

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 1

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Criminalization of Marital Rape in India: Need of the Hour

NAZUK SOOD¹

ABSTRACT

Rape is one of the heinous crimes which can be committed against women in society. Marital rape is a disgraceful offence that still exists in India in the age of feminism and gender equality and has scarred the trust and confidence of women in the institution of marriage. Although many laws are made to ensure the safety of women, it has failed to criminalize the rape that happens within the four walls of the house. Many women have to face the brunt due to the non- criminalization of Marital Rape. Exception II to Section 375 of the Indian Penal Code explicitly states that sexual intercourse by a man with his own wife, the wife not being under the age of 15 years, is not rape. Non- Consensual sexual act with an unmarried girl amounts to rape, but when it is committed against a married woman, it no longer amounts to an offence. Legislators and courts have failed to give the justification for the same for the reasons only known to them. The paper discusses the need for criminalizing Marital Rape in India, and it should be a developed notion that non-consensual sexual acts will amount to rape whether committed against married or unmarried women. The paper also focuses on the legal and judicial framework of Marital Rape in India. Also, the researcher has discussed the final arguments which are being heard by the Delhi High Court presently on the issue of the validity of marital rape exception as carved out in Exception 2 to Section 375 of the Indian Penal Code.

Keywords: Criminalization, Forceful Sex, Marital Rape, Consent, Privacy, Dignity etc.

I. INTRODUCTION

Freedom cannot be achieved unless women have been emancipated from all kinds of oppression.

- Nelson Mandela

Sexual abuse is a major problem faced by women in India. It is most prevalent in the patriarchal society. Women in India are subjected to criminal atrocities such as Rape, Domestic Violence, sexual harassment, trafficking and forced prostitution. Domestic violence in India is a serious issue, and it has only been increased in recent years. According to the National Crime Records

¹ Author is an Assistant Professor of Law, RIMT University, Mandi Gobindgarh, India.

Bureau's report, "Crime in India, 2019", about 70% of women in India are victims of domestic violence.² One such aspect of this domestic violence is marital rape.

Marital rape refers to forcible sexual assault or the threat of physical violence committed by a husband without the consent of his wife. The Indiana University Press 1990 had reported that "More than 1 in every 7 married women has been subjected to rape in their marriage".³ Marital rape has been increased in a few years. Across the world, only 52 countries have recognized marital rape as a crime. At present, Marital Rape has not been recognized as a crime in many countries, including India.

One of the reasons for the non-criminalization of marital rape is that it would destroy the sacred union of marriage and will create absolute anarchy in families. In a patriarchal society, women are considered to be the property of their husbands. She doesn't have her own right and identity after marriage; Therefore, marriage is a license for the husband to have sexual intercourse with his wife even without her consent. Legislations have been enacted to ensure the protection and safety of women from brutal crimes like rape and domestic violence, but they have failed to criminalize the rape that happens within the four walls of the house. Non- Criminalization of marital Rape violates the dignity and fundamental rights of women.

II. THE LEGISLATIVE FRAMEWORK FOR MARITAL RAPE IN INDIA

The Indian Penal Code makes the offence of rape punishable under Sections 375 and 376. Section 375 provides for the offence of rape. According to this section, "A man is said to commit rape if he penetrates his penis or inserts, to any extent, any object, or a part of the body, not being the penis into the private part of a woman or manipulates any part of the body of a woman against her will or without her consent."⁴ A man is also said to commit rape if the sexual act is committed on a woman whose consent was obtained by putting her into fear of death or hurt or in the state of unsound mind or intoxication or when she is below the age of 18 years or when she is unable to communicate the consent.⁵ Exceptions to Section 375 mentions the circumstances where the intercourse does not amount to rape. Exception 2 states that "A man who engages in intercourse with his wife, the wife not being under the age of 15 years is not said to have committed rape".⁶ Section 376 of the Indian penal Code prescribes

² Crime in India 2019, Available at <https://ncrb.gov.in/en/crime-india-2019-0> (last accessed on 17th January 2022).

³ G.V Akshaya and M. Kannappan, *A Study on the Marital Rape in the Indian Legal Scenario*, 119 International Journal of Pure and Applied Mathematics, 1089 (2018).

⁴ Indian Penal Code, 1860, Section 375

⁵ *Ibid.*

⁶ Indian penal Code, 1860, Exception2, Section 375

the punishment for rape. It provides that “Whenever a person has committed rape, he shall be punished with rigorous imprisonment which may extend to life imprisonment and shall also be liable for fine.”⁷

There is no specific legislation that criminalizes marital rape in India. Marital rape is excluded from being an offence under the criminal laws, and Exception 2 of Section 375 of the Indian Penal Code explicitly mentions that sexual intercourse by a man on his own wife is ‘not a rape’ if the wife is above 15 years. However, married women are given other remedies when it comes to the non-consensual sexual act committed by their husbands.

Marital rape comes within the ambit of “cruelty” as defined under Section 498-A of the Indian Penal Code. It provides that “Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Cruelty as defined under Section 498 A refers to the acts which can induce the woman to commit suicide or causes danger to her life or her physical and mental health.”⁸ It covers both aspects – mental as well as physical cruelty. A man is said to commit cruelty if he engages in non-consensual sexual intercourse with her wife.

Another provision that is used by married women against marital Rape is Section 354 of the Indian Penal Code, which prescribes the punishment for outraging the modesty of a woman. It provides that “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”⁹ Protection of Section 354 can be taken as it prescribes the punishment for anyone who assaults or outrages the modesty of any woman, whether married or unmarried. In “Nimeshbhai Bharatbhai Desai v. the State of Gujarat”¹⁰, the Court held that “A man cannot be permitted to violate the dignity by coercing his wife to engage in a sexual act without her full and free consent. If he commits such an act, it will amount to outraging the modesty of the woman and will be punishable under Section 354 of Indian Penal Code.”

Section 377 identifies certain acts which, if committed, would constitute an unnatural offence, and such a prohibition regulates sexual conduct regardless of gender identity and orientation. Consent is not the determining criterion in the case of unnatural offences and rather any offence

⁷ Indian Penal Code, 1860, Section 376

⁸ Indian Penal Code, 1860, Section 498A

⁹ Indian Penal Code, 1860, Section 354.

¹⁰ Nimeshbhai Bharatbhai Desai v. State of Gujarat , (2018) SCC Online Guj 732

which is against the order of nature and can be described as carnal penetration and would constitute an offence under Section 377, thereby making it clear that a wife can initiate proceedings against the husband under Section 377 for unnatural sex.¹¹

The United Nations Declaration on the Elimination of Violence against Women defines violence as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”¹² Article 2 of the Declaration on the Elimination of the Women against Violence states that “Violence includes Marital Rape”. In 2013, the U.N Committee on Elimination of Discrimination Against Women recommended that it is the need of the hour for India to criminalize marital rape.¹³

There are various reports by the Law Commission of India which had discussed the issue of the criminalization of marital rape. 42nd Law Commission Report 1971, 85th Law Commission Report 1980, and 172nd Law Commission Recommendation 2000 suggested that the marital rape exception under the Indian Penal Code needs to be retained as, according to the lawmakers, the criminalization of marital rape would lead to excessive interference with the institution of marriage. After the nationwide protests over Delhi Gang Rape Case in 2012, J. S Verma Committee was set up to review the criminal laws. It suggested that – Marital Rape Exception should be deleted from the ambit of the Indian Penal Code. It further observed that “Consent will not be presumed in the event of an existing marital relationship between the complainant and accused”¹⁴

III. UNCONSTITUTIONALITY OF MARITAL RAPE

The trend of non- criminalization of marital rape emerged from the British era. When the Indian Penal Code was drafted, women were not given equal rights to that men. Married Women was not considered an independent legal entity. Marital rape was largely influenced by the doctrine of coverture. Under the “Doctrine of Coverture”, it was considered that after marriage, the identities of the man and the woman merge into one. Thus, Marital Rape was not considered an offence.¹⁵ In the age of gender equality, the notion of one identity of husband and wife

¹¹ Marital Rape, Available at <https://www.scconline.com/blog/post/2018/04/18/marital-rape-a-husband-cannot-be-permitted-to-treat-his-wife-like-a-chattel-and-violate-her-dignity/>(Last accessed on 17th January, 2022)

¹² Marital rape in India , Available at <https://www.drishtias.com/daily-updates/daily-news-editorials/marital-rape-in-india>(Last accessed on 22nd January, 2022)

¹³ *Ibid.*

¹⁴ Changes made in Indian penal Code, available at <https://lawcommissionofindia.nic.in/1-50/report42.pdf>(Last accessed on 22nd January 2022)

¹⁵ “Criminalizing Marital Rape: A Comparative Analysis of Indian and US Laws”, Available at <http://www.penacclaims.com/wp-content/uploads/2020/12/Sakshi-Mehta.pdf> (last accessed on 22nd January 2022).

doesn't seem to be appropriate. Women have a separate identity as that from men. Many Legislations have been enacted for the safety and the protection of women.

The Constitution of India provides certain safeguards for the protection of women. Marital rape violates the basic principles of the Right to Equality and the Right to life and personal liberty guaranteed under Article 14 and Article 21 of the Constitution, respectively. Article 14 of the Constitution guarantees the right to equality to every person. It provides that "State shall not deny to any person equality before the law and equal protection of the laws within the territory of India".¹⁶ Article 14 permits reasonable classification and prohibits class legislation. Explanation 2 of Section 375 states that "Sexual intercourse by a man with his wife, the wife not being under the age of 15 years is not rape."¹⁷ When a girl or woman is raped by a man, it will amount to rape, an offence under Section 375 of Indian Penal Code. But if they are married and the wife is above the age of 15 years, it would not amount to an offence under Section 375 of the Indian penal Code.

Exception 2 of Section 375 clearly violates Article 14 as it discriminates between married and unmarried women. The exception created two classes of women based on their marital status, and there is no reasonable classification for the same. In "State of West Bengal v. Anwar Ali Sarkar"¹⁸, the Supreme Court held that "Reasonable Classification under Article 14 should be based on the intelligent differentia and the State is violating the fundamental right of equality guaranteed under Article 14 by not criminalizing the marital rape".

Exception 2 clearly defeats the very purpose of Section 375 of the Indian Penal Code. The spirit of Section 375 lies in the protection of the women, whether married or unmarried, and to punish those who engage in the barbaric act of rape. Exempting the person from the punishment just because such person is legally married to the victim is entirely contradictory to the objective mentioned in Section 375 of the Indian Penal Code. The consequences of the rape are the same whether a woman is married or unmarried.¹⁹ It causes the same mental and physical agony to any woman. Moreover, married women may find it more difficult to leave the abusive conditions because they are legally and financially tied to their husbands. On the other hand, since the husbands know they are immune from being penalized, they are more encouraged to engage in sexual intercourse with their wives against her will and without her consent.

Article 21 of the Constitution guarantees the life and personal liberty of an individual. It

¹⁶ INDIA CONST. art 14.

¹⁷ Indian Penal Code, 1860, Exception 2, Section 375.

¹⁸ State of West Bengal v. Anwar Ali Sarkar 1952 SCR 284

¹⁹ Marital Rape in India, available at <https://www.drishtiiias.com/daily-updates/daily-news-editorials/marital-rape-in-india> (last accessed on 22nd January 2022)

provides that “No person shall be denied his life and liberty except the procedure established by law”.²⁰ The Supreme Court, with time, has expanded the scope of the right to life and personal liberty as enshrined under Article 21. The right to life is not just limited to the mere existence of an individual but also includes the right to health, privacy right to live with human dignity, the right to a clean and safe environment etc. The right to life with human dignity is the basic right of every individual. It has nothing to do with race, gender, religion, marital status, or caste.

In “Maneka Gandhi v. Union of India”²¹, the Supreme Court gave a new interpretation to the right to life guaranteed under Article 21. It held that “Right to life encompasses not only a bodily right but also right to life with human dignity”. Similarly, in the case of “Francis Coralie v. Union Territory of Delhi”²², the Court observed that “Right to life includes within its ambit the right to live with the human dignity and all the bare necessities of the life such as adequate nutrition, clothing and shelter”.

Marital rape is violative of Article 21, i.e., the right to live with human dignity. In “Soka v. Emperor”²³, the Court held that “Outraging the modesty of the wife will be punishable irrespective of the fact that she is of tender age or developed enough maturity to understand the gravity of the act. Modesty is an inherent characteristic of womanhood independent of any individual’s personality”. Married women have a fundamental right to live with dignity, which is protected under Article 21 of the Constitution of India. Marital rape undermines the basic dignity of a woman and is therefore violative of Article 21.

Right to life also includes within its ambit the right to privacy. Privacy is considered a fundamental right that is essential for the freedom and protection of human dignity. The right to privacy is not limited to the “right to be let alone” but can also be extended to other aspects, including bodily integrity, personal freedom, data protection, protection from state surveillance, dignity, confidentiality, compelled speech, and freedom to express own opinions and thoughts. In “K.S Puttaswamy v. Union of India”²⁴, the Court held that the right to privacy is a fundamental right of every person, which is protected under Article 21. The Apex Court observed that the “Right to privacy includes the right of an individual to make choices regarding his/ her sexual choices”. Exception 2 of Section 375 is a clear violation of the right to life and personal liberty of the woman who is subjected forcefully to sexual intercourse by

²⁰ INDIA CONST, art 21.

²¹ Maneka Gandhi v. Union of India 1978 SCR (2) 621.

²² Francis Coralie v. Union Territory of Delhi 1981 SCR (2) 516.

²³ Soka v. Emperor AIR 1933 Cal. 142

²⁴ K.S. Puttaswamy v. Union of India 2017(1) SCC 1

her husband.

In “State of Karnataka v. Krishnappa”²⁵, the Supreme Court held that “Sexual Violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and dignity of a woman”. It also observed that non-consensual sexual acts amount to physical and sexual abuse. Similarly, in the case of *Suchita Srivastava v. Chandigarh Administration*²⁶, the Supreme Court held that the right to personal liberty includes within its ambit the right to sexual privacy. Also, Justice DY. Chandrachud made the remarks in “Joseph Shine v. Union of India”²⁷ that “Husband is not the master or owner of the sexuality of the wife”.

In “Bodhisattwa Gautam v. Subhra Chakroborty”²⁸, the Supreme Court held that “Rape is the most barbaric act which can be committed against any person and violates the victim’s fundamental right to live with the human dignity which is protected under Article 21 of the Indian Constitution.” This clearly reflects that non-consensual sexual intercourse with a woman, whether married or unmarried, amounts to rape. Thus, Exception 2 of Section 375 violates Articles 14 and 21 of the Constitution, respectively, and Marital Rape should be criminalized under Section 375 of the Indian penal Code.

IV. JUDICIAL APPROACH TOWARDS THE MARITAL RAPE EXCEPTION

In India, marital rape is not regarded as a criminal offence. A husband cannot be guilty of rape with his lawfully wedded wife. In *Queen Emperor v. Haree Mythee*²⁹, the Court convicted the husband under Section 338 of the Indian Penal Code and observed that “Rape Laws does not apply between husband and wife if the wife is above the age of 15 years but recognized that the husband has no right to disregard the physical safety of the woman even the wife is over 15 years”. Similarly, in the case of *Emperor v. Shahu Mehrab*³⁰, the husband was convicted under Section 304 A of the Indian Penal Code for causing the death of the minor wife by rash or negligent act of sexual intercourse with her.³¹

There are various judgments where Court recognized the women’s right to privacy and bodily integrity but refused to acknowledge the fact that the husband can commit rape or sexual assault on his wife. In *Sareetha v. T. Venkata Subbaih*³², the Court held that “A woman’s right to

²⁵ State of Karnataka v. Krishnappa 2000(4) SCC 75

²⁶ Suchita Srivastava v. Chandigarh Administration 2000(9) SCC 1

²⁷ Joseph Shine v. Union of India (2018) SC 1676

²⁸ Bodhisattwa Gautam v. Subhra Chakroborty 1996 SCC (1) 490

²⁹ Queen Emperor v. Haree Mythee (1891) ILR 18 Cal. 49

³⁰ Emperor v. Shahu Mehrab AIR 1917 Sind 42

³¹ A judicial approach on marital rape, Available at <http://aegaeum.com/gallery/agm.j-3247.41-f.pdf> (last accessed on 23rd January, 2022)

³² Sareetha v. T. Venkata Subbaih AIR 1983 AP 356

privacy will be equally violated in case of non-consensual sexual intercourse with her husband. Rights and duties in a marriage should be equally given to both partners. The right to privacy is not lost by marital association”.

In *Sakshi v. Union of India*³³, the Supreme Court recognized the shortcoming prevalent in the law relating to Rape in India and suggested that it is the need of the hour to bring the changes in rape laws so that the safety of the women can be ensured at all times in public and in the private sphere”. Supreme Court in “*Independent Thought v. Union of India & Another*³⁴ refused to debate upon the issue of criminalization of the marital rape. It expressed that they would not like to make remarks on marital rape where the age of the wife is above the age of 18 years. The Court held that Exception 2 of Section 375, Indian Penal Code, is liable to be struck down as it is discretionary and violative of Article 14, 15 and 21 of the Constitution of India. The Court changed the ambit of Exception 2 of Section 375, and it is to be now read as” Sexual Intercourse or Sexual Acts by a man with his own wife, the wife not being under 18 years of age is not rape.”³⁵

There have been several recent instances where courts dealt with cases surrounding the central issue of marital rape. In “*Dilip Pandey v. the State of Chattisgarh*”³⁶, the Court discharged a man who was accused of raping his own wife, relying on the exception mentioned in Section 375 of the Indian Penal Code. The Court held that “Indian Law does not recognize the marital rape as Exception II of Section 375 explicitly states that sexual intercourse or sexual act by a man with his own wife, the wife not being under 18 years of age is not rape.”

Kerala High Court gave a landmark order³⁷ which states that “*merely for the reason that the law does not recognize marital rape under penal law, it does not inhibit the court from recognizing the same as a form of cruelty to grant divorce*”. *The Court is of the opinion that marital rape is a good and sufficient ground to claim divorce. It falls within the ambit of physical and mental cruelty, although such cannot be penalized.*

In July 2019, the Delhi High Court dismissed a petition seeking a direction to the Central Government to declare marital rape as a ground for divorce. The Court was of the opinion that it did not have the power to legislate under Article 226 of the Constitution.³⁸

³³ *Sakshi v. Union of India*, AIR 2004 SC 3566

³⁴ *Independent Thought v. Union of India*, 2017 SCC Online SC 1222

³⁵ *Ibid.*

³⁶ *Dilip Pandey v. State of Chattisgarh* CRR/117/2021

³⁷ MAT. Appeal No 151 of 2015, Available at https://hckinfo.kerala.gov.in/digicourt/orders/2015/208000001512015_4.pdf(last accessed on 23rd January 2022)

³⁸ Debate on Marital Rape, Available at <https://www.barandbench.com/news/delhi-hc-dismisses-plea-to-declare-marital-rape-ground-for-divorce>(last accessed on 23rd January 2022)

In the case of “Joseph Shine v. Union of India”³⁹, the Supreme Court decriminalized adultery by striking down Section 497 of the Indian Penal Code and refused to acknowledge the argument of the marital entitlements of the husband. Justice Chandrachud stated, “The right to say no to sexual intercourse exist after the marriage also”. These remarks may work in support of the petition filed by the RIT Foundation and - India Democratic Women’s Association in Delhi High Court⁴⁰ which argues that Exception 2 of Section 375 of the Indian Penal Code is unconstitutional on the ground of discrimination between married and unmarried women.

The issue of marital rape has once again raised the question of whether the existing rape laws are sufficient to protect the women or new ones need to be introduced for the protection of adult married women who are forced to engage in non-consensual intercourse by their partners. Presently, the Delhi High Court is in the process of hearing the final arguments, which are the result of a series of public interest litigations challenging the marital rape exception as given under Section 375 of the Indian Penal Code. It can be seen from the court arguments and media discussions that the debate mainly revolved around ethical and social complexities. It all started in 2015 when the NGO RIT Foundation moved a petition to the Delhi High Court challenging the legality of the “marital rape exception” as provided under Exception II of Section 375 of the Indian Penal Code. The judgment was given by the Apex Court in “Independent Thought v. Union of India”⁴¹ that a man is not guilty of the rape if the wife is above 18 years of age started the debate around the issue of criminalization of marital rape. Petitions challenging the marital rape clause were filed by the ‘All India Democratic Women’s Association’ and 3 individuals who were victims of domestic and sexual violence⁴².

The Centre filed an affidavit in response to the petitions that the consultation on the issue of the criminalization of marital rape is in the process, keeping the view the recommendations made by Justice JS Verma Committee Report constituted after the aftermath of the Nirbhaya Gang rape case in 2012. The issue is currently being heard by 2 Judge Bench of Justices Rajiv Shakti and C Harishankar⁴³. The Government contended that “Amendment in the Indian Penal Code is not necessary for a view of the criminalization of the marital rape as a woman who is a victim of sexual violence by her husband has several other criminal remedies”.

³⁹ Joseph Shine v. Union of India, 2018 SCC Online SC 1676

⁴⁰ Writ Petition Civil No. 284/2015

⁴¹ Supra Note 33.

⁴² Marital rape: Legal Issues and Debates, Available at <https://www.indiatoday.in/law/story/explainer-the-debate-over-marital-rape-1903050-2022-01-22> (Last accessed on 23rd January 2022)

⁴³ *Ibid.*

Senior Advocate Rajshekhar Rao, who is assisting the Court as an amicus curiae in a batch of petitions to criminalize marital rape, observed that “Status of marriage between 2 parties cannot be sufficient reason to deny a wife the ability to prosecute her husband for marital rape.” He illustrated that the relationship between man and woman could be divided into 3 stages- courtship, engagement, and separation. If the man and woman engage in a non-consensual sexual act in the courtship period or before marriage, it will be an offence. The same act will not be considered an offence if it is committed after the marriage. Also, If the man engages in sexual intercourse with his own wife who is living separately, he shall be guilty of rape and is liable to be convicted under Section 376B of the Indian Penal Code. By giving such an illustration, he tried to highlight the anomalies in the rape laws in India. Another amicus, Curiae Rebecca John, argued before the Court that “If a woman is subjected to sexual intercourse without her consent, then the Exception to Section 375 of the Indian Penal Code should be viewed as an instrument of oppression. She drew a parallel between the struck down Section 497, which criminalized adultery and Section 375 to argue that both the provisions highlight the dominance of one partner over the other in marriage.⁴⁴

V. CONCLUSION

There is no denying in the truth that marital rape still exists in Indian society, and laws have failed to provide any relief to the women who have faced the brunt of marital rape. Non-criminalization of marital Rape is the major concern in the Indian legal system. Marital rape violates the woman’s fundamental right to privacy and right to live with dignity as enshrined under Article 21 of the Constitution. There is no legal and ethical justification for the distinguishment of rape between married and unmarried women. Act of non – consensual sexual act will be rape whether it is committed against a married or unmarried woman.

The major reason behind the non-criminalization of marital rape is the conservative and patriarchal society. Women are expected to be always submissive. She is considered as the property of her husband. In India, marriage is seen as a license to engage in sexual intercourse even if it is without the consent of another spouse. Non- Consensual sexual intercourse is a direct attack on the right to live with dignity, and it is the most barbaric act which can be committed against any individual. There is an immediate need to criminalize marital rape under the Indian Penal Code. Mere providing other criminal avenues are not sufficient. In the age of

⁴⁴ Marital rape Case, Available at <https://www.tribuneindia.com/news/delhi/marital-rape-case-misuse-protecting-institution-of-marriage-no-ground-to-sustain-exception-amicus-curiae-tells-delhi-hc-362381>(Last accessed on 23rd January 2022)

feminism and gender equality, society needs to debunk the prevailing myths that rape by the spouse is not significant.

Due to the lack of reporting of the cases of marital rape, the judiciary is hesitant to see this as a criminal offence. Police authorities are reluctant to interfere in the issue of marital rape as they are of the view that it is the private domain of the parties, and hence by interfering, they will be violating the right of privacy of the individuals. Steps must be taken by the judiciary and the police authorities to sensitize the issue of marital rape. Moreover, the Courts cannot be a mute spectator to the offence of marital rape and can not leave the issue to the decision of the Parliament. The notion that criminalizing marital rape will harm the sacred institution of the marriage must be withered away with. What must be understood by the Courts and legislature is that women cannot be made to suffer on the pretext of maintaining the social appearance and protecting the sanctity of the marriage.
