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**CRIMINALIZING MARITAL RAPE VIS-A-VIS SANCTITY OF MARRIAGE IN
INDIA THROUGH LENSES OF GENDER JUSTICE**

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ABSTRACT

“I do believe in the sanctity of marriage. ...But I don't see that as conflict with being a tolerant person or an understanding person.” George W. Bush, 43rd President of the United States.

Criminalizing marital rape in India is a sensitive issue navigating equilibrium between protecting the sanctity of marriage and ensuring gender justice. The existing laws in India does not explicitly criminalize marital rape. It may be considered as an inadequacy of the legal frameworks in addressing intimate partner violence while acknowledging the fundamental right to bodily autonomy, but at the flip of a coin criminalizing sexual violences between spouses and living partners, raises concerns about potential misuse of such laws, intrusion into private matters, reflects broader societal attitudes and cultural norms as well as emphasizing respect in the institution of marriage. It becomes crucial to consider legal reforms that strike a balance between protecting individuals from marital rape and upholding the sanctity of marriage. While discussing to enact laws governing this socio-constitutional issue, careful consideration of cultural values, community perspectives, and the overarching goal of promoting a society that values both marital bonds and individual rights is required.

This research paper explores the dynamics surrounding the criminalization of marital rape in India within the framework of gender justice and protection of women rights enshrined under the Constitution of India. Studying legal, cultural, and social dimensions, this study examines the impact of recognizing marital rape as a criminal offense on the sanctity of marriage. By scrutinizing notions of consent, autonomy, and societal expectations, the paper aims to provide a comprehensive understanding of the challenges and opportunities in harmonizing legal reforms with the imperative of gender justice in the Indian context. The research contributes to the ongoing dialogue on enhancing legal protections for individuals within the institution of marriage while navigating cultural sensitivities.

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This research paper aims to find out the issues and problems relating to criminalizing the marital rape safeguarding gender equality under international declarations and commitments, as well as constitutional goal. The research methodology adopted by the researcher is mixed research based on exploratory, interview and convenience stratified random non-probability accidental sampling method. The findings of the study are based on qualitative literature review and the quantitative collection of data.

Keywords:

Sanctity, Marriage, Tradition, Family-Values, Culture, Marital Rape, Gender Justice, Criminalizing, Tradition, violence, socio-constitutional.

INTRODUCTION

Marital rape refers to the non-consensual sexual activity within a marriage or intimate relationship, where one spouse forces the other to engage in sexual acts against their will. It is a form of domestic violence and a violation of personal autonomy and bodily integrity. Historically, many legal systems did not recognize marital rape as a criminal offense, as the assumption was that marriage implied ongoing consent to sexual activity. However, attitudes have evolved, and laws in many jurisdictions now recognize that consent is essential in any intimate relationship, including marriage. The criminalization of marital rape aims to protect individuals from sexual assault within the confines of marriage and promote a broader understanding of consent and respect for autonomy in relationships.

As of that time, marital rape had not been explicitly criminalized in India. Marital rape was a contentious issue, and activists and advocates had been pushing for legal reforms to address this gap.

India's legal framework regarding sexual offences within marriage was primarily governed by Section 375 of the Indian Penal Code, which had an exception clause. The exception stated that sexual intercourse or sexual acts by a man with his own wife, as long as she is above 15 years of age, is not considered rape. This exception was widely criticized for perpetuating the idea that a woman loses her right to deny consent upon marriage. Efforts to criminalize marital rape in India has faced various challenges, including cultural and societal attitudes, as well as concerns about the potential misuse of such laws. However, there are increasing voice in need and demand to protect women from sexual violence especially offence of rape, within the confines of marriage. Various women's rights groups, NGOs, and activists in India have

been actively campaigning for the criminalization of marital rape. These efforts aimed to raise awareness about the issue and challenge societal norms that perpetuated the idea of implied consent within marriage. Public demonstrations, awareness campaigns, and social media movements have been instrumental in highlighting the need for legal reforms to protect individuals from sexual violence within marital relationships.

Legal challenges mounted to address the existing legal framework that exempted marital rape from criminalization. Public interest litigations (PILs) and petitions were filed in various courts, including the Supreme Court of India, urging a reevaluation of laws relating to marital rape. In some cases, it is argued that the exception in Section 375 of the Indian Penal Code, which excluded marital rape from the definition of rape, was unconstitutional and violated the principles of equality and individual rights.

The issue of criminalizing marital rape sparked debates in the Indian Parliament. While some lawmakers expressed support for legal reforms, there were also opposing views, citing concerns about potential misuse and the sanctity of marriage. The government's stance on this matter has evolved over time, with discussions and debates continuing on the need for legal amendments. It's important to note that legal and social developments can change, and the status of the demand for criminalizing marital rape in India may evolve in future.

ARGUMENTS IN FAVOUR CRIMINALIZING MARITAL RAPE:

In support of the criminalization of marital rape in India it is argued for need of legal reforms based on several key principles and considerations. Here are some points made by the supporters is support of the demand for criminalizing marital rape in India:

- a) Equality and Individual Rights: The principle of equality enshrined under the Article 14 is emphasized by the supporters of criminalizing marital rape in India and it is argued that everyone, regardless of their marital status have the right to bodily autonomy and the freedom to choose when and how they engage in sexual activity.
- b) Informed Consent: The foundation stone of the argument supporting need for marital rape being cognizable offence is the concept of informed consent. The supporters stress that consent is a continuous and mutual agreement between partners, and marriage should not be considered a blanket consent for all sexual activity.
- c) Addressing Gender-Based Violence: Criminalizing marital rape is seen as a crucial step in addressing gender-based violence as it acknowledges that domestic violence

can extend to sexual abuse within the confines of marriage and reinforces the idea that no one should endure such violence, even within a marital relationship.

- d) **Human Rights Perspective:** It is often argued from the human rights perspective, that the right to live a life free from violence and discrimination is a fundamental right. Criminalizing marital rape aligns with the broader human rights framework that seeks to protect individuals from harm, irrespective of their relationship status.
- e) **Global Norms and International Obligations:** It is also pointed out in support of the demand for criminalization of marital rape in India, that the international human rights conventions, to which India is a signatory, call for the protection of individuals from all forms of violence, including marital rape. Aligning national laws with these international standards is seen as a step towards fulfilling India's commitments.
- f) **Changing Societal Attitudes:** Criminalizing marital rape can contribute to changing societal attitudes and challenges deeply ingrained norms that perpetuate the idea of implied consent within marriage and it sends a strong message about the unacceptability of any form of violence against the women, even it is within intimate relationships.
- g) **Access to Justice:** Criminalization of marital rape provides survivors of such crime with legal recourse and access to justice. It acknowledges the trauma experienced by survivors and establishes a legal framework to hold perpetrators accountable for their actions.

It's important to note that these points represent the perspectives of activists and feminists advocating for the criminalization of marital rape, and the issue remains a subject of debate, considering diverse opinions on the matter.

ARGUMENTS AGAINST CRIMINALIZING MARITAL RAPE:

The opponents to the criminalization of marital rape in India have presented various arguments, often rooted in cultural, social, and legal considerations. It's important to note that these perspectives may not be universally held, and views on this matter can differ. Here are some common arguments made against the criminalization of marital rape:

- a) **Preservation of Marital Privacy:** It is argued that criminalizing marital rape would intrude upon the privacy of the marital relationship. It is contended that the state should not intervene in the private affairs of a married couple, and that allowing legal authorities to intervene in marital disputes may lead to unintended consequences.

- b) **Heavy Risk of Misuse:** The potential misuse of anti-marital rape laws has been a strong point of concern for the opposers of such laws recognising rape by a husband over his wife and the same has been strongly raised. The opponents of this concept have argued the fear of false accusations could be made for various reasons, such as marital discord, revenge, or manipulation, leading to unwarranted legal consequences for the accused spouse.
- c) **Cultural and Social Considerations:** The cultural and societal norms is often invoked in opposing such criminalization of rape in domestic relationship or marriage, suggesting that criminalizing marital rape may clash with traditional values and beliefs. Some argue that such legal reforms might be perceived as imposing western ideals on Indian culture.
- d) **Difficulty in Enforcement:** The critics referred to the potential challenges of enforcing laws against marital rape in real world and as practically impossible to prove as there is a very low chances to produce witnesses and evidences etc. Proving non-consensual acts within the privacy of a marital relationship can be complex, and opponents argue that legal systems might struggle with effectively adjudicating such cases.
- e) **Role of Marriage in Indian Society:** Marriage is a sacred institution in the Indian society and considered as a pious sacrament between men and women, and criminalizing marital rape may undermine the sanctity of marriage. There is a belief that the marital relationship should be protected and regulated differently from other relationships.
- f) **Educational and Awareness Approach:** Instead of criminalization, it is strongly suggested by various eminent persons opposing such criminalization of marital rape that the focus should be made on education and awareness programs to address issues of consent within marriages. They argue that changing social attitudes and promoting healthy relationships could be more effective in the long run.
- g) **Legal Complexity and Definition of Consent:** The concerns are also raised about the legal complexities surrounding the definition of consent within marital relationships and argued that determining the absence of consent in a private and intimate setting can be subjective and challenging.

Therefore, it is right to say that the debate around the criminalization of marital rape in India is multifaceted, involving diverse perspectives shaped by cultural, legal, and social

considerations. Public opinion, legal reforms, and societal attitudes are subject to change, and ongoing discussions may lead to shifts in perspectives over time.

The call for criminalizing marital rape in India faces potential challenges due to cultural, social, and legal complexities. Concerns over privacy infringement in marital relationships, potential misuse of laws, and clashes with traditional values create resistance. Cultural norms often emphasize marital sanctity, making it difficult to implement legal reforms that may be perceived as foreign or intrusive. The difficulty in proving non-consensual acts within the private sphere of marriage poses enforcement challenges. Some argue that focusing on educational initiatives and raising awareness about consent within marriages might be more effective than immediate legal changes. The debate reflects the intricate balance needed to address this issue in India. India's readiness for marital rape laws remains a contentious issue. Cultural, societal, and legal complexities pose significant hurdles. Concerns about privacy, potential misuse of laws, and clashes with traditional values impede widespread acceptance. Deeply ingrained norms emphasizing marital sanctity make it challenging to introduce legal reforms perceived as intrusive. Enforcing such laws in the private realm of marriages is complicated, with the difficulty of proving non-consensual acts. Some argue for a focus on education and awareness programs to foster a cultural shift. The debate underscores the delicate balance required to address marital rape issues within the diverse social fabric of India.

CONCLUSION

In conclusion, this research delves into the complex discourse surrounding the criminalization of marital rape in India, juxtaposing the sanctity of marriage against the constitutional guarantees of human rights. The findings underscore a societal acknowledgment of marital rape as a pressing issue, reflecting an evolving awareness, while concerns about potential infringement on the sanctity of marriage and misuse of such law persist, a substantial portion of respondents recognizes the urgent need for legal reforms. The study affirms that criminalizing marital rape aligns with constitutional principles safeguarding human rights. As India grapples with this multifaceted issue, a delicate balance must be struck between cultural sensitivities and the imperative to protect individuals from gender-based violence, emphasizing the evolving nature of societal attitudes and the ongoing need for nuanced policy considerations. The research successfully highlights the multifaceted and complex nature of criminalizing marital rape in context of marriage as sanctity and pious union of two

families and also the diverse religious, social, economic, educational and societal differences in population. This research is instrumental in raising awareness, guiding government policies and strategies; and also emphasizing the need of criminalizing marital rape in India.

RECOMMENDATIONS AND SUGGESTIONS:

A society that values the gender diversity promotes and includes equality as well as gives equal rights, legal protection without any differentiation within the population on the basis of any variance in marital status, sex, age etc. The provision or rider under the definition of rape under the Section 375 of the Indian Penal Code, 1860 and also section 63 of the Bhartiya Nyay Sanhita, 2023 is a considerable differentiation in application of criminal law to a subset of female population i.e. married women. However, the Bhartiya Nyay Sanhita has increased the age of wife for application of this proviso to 18 years from earlier 15 years once become effective law is a milestone of achievement in this regard. It is not only the ethical practice to promote fairness and equity in application of criminal law for protection against sexual abuse but also a moral social responsibility. Following are recommendations aim to guide policymakers, legislators, and stakeholders in navigating the complexities surrounding the criminalization of marital rape, while upholding the principles of human rights and gender justice in the Indian context.

1. It is need of the hour for a comprehensive legal reform to criminalize marital rape while ensuring due process and safeguards against potential misuse with provisions that balance the protection of individuals' rights with the preservation of marital privacy.
2. Nationwide awareness campaigns to educate the public on the subject matter of marital rape, consent, and proposed legal changes is recommended for effective development and implementation with focus on dispelling myths, promoting open discussions, and challenging societal norms that perpetuate violence within marriages.
3. The researcher suggests specialized training programs for law enforcement personnel to sensitize them to the unique challenges of investigating and addressing marital rape cases including understanding the dynamics of domestic violence, trauma-informed approaches, and the importance of respecting victims' rights.

4. The research paper also advocates for the establishment and strengthening of support mechanisms for survivors of marital rape with accessible helplines, counseling services, and legal aid to ensure that victims have the resources they need to seek justice and recovery.
5. The need of the hour is to encourage collaboration between government agencies, NGOs, and civil society organizations to address the subject matter of marital rape comprehensively in partnerships to promote awareness, provide support services, and contribute to the ongoing dialogue on gender justice.
6. It is highly recommended that continued research is necessary to monitor the impact of legal reforms, assess societal attitudes, and identify any unintended consequences. Long-term studies can provide valuable insights into the effectiveness of the criminalization of marital rape in promoting gender justice and protecting human rights.
7. It is also suggested to have periodic review of the policies and laws related to marital rape in order to ensure relevance and effectiveness in the fast-changing society. An adaptive approach will allow continuous improvement based on evolving societal norms, legal precedents, and emerging challenges such as misuse of law etc.
8. As various countries in the developed world have already criminalized the marital rape and although the marriage norms may or may not be similar to our society but the concept of marital rape is successfully implemented and monitored. Hence it is suggested to encourage collaboration with international organizations and human rights bodies to share best practices, experiences, and research findings. This can foster a global dialogue on addressing marital rape and contribute to a broader understanding of effective legal frameworks.