determination. Human life is not merely about existence, it is about living a healthy life mentally and physically, and it is the duty of the state to protect every individual's right to sexual privacy, right to bodily self-determination and right to good health.

INTERNATIONAL OBLIGATIONS AND RECOMMENDATIONS

The “Convention on the Elimination of all Form of Discrimination Against Women” (CEDAW), adopted in 1979 by the UN General Assembly, came into force on 2nd September 1981 with 189 countries as a member state to which India is a state party but later ratified the convention.

The treaty is first of its kind to address the elimination of all forms of discrimination against women at all front. Article 1 of the treaty states that “Discrimination is any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status” and As per section 375 IPC “sexual intercourse by a man with his own wife, not being under fifteen years of age is not rape” where Article 1 of CEDAW does not have a binding authority but still the provision of IPC are inconsistent with it, discriminatory in nature on the basis of the marital status of the

¹⁴ Govind v. State of M.P.,[1975]AIR 1378 (SC).

¹⁵ Saretha v. T. Venkata Subbaiah,[1983]AIR 356(AP).

¹⁶ World Health Organization, Understanding and Addressing Violence Against Women: Sexual Violence, WHO/RHR/12.37, at 6 (2012).

victim. Article 2(a) of CEDAW categorically encompasses marital rape as violence against women.

Further in line with the obligations set out in general recommendation (GR) 19¹⁷ of CEDAW, “the state parties are obligated to make effective steps to protect women from all kinds of violence, through effective legal measures including penal sections, civil remedies and compensatory provisions”. GR 33 require “states to ensure that definition of sexual crimes including marital rape is based on lack of freely given consent, and taken consideration coercive circumstances”.

In the year 1995, Beijing declaration, and platform for action which was adopted by India as a United Nations Member State recognized that violence against women, including marital rape, “is a manifestation of the historically unequal power relations between men and women.” and it was demanded that the states enact or enforce sanctions to punish perpetrators and provide women with access to justice.¹⁸ In the line of implementing recommendation. The National Commission for Women (NCW) established, to provide a safe and secured environment at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and The Protection of Women from Domestic Violence Act, 2005 has been enacted for protection of women but the sensitive issue is still there.

UN treaty bodies such as the Committee against Torture and the Human Rights Committee have recognized that violence against women, which includes marital rape, can breach fundamental rights to life, liberty and security of person, to non-discrimination and equal protection under the law, and to freedom from torture.

Article 51(C) of Indian Constitution ensures that “the state should respect international law and treaty obligations”.¹⁹ Also, Article 253 provides “power to the parliament to make laws by rectifying and implementing any treaty”.²⁰

The **Universal Periodic Review (UPR)** is a unique approach through which all the UN member states review human rights for every country and put recommendations for each other to improve

¹⁷ <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

¹⁸ World Conference on Women, Report of the Fourth World Conference on Women, paras. 118, 124(c,h) UN Doc. A/CONF.177/20/Rev.1 (Sept. 4-15, 1996).

¹⁹ 51.(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration. PART IVA- FUNDAMENTAL DUTIES

²⁰ 253. Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body

human rights in their countries. As per Indian UPR, **3rd cycle-27th Session**, countries Ireland, Honduras, Portugal, Sweden, Australia, Belgium, Iceland, Namibia, France, Zambia, Lithuania and Canada recommended India to implement existing laws on all forms of violence and sexual violence against women and girls to remove the exception relating to marital rape from definition and to adopt comprehensive laws to combat all forms of violence including marital rape.²¹ State failures to recognise to marital rape is an encouragement or de facto negligence to the fact that marital rape is also a form of violence against women and fall foul to international obligations and recommendations.

CURRENT SCENARIO AND LEGISLATIVE PROGRESS

The 172nd Law Commission of India, which was form to review rape laws in India 2000, in consequence of writ petition filed by 'SAKSHI' an organisation working for the interest of women, where the petitioner raised the objection on an exception of marital rape and reasoning was given that regarding husband causing injury to wife to which he shall be punished like any other offender but raised a concern relating to women above 16 or 18 years of age.

The law commission rejected the suggestion and stated that "we are not satisfied that the exception should be deleted since that may amount to excessive interference with the marital relationship".²² Indeed, even in 2012, a Standing Committee on Home Affairs dismissed the recommendation to criminalise conjugal assault "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 entire family system will be under great stress and the Committee may perhaps be doing more injustice."²³ The argument given by the Standing Committee, 2012 and Law commission 172 both raise some important questions.

²¹ UPR27_India_ThematicListofRecommendations_E.pdf

²² Law Commission of India (2000) Review of Rape Laws, 172nd Report, New Delhi.

²³ <https://www.prsindia.org/uploads/media/Criminal%20Law/SCR%20Criminal%20Law%20Bill.pdf> page,47.

On December 23, 2012, a three-part Committee headed by **Justice J.S. Verma**, previous Chief Justice of the Supreme Court, was comprised to prescribe revisions to Criminal Law in order to accommodate snappier preliminary and improved discipline for lawbreakers blamed for perpetuating rape against women. The Committee prescribed that the exemption to marital rape ought to be expelled. Marriage ought not to be considered as an unavoidable agreement to sexual acts. Consequently, with respect to a request about whether the complainant agreed to the sexual movement, the connection between the person in question and the charge ought not to be important.²⁴

However, the proposal of the committee was turned by the legislature, equivalent to numerous others since freedom. Based on the thinking that by changing the arrangement and condemning conjugal assault will crush the organization of the marriage and it will affect the family and society. The benefit to carry on with a dignified life is as yet an extravagance in opinion of the government. One consequence of recommendation was, the definition of rape in section 375 changed, but Exception 2 remained, as it was previously.

In 2015 while discussing the recommendation of UN Committee on “Elimination of Discrimination against Women in India”, to criminalise marital rape, India’s Minister of state for Home Affairs, Haribhai Parathibhai Chaudhary, stated that “the marriage is a sacrosanct institution. He argued that the concept of marital rape, as understood internationally, is not suitable in the Indian context, due to illiteracy, poverty, social customs and values, religious beliefs and the fact that Indian society treats marriage as a sacrament”²⁵

The issue should not be seen as a problem of illiterate people, poor people or those who live in small parts of the country rather should be seen as an issue of 48.5% of total population of the country.”²⁶ Where 7 % of females got married by age of 15 and 27 % by age of 18.”²⁷

Such belief of our lawmaker, social establishment and sacramental bond as shield to justify such deeds in society needs to be changed, women are not less human and there is no proven fact that women who belongs to lower class of society and not educated are only victim. Women from all

²⁴<https://www.prindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

²⁵<https://pib.gov.in/newsite/PrintRelease.aspx?relid=119938>.

²⁶https://censusindia.gov.in/2011-prov-results/data_files/mp/06Gender%20Composition.pdf

²⁷<https://www.girlsnotbrides.org/child-marriage/india/>

class of societies are equally victim, though the women who belong to upper class and literate are one who representing all the victims and raising voice against it.

In 2017, while deciding a writ petition apex court, observed that “the exception 2 of amended section 375 IPC, need to be read in a manner that the immunity under the exception is available to husband, in case where the wife is the age of above 18 years, thus the threshold of the age of 15 years was struck down and replaced, but the issue of criminalisation of marital rape remains”.²⁸

Though the replacement of the age threshold addresses the violation of girls rights due to child marriage but a person below the age of 18 years considered as child per se, Juvenile Justice Care, Protection Act, 2012, the Protection of Children from Sexual Offenses Act, 2012, and Prohibition of Child Marriage Act, 2006. As per these laws already are protected from child marriage, sexual assault and remedies are available to the victim, but the status of married women above 18 years is needed to be considered.

The writ petition in the case **Foundation v. Union of India**, with the prayer essentially to criminalize marital rape, is presently pending to hearing and adjudication in the High Court of Delhi. The challenge is based on exception 2 of section 375 being unconstitutional and violation of fundamental rights of women under article 14,15,19, and 19 of constitution of India.²⁹

The supreme court has defined “sexual intercourse” as heterosexual intercourse involving natural intercourse between men and women”.³⁰ Thus the immunity under the exception under 375(2) is only for sexual intercourse as defined by the Supreme Court, by the husband with the wife not below the age of 18 years. Thus, the immunity has to be given restrictive meaning and not to be applied across the entire definition of rape in section 375 IPC.

The High Court accepted this interpretation recently while framing charges against the accused husband in the case alleged of unnatural sexual intercourse and insertion of external objects to his wife.³¹

²⁸ Independent Thought v. Union of India [2017] SSC 1222 (SC).

²⁹ Foundation v. Union of India [2017]5 SCC 702 (DEL).

³⁰ Sakshi v. Union Of India And Ors,[2004]AIR 3566,(SC).

³¹ Anurag Soni v. The State of Chhattisgarh, 629 OF 2019 (Arising out of SLP(Criminal) No.618/2019)

The contention not to criminalise marital rape is under only state's inability to secure women's right as a citizen and as a human. The idea of patriarchy society should be changed and to accept marriage as a thought of deep-rooted consent to satisfy the sexual want of a husband ought to be overhauled.

SECTION 375 (2) IPC: ARGUMENTS AND CRITICISM

There are some arguments that are always given at front to support for not removing the exception clause of section 375 regarding immunity to husbands. Most given arguments are that Indian society is not ready for such a law because it will lead to shattering of families and institutions of marriage. There can be other arguments that India has very high illiteracy and poverty rate so it is difficult for such part of society to understand the complexity of the idea of raping his wife. Many organizations working for the protection of men's rights gave the argument that women will abuse the law and it will become a new tool for harassment to men like domestic violence and dowry laws.

These arguments are contradictory if we are talking illiterate and poor and society which is trapped in social and religious belief that they will not understand the concept that gave presumption of lackness of wisdom and another argument about the abuse of the law by women that mean they are so smart that they can understand the law and can use it for revenge or torture to their husband and family. In both these positions, the nature of women and their actions are already presumed and labelled.

Asian countries where marital rape is recognized, like Nepal, are also multi-religious, secular, a multilingual country with Hindu population in the majority, and is a developing country like India, but if we say there are lack of resources in Nepal in comparison to India, still in 2006, the Supreme Court of Nepal declared "marital sex without wife's consent is rape and punishable with a punishment of imprisonment for a period of 3-6 months". Therefore, to fill the lacuna in the legal system, the argument is that there are adequate resources available to protect women under **Section 498A IPC**, "where husband and relatives can be punished if they are hindering mental and physical health of a woman" and The Domestic Violence Act, 2005, Section 3 recognizes "sexual assault

as a type of domestic violence” and Section 13 of Hindu Marriage Act, 1956 recognized cruelty as a ground for divorce.³²

Though there are provisions that are not adequate, for instance, the domestic violence act only provides a civil remedy to wife and there is not any provision for punishment like general cases of rapes and cruelty provision only can help them to get a divorce and that is not going to change the behaviour of husband she marries and assaults another woman. Lastly, it is difficult to establish a crime of rape in a relationship of marriage where a husband shall rape his own wife. Therefore, this kind of argument raises two presumptions, first, that all wives are liars and they will use marital rape against their husband and second, marriage is consent for husband's desire and like any other property of his he can use it.

By establishing a proper system of complaint, inquiry, and investigation for marital rape like other countries where it is already a crime. It is the duty of the state to find ways to protect the citizens against these crimes; the state cannot run from the liability on the argument that something is difficult. Every crime is difficult to investigate and still, there are provisions for them but why not for marital rape?

In 1991, Lord Keith stated that “modern marriage is a partnership of equals and the wife is no longer considered the subservient chattel of her husband to which, the European Commission of Human Rights, further laid that “the rapist's relationship with the victim does not change the fact that he is a rapist”.

CONCLUSION

India has the lowest divorce rate, only 13 out of 1000 marriages end up by divorce, isn't it a good thing. It is presumed that criminalisation of marital rape will increase the rate of divorce and institution of marriages will be in danger. The divorce rate is low because as a society we failed to provide strength to the women to speak up against the wrong they are tolerating behind doors in the name of all false expectations we labelled with the persona of a woman since, we already decide the expected behaviour of a wife, that she should obey her husband, and shall not refuse to

³² https://highcourtchd.gov.in/hclsc/subpages/pdf_files/4.pdf.

it. At what cost we are protecting our beliefs and society? Murders, suicides, and domestic violence are the cost they pay.

This is the high time as a progressive society that the difference between rape and marital rape should also be struck down. Women are already so vulnerable in the eyes of the patriarchal society as on one hand, we work to protect their dignity at the workplace, whereas on the other, we acknowledge domestic violence. As the **Criminal Law Amendment Bill 2013**, suggested revised definition of rape irrespective of gender of the victim. We should educate society about this stigma and that is possible only when the state shall recognize the fact that yes, it is rooted in our culture and will make laws regarding it that all women below or above the age of 18 cannot be raped by their husband and provide protection for the same.

The only role of a woman should not be seen as a good wife, but it should be more than that. In present time, women are working in all areas and emerging as individual citizens, and no longer the identity of women are attached to her husband. The concept of patriarchy is changing, and state can give strength to these women by recognising them as a citizen as many others by making laws for marital rape helping them to live with liberty and confidence.

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