

CRITICAL ANALYSIS : LEGAL FRAMEWORK OF RAPE PROVISION IN INDIA

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ABSTRACT

The aim of this paper is to examine legal framework in india related to rape are essential to uphold human dignity and addressing significant issues surrounding consent and gender equality in martial rape .In section 63 reflects outdated patriarchal norms,which can perpetuate societal norms ,that diminish women’s dignity .This is contrary to contemporary understanding of human rights and gender equality. The anti rape laws still have to bring major amendment because there is brutal cases still happening in india .In recent the 31 year old women trainee doctor rape and murdered in RG kar medical college and hospital .”The entire procedure followed by your state is something which I have not come across in the 30 years of my life “, justice pardiwala said during the hearing .In December 11 2017 ,40 year old man who allegly indulged in brutal unnatural sex with his wife which eventually lead to her death the chattisgarh high court acquits a man of martial rape charges .”it is quite clear that if the wife is not below 15 years of age, then any sexual intercourse or sexual act by the husband with his wife cannot termed as rape. As such, the absence of consent of the wife for an unnatural act loses its importance ,” held justice Vyas. According to recent government survey ,32%of married women face physical ,sexual or emotional violence by their husbands and 82% of married women ,aged18-49,who have experienced sexual violence said their current husbands were the perpetrators. The government need to review the legal framework related to rape and martial rape to protect women from harmful act and also to protect their dignity. After Nirbhaya case of 2012 expanding the definition of rape include digital rape under section 63 of BNS . The government need to bring specific legislation of digital rape . The findings indicate a notable increase in reported cases and persistent challenges in implementation ,such as forensic evidence collection and social stigma.This paper concludes with recommendation for legal and societal reforms to enhance the protection and support for victims of rape and martial rape in india.

Keywords: Rape, gender equality, martial rape ,digital rape, judicial approach, legal evolution

INTRODUCTION:

“Women don’t get raped because they were drinking or took drugs. Women do not get raped because they weren’t careful enough. Women get raped because someone raped them.”

~ Jessica Villenti

¹⁰⁹³ In India, rape is among the most common crimes committed against women. Reports indicate that one woman is raped in India for every 20 minutes. Thus, many experts claim that females and young women in particular are very exposed to be victimized in rape incidences. So, according to experts, only approximately 10% of rapes which occur are reported, and the rape conviction rate is 24.2 percentage. In 2023, the National Crime Record Bureau reported 199,954 cases of rapes being committed during the year. In 2024, 8% increased 214,113 complaint being registered were perpetrated by somebody known to the victim (98 percentage of the cases)

Even though there have been attempts through legislation to curb the use of sexual history testimony in prosecuting rape cases, this testimony is still allowed in many prosecutions which creates significant controversy and calls for changes in legislation. Before this, many authors suggested that there is no equal judicial protection for rape victims because the outcome of a judicial process known as “rape” is almost always influenced by certain characteristics of the victim, the defendant, and the rape case. Rape is legally defined in section 63 of Bharatiya Nyaya Sanhita. The purpose of this research paper is to indicate the legal issues in section 63 of Bharatiya Nyaya Sanhita especially the definition of the section is comprehensive and creates ambiguity. Marital rape who is over 18 years old doesn’t constitute rape. Proper legal framework is needed for Digital rape. The women of our society have always been

prone to be a victim of a sexual assault irrespective of their age criteria. Beginning from infancy right till now above 45 years of age women have been a victim

METHOD OF STUDY

This study utilizes a secondary method of data collection to comprehensively investigate the extensive issues in the definition of rape and not criminalising marital rape and its impact on victims of this offence. In rape definition, rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth, or anus. Marital rape, which involves sexual intercourse between married couples without the consent of one of the partners in a marriage. Digital rape refers to a form of sexual assault involving non-consensual insertion of fingers or toes into the victim's body, specifically the vagina, urethra, or anus. These issues have emerged as one of the major challenges in violation of human rights, incorporating the right to privacy, dignity, and mental health.¹⁰⁹⁴ To advocate these by the use of secondary data collection methodology, this paper has gathered information on multiple case laws and has focused on judicial verdicts which served as legal precedents and have played a crucial role in shaping and framing new laws. To address this pressing issue, it is essential to gather data from multiple sources to gain a thorough understanding of its implications and explore potential solutions. Through the collection of data from distinct secondary sources, this paper has highlighted multifaceted challenges faced by victims of marital rape and how deeply ingrained norms of society have suppressed this arising issue. These secondary sources allow for a holistic examination of the issue, taking into account various perspectives, experiences, and expert opinions. Through data collection, this study seeks to contribute to the ongoing discourse on

¹⁰⁹³ Vibha Yadav, Marital Rape, Uttarakhand Judicial & Legal Review, (Jan. 20, 2020, 2:40 PM), <http://ujala.uk.gov.in/files/chl9.pdf>.

¹⁰⁹⁴ Priyanka Rath, Marital Rape and the Indian Legal Scenario, India Law Journal (Dec. 22, 2020, 1:21 PM), http://www.indialawjournal.com/volume2/issue_2/article_by_priyanka.html.

marital rape and inform strategies to mitigate their negative impact on society.

RESEARCH OBJECTIVE:

- To examine and understand loopholes in rape laws and provide necessary solution
- To know the relevance of the laws provided in present day with various case law
- To examine and understand the digital rape arising in present day
- To determine the socio legal barriers in the society
- To examine the need for criminalising the marital rape above 18 year
- To know the the relevance of laws provided in present day with various case law

RESEARCH QUESTION:

- Why we need for amendment to definition of rape ?
- Need for the criminalisation of marital rape it violate women fundamental right?
- Need for recognition of digital rape and should bring specific legal framework and its challenges?

BACKGROUND :

¹⁰⁹⁵The word rape from since ancient time it defined as barbaric and gruesome act which violate body integrity and honour of a women .It considered not against the women but also the humanity as whole .Most of the culture recognised rape as a crime .In medieval era also witnessed the concept of rape and its punishment .After British East India Company first set up penal norms and the Indian penal code was enacted in in the year 1860 Section

375 to 376E of the IPC refers to sexual offence . The word rape defined as having intercourse under false pretenses ,with consent but under fear of death,or without consent .Marital rape or sex without consent between married couple was not recognized by the IPC .The punishment for rape is very lenient as 2 year gang rape and repeat offenders were also given harder punishments After Mathura rape case (Tuka Ram and Anrsss v State of Maharashtra) . In the year 1972, a sixteen- year girl named mathura was raped by three drunk police officers .The lower court acquitted the officers and it was held that the girl is of 'loose morals' the supreme court overturned the judgement of Bombay highcourt and held that Mathura did not raise an alarm nor did she have any visible injury on her body thereby indicating that she did not resist the advances. After this incident in the year 1983, a change was made to section 114(A) of the Indian Evidence Act .A 'Custodial rape' was introduced to include rape of women while in the custody of public servants. This amendment made consent an integral part of rape and that the court should presume that the women is saying the truth when she says that there was no consent . This amendment also banned publishing the identity of the victim and prohibited the 'character assassination 'of the victim in court. Amendment to Indian evidence act, 2002 . An NGO named Sakshi filed a PIL highlighting that cross-examination of rape victims degraded their sexual integrity and discouraged reporting. The Supreme Court asked the Law Commission to review rape laws, identifying Section 155(4) of the Indian Evidence Act as problematic, as it allowed discrediting victims based on character. This clause was amended in 2002, banning victim cross-examination. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to address the increasing child sexual abuse cases in India. It criminalizes all sexual activity with children under 18 years and includes offenses like pornography, harassment, and non-penetrative assault. The Act mandates child-friendly mechanisms for reporting,

¹⁰⁹⁵ Hasday & Jill Elaine, Contest and Consent: A Legal History of Marital Rape, California Law Review 88(5), 1482-1505 (2000) <http://dx.doi.org/10.2307/2F3481263>.
Navi Pillay, Valuing Women as Autonomous Beings: Women's Sexual and Reproductive Health Rights, Helen Kanzira Lecture, (2012).
http://www.chr.up.ac.za/images/files/news/news_2012/Navilay%20Pillay%20Lecture%2015%20May%202012.pdf Ending Violence Against Women-From Words to Action (United Nations Publications 2006)
<http://www.un.org/womenwatch/daw/vaw/publications/English%20Study.pdf>.

investigation, and trial, ensuring protection during proceedings and fast-tracking cases within a year. It is gender-neutral and emphasizes safeguarding children's privacy and dignity throughout the judicial process. Criminal law amendment act, 2013 after the 23 year old girl brutally gang raped in moving bus in delhi .Through this act ,even a threat to rape is considered a crime . section 354A to 354D has been added to the IPC which describes sexual harassment and punishment. The amendment also mention the character of victim is irrelevant and the past sexual history of the women can't be used as evidence. The minimum sentence for rape was changed from 7year to 10 years. In case where the victim dies ,the offender will be punished according to juvenile justice act. Criminal law (amendment) ordinance, 2018 reason for this amendment is a 18 year old girl was raped by priest of a temple in kathua district of jammu and Kashmir changes were mainly made to the POCSO act since it was against child .If anyone raped below sixteen year old girl then minimum punishment is 20year whereas the rape of anyone below the age of twelve then punishment is death penalty. After these amendments on July 1, 2024 IPC replaced as Bharatiya Nyaya Sanhit .The definition of rape in BNS remain same with life imprisonment or a death sentence .one of the accused was a minor he will be as IPC and also not criminalising marital rape where the wife is above 18 years.

MARTIAL RAPE IN INDIA

In India, marital rape exists in reality but not in law. This means that although many women experience sexual violence within marriage, the law does not clearly recognize it as a criminal offence. In several other countries, either the legislature has criminalized marital rape or the judiciary has played an important role in recognizing it as an offence. In India, however, the legal position remains inconsistent. In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court observed that

rape is a crime against basic human rights and a violation of the victim's most cherished fundamental right—the right to life and personal liberty under Article 21 of the Constitution of India. Despite such strong recognition of rape as a violation of fundamental rights, marital rape continues to remain largely unrecognized as a criminal offence under Indian law.

Women who suffer sexual violence from their husbands are often denied protection from the State because Section 375 of the Indian Penal Code, 1860 contains an exception that protects husbands from prosecution for rape committed against their wives. The origin of this exception can be traced back to the views of Sir Matthew Hale, a 17th-century English jurist. He argued that a husband cannot be guilty of raping his lawful wife because, through marriage, the wife has given permanent consent to sexual relations with her husband. This view created the notion that once a woman is married, she no longer has the right to refuse sexual intercourse with her husband.

¹⁰⁹⁶Under the present legal framework in India, only two categories of married women receive protection under rape laws. These include wives who are below a certain age and wives who are living separately from their husbands. For instance, if a girl below a particular age is raped, the punishment can include rigorous imprisonment for a long period. However, if the offender is her husband, the punishment may be comparatively lesser. This distinction highlights the unequal treatment of married women under rape laws.

A limited step toward addressing sexual violence within marriage was taken in 1983 when Section 376A was added to the Indian Penal Code, 1860. This provision criminalized sexual intercourse by a husband with his wife without her consent when the wife is living

¹⁰⁹⁶ Halsbury's Laws of England, 4th Ed., Vol. 11 (1), para 495.

R. v. R., 94. Cr App R 216 (1992).

SW v. UK, 21. EHRR 363 (1995).

Gautam v. Chakraborty, 1. SCC 490 (1996).

N. Tandon & N. Oberoi, Marital Rape - A Question of Redefinition, Lawyer's Collective, p. 24 (2000).

separately from him, either under a legal decree or by custom. In such cases, the husband may face imprisonment of up to two years. Although this amendment rejected the idea that marriage is a license to rape, it only provides partial protection because it applies only when the spouses are separated. Therefore, it is considered a piecemeal reform, and many believe that stronger legislative action is still required.

Earlier, the Law Commission of India in its 42nd Report recommended that sexual intercourse with a minor wife should be treated as an offence. However, the Joint Committee reviewing this proposal rejected the recommendation. The Committee argued that marriage implies consent to sexual relations and therefore a husband cannot be found guilty of raping his wife regardless of her age. According to this view, sexual relations were considered an inherent part of the marital relationship.

Many women's organizations and the National Commission for Women have demanded the deletion of the marital rape exception contained in Section 375 of the IPC. This exception states that sexual intercourse by a man with his own wife, if she is above a specified age, does not constitute rape. A government Task Force on Women and Children also reviewed existing laws relating to women and suggested that the definition of rape should be broadened to include all forms of sexual abuse. However, like the Law Commission, the Task Force stopped short of recommending the criminalization of marital rape. As a result, the current legal framework in India remains inadequate in protecting women's bodily integrity and sexual autonomy within marriage.

¹⁰⁹⁷Several arguments are often raised against the criminalization of marital rape. Some people

¹⁰⁹⁷ Hale, *History of the Pleas of the Crown* 629 (1778).

Indian Penal Code, 375: Exception (1860).

Indian Penal Code, 376-A (1860).

Law Commission of India, 42nd Report, 1977, Indian Penal Code, para. 16.115, p. 277.

claim that marital rape is uncommon and that recognizing it as a crime would unnecessarily burden the already overloaded legal system. Others argue that dissatisfied or angry wives may falsely accuse their husbands, leading to the breakdown of marriages. However, such arguments are increasingly criticized in modern legal discourse.

In contemporary legal systems, the concept of consent requires that sexual activity must involve the clear and voluntary agreement of both parties. The old idea of "irrevocable consent," which suggested that a wife permanently consents to sexual relations after marriage, developed during a time when divorce was almost impossible and women had very limited rights. In today's context, this concept is considered outdated and inconsistent with principles of personal autonomy and equality.

Empirical studies also contradict the claim that marital rape is rare. Research conducted by organizations such as the Joint Women Programme indicates that a significant number of married women have experienced sexual violence by their husbands. Many women living in shelters for victims of domestic violence report having been sexually assaulted by their spouses. These incidents are often not reported because women believe that the law does not support them.

Another argument is that marital rape is difficult to prove in court. However, the difficulty of proving a crime cannot be a valid reason to refuse recognition of the offence itself. Criminalizing marital rape would at least acknowledge the seriousness of the harm and could act as a deterrent against abusive behavior.

Concerns about false accusations are also frequently raised. Yet the criminal justice system already contains safeguards such as the requirement that guilt must be proven beyond reasonable doubt. Moreover, because of the social stigma associated with rape trials, it is

unlikely that women would make such accusations casually or out of revenge.

It is true that marriage generally involves emotional intimacy and sexual relations. However, forced sexual intercourse cannot be equated with an expression of love or affection. In fact, it undermines the very foundation of a marital relationship. While matrimonial laws may attempt to preserve marriages, the primary objective of criminal law is to protect the dignity and bodily integrity of individuals.

Ultimately, the central issue is the right of every individual to exercise autonomy over their own body. If non-consensual sex outside marriage is recognized as a crime, the same principle should logically apply within marriage as well. Personal autonomy and bodily integrity are fundamental human rights, and they should be protected regardless of marital status.

DEFICIENCY IN INDIAN LAW

The legal framework dealing with rape in India has often been criticized for being inconsistent and full of contradictions. Several legal loopholes continue to prevent women from being adequately protected against marital rape. One major issue arises from the constitutional framework itself. The judiciary has expanded the interpretation of Article 21 of the Constitution of India to include the right to live with human dignity. Forced sexual intercourse within marriage clearly violates a woman's dignity and personal autonomy. Therefore, many scholars argue that the marital rape exception under Section 375 of the Indian Penal Code, 1860 is inconsistent with the constitutional guarantee of dignity and personal liberty.

¹⁰⁹⁸Another constitutional concern relates to equality. Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws to all persons. However, the marital rape exception creates

discrimination between married and unmarried women. If a woman is raped by a man who is not her husband, the act is punishable as rape. But if the same act is committed by her husband, the law often refuses to recognize it as rape. This unequal treatment raises serious questions about whether the exception under Section 375 is a reasonable classification and whether it violates the constitutional guarantee of equality.

The Constitution also imposes a duty on citizens to respect the dignity of women. Under Article 51A(e) of the Constitution of India, every citizen has a fundamental duty to renounce practices that are derogatory to the dignity of women. Despite this principle, the legal system has often failed to treat marital rape and certain forms of domestic violence as serious violations of women's dignity.

¹⁰⁹⁹International human rights standards also highlight this issue. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This convention recognizes that discrimination against women violates the principles of equality and human dignity. International bodies have also recommended that countries criminalize marital rape. For instance, the Commission on Human Rights, through its 1995 resolution on the elimination of violence against women, urged states to recognize marital rape as a criminal offence.

One of the traditional arguments used to justify the marital rape exemption is that consent to marriage implies consent to sexual relations. According to this reasoning, sexual intercourse is considered an inherent part of the marital contract. As a result, it is assumed that a wife cannot refuse sexual relations with her husband. However, this assumption ignores the modern understanding that consent must be

¹⁰⁹⁸ UN Women Entity for Gender Equality: Progress of the World's Women-In Pursuit of Justice (2011-12)
<http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf?la=en&vs=2835>.

¹⁰⁹⁹ National Violence Against Women Survey, NCJ 172837, Washington, DC: US Department of Justice.
<https://www.ncjrs.gov/pdffiles/172837.pdf>.
13 Kersti Yllo & M. Gabriela Torres, Marital Rape: Consent, Marriage, and Social Change in Global Context (3rd ed.2016).

voluntary and continuous, and it cannot be permanently given through marriage.

There are also several contradictions in the law regarding age and consent. The law prohibits the marriage of girls below 18 years of age, yet it has historically allowed non-consensual sexual intercourse with a wife above a certain age without recognizing it as rape. This inconsistency creates confusion and weakens legal protection for young married women.

Another paradox arises in the way rape laws treat consent. Under the Indian Penal Code, 1860, sexual intercourse with a girl below a specified age is considered rape even if she consents, provided she is not the wife of the accused. However, if the girl is the wife of the accused and above the specified age, even non-consensual sexual intercourse may not be treated as rape. This creates an unfair distinction between married and unmarried women.

The punishment provisions also reveal inconsistencies. For example, non-consensual intercourse with a wife within certain age groups has historically attracted significantly lighter punishment compared to rape committed outside marriage. Such differences suggest that the law treats sexual violence within marriage as less serious, which undermines the protection of women.

Another provision often cited as a protective measure is Section 498A of the Indian Penal Code, 1860, which deals with cruelty by a husband or his relatives. Courts have sometimes interpreted cruelty to include certain forms of abusive sexual conduct. However, the law does not clearly define what constitutes “perverse sexual conduct” in marital relationships. This creates uncertainty, as courts must interpret whether excessive or forced sexual demands can amount to cruelty.

The Protection of Women from Domestic Violence Act, 2005 was introduced to provide civil remedies for women facing domestic violence. The Act includes sexual abuse within

the definition of domestic violence and provides remedies such as protection orders and residence rights. However, the Act does not explicitly criminalize marital rape, and therefore it has been criticized for failing to adequately address the issue of forced sexual relations within marriage.

Although some progress was made in 1983 by recognizing sexual intercourse with a separated wife without consent as an offence, courts have often been hesitant to impose strong punishments in such cases. As a result, even this limited protection has not been fully effective.

¹¹⁰⁰Another legal barrier arises from evidentiary rules. Under Section 122 of the Indian Evidence Act, 1872, communications between spouses during marriage are generally protected from disclosure in court. Since marital rape is not fully recognized as a criminal offence, evidence related to such acts may not be easily admissible. In many cases, it can only be introduced indirectly through charges such as cruelty or physical abuse.

Because of these overlapping legal limitations, proving marital rape in court becomes extremely difficult. Even when victims attempt to seek justice through provisions under the Indian Penal Code or the Domestic Violence Act, the absence of a clear criminal offence for marital rape creates significant legal obstacles. As a result, many women are left without effective remedies for violations of their bodily autonomy and dignity within marriage.

JUSTICE VERMA COMMITTEE RECOMMENDATIONS :

- Section 375 of the Indian Penal Code, 1860, even after the reforms introduced by the Criminal Law (Amendment) Act, 2013, deals with sexual offences but provides only limited protection in cases of marital rape.

¹¹⁰⁰Indian Penal Code, 375(6) (1860).

- Earlier, the law stated that rape within marriage would be recognized only if the wife was below 12 years of age. If the wife was between 12 and 16 years, the act was treated as an offence but with less severe punishment.
- When the wife was above 16 years, the law did not recognize forced sexual intercourse by the husband as rape. This meant that women above this age had no legal protection within marriage, which raised serious concerns regarding women's rights and human rights principles.
- This situation appeared illogical and contradictory because the legal age of marriage for women in India is 18 years, yet protection from sexual abuse within marriage was earlier recognized only up to 16 years.
- To remove such legal gaps and strengthen the law relating to sexual offences, Parliament passed the Criminal Law (Amendment) Act, 2013 in April 2013 in the Lok Sabha. This Act replaced an earlier ordinance issued in February 2013.
- The amendment introduced significant changes to several laws, including the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872.
- These reforms were largely based on the recommendations of the Justice Verma Committee, which was formed to suggest stronger laws against sexual violence.
- Earlier, the Law Commission of India in its 172nd Law Commission Report on Review of Rape Laws had recommended several major reforms regarding rape laws.
- The Commission suggested that the term "rape" should be replaced with "sexual assault" to make the law broader and more inclusive.
- It also recommended expanding the definition of sexual intercourse under Section 375 to include all forms of penetration, such as penile-vaginal, penile-oral, finger-vaginal, finger-anal, and penetration using objects.
- Based on the judgment in Sakshi v. Union of India, the Commission suggested that sexual assault on any part of the body should be considered rape.
- Another recommendation was that rape laws should be gender-neutral, so that cases like custodial rape of young boys could also be addressed under the law.
- The Commission also proposed creating a new offence under Section 376E titled "unlawful sexual conduct."
- It recommended amending Section 509 of the IPC to impose higher punishment when the offence is committed with sexual intent.
- A major recommendation was related to marital rape. The Commission suggested removing Exception 2 to Section 375, which protects husbands from prosecution for rape of their wives.
- According to the recommendation, forced sexual intercourse by a husband should be treated as an offence, similar to any other form of physical violence committed against a wife.
- It also proposed deleting Section 376A on similar reasoning.
- Under the Indian Evidence Act, the Commission recommended that if a victim states that she did not consent to the sexual act, the court should presume absence of consent unless proven otherwise.
- The Justice Verma Committee also criticized the government, police insensitivity, and gender bias as major reasons for the increasing crimes against women in India.
- The Committee recommended the creation of new offences such as disrobing of a woman, voyeurism, stalking, and trafficking, many of which were later incorporated into law.

- However, one of the most important recommendations of the Committee – criminalizing marital rape – was not accepted by the government, leaving a significant gap in the legal framework addressing sexual violence within marriage.

SUGGESTIONS :

- Redefining the consent – In rape jurisprudence over reliance on consent in determining whether the offence is committed, the victim suffers to prove the absence of consent and therefore innocence. Women sometime not in the position to exercise choice in giving consent because some inequality exists in certain social situations. If the law didn't provide justice for their abuse because of consent approach, the law has failed her.
- Criminalization of marital rape amendment to section 63 of BNS to remove marital rape exception above 18 years recognising it as a criminal offence. This aligns with constitutional rights equality and bodily autonomy and strengthen existing law. Enhance protection of women from domestic violence act 2005, to explicitly include marital sexual violence and provide stronger legal remedy
- Judicial and police reforms – Implement gender sensitization training for judges and police officers to ensure unbiased handling of marital rape cases add certain requirement to prevent its issues
- Under all personal laws, marital rape should be considered as one of the most essential grounds for divorce

- Victim support service – Enhancing victim support services including counselling, legal assistance, is crucial. Providing comprehensive support can encourage victims to come forward and aid in their recovery.
- Public awareness campaigns: Raising public awareness about digital rape and need strong specific legal implications can help reduce stigma and encourage reporting. educational campaigns can inform the public about the seriousness of the crime and the available legal recourse.

CASE LAW :

Tukaram v. State of Maharashtra (Mathura Rape Case) (1979)

It involved a young tribal girl named Mathura who was allegedly raped by two policemen inside a police station where she had gone with her relatives to lodge a complaint. The prosecution argued that the accused abused their authority and committed rape while Mathura was in custody, and that her consent was not voluntary. The defence contended that the sexual act was consensual and emphasized the absence of physical injuries or signs of resistance. The Supreme Court of India acquitted the accused, holding that the prosecution failed to prove that the intercourse was against Mathura's will. The Court relied on the lack of injuries and resistance to conclude that the act might have been consensual, a decision that was widely criticized and later led to reforms in India's rape laws.

State of Punjab v. Gurmit Singh (1996)

In this case, the victim alleged that she had been raped by the accused, and the trial court convicted him based mainly on the victim's testimony. On appeal, the issue before the Supreme Court of India was whether the testimony of the victim alone was sufficient to

sustain a conviction. The Court held that the evidence of a rape victim should not be treated with suspicion and that her testimony alone can be enough for conviction if it is credible and trustworthy. The Court also emphasized that rape trials should be conducted in camera to protect the dignity and privacy of the victim and to avoid unnecessary public humiliation during the judicial process.

Independent Thought v. Union of India (2017)

The case challenged the exception under Section 375 of the Indian Penal Code, 1860, which earlier allowed sexual intercourse by a husband with his wife if she was above 15 years of age. The petitioner argued that this exception violated the constitutional rights of minor girls and was inconsistent with child protection laws such as the Protection of Children from Sexual Offences Act, 2012. The Supreme Court of India held that sexual intercourse with a wife below 18 years of age would amount to rape, even if she is married. The Court read down the exception to Section 375 and stated that the age of consent must be 18 years, thereby providing greater protection to minor married girls.

RIT Foundation v. Union of India (2022)

The petition challenged the constitutionality of the marital rape exception under Section 375 of the Indian Penal Code, 1860, which states that sexual intercourse by a man with his own wife (above a certain age) is not rape. The petitioners argued that this exception violates women's fundamental rights to equality and dignity under Article 14 of the Constitution of India and Article 21 of the Constitution of India. The Delhi High Court delivered a split verdict: one judge held that the exception is unconstitutional because it denies married women protection from sexual violence, while the other judge upheld the validity of the exception, stating that the matter should be decided by the legislature. As a result, the issues were left unresolved and the matter has been taken to the Supreme Court of India for final determination.

CONCLUSIONS :

Reforming laws relating to sexual offences is a complex and sensitive task, especially in a diverse country like India. The legal system must operate within a framework where multiple personal and religious laws coexist, which sometimes makes it difficult to introduce uniform criminal law reforms. Any amendment to sexual offence laws may come into conflict with these personal laws. Although there is a clear need to bring substantial reforms—such as making sexual offence laws gender-neutral and removing existing inequalities—a complete and radical restructuring of the legal framework may not always be practical. Experiences in jurisdictions such as the United States, Canada, and New South Wales show that drastic overhauls of sexual offence laws have not always produced the expected results. Therefore, legal reform must be thoughtful, balanced, and sensitive to social realities.

¹¹⁰¹At present, one of the most urgent reforms required in India is the criminalization of marital rape under the Indian Penal Code, 1860. However, simply declaring marital rape as a criminal offence will not be sufficient. Effective implementation requires broader institutional and social change. The judiciary and the police must be properly sensitized to deal with such cases in a fair and empathetic manner. In addition, public awareness and education are necessary so that society understands the seriousness of marital rape. The true objective of criminalizing marital rape can only be achieved when society challenges the long-standing myth that sexual violence within marriage is insignificant or acceptable.

If the institution of marriage is weakened by the recognition of marital rape as a crime, it suggests that the institution itself may not be based on equality or democratic values. Instead, it may reflect traditional power structures where the husband exercises control and dominance over the wife. Such a

¹¹⁰¹ D. Nicolson & L. Bibbings, *Feminist Perspectives on Criminal Law* 185 (1st ed. Cavendish Publishing Ltd. 2000)

perspective is rooted in patriarchal thinking that views the wife as the property of the husband. Modern legal systems must move away from this outdated notion and recognize marriage as a relationship between equals where both partners retain autonomy and dignity.

Some critics argue that laws criminalizing marital rape may be misused. However, the possibility of misuse exists in almost every law, and this has never been a sufficient reason to deny protection to genuine victims. Laws are enacted because the benefits of protecting individuals from harm outweigh the potential risks of misuse. Marriage may imply mutual consent for companionship and intimacy, but this consent cannot override a person's fundamental autonomy over their own body. Non-consensual sexual intercourse is recognized as a crime outside marriage, and logically the same principle should apply within marriage as well. Ultimately, the issue of marital rape is about protecting the basic human right of bodily autonomy and dignity, regardless of whether a person is married or unmarried.

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