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**THE UNSPOKEN REALITY: THE INTERSECTION OF POWER, TABOO
AND SEX IN MARITAL RAPE**

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ABSTRACT

One type of sexual abuse that occurs in the institution of marriage against the consent of women is marital rape. Marital Rape means, a husband's forced or unconsented sexual relations with his wife. In India, the courts, and the law both remain mute on this particular sort of atrocity. In India, one of the major reasons for not criminalising rape within marriage is the relationship existing between the perpetrator and the victim. Another reason why there is no legalisation of marital rape being because of the belief that doing so would diminish the sanctity of marriage. This paper employs the doctrinal research design. It has been used to analyse the Indian judiciary's stance regarding the criminalization of marital rape. The existing Indian laws' needs are analysed with respect to the judgments and perspectives of judicial officers regarding marital rape. Researchers seek to substantiate their argument by highlighting the apex court judgements that provide that, every woman has the right to sexual privacy, and no one has the right to violate the right anytime they deem fit. Further in another High Court judgment, the judiciary takes the stance that the marriage does not give them the license to rape their wives forcibly. The paper primarily aims at investigating the pervasive denial of justice in cases of marital rape and the detrimental effects this has on survivors of marital rape. Secondly, this paper aims to shed insight on the arguments made in favour of the criminalisation of the marital rape in India. And then finally, this paper aims to explore the intersection between various factors such as power, societal norms, sex, and marital rape and traces the jurisprudential evolution of marital rape. To conclude, the paper provides an overview of the area of marital rape and throws light on arguments favouring criminalisation of marital rape.

KEY WORDS: Autonomy, Consent, Criminalization, Marital rape, Power

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INTRODUCTION

Marital rape disrupts the fiduciary character of the marriage as well as the victim's individual autonomy and privacy in addition to exposing the victim to protracted health problems and significant psychological distress. While there is not a comprehensive legal definition in India, this is because the legal and due to the cultural sanctity, it has acquired over time, it can be defined as an act of nonconsensual or unwilling sexual relations between couples, when consent, if any, has been obtained by coercion, threats, fear of punishment, or physical harm³. Furthermore, although though any spouse can do it, it has become a gender-specific crime worldwide, with husbands targeting their wives and ex-wives (committed while cohabiting) being the most common perpetrators. Marital rape is a significant social problem that affects 40% to 50% of battered women and 10% to 14% of all married women⁴. Not only do non-sexual violence and marital unhappiness rates dramatically exceed rates of marital rape, but they also have lower judgments of marital quality. Verbal resistance is a common tactic used by victims of marital rape to resist. Nonetheless, the majority of women who are raped in marriage are either incapable or unable to confront their husbands' sexual aggressiveness. Significant degrees of depression, gynaecological issues, posttraumatic stress disorder (PTSD), and adverse physical health symptoms are experienced by victims of marital rape. Even while every marital rape victim has a unique situation, there are some unavoidable commonalities in their situations and behaviours such an extent has the crime been granted cultural sanctity that the majority of the victims of the crime feel bad about themselves and think that their refusal to have sex was what caused the crime to be committed. In addition, women who typically endure sexual abuse as children may become indifferent to the crime because they are socialized from an early age to accept that coercive and unwanted acts of intimacy are acceptable or even token gestures of love⁵. Additionally, it is asserted that in poor nations like India, one in three males rape their women. Even though India's rape legislation has been tightened over the past ten years, the exception for husbands who rape their wives has not been eliminated. This is the only explanation for the lack of reliable data and records regarding the crime and the low reporting of it in India. To combat the problem, a number of nations have either outlawed married rape, removed the exclusions granted to spouses, or repealed marry-your-rapist legislation; yet, for the majority of Asia, including

³ Heise, Lori L. "Violence against women: An integrated, ecological framework." *Violence against women* 4.3 (1998): 262-290.

⁴ Braceland, Francis J. *AMERICAN JOURNAL OF PSYCHIATRY*.

⁵ Bennice, J. A., & Resick, P. A. (2003). Marital Rape: History, Research, and Practice. *Trauma, Violence, & Abuse*, 4(3), 228-246. <https://doi.org/10.1177/1524838003004003003>

India, not much has changed. Thirty-six nations—India among them—are home to Marital rape is illegal for 2.6 billion women, different deeds of non-criminalization show the legal and cultural support that crime has accumulated throughout time in different nations.⁶ This paper explores the interplay of cultural and legal reasons for not criminalising rape in India and also traces the evolution of the Indian judiciary's stance on the criminalisation of marital rape.

THE INDIAN JUDICIARY'S STANCE

Since the 1970s, feminist groups in India have acknowledged rape as a form of male tyranny and control over women. Nonetheless, the Indian legal system would rather consider it a matter of the raped woman's loss of honour. This paper will discuss the historical tensions that exist between Indian feminists and the judicial system and the evolution of the judiciary's stance over the decades, by examining the colonial influence, the perception of rape as per Macaulay's commission, post-Independence India and rape, the relationship between fundamental rights and marital rape etc.

I. COLONIAL INFLUENCE

Like in a number of other former British colonies, India has a lengthy history of colonial control, which is directly related to the establishment of the exception for marital rape in British jurisprudence and the country's penal code. The idea was initially presented in the History of the Pleas of the Crown in 1736 by the Chief Justice of England at the time⁷. According to his argument, a wife cannot be judged guilty of raping her husband since she gave her husband her matrimonial permission, which she cannot take back, and signed a marriage contract, which commits her to him. The common law exemption that states a husband cannot be found guilty of raping his own wife—or, to put it another way, that a woman cannot be raped by her own husband—was based on this idea, which eventually became known as the Lord Hale doctrine. Here, it becomes important to highlight that Hale supported his theory only with the idea of the wife's irreversible agreement, rather than with sound legal reasoning.

⁶ Kumar, Vidhik (2021) "Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India," Dignity: A Journal of Analysis of Exploitation and Violence: Vol. 6: Iss. 3, Article 6.

⁷ Sankaran, M. V. "THE MARITAL STATUS EXEMPTION IN RAPE." Journal of the Indian Law Institute, vol. 20, no. 4, 1978, pp. 594–606. JSTOR, <http://www.jstor.org/stable/43950556>.

Moreover, the "unities" theory—which held that a husband-and-wife merge into a single, unchanging identity—was put forth by Blackstone in the middle of the 18th century, which contributed to the increased acceptance of the marital rape exemption. In addition to the "unities" thesis, the "separate sphere" doctrine, which suggested that men and women should occupy distinct domains of society—that is, males the public or political sphere and women the private sphere—further destroyed women's civil identities obtaining the private and familial domain. In addition, since it was already established that women belonged to their husbands, no laws governing male authority in the home were created, giving men complete freedom to mistreat their spouses without worrying about the consequences⁸. Due to the combined effects of all the aforementioned views, most common law nations now consider the prohibition of marital rape to be both practically and legally impossible.

II. RAPE AND MACAULAY'S COMMISSION

Article 372 of the Indian Constitution maintains the applicability of the Indian Penal Code, 1860 (henceforth, IPC), which was drafted by T. B. Macaulay and his fellow law commissioners. Sections 375 and 376 of the Indian Penal Code, which came into being in 1860, respectively addressed the offence of rape and its punishment, were derived from Clauses 359 and 360 of Macaulay's Draft Penal Code. Section 359 provided that:

When a man has sexual relations with a woman in the following specific circumstances, it is deemed that he has committed rape. These situations can include ones in which the woman is under nine years old, uncooperative, unconscious, or pressured into providing consent out of fear of harm. They can also involve lying to the woman about the man's identity. It is significant to remember that under this rule, a man's sexual relations with his wife are not considered rape.

Clause 360 of Macaulay's Code stipulates that rape carries a sentence of two to fourteen years in jail. Engaging in sexual activity with a woman under certain circumstances, such as when she is unconscious, pressured out of fear, misled about the man's identity, or if she is less than nine years old, is considered rape. Notably, a man's sexual relations with his spouse are not seen to constitute rape under the law. According to Macaulay's Code, Clause 360, a person

⁸ Bhat, Meghna, and Sarah E. Ullman. "Examining Marital Violence in India: Review and Recommendations for Future Research and Practice." *Trauma, Violence & Abuse*, vol. 15, no. 1, 2014, pp. 57–74. JSTOR, <https://www.jstor.org/stable/26638333>.

convicted of rape may be imprisoned for a maximum of fourteen years and a minimum of two years⁹. The final versions of sections 375 and 376 in the 1860s IPC varied slightly from clauses 359 and 360, respectively, following discussions in the Select Committee. A quick look at clauses 359 and 360 reveals that Macaulay and his team most likely believed that a woman who marries her husband forfeits her right to refuse sexual relations with him forever and that the husband thus gains the unqualified right to force sex on his wife¹⁰. They gave marriage a premium treatment. Because the commissioners presumably did not think it appropriate for a man to engage in sexual activity with another man inside his own jurisdiction to commit rape, they may have considered "marital rape" to be rape, giving them the unqualified and unconditional right to force.

III. POST-INDEPENDENCE INDIA

Post Independence, three cases in the late 1970s and early 1980s sparked a public discussion about rape and influenced India's newly formed feminist movement. The rape statute was amended in 1983 because of the national effort this movement launched to address the issue of rape. The first instance concerned Hyderabad-based Muslim working-class woman Rameezabee. She and her spouse were detained by the police in April 1978 while returning from a late-night moviegoing excursion for "loitering. "The cops made a fine demand. To fetch the money, the spouse returned home. Three police officers raped Rameezabee when he was away. The husband came back, and the police beat him to death. Rameezabee faced legal action for seducing minor girls to become prostitutes. After being found guilty on this crime, she was given a year of probationary release¹¹.

The second case included Mathura, a tribal labourer from Maharashtra who was between the ages of 14 and 16. Her employer Nushi's cousin Ashok was someone she got to know. Mathura and Ashok made the decision to wed. Gama, her brother, reported to the local police on March 26, 1972, that Ashok and Nushi had abducted Mathura. They brought Nushi, Ashok, Mathura, and Gama to the police station so they could be questioned and have their

⁹ Jolly, Stellina, and M. S. Raste. "RAPE AND MARRIAGE: REFLECTIONS ON THE PAST, PRESENT AND FUTURE." *Journal of the Indian Law Institute*, vol. 48, no. 2, 2006, pp. 277–84. JSTOR, <http://www.jstor.org/stable/43952037>.

¹⁰ See, Hale, *History of the Pleas of the Crown* vol. 1 (1736) and East, *Treatise of the Pleas of the Crown* (1803).

¹¹ Gangoli, Geetanjali. "Controlling Women's Sexuality: Rape Law in India." *International Approaches to Rape*, edited by Geetanjali Gangoli and Nicole Westmorland, 1st ed., Bristol University Press, 2011, pp. 101–20. JSTOR, <https://doi.org/10.2307/j.ctt9qgkd6.9>.

statements recorded. As they were about to leave the police station at 10:30 p.m., Mathura was restrained by Constable Ganpat and Chief Constable Tukaram. Tukaram attempted to rape her and Ganpat had already raped her. Mathura told the gathering outside the police station that she had been sexually assaulted as soon as she left. The throng encircled the station and applied enough pressure to guarantee that a rape charge was filed. The Bombay High Court overturned the Sessions Court's decision to acquit the accused and found Tukaram and Ganpat guilty of rape. Justice Koshal of the Supreme Court reversed the ruling of the High Court, expressing scepticism towards Mathura's assertions and stressing that, in accordance with section 375 of the Indian Penal Code, consent for sexual relations may only be revoked in the event of a threat of death or bodily damage¹².

In the third case, a young middle-class woman named Maya Tyagi was traveling to her parents' home in Haryana on July 18, 1980. Her spouse physically assaulted a civilian police officer who tried to harass her when her car broke down. The policeman killed her husband by shooting him when he returned with additional cops. Before being raped at the police station, Maya was publicly humiliated, stripped, and dragged out of the automobile. After being wrongly accused of being an armed robber (dacoit), she was eventually freed on bond. The sensitivity of victims of sexual abuse while in detention and police violence are brought to light by this case¹³.

Cases of police injustice and rape in custody were brought to light by the cases of Mathura, Rameezabee, and Maya Tyagi. After being raped while in detention, these women were mistreated and faced false allegations. Public outcry over the incidents resulted in campaigns calling for victim justice and legal reforms. Nationwide protests, court investigations, and calls for changes to rape laws erupted in response to these cases. A major campaign calling for reforms to the judicial system to safeguard women's rights and properly handle custodial rape was sparked, in part, by the Mathura case. In order to raise awareness and mobilize support for the cause, legal professors wrote an open letter denouncing the Supreme Court's decision in the Mathura case. This helped spark campaigns and advocacy groups all over the nation.

¹² Tuka Ram and Anr v. State of Maharashtra, 1979 SCC (2) 143 ACT

¹³ Maya Tyagi, Meerut v. Ito, Baraut (Maya Tyagi Case) AIR 1978 All 386

IV. FUNDAMENTAL RIGHTS AND MARITAL RAPE

Marital rape breaches some of the victims' most fundamental human rights and causes extreme physical and psychological anguish because it is such a demeaning act. Many laws exist which create women's legal identities as distinct from those of their husbands, in addition to measures that prevent and remedy violence against women, as the 2013 "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act" (also known as the Protection of Women from Domestic Violence Act, 2005). The marital rape exception is live evidence that the nation is still mired in a time when women had no rights, but the situation surrounding it has not altered all that much¹⁴. The Indian Constitution's most fundamental rights—the right to equality under Article 14 and the right to life and liberty—are violated by the exemption against marital rape. The Indian Constitution's Article 21 guarantees personal liberty. The marital rape exemption creates a clear division between married and single women, providing them with two distinct levels of protection: married women are not protected from being raped by their husbands, while single women are protected from rape by any man. The exemption is in violation of article 14 since it does not afford married women the same protection against sexual assault and rape as it does to unmarried women. Only when a categorization has a reasonable connection to the goal the act seeks to accomplish can it be considered just and reasonable for the purposes of article 14 scrutiny¹⁵. The fundamental goal of section 375 is to protect women from sexual assault and to prosecute those who conduct it; nevertheless, exception 2 absolves married men of responsibility for sexual assaults against their wives, which not only defeats but also runs counter to the section's stated goal.

Additionally, the exemption goes against Article 21 of the Constitution. The Indian Supreme Court has ruled repeatedly in rulings that a person has the right to freely choose her intimate partner and to engage in sexual activity voluntarily; using force would be considered physical-sexual violence which infringes the individual's dignity¹⁶ and right to privacy¹⁷. The Supreme Court ruled that these principles apply to everyone, regardless of gender or marital status, without making any distinctions between married or single people. If it had intended to

¹⁴ Chapman, Jean. "Violence against Women in Democratic India: Let's Talk Misogyny." *Social Scientist*, vol. 42, no. 9/10, 2014, pp. 49–61. JSTOR, <http://www.jstor.org/stable/24372976>.

¹⁵ *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75)

¹⁶ *The Chairman Railway Board & Ors v. Mrs. Chandrima Das & Ors*, (2000) 2 SCC 465; MANU/SC/0046/2000; AIR 2000 SC 98

¹⁷ *State Of Maharashtra And Another vs Madhukar Narayan Mardikar*, 1991 SCC (CRI) 1

apply these principles differently, it would have done so. If it had been intended just for women or single women, it would have said as much.

CULTURAL AND LEGAL REASONS FOR NOT CRIMINALIZING MARITAL RAPE IN INDIA

In countries like India, gender roles and patriarchal norms sustain an unequal power dynamic, legitimising sexual assault and eroding women's autonomy and consent. Victim-blaming and societal stigmas silence survivors and discourage them from getting assistance. The idea of marital rape as it is understood internationally is thought to be inappropriate for use in the Indian context because of a number of reasons, including poverty, illiteracy, a wide range of social customs and values, religious beliefs, and a societal attitude that views marriage as a sacrament. When politicians or anyone else uses the "Indian culture/context" defence to argue against making marital rape a crime, they are essentially saying that the need to address sexual violence committed within the very structures they claim to be so deeply ingrained in is less important than their patriarchal ideas about male dominance, family dynamics, and ownership over the female body. India must move quickly to pass progressive laws that adhere to international norms, particularly in the area of gender-based violence, in order to stop the right to bodily autonomy from being violated under the pretext of customs and culture. It is important to remember that India has ratified international accords such as the convention on the elimination of all forms of discrimination against women, which criminalise marital rape and impose duties on the country to implement its terms. Since marriage is meant to be a partnership based on trust and agreement, arguing that marital rape might jeopardise the structure of marriage is tantamount to declaring marital rape, which is ultimately a form of sexual violence that makes it a fundamental part of the institution.¹⁸ The majority of nations on earth acknowledge that rape is a crime and that it is an act of rape. However, India, a rising "superpower," has been impeded. A thorough examination reveals multiple contributing factors: an antiquated Indian Penal Code that dates back to the Victorian era; an inflexibly patriarchal society that suppresses women's agency and voice throughout India's numerous religions; and a culture where marriage and family, in the archaic sense of the word, remain the cornerstones of society. But the Union Government itself is perhaps the most obstinate barrier preventing India from making marital rape a crime. The government has continued to defend men who rape their wives by citing the same few

¹⁸ BENNICE, JENNIFER A., and PATRICIA A. RESICK. "MARITAL RAPE: History, Research, and Practice." *Trauma, Violence & Abuse*, vol. 4, no. 3, 2003, pp. 228–46. *jstor*

arguments over and over, even though there are usually multiple writ petitions challenging the marital rape exemption to Section 375¹⁹ before the Supreme Court and the various high courts, filed by private citizens and civil society organisations. All it takes to dissect the explanations into their most basic components is a critical eye: sexism and misunderstandings. The few factors preventing the criminalisation of marital rape will be substantiated below.

I. CRIMINALIZATION GOING AGAINST THE ESSENCE OF INDIAN CULTURE

According to, Dipak Misra, a former chief justice of India, stated that marital rape should not be criminalised in India "because it will create absolute anarchy in families and our country is sustaining itself because of the family platform which upholds family values." The premise of this argument is that, because of the significant cultural and socioeconomic divide between India and the West, marital rape cannot occur in India in the same way that it does in the West. The claim is that a culture of social mores, religious convictions, and extreme illiteracy makes it impossible to criminalise marital rape since people aren't ready for it. The Indian government implied that people who opposed women being raped by their husbands were "blindly" adhering to Western traditions.²⁰ The government stated that the country has its own special issues because of a variety of factors, including poverty, vast diversity, lack of financial empowerment for most women, literacy, and societal mindset. These factors should be carefully taken into account before criminalising marital rape. The government claims that because most Indians are impoverished, ignorant, conservative, and religious, as opposed to Americans, they think a husband cannot rape his wife because a nice Indian lady would always give her assent to her husband. According to the government, this presents a special challenge for India in terms of making marital rape a crime.²¹ In doing so, it admits that thousands of men violate their wives' sexual permission on a regular basis because of this mentality and that what they're doing is, in fact, rape. Then the government claims that most marriages will end if they make marital rape illegal in these situations, presumably because

¹⁹ Section 375, The Indian Penal Code, 1860

²⁰ X, Laura. "Marital Rape." *Off Our Backs* 15, no. 1 (1985): 24–24, Heinonline

²¹ *Id*

women will confront their rapist husbands (who may thereafter be seen as criminals by the law) and use their legal options to pursue protection and justice. If the government's reluctance to criminalise marital rape stems from the fear of marriages disintegrating, then it is acknowledging that women will wish to put an end to the daily sexual abuse they experience in their marriages if they have legal redress and protection. The Supreme Court concurs that making marital rape a crime does not pose any harm to marriages. In **Independent Thought v. Union of India**,²² the Court made it clear that marriage is private and that the institution of marriage cannot be destroyed until the Indian State makes it illegal to get married. It said that criminalising marital rape cannot undermine the institution of marriage, just as divorce and legal separation haven't. It's interesting to note that the Gujarat High Court has decided that marital rape is what has harmed the institution of marriage since it is a non-consensual conduct that betrays trust and confidence in a partnership.

II. PATRIARCHY'S POWER PLAY

In the past, patriarchal societies restricted the rights and freedoms of women in marriage, therefore upholding the dominance and control of males. This has resulted in social standards that devalue women's physical integrity and personal autonomy, frequently ignoring or downplaying the problem of non-consensual sexual activity in marriages. Over time, as public opinions have changed, so too has the legal system in India regarding marital rape. Adopted in 1860, during the British colonial era, the Indian Penal Code (IPC) made rape a crime, but it also excluded non-consensual sexual actions performed by a husband against his wife. The idea that marriage signified unchangeable agreement to sexual encounters served as the foundation for this exemption. This exception served to uphold the idea that wives had little control over their own bodies and that they were their husbands' property.²³ India has witnessed an increase in the acknowledgement of gender equality and women's rights in recent times. Advocates are calling for the recognition and punishment of marital rape, a problem that has gained significant attention. The legislation has been changed gradually and contentiously. Critics argue against making marital rape a crime because they worry about

²² Independent Thought v. Union of India, [2017] 10 SCC 800, AIR 2017 SC 4904

²³ SIR MATTHEW HALE, HISTORIA PLACITORUM CORONAE: THE HISTORY OF THE PLEAS OF THE CROWN (Professional Books Limited, P.R. Glazebrook ed., 1971)

legal abuse and government meddling in personal family affairs. They also voice worries about possible harm to cultural norms and values. Although there has been a noticeable increase in public knowledge of marital rape, there is still more to be done to change society perceptions, the law, and the support networks for victims. A comprehensive strategy that includes education, awareness campaigns, support services, and legislative changes is required to empower survivors and confront patriarchal attitudes that perpetuate this violence. All things considered, the historical and cultural context of marital rape in India emphasises the necessity of significant legal and societal changes to safeguard people's rights and well-being in married relationships, as well as to guarantee that consent, autonomy, and gender equality are valued and upheld.²⁴ It also throws light on how the patriarchy has contributed to centuries of subordination of women's rights

III. THE FEMINIST PERSPECTIVE

The premise that sexual violence in marriage is a type of gender-based violence that upholds the disparity in power between men and women is at the heart of the feminist position on marital rape. Feminists believe that women ought to be in charge of their own bodies and have the freedom to decide when and with whom to have sex. The situation in India, on the other hand, is complicated as marital rape is still a taboo and often disregarded topic there. Marital rape victims in India are not legally protected, and the problem of sexual violence within marriage has long been disregarded by the country's patriarchal society. Marital rape is not considered a criminal offence in India, and there are no laws protecting women from it. Moreover, women in India are frequently under a great deal of pressure to uphold the sanctity of marriage, even at the expense of their personal wellbeing, according to cultural and societal conventions. It might be difficult for wives who speak out against abusive husbands to get social and legal help since they risk being shunned and stigmatised.²⁵ Nonetheless, there is a burgeoning feminist movement in India that is opposing the societal and legal conventions that support violence against women, including rape in marriage, and gender inequity. In India, feminist groups have been fighting for social and legal safeguards for

²⁴ Law Commission of India, Review of Rape Laws, Report No. 172 (March 2000)

²⁵ Gelles, Richard J. "Power, Sex, and Violence: The Case of Marital Rape." *The Family Coordinator*, vol. 26, no. 4, 1977, pp. 339–47. *Heinonline*

women who are victims of marital rape as well as increasing public awareness of the problem. Here are some instances of feminist groups and movements in India that are tackling the problem of spousal rape. A feminist collective formed by students, the Pinjra Tod movement was founded in Delhi in 2015 with the intention of challenging patriarchal conventions that restrict women's freedom and movement within and outside of educational institutions. The "One Billion Rising" Campaign is a global movement that aims to end violence against women and girls; the "Majlis Legal Centre"²⁶ is a feminist legal aid and advocacy organisation based in Mumbai; and the group has been actively protesting against sexual harassment and violence, including marital rape. The group offers legal assistance to women who have been victims of prejudice and abuse, including rape in marriage. The Majlis Legal Centre has been a leading proponent of legal reform in India, pushing for the recognition of marital rape as a crime.

IV. INTERSECTION WITH G²⁷ENDER INEQUALITY

Marital rape is an example of gender inequality and a reflection of the uneven power relations that exist in society between men and women. First of all, the power dynamics between men and women in a marriage are reflected in instances of marital rape. In the past, marriage was perceived as a transfer of ownership from a woman's father to her husband, and women were considered the property of males. The idea that a man has the right to have sex with his wife without getting her permission stems from this view. This kind of thinking perpetuates gender inequality by supporting the notion that males are entitled to control women in all spheres of life, including sexuality.²⁸ For instance, marriage is seen as a contract in some nations, allowing men to have sex with their spouses against their will. In these situations, gender inequality is maintained because the legislation is created to uphold the rights of males rather than women. Secondly, when it comes to seeking legal action after being raped in marriage, women frequently face obstacles due to gender imbalance. Owing to societal and cultural conventions, women can be reluctant to criticise their spouses. In addition, it can not be

²⁶ Network, L.N. (2021) Gujarat HC to consider if exception to marital rape from Section 375 IPC violates wife's fundamental right to sexual autonomy, *Live Law*

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²⁸ Llewellyn, *supra*, at 401-06

considered a crime by the judicial system, which makes it difficult for women to pursue justice. Thirdly, women frequently find it difficult to leave violent relationships, particularly those that include marital rape, due to gender disparity in terms of economic and social power. Women may frequently be financially reliant on their spouses and lack the resources to exit the marriage.²⁹

V. CULTURAL INVALIDATION

80% of people in general think that men use force to get their wives to engage in sexual activity frequently or fairly frequently. Despite this, the general culture has persistently discredited marital rape. The widely held notion that marital rape is not "real rape" has been one of the main causes for this pervasive cultural invalidation. Several research has confirmed the trend that the more intimate the victim-offender connection, the lower the threshold for classifying the event as a rape, the higher the victim's share of the responsibility, and the lower the felt injury.

First, a new research shows how our culture's definitional bias defines forced sexual relations with an intimate partner as rape.

Second, by faking the victim-perpetrator connection, a researcher looked at victim-blaming and rape supporting views in a sample of about 100 graduates. The findings showed a considerable difference in the types of relationships, with marital rape scoring highest on measures of victim blaming and rape-supportive views, and stranger rape scoring lowest. Furthermore, for the scenario that showed a history of sexual relations between the victim and the offender, participants approved noticeably more attributions that blamed the victim and supported rape. The latter finding raises the possibility that the implicit history of sexual consent between the perpetrator and victim accounts for a portion of the definitional prejudice against marital rape. It is probable that common-law theory (e.g., Hale doctrine) that upheld the idea of irreversible consent may have historically resulted in this prejudice.

Third, by asking people what they think should happen in terms of legal repercussions for such crimes, a number of studies have looked into how severe people believe marital rape to be. An initial investigation into this matter was carried out in Maryland prior to the prohibition of marital rape. Participants in this study were asked to rate the seriousness of a

²⁹ Ghosal, Sarbani Guha, and Sarbani Guha Ghosa. "SOCIO-POLITICAL DIMENSIONS OF RAPE." *The Indian Journal of Political Science*, vol. 70, no. 1, 2009, pp. 107–20.

variety of criminal acts by Rossi, Waite, Bose, and Berk (1974). Since it was not yet prohibited, rape committed by a present spouse was left out of the study. Participants regarded the gravity of forced rape by a former husband as almost equal to that of blackmail, LSD usage, and drunk driving. Interestingly, the top 25 rankings included all other types of rape.³⁰

SUGGESTIONS

It is clear that marital rape is a widespread problem in India, and the authors recommend a number of measures to effectively address its pervasiveness:

A. Remove the Exception for Marital Rape

First and foremost, the Indian Penal Code's provision for marital rape must be completely removed.¹⁵³ Likewise, it would essentially prohibit marriage from being used as a defense to rape claims if the Code defined marital rape as a criminal violation.

B. Implement Effective Police Procedures

Second, effective police methods need to be supported by the State. One major obstacle that deters women is the presence of antagonistic police procedures. From initially reporting acts of violence. Another obstacle for women reporting sexual assault in married relationships is the ability of law enforcement discretion to prevent officers from filing charges.

C. Fight Negative Stereotypes

Finally, the continued prevalence of marital rape in India can be linked to deeply rooted patriarchal beliefs, as well as crippling societal and economic systems that are common across the nation. Due to the societal stigma in India associated with rape victims and the negative perception of women who are unable to "make their marriage work," women are less likely to report incidents of rape within their marriages. As a result, eliminating long-standing stigma and preconceived notions about women is crucial to ending marital rape.

³⁰ JENNIFER A. BENNICIE and PATRICIA A. RESICK, *Trauma, Violence & Abuse*, July 2003, Vol. 4, No. 3 (July 2003), pp. 228-246, *jstor*

CONCLUSION

The research paper delves into the unspoken reality of marital rape, focusing on the intersection of power, taboo, and sex within the context of Indian society. It highlights the prevalence of marital rape in India and the lack of legal criminalization of this form of sexual abuse, attributing it to factors such as the sanctity of marriage and the relationship between the perpetrator and the victim. The paper employs a doctrinal research design to analyze the Indian judiciary's stance on the criminalization of marital rape, emphasizing the detrimental effects on survivors and the arguments in favor of criminalization. It also examines the historical tensions between Indian feminists and the judicial system, tracing the evolution of the judiciary's stance from the colonial era to recent times. The document discusses the cultural and legal reasons for not criminalizing marital rape, including the perceived threat to Indian culture and the power dynamics influenced by patriarchal norms. It further explores the feminist perspective, highlighting the feminist movements in India advocating for legal safeguards for victims of marital rape and the intersection of marital rape with gender inequality. Additionally, it addresses the cultural invalidation of marital rape, shedding light on the prevailing bias that defines forced sexual relations within intimate relationships as not constituting "real rape."

Overall, it can be concluded that this research paper presents a comprehensive and insightful analysis of the multifaceted issue of marital rape in India, encompassing legal, cultural, and feminist viewpoints. It effectively captures the complexity of the subject matter, providing a thorough examination of the historical, cultural, and legal factors that have contributed to the lack of criminalization of marital rape in India, while also highlighting the efforts of feminist movements to address this issue and the intersection of marital rape with gender inequality.