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Criminalizing Marital Rape in India: Legal Gaps, Societal Impacts, and the Path Forward

DR. PRASANATA CHHETRI¹

ABSTRACT

Marital rape is defined as a situation where a husband forcefully engages in sexual intercourse with his wife without her consent. This form of rape has been criminalized in over 100 countries, yet India remains among the 36 countries that have not recognized marital rape as a crime. Section 65 of the Bharatiya Nyaya Sanhita (BNS) 2023 defines various forms of rape but does not include marital rape within its scope. Exception 2 of Section 65 of the BNS explicitly states that sexual intercourse or sexual acts between a man and his wife, provided the wife is over the age of 18, do not constitute rape. The lack of legal recognition of marital rape in India can be attributed to several social, legal, and cultural factors. Despite the absence of specific legislation addressing marital rape, available data reveals a rising incidence of such acts, highlighting a violation of married women's rights. This paper aims to explore the factors contributing to marital rape, its impact on women, and the pressing need to criminalize it in India. Furthermore, it offers suggestions on how the issue can be addressed within the legal framework.

Keywords: *Marital Rape, Marriage, Women's Rights, Sexual Abuse, Consent.*

I. INTRODUCTION

Women represent more than half of the world's population. Women make up more than half of the global population and fulfill a wide range of important roles. They are not only dedicated mothers who nurture and raise children, but also offer love and support to their husbands, parents, and siblings. Beyond their familial responsibilities, women are also integral to the socio-economic progress of society, contributing significantly to its development and well-being.

Though women play a vital role in the development of a nation they are always considered inferior to men and have always been ill-treated and are subjected to various forms of violence. The violence is also directly related to the violation of the basic rights of an individual such as the right to live a dignified and healthy life, right to work, right to livelihood, right to family,

¹ Author is an Assistant Professor at School of Legal Studies, ICFAI University, Sikkim, India.

right to education, and so on. According to Beijing Platform for Action, Para 112 (1995)"Violence against women is an obstacle to the achievement of the objectives of equality, development, and peace².

The Declaration on the Elimination of Violence against Women held that violence against women constitutes a violation of the rights and fundamental freedoms of women and a manifestation of historically unequal power relations between men and women³. Sexual assault, Sexual harassment at the workplace, rape, molestation, stalking, voyeurism, dowry death, honor-killing, cruelty by husbands and relatives, and domestic violence are some of the most common forms of violence against women prevailing in all parts of the world.

Violence against women is not limited to the outside world; women, as integral members of the family, often face abuse within their own homes. Domestic violence, cruelty by husbands, dowry harassment, marital rape, and other forms of mistreatment are prevalent within the confines of the household. These forms of violence strip women of their fundamental rights, as guaranteed under Articles 14, 15, and 21 of the Constitution of India. Among these issues, marital rape stands out as a critical concern that requires urgent attention and state intervention, especially in the absence of a specific law addressing marital rape in India.

According to the survey report of NFHS, 32 percent of married women (18-49 years) have experienced physical, sexual, or emotional spousal violence. The most common type of spousal violence is physical violence (28%), followed by sexual violence (14%)⁴.

II. CONCEPT OF RAPE AND MARITAL RAPE

To understand the meaning of marital rape, we must first understand the concept of 'Rape'. Rape is an intercourse or forms of sexual penetration carried out without consent. Section 63 of the BNS, provides that a man is considered to commit "rape" if he penetrates his penis, to any degree, into a woman's vagina, mouth, urethra, or anus, or coerces her into doing so with him or another person or inserts any object or part of his body, other than his penis, into a woman's vagina, urethra, or anus, or forces her to do so with him or another person; or manipulates any part of a woman's body to cause penetration into her vagina, urethra, anus, or any other part of her body, or compels her to do so with him or someone else; or applies his mouth to the vagina,

² Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, U.N. Doc. A/CONF.177/20 (1996),

<https://documents.un.org/doc/undoc/gen/n96/273/01/pdf/n9627301.pdf?token=wUcsiEKaYoE6nIPFYo&fe=true>.

³ Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993), https://www.ohchr.org/en/instruments_mechanisms/instruments/declaration-elimination-violence-against-women.

⁴ Ministry of Health and Family Welfare, Gov't of India, *National Family Health Survey (NFHS) Report-5 (2019-2021)*, <https://www.rchiips.org/nfhs/NFHS-5Reports.jsp>.

anus, or urethra of a woman, or forces her to do so with him or another person.

These acts are considered rape if they occur against her will, without her consent, or if her consent is obtained under duress, such as through threats of death or harm. Rape also applies if consent is given because the woman believes the man to be her lawful husband, even though he is not, or if she consents while mentally impaired due to intoxication, drugs, or unsoundness of mind, making her unable to understand the nature and consequences of the act. Additionally, if a woman is unable to communicate her consent, it is also considered rape. Section 65 further clarifies that consent is irrelevant if the woman is under the age of eighteen⁵.

Thus, to prove a charge of Rape, sexual intercourse or penetration against the woman's will or without her consent are the two essential of Rape. In *Koppula Venkatrao v. State of AP*⁶ the Supreme Court held as follows: “The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of “rape” as contained in Section 375 Indian Penal Code refers to “sexual intercourse” and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.”

Additionally, Consent should be free from any form of coercion or undue influence. In any circumstances, where the consent is obtained by putting her or any person in whom she is interested, in fear of death or of hurt or when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, or she is unable to understand the nature and consequences of that to which she gives consent or with or without her consent, or when she is under eighteen years of age or when she is unable to communicate consent⁷, such consent shall not be considered as free consent.

Marital rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. It is a non-consensual act of violent perversion by a husband against the wife where she is abused physically and sexually⁸. Marital rape, also known as spousal rape, occurs when one spouse forces or coerces the other

⁵ Bharatiya Nyaya Sanhita, Act 45 of 2023.

⁶ *Koppula Venkatrao v. State of Andhra Pradesh*, AIR 2004 SC 1874.

⁷ *ibid*

⁸ *Nimeshbhai Bharatbhai Desai v. State of Gujrat*, 2018 SCC OnLine Guj 732.

into sexual activity without the consent. Therefore, any sexual intercourse between a husband and wife in which the wife's consent is absent, not freely given, or coerced, constitutes marital rape.

It is a form of sexual violence and a violation of an individual's bodily autonomy, regardless of the marital relationship. The concept of marital rape challenges historical and cultural beliefs that once saw marriage as a form of ownership or entitlement, where sexual access was presumed to be a right of the husband, regardless of the wife's will. It violently strips away a woman's dignity by denying her bodily autonomy, emotional integrity, and the right to be treated with respect as an equal partner in her marriage. It reduces her to an object to be controlled and used, violating her trust, causing psychological harm, and reinforcing societal inequality. United Nations has declared Marital Rape as a violation of Human rights⁹.

(A) Types of Marital Rape:

Marital rape may be broadly classified into following two categories;

(i) Sexual coercion by non-physical means:- this form of coercion involves social coercion in which the wife is compelled to enter into sexual intercourse by reminding her of her duties as a wife. This form of coercion entails applying non-physical techniques and tactics like verbal pressure in order to get into sexual contact with a non-consenting female. The most commonly used non-physical techniques include making false promises, threatening to end the marital relationship, lies, not conforming to the victim's protests to stop, etc. Such acts of sexual coercion by the use of non-physical stunts though considered less severe in degree as compared with physically coercive sexual acts are widespread and pose a threat to the women's right in the society.

(ii) Forced Sex: this involves the use of physical force to enter into sexual intercourse with an unwilling woman. It can be further classified into the following three categories;

(a) Battering Rape: this form of rape involves the use of aggression and force against the wife. The women are either battered during the sexual act itself or face a violent aggression after the coerced sexual intercourse. The beating may also occur before the sexual assault so as to compel her into sexual intercourse.

(b) Force Only Rape: in this form of rape, the husband does not necessarily batter the wife, but uses as much force as is necessary to enter into sexual intercourse with the unwilling wife.

⁹ United Nation, Special Rapporteur on violence against women and girls, 05th august 2020, <http://www.ohchr.org/en/calls-for-input/rape-grave>.

(c) **Obsessive Rape:** this form of rape involves the use of force in sexual assault compiled with the perverse acts against the wife. It involves a kind of sexual sadistic pleasure enjoyed by the husband¹⁰.

(B) Causes of Marital rape

The causes of marital rape are complex and multifaceted, often rooted in a combination of social, cultural, psychological, and relational factors. These factors influence the dynamics of power, control, and entitlement in a marriage. Patriarchy society is regarded as one of the most common cause of Marital Rape. As patriarchal values place men in dominant positions and women in subordinate roles. These gender norms often lead to the belief that a husband has a right to sexual access to his wife, regardless of her consent. In such environments, a woman's autonomy and personal rights may be disregarded, making marital rape more likely to occur. This view can also be reinforced by cultural or religious doctrines that treat women as the property or responsibility of men.

Marital rape often arises from a desire for power and control over the partner. In many abusive relationships, sexual violence is used as a tool for exerting dominance. The abuser may use rape as a way to assert authority, humiliate, and degrade the victim, reinforcing their control over the marriage. This can be part of a broader pattern of emotional, physical, or financial abuse. Psychological and emotional factor can also lead to the commission of Marital Rape. As individuals who commit marital rape may have deeply ingrained psychological issues, including a lack of empathy, an inability to respect boundaries, or distorted attitudes about sex and relationships. Past experiences of abuse, trauma, or unhealthy sexual norms can shape the way they view relationships and consent. Additionally, some abusers may have an entitlement mentality, viewing sex as a marital duty for their wife rather than an act of mutual consent.

Non- recognition of marital rape as a crime can embolden perpetrators and disempower victims. In some cases, fear of social stigma or reprisal may prevent victims from reporting marital rape. Victims may worry about their reputation, being disbelieved, or facing backlash from family or community.

The perception among law enforcement, shaped by societal norms that justify various forms of domestic violence, including forced sexual intercourse by the husband often leads to the view that such acts are “part and parcel” of marriage. This mindset contributes to the perpetuation of marital rape, as it fails to acknowledge that consent remains a fundamental requirement for sexual relations, regardless of the marital relationship. These deeply ingrained beliefs prevent

¹⁰ Nimeshbhai Bharatbhai Desai v. State of Gujrat, 2018 SCC OnLine Guj 732.

authorities from recognizing that women's consent is essential, and not optional, within marriage.

Other factors like lack of education, sexual addiction or dysfunction, economic dependency of victims upon the abuser, lack of awareness, etc. are some of the other contributing factors of Marital Rape.

(C) Effects of Marital Rape on Women

Marital rape has profound and far-reaching effects on women, impacting them physically, emotionally, psychologically, and socially. Physical health consequences includes bruising, genital injuries, infections, or sexually transmitted diseases and also caused gynecological problems, such as vaginal tearing, bleeding, pelvic pain, or difficulty in conceiving, unwanted pregnancies. Whereas depression, anxiety, low self-esteem, feelings of powerlessness, loss of trust, etc. are the Mental and Emotional Impact of Marital Rape.

It also lead to Behavioral and Social Consequences such as Social Isolation where Victims may withdraw from friends, family, or social activities due to shame, fear of judgment, or the abuser's controlling behavior. Fear of stigma, disbelief, or retaliation often prevents women from reporting the abuse. In many cases, women may feel trapped by cultural or societal pressures to "keep the family together," further preventing them from reaching out for support. The psychological toll of marital rape can interfere with a woman's ability to function at work or in social settings. She may have difficulty concentrating, experience extreme fatigue, or face emotional outbursts, leading to professional challenges or even job loss.

In some cases, the trauma from marital rape can make it difficult for women to engage in future relationships, either because they fear intimacy or because they associate all relationships with violence and betrayal. In extreme cases, the constant emotional and psychological pain may lead victims to contemplate or attempt suicide. Self-harm behaviors can also arise as a way of coping with the overwhelming feelings of worthlessness or emotional numbness.

The effects of marital rape extend beyond the victim, profoundly impacting the children of the abused. Children who witness or are aware of marital rape may internalize unhealthy views of relationships, where violence or coercion is normalized. This can perpetuate a cycle of abuse, leading them to repeat similar patterns in their own relationships. A victim of marital rape may struggle with parenting duties due to the emotional and physical toll the abuse takes on her. This can lead to difficulties in forming healthy bonds with her children or providing them with emotional stability.

III. STATUS OF MARITAL RAPE IN INDIA

The Indian law does not criminalized marital rape as an offence. According to section 63 of the BNS which deals with Rape provides that Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape¹¹.

The exception outlined in Section 63 of the BNS, 2023 is derived from Exception 2 of the Indian Penal Code (IPC), 1860. Section 375 of the IPC defines and criminalizes rape, covering both sexual intercourse and other forms of sexual penetration without a woman's consent. However, the IPC does not explicitly address rape committed against a legally wedded wife. Instead, Exception 2 of Section 375 states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape¹².

The exception for marital rape outlined in Section 375 of the Indian Penal Code is based on the views of British jurist Sir Matthew Hale. In seventeenth century, he made a statement that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract”. Hale believed that "matrimonial consent" was irrevocable. Variations on Hale's strict irrevocability principle allow for a wife to revoke her implied sexual consent only in times when "ordinary relations" in the marriage are suspended. For example, a woman can revoke her implied consent when she and her husband are separated. Until recently, this view was widely accepted¹³. This principle, known as Hale's Principle, formed the foundation for the marital rape exception and was followed in England for many years. When the Indian Penal Code was drafted in 1860 by Thomas Babington Macaulay, this same principle was assimilated in the Indian Penal Code. Consequently, Section 375, Exception II, was introduced as the exception for marital rape.

In addition to **Hale's Principle**, the **Doctrine of Coverture from Common Law**, which postulates that a woman loses her individual legal identity upon marriage, also played a significant role in the inclusion of this exception in the Indian **Criminal Laws**, contributing to the non-recognition of marital Rape¹⁴.

The Criminal Law Amendment Act of 2013 was introduced in response to the tragic rape, assault, and subsequent murder of a medical professional in December 2012. This amendment

¹¹ Bharatiya Nyaya Sanhita, Act 45 of 2023.

¹² Indian Penal Code, Act 45 of 1860.

¹³ Theresa Fus, *Criminalizing Marital Rape: A Comparison of Judicial and Legislative Approaches*, 39 Vanderbilt Law Review 481 (2021), <https://scholarship.law.vanderbilt.edu/vjtl/vol39/iss2/5>.

¹⁴ Stretton, Tim, and Krista J. Kesselring, editors. *Married Women and the Law: Coverture in England and the Common Law World*. McGill-Queen's University Press, 2013. JSTOR, <http://www.jstor.org/stable/j.ctt32b7jq>.

brought significant reforms to the legal framework on rape and sexual violence. However, the law did not alter the existing exception under Section 376, which continues to exempt a husband from being prosecuted for raping his wife, thereby leaving the issue of marital rape unresolved.

The harm caused by maintaining the exclusion was somewhat alleviated by the introduction of Section 376B. This provision stipulates that if a man engages in sexual intercourse with his wife, who is living separately due to a legal decree, without her consent, shall be imprisonment for a term of two to seven years, along with a fine¹⁵.

This provision sexual intercourse by husband upon his wife during separation was added keeping in mind the recommendation made by the Law Commission in its 42nd Report which stated, that *“Exception II of Section 376 fails to take of note one special situation, namely, when the husband and wife are living apart under a decree of judicial separation or by mutual agreement. In such a case, the marriage technically subsists, and if the husband has sexual intercourse with her against her will or without her consent, he cannot be charged with the offence of rape. This does not appear to be right. We consider that, in such circumstances, sexual intercourse by a man with his wife without her consent should be punishable as rape”*¹⁶.

Justice J.S Verma Committee 2013, recommended that the exception for marital rape be removed and states that a marital or other relationship between the perpetrator and victim is not a valid defence against the crimes of rape or sexual violation. The Committee also referred to a suggestion by Prof Sandra Fredman of the University of Oxford that *“training and awareness programmes should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife”*¹⁷.

In 2015, the Pam Rajput Committee appointed by the Government of India to study the status of women in India strongly recommended that marital rape be criminalized and argued that marriage does not presume consent. The Committee stated that *“Marital rape should considered an offence irrespective of the age of the wife and the relationship between the perpetrator and the survivor”*¹⁸.

On the other hand, the Law Commission of India in its 172nd Report on *“Review of rape Laws”* refused to recommend deletion of the Exception regarding marital rape. While rejecting the

¹⁵ Bharatiya Nyaya Sanhita, Act 45 of 2023.

¹⁶ Law Commission of India, Forty-Second Report, Indian Penal Code, June 1971, Government of India, Ministry of Law.

¹⁷ Report of the Committee on Amendments to Criminal Law, January 13, 2013.

¹⁸ Report of the High Level Committee on the status of Women in India, Government of India, Ministry of Women and Child Development, June 2015.

recommendation, the Commission said, *“We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship¹⁹”*.

Marital rape represents a severe violation of several fundamental rights guaranteed under the Constitution of India, particularly the right to gender equality and dignity. Article 21 of the Constitution, which upholds the “right to live with human dignity,” is directly infringed upon by the act of marital rape. Allowing such an exception under Section 63 of the BNS, 2023, therefore, runs contrary to this right, as it denies women their fundamental dignity and autonomy.

Moreover, Article 14 guarantees equality before the law and equal protection under the law. It prohibits the State from enacting laws that discriminate unjustly. By providing an exception in Section 63 of the BNS, 2023, which exempts husbands from the charge of rape, the law creates a discriminatory distinction between wives and others. This differentiation is arbitrary and does not meet the standard of reasonable classification required by Article 14. As a result, the exception violates the equality principles enshrined in the Constitution.

The protection of women's dignity is a fundamental duty enshrined in the Constitution, which imposes an obligation on every citizen to "renounce practices derogatory to the dignity of a woman," as outlined in Part IV-A. The exception provided under Section 63 of the BNS, 2023, directly undermines this duty by condoning a practice that is detrimental to the dignity of women. As such, the exception violates the fundamental duties laid out in Part IV-A of the Constitution, which aim to foster a society that upholds the respect and dignity of all individuals.

India, as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), is bound by its principles. CEDAW explicitly recognizes that any form of discrimination against women undermines the fundamental principles of equality and human dignity. Therefore, the exception in Section 63 of the BNS, 2023, which discriminates against women, is inconsistent with India's international obligations under CEDAW.

Amnesty International has publicly stated that while the Criminal Law (Amendment) Act, 2013 introduced some positive reforms, it remains inadequate in several key areas and fails to fully comply with India's international legal obligations. The organization recognizes that the Act criminalizes various forms of violence against women, such as acid attacks, stalking, and voyeurism. However, it remains critically deficient in other respects, particularly its failure to

¹⁹ Law Commission of India, One Hundred and seventy-second Report on Review of rape Laws, March 25, 2000.

criminalize marital rape and address sexual assault by security forces²⁰.

Developed countries like Poland (1931), Czechoslovakia (1950), Denmark (1960), Sweden (1965), and Norway (1971) already criminalized the marital rape. In the United States, marital rape was criminalized in 1975, and the United Kingdom stopped treating marriage as a defense to rape in 1991²¹.

India is one of 36 countries including Pakistan, Afghanistan, Bangladesh, Egypt, Algeria and Botswana that have not criminalized marital rape. According to a UN Women report, most of these countries were developing nations including China, Myanmar, Sri Lanka, Haiti, Laos, Mali, Senegal, and Tajikistan²².

In India, the **Protection of Women from Domestic Violence Act, 2005** is the only legislation that touches upon the issue of sexual abuse within marriage or intimate relationships. However, the Act primarily offers **civil remedies** for victims of sexual abuse and does not include any **penal provisions** to hold offenders criminally accountable for marital rape.

IV. JUDICIAL ACTIVISM

In the absence of specific laws criminalizing marital rape in India, the judiciary has consistently sought to protect the dignity of women who are victims of such abuse through various rulings.

In the case of *Independent Thought vs. Union of India & Others*, the Supreme Court declared Exception 2 to Section 375 of the Indian Penal Code was arbitrary, unreasonable, and in violation of the rights of the girl child. The Court found the exception to be inconsistent with the principles of fairness, justice, and reasonableness, thus violating Articles 14, 15, and 21 of the Constitution of India. As a result, the Court raised the minimum age of a wife from 15 to 18 years. Consequently, Exception 2 to Section 375 was interpreted as follows: “Sexual intercourse or sexual acts by a man with his wife, if she is under 18 years of age, shall be considered rape”²³.

In *Sakshi v. Union of India*²⁴, the Supreme Court stressed the need for improvements in legislation governing sexual offenses, including marital rape. The court recognized that

²⁰ Amnesty International, AI Index: ASA 20/026/2013 17 May 2013, <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa200262013en.pdf>.

²¹ World Bank Group, Closing the Gaps- Improving Laws protecting women from violence, Women, Business and The Laws” by Alena Sakhonchik, Isabel Santagostino Recavarren, and Paula Tavares, <https://thedocs.worldbank.org/en/doc/3498115199386557690050022017/original/TopicNoteProtectingWomenfromViolenceEN.pdf>.

²² Supreme Court’s Judgment on Marital Rape: What Has Been the Discussion So Far, Outlook, Saturday, Apr 15, 2023, <https://www.outlookindia.com/national/supreme-court-s-judgment-on-marital-rape-what-has-been-the-discussion-so-far-news-226703>.

²³ *Independent Thought v. Union of India and Others* (2017) Writ Petition (Civil) No. 382 OF 2013.

²⁴ *Sakshi v. Union of India*, (2004), Cri. LJ 5025, 1999 (5) SCALE 376, (1999) 6 SCC 591.

women's rights were human rights, and that the government should alter laws to address issues such as marital rape.

Similarly, in *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, the High Court held that “a woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent”. Further, Justice **J.B. Pardiwala** held, *“The total statutory abolition of the marital rape exemption is the first necessary step in teaching societies that dehumanized treatment of women will not be tolerated and that the marital rape is not a husband's privilege, but rather a violent act and an injustice that must be criminalized”*²⁵.

Another notable case before the Karnataka High Court was a wife bringing rape claims against her husband, which were refused. The court's conclusion contradicted the exception established under rape law. The court did not directly invalidate the marital rape exception, but it did allow the case to proceed. Previously, the husband had appealed to the High Court after a trial court admitted the violation under Section 376 (rape). Justice M Nagaprasanna, a single judge on the Karnataka High Court, declared, “A man is a man; an act is an act; rape is a rape, whether committed by a man referred to as the 'husband' against a woman who is termed the 'wife'. The court also emphasized that the “outdated... regressive” belief that “husbands possess dominion over their wives, including their bodies, minds, and spirits, should be eradicated”²⁶.

In August 2021, the Kerala High Court in a significant judgment said that marital rape, although not penalized in India, would be a good ground for divorce. A Division Bench of Justices **A. Muhamed Mustaque** and **Kauser Edappagath** held, *“We, therefore, are of the view that marital rape is a good ground to claim divorce. In modern social jurisprudence, spouses in marriage are treated as equal partners and husband cannot claim any superior right over wife either with respect to her body or with reference to individual status. Treating wife's body as something owing to husband and committing sexual act against her will is nothing but marital rape”*²⁷.

In addition to these three main rationales, there are many secondary reasons for the perpetuation of marital exemption, the first of which is evidentiary difficulty. When a couple is married and regularly engages in sexual activity, it can be quite difficult to prove that one particular instance

²⁵ *Nimeshbhai Bharatbhai Desai v. State of Gujrat*, 2018 SCC OnLine Guj 732.

²⁶ *Hrishikesh Sahoo v. State of Karnataka*, (2018) SCC Online Kar 1261

²⁷ SCC Online Times, dated August 10, 2021, <https://www.sconline.com/blog/post/2021/08/10/marital-rape/>.

out of many was without consent.

V. SUGGESTION

Rape is universally recognized as a criminal offense, yet when it occurs within marriage, legal systems often take different approaches due to historical and cultural perspectives. Marital rape, however, is a severe violation of both human rights and the fundamental rights guaranteed under the Constitution of India. Achieving true gender equality is impossible without recognizing marital rape as a punishable offense. Therefore, the Parliament should recognize marital rape as a crime under the BNS, with penalties consistent with those outlined for rape in Section 64 of the BNS. Furthermore, marital rape should be treated as a valid ground for divorce, offering the option to the wife. However, if the wife chooses to remain in the marriage, she should have the autonomy to do so, without being compelled to divorce.

VI. CONCLUSION

In conclusion, the recognition and criminalization of marital rape are essential steps toward ensuring justice, equality, and dignity for women. While legal reforms are crucial, addressing this issue requires a broader societal effort it is crucial to invest in education on healthy relationships, consent, and gender equality from an early age. Promoting awareness about the importance of mutual respect, personal autonomy, and boundaries in intimate relationships is key to preventing such violations. In addition to legal reform, there must be robust protection and support systems for victims of marital rape, including counseling services, safe shelters, and legal aid.

A significant part of addressing marital rape involves fostering cultural shifts that challenge the deeply ingrained norms of gender inequality and the normalization of sexual violence. This requires a concerted effort to reshape societal attitudes, encouraging people to question outdated beliefs that perpetuate violence against women, and to promote respectful and equal relationships.

Ultimately, ending marital rape calls for a collective societal effort to recognize it as a serious violation of human rights. It demands a commitment from all levels of society, government, education systems, communities, and individuals to actively challenge and dismantle the structures that allow marital rape to persist.

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