

CONSTITUTIONALISATION OF MARITAL RAPE: DEMAND FOR REFORM

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Abstract

*“Our lives begin to end the day we become silent about the things that matters”-
Martin Luther King, JR.*

Marital Rape means a non-consensual intercourse and all kinds of sexual assault with women when they engaged in marital relationship. This has become very serious issue and matter of domestic violence against women. Most of the countries have criminalized this in the definition of rape. But unfortunately, this is still legalized and included as an exception under section 375. In Indian Penal Code Exception 2 which states that “Sexual intercourse or Sexual acts by a man with his own wife, the wife not been under 15 years of age, is not a rape.” This law is violating Article 14 and Article 21 of Indian Constitution but still it is not criminalized. As per current law wife is presumed to deliver perpetual consent to have sex with her husband after entering into marital relations. When IPC was drafted in 1860 women were not considered as separate legal entity and ideology at that time was very different because women don’t have same privileges as men were having and expected women to possess qualities of innocence otherwise not eligible for marriage. But the scenario in 21st century is completely different still women are facing discrimination.

In this research paper we would be explaining all about marital rape which will include its history, international scenario, Indian perspective and give our suggestions and recommendations what can be done to resolve the same and give women’s their rights.

Introduction-

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Rape is not only savagery against ladies but rather a grave infringement of a person's basic ideal of life and individual freedom. If we define rape it is an unlawful sex without assent of a man because of physical drive or danger, or due to deceitful demonstration of perpetrator. Domestic violence in India is a well-established problem faced by the people of India and it is increasing rapidly from recent years. Marital rape, the act of forcing your spouse into having a sexual intercourse without her consent, it is an unjust way to disempower the women. In many countries this practice has been impeached but India is one the 36th country where marital rape is still not criminalized. About 70% of women in India are the victims of domestic violence. As per the analysis in India maximum women is raped every 16 minutes and in every 4 minutes, she experiences cruelty from her in-laws. According to the analysis of National Family Health Survey done in past years is approx. 99% of sexual violence cases go unreported and around 59% of women have suffered both physical and sexual violence from her husband². According to the information from National Coalition Against Domestic Violence (NCADV), between 10-14% of married women had experienced marital rape³. In 2013, the UN Committee on elimination of Discrimination Against Women suggested the Indian government should criminalize marital rape. According to NCADV, 18% of female survivors of marital rape say their children witnessed the crime⁴. Today, large number of nations have either established marital rape laws or have revoked marital rape special cases or have laws that don't recognize marital rape or ordinary rape. The laws to secure the interests of the casualties of marital rape are lacking and deficient, and the means taken are unacceptable This demonstrates marital rape is currently perceived as an infringement of human rights.

Historical Background-

The history of marital rape essentially contains large silence attributable to this absence of prosecution. In many situations, Cases are left uninvestigated and are not brought in front of the

² Chapter 15 - Domestic Violence - inside_cover_citation_authors_6sep07.doc

[http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20\(468K\).pdf](http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20(468K).pdf)

³ Domestic Violence and Sexual Abuse- <https://ncadv.org/blog/posts/quick-guide-domestic-violence-and-sexual-abuse#:~:text=Marital%20rape%20is%20a%20rape,with%20a%20spouse%20is%20rape.>

⁴ <https://ncadv.org/blog/posts/quick-guide-domestic-violence-and-sexual-abuse#:~:text=Marital%20rape%20is%20a%20rape,with%20a%20spouse%20is%20rape.>

court to reconstruct them and to have a concrete proceeding of trails and appeals on such cases. A large proportion of the nineteenth-century judicial opinions that mentioned the marital rape exemption, as an example, turned around the question of whether or not a rape indictment, during a case with no evidence of conjugal relationship between victim and suspect, still had to state that the victim and suspect weren't married to each other.⁵

As we know that it is illegal at all times for a man to force sex upon a woman other than his wife but a husband could force sex upon his wife without violating the law.

The justifications for the marital rape are that the British common law view that the contract of marriage includes the husband's right to sex that means the wife have given consent for lifetime by entering into contract of marriage.

In 1857, the case Massachusetts in US firstly recognized the concept of "contract" in justification for the marital defense for rape. The "right" of a husband to have sex with his wife has also provided that husband has right to give divorce to his wife on the grounds that she refused to sex⁶. Then this defense became the crucial part of the rape law in every state.

As the supreme court of Virginia⁷ has observed that, it is "hard to imagine how charging a husband with the violent crime of rape can be more disrupted than the violent act itself".

The third argument posed that there are the greatest obstacles for repealing the marital rape exception, but the fundamental incoherence of the justification has undercut its way⁸.

Earlier the rape law expressed what a "male person" couldn't do to "any women, other than his wife". Legal writers took pain to emphasizes that "A man can't be guilty of a rape upon his own wife", that "a husband doesn't become guilty of rape by forcing his mate to his own embraces," that rape could also be committed by any male of the age of fourteen or over, not the husband of the feminine⁹. This clear prohibition on prosecution had its supposed result.

⁵ Contest and Consent: A Legal History of Marital Rape written by Jill Elaine Hasday

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=11686&context=journal_articles

⁶ The History of Marital Rape Laws By Deborah C. England

<https://www.criminaldefenselawyer.com/resources/criminal-defense/crime-penalties/marital-rape.htm>

⁷ In the case of WEISHAUP V. COMMONWEALTH, 315 S.E. 2nd 847 (1984)

⁸ The History of Marital Rape Laws By Deborah C. England

<https://www.criminaldefenselawyer.com/resources/criminal-defense/crime-penalties/marital-rape.htm>

⁹ Contest and Consent: A Legal History of Marital Rape - Jill Elaine Hasday

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Most of the controversy over the code's sexual offence provisions concerns the section on rape and related offenses, which specifies there are 3 criminal levels of sexual intercourse with a mentally competent and aware, adult women¹⁰. In 18th century English law had a set of rules where the wife was considered being dependent on her husband, incapable of independent existence. Husband and wife are marked together as a one entity, and all the rights of the wife were encompassed by those of her husband.

The husband was the master to the wife and enjoyed privileges over her body and will not be fathomed for raping his wife. Women were treated like chattel by their husbands.

In 18th century England, women were confined to the domestic sphere, and therefore the state ensured that they remained hooked into their male counterparts.

In many countries a considerable proportion of women are experiencing physical violence also experience sexual assault. In Mexico and therefore the United States, studies estimate that 40-52% of females experiencing physical violence by an intimate partner have also been sexually concerned by the partner. Sometimes, sexual violence occurs without physical violence, in India state of Uttar Pradesh during a stratified sample of over 6000 women, 17% reported having been sexually and physically abused by their husbands. About 50% of them reported that they were forced to possess sexual activity at the advanced stage of their pregnancy.¹¹

It is strange to presume that this still applies to modern day India in 21st century where women have become individualistic and capable of giving assent and now the women are no more dependent upon their husbands and they live freely as an independent person under the laws made for her.

Today large number of nations have either established martial rape laws that revoked martial rape special cases or have laws that do not recognize marital rape and ordinary rape. This implies that marital rape is currently perceived as an infringement of human rights. In 2005, the protection of women from domestic violence act, 2005 was passed which considers marital rape as a type of local rape. Under this act, a lady can go to the court and get legal partition from her

¹⁰ Why the Model Penal Code's Sexual Offense Provisions Should Be Pulled and Replaced- Deborah W. Denno
<https://core.ac.uk/download/pdf/159603917.pdf>

¹¹ Sex related offences and their prevention and control measures: an Indian perspective By Dr. Barindra N. Chatteraj https://www.unafei.or.jp/publications/pdf/RS_No72/No72_13VE_Chatteraj.pdf

husband for marital rape. Marital rape is unreasonable: is a lady's body raped, as well as her affection and trust are damaged in this way throwing her it might be said of instability and dread.

International perspective of Marital Rape-

The concept of marital rape is not a new development or not the replacement of any previous concept related to rape. It came into limelight when the cosmopolitan group of women raised their voice against the inequality towards the rights of the married women belonging to their body and clear their grievance or struggle towards it. The issue came to wide international attention from second half of 20th century but still in many countries which includes India as well, that either rape is not criminalized or if it is criminalized then no action is taken against it and is tolerated on a wider scale¹².

Along with India there are other 36 countries like Pakistan, Bangladesh, Afghanistan, Colombia, Myanmar, Syria, Yemen, Tajikistan etc., here the main issue is that the marital rape has not been criminalized yet and the reason behind it is not only the orthodox or conservative mentality of the people but there are also other social factors responsible for this issue not being criminalized. This concept has been evolved from the theory "*might is always right*" where superior males always have considered females powerless, weak and hopeless creature in a society. The legal subordination of wives is usually considered to be a misbalance. The origin of this concept of a marital rape exemption from other rape laws could be a rule that a husband cannot be accused and charged for having sex with his wife without her consent and that to be forcefully.

The western countries challenged this view concerning marriage and sexuality during 1960s and 70s especially by second-wave feminism, resulting in an acknowledgement of the woman's right to self-determination and a trend for being intolerant of all matters relating to her body, and the withdrawal from non-consensual activities or taking a defense of marital rape.

Poland in 1932 was first to possess law explicitly making it a criminal offence¹³. Australia, under the impact of second wave of feminism within seventies, was the primary common law country to pass reforms in 1976 that made rape in marriage a criminal offence. And since 1980's many

¹² Asst.Prof of Law –Mamta Thapa <https://www.iilsindia.com/blogs/marital-rape-crime->

¹³ <https://iws.gov.pl/wp-content/uploads/2018/09/Anet-a-Michalska-Warias-Marital-Rape-in-Poland-from-the-Legal-and-Criminological-Perspectives-62.pdf>

countries who follows common law have developed their legal system and have expressed to abolished the marital rape immunity in direct as well as in indirect manner. This concept was used many countries which includes South Africa, Ireland, Canada, the United States, New Zealand, Malaysia, Ghana, Israel, etc. Belgium has also criminalized marital rape in 1979, the Brussels court of appeal recognized marital rape and instituted that a husband who used serious violence to coerce his wife for having sex against her consent is to be guilty for the criminal offense of rape¹⁴. In Europe as well as in Finland marital rape got criminalized in 1994.

One of the situations of non-criminalizing of marital rape is South Sudan, Art 247 states: “*sexual intercourse by a marriage isn’t a rape, within the meaning of this section*”¹⁵. In contrary an example of a country which explicitly criminalizes marital rape in Namibia. The combating of rape act¹⁶ states that: “*No marriage or other relationship can constitute a defense to be charged for rape under this act*”¹⁷. An example of a jurisdiction where marital rape may be a distinct criminal offense is none other than a buffer country and a neighbor of India i.e., Bhutan where ‘Marital rape’ is defined in article 199 which states; “*A defendant shall be guilty of marital rape, if the defendant engages in forceful sexual activity with his own spouse without consent or against the desire of the opposite spouse*”¹⁸.

Women are entitled to enjoy an equivalent human rights and fundamental freedoms as other individual do. International human rights treaties require state parties to require the proactive

¹⁴ Women and Justice: Court: Court of Appeals of Belgium

Domestic Case Law Cour d’appel, Bruxelles No. 89/3060 Court of Appeals of Belgium (1979)

https://www.law.cornell.edu/women-and-justice/court/court_of_appeals_of_belgium

¹⁴ Global Database on Violence against Women Section 247 of The Penal Code - Punitive Actions for Rape

<https://evaw-global-database.unwomen.org/en/countries/africa/south-sudan/2008/section-247-of-the-penal-code---punitive-actions-for-rape>

¹⁵ Global Database on Violence against Women Section 247 of The Penal Code - Punitive Actions for Rape

<https://evaw-global-database.unwomen.org/en/countries/africa/south-sudan/2008/section-247-of-the-penal-code---punitive-actions-for-rape>

¹⁶ The Combating of Rape Act (No. 8 of 2000)

¹⁷ Global Database on Violence against Women Combating of Rape Act (No. 8 of 2000) country - Namibia

<https://evaw-global-database.unwomen.org/es/countries/africa/namibia/2000/combating-of-rape-act-no-8-of-2000>

¹⁸ Penal code of Bhutan by J_dorji article no. 199 page no. 28

<https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814108.pdf>

steps to make sure that women's human rights are respected by law and to eliminate discrimination, inequality, and practices that negatively affect women's rights. Under international human rights law, women can also be entitled to specific additional rights.

As a vulnerable group, women have special status and protection within the United Nations and regional human rights system. International human rights treaties prohibit discrimination on the basis of gender and also require states to make sure the protection and realization of women's rights in all areas¹⁹

Violence against women is particularly initiated by the partner sexual violence and is a major cause of public and clinical health problems and a violation of women's human rights. It is basically rooted and leads to the continuation of gender inequality. Globally 1 in 3 women experiences physical or sexual violence in their lifetime, mostly by her partner²⁰. This is very evident that the scale of gender inequality and discrimination against women is really high.

The United Nations defines violence against women as- "an act of gender-based violence there are many acts which end up in physical, sexual and mental suffering of women, this includes the threats of coercion or arbitrary deprivation of liberty whether it occurs privately or publicly".²¹

The international human rights system has facilitated bringing individual cases of violence against women to the CEDAW committee through the optional protocol. According to the World Health Organization, approximately 30% of women report experiencing physical or sexual violence by their partner²².

There are many international human rights instruments that directly address the rights of women at the international level:

¹⁹ International Justice Resource Center- https://ijrcenter.org/thematic-research-guides/womens-human-rights/#Violence_against_Women

²⁰ World Health Organization on violence against women - https://www.who.int/health-topics/violence-against-women#tab=tab_1

²¹ World Health Organization on violence against women - https://www.who.int/health-topics/violence-against-women#tab=tab_1

²² World Health Organization- facts sheet – violence against women- 9 March 2021 <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

Convention on the Elimination of all form of Discrimination against Women (CEDAW) -

Article 1 of CEDAW defines discrimination on the basis of gender and majorly its reputations were faced my women only and it is defined as “*any distinction, exclusion or restriction made on the thought of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by men, no matter of their marital status*”²³. Exception 2 of section 375 of Indian penal code, which reads “*sexual intercourse by an individual together with his own wife, the wife not being under fifteen years of aged, isn’t a rape*”, permits violence against women on the thought of their legal status, and is therefore inconsistent with Article 1. Violence was majorly based in the gender discrimination and which is being prohibited under article 1. Although the declaration on the elimination of violence against women doesn’t have the binding legal authority of a convention or treaty, it’s universal in coverage and a strong statement of principle to the international community. The Articles 2(a) of the DEVAW categorically encircles the violence faced by the women i.e., majorly the marital rape. Further, the parties to CEDAW were obligated to exercise due diligence to fight or contest between the individual or groups against the violence faced by women. The obligation is set out in general recommendation 19 of CEDAW²⁴, which interprets the convention as requiring that state parties implement effective legal measures, *including penal sanctions*, civil remedies and compensatory provisions, to protect women against all the sort of violence. Building on GR19, the General Legislative Measures provided in paragraph 33 of GR 35 requires state to “ensure that the definition of sexual crimes, including marital and acquaintance/rape is totally based upon nonconsensual activity, and takes account of forceful abuse to a woman²⁵”. As a view the state failed to criminalize this type of violence and eventually it encouraged the permission to commit these types of crimes and fails to provide due diligence obligations.

²³ United nations entity for gender equality and the empowerment of women- convention on the elimination of all forms of discrimination against women – article 1

<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>

²⁴ United nations entity for gender equality and the empowerment of women- convention on the elimination of all forms of discrimination against women- general recommendation 19 11th session , 1992

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

²⁵ Committee on the Elimination of Discrimination against Women - General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

Preventive measures and responses taken by world health organization on the issue of rise in the violence against women-

As per the analysis done by WHO on the context that how many women in the country are facing the violence against them through their partners or someone else which causes a major health public health problem and which directly violated the women's human right. As per the estimate published by WHO which indicated that globally around 1 in 3 which means 30% of women In worldwide have been subjected to either the physical or sexual intimation from her partner or non-partner as a sexual violence in their lifespan. Majorly of these types of offences are initiated through their partners violence only. In worldwide almost one-third i.e., 27% of women who are aged between 15-49 years who were in the relationship reports that they have been subjected to some kind of physical or sexual violence by their partners itself. Violence directly affects the health of women in physically, mental, sexual and reproductive health and this may increase the increase the risk of acquiring HIV. The violence against women is some how preventable. The health sector has a very vital role play that is to provide comprehensive health care to women who suffered this type of violence.

Prevention and Response-

There is a growing need to work in the prevention of violence against women. In 2019, WHO and UN women with endorsement from 12 other UN and some bilateral agencies who published the word RESPECT women as a framework for preventing the growing violence against women.

Each letter of RESPECT depicts several meanings²⁶-

R- relationship skills strengthened

E- empowerment of women

S- services ensured

P- poverty reduced

²⁶ World health organization- respect women – preventing violence against women

<https://www.who.int/publications/i/item/WHO-RHR-18.19>

E- environments made safe

C- child and adolescent abuse prevented

T- transformed attitudes, beliefs and norms

Violence against women is majorly a public health problem rooted in gender inequality, and is a gross violation of women's human rights affecting the lives and health of millions of women and girls. The main aim to end this violence against women, a framework was made for the prevention of violence against women i.e., RESPECT as above mentioned. This framework was developed by the policy makers and it was based upon UN framework for actions to prevent violence against women from 2015.

For these each 7 types of strategies there are a range of intervention i.e., low and high resources setting along with the evidence of effectiveness.

RESPECT also highlights that successful intervention are those that prioritize safety of women, whose core elements involves the challenging the unequal gender power relationships²⁷.

To achieve lasting changes, it is really important to enact and enforce legislation and develop and implement policies to promote gender equality which allocates resources to prevent and response and invest more in women's right.

This was all about the international scenario which clearly describes that the legislation internationally is very weak in regard to Marital Rape but many international organizations are coming with major laws and frameworks that can provide safety to women against the violence they face. Now let's discuss about some Indian perspective regarding marital rape

Indian Perspective -

In India Martial rape has become a threat to whole society. Under IPC martial rape is treated as exception in clause 2 of section 375. If we talk about the bare provision it states that

²⁷ World health organization- fact sheet- violence against women- prevention and responses

<https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

Exception 2- “Sexual intercourse or sexual acts by a man with his own wife, the wife is not being under fifteen years of age, is not rape”²⁸.

By this it clearly means that if a women is forced to have sex during the marriage then it will not be considered as rape. Sexual intercourse during the marriage is an implied consent. The crime against women is very much and according to National crime records Bureau (NCRB) there is 70% increase in crime rate relating to women’s and these basically includes Rape, Domestic violence, Murder, Torture etc. India is a democratic country and everyone is having fundamental rights to enjoy dignified life as per article 21 of the constitution but then also crime like martial rape is increasing day by day because of soft hearted legislation. According to National Female Health Survey married women suffers Marital control which can be physical abuse, mental abuse and sexual abuse²⁹.

How Marital rape treated as Exception-

This question is in minds of most of the peoples that why marital rape is not covered under the definition of rape and else it is in exception of rape. To answer this we need to understand the concept of Doctrine of Coverture.

Doctrine of Coverture³⁰- This doctrine is a very famous common law concept and according to it, Husbands and wife’s are treated as one single entity and wife’s separate legal existence gets disappeared as far as other rights like property, etc are concerned. Everything gets merged with their husbands like earnings, name, property, etc. Now linking to Doctrine of Coverture why Martial rape as an exception to IPC definition for rape, we will find that when IPC was drafted in 1860s the draft was on the basis of Victorian patriarchal norms that never recognized men and women as equal and merged the rights of women’s with husbands applying Doctrine of Coverture. This has raised question many a times because this provision is violating Article 14 and Article 21 of the Indian Constitution. Now, if we look towards the current scenario the

²⁸ Criminal Manual, Indian Penal Code, Section 375, (2020 Edition).

²⁹ National Female Health Survey [http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20\(468K\).pdf/](http://rchiips.org/nfhs/NFHS-3%20Data/VOL-1/Chapter%2015%20-%20Domestic%20Violence%20(468K).pdf/)

³⁰[http://www.kentlaw.edu/faculty/fbatlan/classes/BatlanGender&LawS2007/CourseDocs/coursedoc07/Blackstone.p
df](http://www.kentlaw.edu/faculty/fbatlan/classes/BatlanGender&LawS2007/CourseDocs/coursedoc07/Blackstone.pdf)

situation is very different. Almost every country has criminalized marital rape because they have understood the need to current society. Women's are having equal rights as to men and they are separate entity in today's era. So there is need to criminalize marital rape and include it in the provision of section 375 removing the exception clause 2.

There are three categories of Marital rape which are as follows³¹-

- A) **Battering rape**- In this type of rape, women face both mental and physical sexual violence. It may include physical violence where husbands want to make up and coerces his wife to have sex against her will. Majorly cases of marital rape victims fall under this category.
- B) **Force only rape**- In this type of rape, husbands use only the amount of force necessary to put their wives under duress. These assaults are typically after the women has refused sexual intercourse.
- C) **Obsessive rape**- In this type of rape there is sadistic or obsessive rape where the assault involve torture and perverse sexual acts and often physically violent.

These are the various types of Marital rape a women faced by their husbands.

Violation of Fundamental rights-

Indian Constitution has given fundamental rights to every citizen and no one has a right to violate them. But this provision of marital rape is violating fundamental rights mentioned in Article 14 and Article 21 of Indian Constitution. Now we will discuss how Marital rape is violating fundamental rights of citizens of India

This Exception is very much violative to Article 14 and Article 21 of the Indian constitution.

*Article 14- Equality before law- "The state shall not deny to any person equality before the law or the equal protection of laws within territory of India."*³²

This means that every person is having equality and equal protection of laws with rational nexus and intelligible differentia. Now linking the provision of Marital Rape vis- vis Article 14 we will

³¹ <https://www.lawteacher.net/free-law-essays/family-law/marital-rape.php>

³² JN Pandey, The Indian Constitution, (50th edition)

find that it is violating Article 14 as there is no intelligible differentia or rational nexus in making distinction between a non- consensual force sex by the husband. On one side Article 14 is giving guarantee equality to all and on the other side Indian criminal law is discriminating rights of female by their own husbands very badly.

There are various landmark cases like State of West Bengal v. Anwar Ali Sarkar³³, AIR (1952) relating to Article 14 which states that reasonable test should be pass so that there are some rational nexus to the objective that act seeks to achieve. Linking to the exception 2 of section 375 we exempting husbands from punishment is making contradiction to Article 14 of Indian Constitution. This exception is encouraging husbands to forcefully enter into sexual intercourse without the consent to wife and later on it may develop into domestic violence. So, basically Exception 2 of 375 does not qualify the test of reasonableness thus becoming violative of Article 14 of Indian constitution.

Violation of Article 21-

This Exception 2 for marital rape is also violation to Article 21 of the constitution. This is as follows-

Article 21- "No person shall be deprived of his life or personal liberty except according to procedure established by law".³⁴

Article 21 of our constitution gives us the fundamental right to live a dignified life and it includes right to health, privacy, dignity, etc. Now linking the provision of Marital Rape vis-vis Article 21 we will find that women's are deprived of their fundamental right their dignity is being violated. In a very landmark judgment of Justice *K.S Puttuswamy (Retd.) Vs. Union of India*, the Supreme court said that right to privacy is the fundamental right and it includes decisional privacy reelected by an ability to make intimate decisions and it consists sexual r procreative nature and decisions in respect of intimate relations.³⁵

³³ State of West Bengal v. Anwar Ali Sarkar, AIR (1952) SC 75 (India).

³⁴ JN Pandey, The Constitution of India,(50th Edition)

³⁵ Justice K.S. Puttuswamy (Retd.) v. Union of India, (2017) AIR 2017 SC 4161 (India)

In another landmark case of *The Chairman Railway Board Vs. Chandrima Das*, rape is not merely an offence but it is crime against the society as a whole.³⁶

In *State of Karnataka Vs. Krishnappa*, it was held that non-consensual sexual intercourse amounts of privacy and sexual violence.³⁷

By the above discussion and cases cited it is clear that Exception 2 under section 375 of Indian Penal Code is violative to Article 14 and Article 21 of the Indian Constitution.

Justice Verma Committee vis- vis Marital Rape-

Marital rape issue was also discussed in Justice Verma Committee. This committee was formed to recommend amendments in criminal law and provide fast trial with enhanced punishments to the criminals. The committee suggested that rape should not be limited to penetration of vagina, anus etc but it should include non-consensual sexual intercourse which is mentioned in exception 2 of section 375. Under Indian Penal Code there is a difference between rape within marriage and outside marriage, the committee suggested to remove Exception 2 and include it in the definition of rape. The committee suggested that wife is not a single entity under their husband both are separate entity and have all rights. Rape should be considered as an offence regardless to relation between the parties. This report was formed and it also included sexual assault, acid attack, sexual harassment, and lot more. This report was submitted on January 23, 2013.³⁸

Is there is any change in the provisions of Marital Rape after Criminal Amendment 2013-

We all know the horrific gang rape case of 2012 and after that incident there was many amendments made in criminal law and popularly known as Criminal Amendment 2013³⁹. The Criminal Amendment Act 2013 includes many changes and addition to criminal law for example the definition of rape included many new things, new offences like acid attack, sexual harassment, voyeurism, stalking have been incorporated into in Indian Penal code. But besides

³⁶ *The Chairman Railway Board & Ors v. Mrs. Chandrima Das & Ors*, AIR 2000 SC 98

³⁷ *The State Of Karnataka vs Krishnappa* on 30 March, 2000, 2000 CriLJ 1793 4 SCC 75

³⁸ Justice Verma Committee report summary/ <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary> .

³⁹ Criminal Amendment Act, 2013, Act No. 13 of 2013 (2 April 2013)

this Criminal Amendment Act 2013 was criticized by many human rights and women's right organizations because the act donot include Marital rape as an offence which is violating rights of women's. The arguments for not criminalizing marital rape was that marital rape would destroy the marriage and also women's will take advantage towards it which will itself become difficult to proof. So, Marital Rape was not considered as crime and provisions were not changed after Criminal Amendment Act , 2013 also.

Protection of Domestic Violence Act (2005)-

There is no better relief for marital rape in India but in domestic violence act 2005 it can observed that if a women suffers from marital rape by their husbands then a civil remedy is available for them. There is no criminal liability for husband this means nonconsensual intercourse with the wife donot attracts any punishment. The only remedy available for victims of marital rape are judicial separation from their husbands⁴⁰. This is just a utter violence of human rights and Article 14&21 of constitution of India. This issue is very serious in nature but the legislation is more inclined not to interfere in family and personal matters of a person.

This was all about the Indian scenario which clearly describes that the legislation is very weak in regard to Marital Rape. There is utter violation to human rights, Article 14 & 21 of Indian Constitution but still women's are facing violence and there is no criminal punishment available for the person who has committed this offence.

Some Suggestions and Recommendations-

- Rape is heinous crime whether it's before marriage or after marriage so steps should be taken to improvise the law.
- The Exception 2 under section 375 of IPC should be removed and punishment for marital rape should be inserted.
- All the provisions of matrimonial laws should get amended.

⁴⁰ The Protection of Women from Domestic Violence Act, 2005, Section 3 Explanation 1 (ii), passed in August 2005; entered into force in October 2006 .

- The provision of marital rape is violating fundamental rights of women's so this provision should be amended accordingly so that it donot violated the fundamental rights of the citizens.
- The fact that wife and husband are married and having a relationship should not be considered as a point to reduce the sentence or punishment for husbands.
- Divorce should not be compulsory rather it should be on the option of wife whether she wanted the same or not.

Conclusion-

Marital rape is becoming a disease and harming fundamental rights of women's. It is acting like a slow poison where women's are physically abused by their own husbands and slowly-gradually facing issues like mental torture, cruelty, dowry demands, etc. So basically we can say that one crime is leading evolution of many others with it. The society needs to understand that every human has their own choice of living and you cannot force anyone to live accordingly to you but in the case of marital rape husbands are forcing their wife's to have sexual intercourse with them without their consent. These types of offences are leading to gender inequality and biasness thus giving confidence to males to do that ever they want. A women's sacrifice a lot for their marriage and the only thing they demand is dignity and respect in her In-laws house and if she is not able to get the same then there is no point for that marriage or relationship. Like in all other matters we believe that women's are equal and stand equal to men's likewise in the case of marital rape also women's should be given rights to fight for the wrong.

We authors believe that in future parliament will consider amending the laws to provide strict provisions and punishments just like in case of rape and women's will get their fundamental rights.

