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RESEARCH ARTICLE

RAPE IS RAPE EVEN IN MATRIMONY: AMENDING THE INDIAN PENAL CODE TO CRIMINALIZE MARITAL RAPE: A CURRENT COMPELLING NECESSITY

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Abstract

Matrimony is a revered union that establishes a holy connection between two individuals and their respective families. However, when matrimony is entered into without the explicit consent of the parties involved or when the individuals participating in the marriage are not satisfied with the arrangement, it can become unpleasant or unfavourable. Throughout history, our civilization has exhibited a proclivity towards a patriarchal system, dating back to the era of hunting and gathering. It is inherent for men to exhibit dominant emotions as a result of their natural disposition. When examining the global context, it becomes evident that establishing and enforcing law and order play a significant role in defining and regulating societal norms and behaviours. The "Indian Penal Code" of 1860 encompasses a set of laws and corresponding penalties that have been established. However, a common misconception among individuals is the lack of understanding regarding the historical origins of these regulations, which the British established during a bygone era. Marital rape is not criminalized under Indian law, specifically the "Indian Penal Code" of 1860, which does not acknowledge the act of a husband raping his wife as a punishable offence. The rationales for this phenomenon are diverse and can be identified in numerous publications of the Law Commission, deliberations within the Parliament, and adjudicatory rulings. There are various justifications for this, including the preservation of the sacred nature of marriage and the availability of alternative legal remedies. This paper examines the fallacies underlying the arguments favouring decriminalizing marital rape. The author presents a scholarly examination of Article 14 of the Constitution of India, asserting that the inclusion of a marital rape exception clause within the "Indian Penal Code 1860" is fundamentally inconsistent with constitutional principles. Additionally, the author highlights the dearth of available alternative avenues for a woman to seek legal recourse in cases of marital rape. The author asserts that criminalizing marital rape is imperative and presents a comprehensive framework for achieving this objective.

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Introduction:-

Marital rape is defined as the act of rape perpetrated by an individual legally recognized as the victim's spouse. The concept of rape remains consistent, denoting non-consensual sexual intercourse or sexual penetration.¹ Hence, a crucial element in establishing the offence of rape is the demonstration of non-consent. The responsibility of demonstrating the absence of consent frequently falls upon the victim. In certain circumstances, such as when dealing with individuals who are under the legal age of consent, it is often assumed that consent is absent due to the legal presumption that children lack the capacity to provide consent for engaging in sexual activities.² Conversely, there are also situations in which the presence of consent is assumed. Frequently, this assumption is present in cases where the victim and the criminal are in a marital relationship.³ In such circumstances, the concept of marital rape is rendered paradoxical.

Currently, the legal recognition of marital rape as a criminal offence is limited to a total of fifty-two nations.⁴ Marital rape remains unrecognized as a criminal offence by both legal frameworks and societal norms in numerous jurisdictions worldwide, including India. Despite the acknowledgement of rape as a criminal offence and the establishment of corresponding sanctions by several countries, there remains a notable exemption in the application of such laws when the victim and perpetrator are in a marital relationship. This provision is commonly referred to as the "marital rape exception clause." Within these legal countries, four primary grounds exist for the non-criminalization of marital rape. The first two explanations are no longer applicable in contemporary society due to the progress made in achieving gender equality. The first rationale originated from the perception of the wife as being subordinate to her husband.⁵ Historically, women were considered property or chattel within the institution of marriage, resulting in a lack of rights for women. In the given scenario, it is inconceivable to comprehend a situation where a husband engages in non-consensual sexual activity with his wife, as historically, the husband had a position of authority over his wife and possessed certain entitlements pertaining to her physical autonomy. In addition to this rationale, the notion of unities was also present. This thesis was predicated on the notion that upon entering into matrimony, the woman's individual identity became amalgamated with that of her spouse. Consequently, the legal framework did not grant married women a distinct legal identity separate from that of their husbands. This is connected to the preceding rationale concerning the perception of women as the property of their husbands.

Nevertheless, during the feminist revolution in the 1970s, the aforementioned explanations ceased to be the primary focus of efforts to oppose the criminalization of marital rape.⁶ This was due to the acknowledgement of women as being equal to men in terms of citizenship. Instead, more intricate hypotheses have emerged as the rationales. The principle of "implied consent" represents a notable rationale. Within the context of marriage, it is commonly believed that an undeniable presumption of consent is established when a man and a woman enter into this legal and social institution. Marriage is widely seen as a legal agreement, with mutual permission to engage in sexual acts being commonly recognized as the fundamental component of this contractual arrangement. The fourth rationale, which represents the most contemporary perspective, posits that criminal law ought not to encroach upon the conjugal bonds shared by spouses. The private sphere is an area that should remain inviolable by legal intervention. This paper aims to critically examine the explanations put out for the non-criminalization of marital rape in India and afterwards present a proposed paradigm for its criminalization.

Background Of The Marital Rape Exception In The Indian Context

Section 375 of the "Indian Penal Code" encompasses the criminalization of the act of rape. The definition in question is comprehensive, encompassing not only sexual intercourse but also other forms of sexual penetration, such as oral sex, within the scope of the term "rape". Nevertheless, "Exception 2" serves to exempt the applicability of the aforementioned section in cases involving sexual intercourse or sexual activities between individuals who are

¹ The Indian Penal Code, 1860, §375.

² The Protection of Children from Sexual Offences Act, 2012, §3. Consent is immaterial when the assault is against a child.

³ The Indian Penal Code, 1860, §375, Exception 2

⁴ UN Women, 2011-2012 Progress of the World's Women, 17, (2011) available at <http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2011/progressoftheworldswomen-2011-en.pdf?v=1&d=20160810T092106> (last visited on Aug 28, 2023).

⁶ Rebecca M. Ryan, The SexRight: A Legal History of Marital Rape Exemption, 20 Law and Social Enquiry, 944 (1995).

legally married. According to Indian law, a wife lacks legal remedies under criminal law in the event of spousal rape. The verbiage pertaining to Exception 2 as outlined in Section 375 of the "Indian Penal Code" is as follows:

*"Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."*⁷

The absence of a justification for the exclusion of sexual intercourse or sexual acts between spouses from being classified as rape is evident in the exception clause outlined in section 375 of the "Indian Penal Code." Considering that this section's central focus is the concept of consent, it is plausible to argue that an irrefutable presumption of consent is established when the victim and the offender are legally married. However, it is conceivable that the deliberate legislative decision to exclude married couples from the application of this clause may have been influenced by the perceived sanctity attributed to this institution within our society.

Although the legal framework does not encompass the criminalization of marital rape as a whole, it does address a particular type of marital rape. This specific form pertains to instances of "non-consensual sexual intercourse" that occur when the husband and wife are living apart due to judicial separation or other similar circumstances. According to Section 376B of the "Indian Penal Code", it is stipulated that:

"Section 376B: Sexual intercourse by husband upon his wife during separation: Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation - In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375".

This section emphasizes that according to section 375 of the "Indian Penal Code," consent is presumed, which is not relevant in this particular situation due to the absence of cohabitation between the husband and wife. Cohabitation engenders the presumption that the woman has consented to participate in sexual relations with her spouse.

The subject at hand invites contemplation and examination of the progression of legislative discussions and recommendations from the "Law Commission of India" pertaining to marital rape. Such an analysis can provide insights into the underlying factors that have led to the inclusion of an exception clause in India.

The initial examination of this matter was conducted in the 42nd Law Commission Report.⁸ Due to later amendments to the legislation, the significance of this Report is limited to providing insights into the Commission's perspective on marital rape. This Report put out two significant recommendations. Firstly, it is essential to acknowledge that in cases where the husband and wife have undergone a legal separation, the exception clause should not be applicable. While the notion put forth was commendable, the rationale provided for it lacked clarity. It stated that *"in such a case, the marriage technically subsists, and if the husband has sexual intercourse with her against her will or her consent, he cannot be charged with the offence of rape. This does not appear to be right"*. The omission of an explanation for the incorrectness of the situation is evident in the discussion. The statement suggests that the presumption of consent exists in cases when the spouses cohabit. However, the absence of cohabitation negates the presumption of consent. The second recommendation outlined in this study pertained to instances of non-consensual sexual intercourse with females between the age range of twelve to fifteen years. According to the Report, it is recommended that the penalty for such transgressions be categorized in a distinct part and preferably avoid being labelled as rape. This discrepancy arose due to the existence of distinct penalties for spousal rape committed against wives aged twelve to fifteen, previous to the recent revisions in the "Indian Penal Code". The primary characteristic of the second proposal is its inclination to refrain from categorizing marital rape as rape, instead considering it as a potentially lesser offence akin to a sexual misdemeanour. This Report provides an overview of the presumption of consent that is applied within the context of cohabitation between spouses, as well as the distinction made between marital rape and other forms of rape, with the former often being perceived as less

⁷ The Indian Penal Code, 1860, §375

⁸ Law Commission of India, Indian Penal Code, Report No. 42 (June 1971), available at <http://lawcommissionofindia.nic.in/1-50/report42.pdf> (last visited on September 1, 2023).

severe. The Report, however, did not provide any commentary on the exception provision itself, specifically regarding whether the retention or removal of the exception clause is necessary.

The legitimacy of the exception clause was thoroughly addressed by the Law Commission in its 172nd Report.⁹ Throughout the course of the discussion, multiple arguments were put out regarding the validity of the exception provision. The argument stated that since various types of spousal violence were deemed unlawful, there existed no rationale for excluding marital rape from the purview of legal accountability. The argument in question was dismissed by the Law Commission on the grounds that the criminalization of marital rape may lead to an excessive degree of interference within the institution of marriage. The objective of this Report is to offer a comprehensive understanding of the intricate correlation between marital rape and the perceived sanctity of the institution of marriage.

In 2012, a committee led by Justice J.S. Verma (Retd.) presented a recommendation that differed in spirit from prior talks, proposing the criminalization of marital rape. The establishment of this Committee was prompted by the widespread public outcry for the enhancement of the criminal justice system's efficacy in addressing incidents of severe sexual assault against women. In 2012, the Committee released the "Report of the Committee on Amendments to Criminal Law", commonly referred to as the "J.S. Verma Report"¹⁰. One recommendation proposed in the report advocates for the criminalization of marital rape. A recommendation with a dual purpose was put forward. The initial suggestion put out was to remove the exception clause. One additional proposal entailed the inclusion of a provision in the law that explicitly clarifies the inadmissibility of a marital or analogous relationship as a valid defence for the accused, as well as its irrelevance in establishing the presence or absence of consent. Furthermore, it was recommended that such a relationship ought not to be regarded as a mitigating element in the process of determining appropriate penalties. This Report examines the origins of the immunity provided to husbands who perpetrate crimes against their wives, highlighting its association with antiquated beliefs seeing women as possessions of men and their presumed perpetual agreement to their husbands' sexual desires. It has been observed that the withdrawal of this immunity has occurred in some countries and in the context of contemporary notions of marriages characterized by equality, the presence of such an exception clause is deemed untenable.

In consideration of the aforementioned circumstances, the "Criminal Law Amendment Bill, 2012" was formulated. The substitution of the term "rape" with "sexual assault" was implemented in this legislation with the aim of broadening its applicability. However, it is noteworthy that the Bill did not incorporate any provisions to classify marital rape as a criminal offence. The Amendment Bill of 2012 failed to include the recommendations outlined in the J.S. Verma Report. The 167th Report of the Parliament Standing Committee on Home Affairs examined the Amendment Bill of 2012 and facilitated public comments as part of its assessment process.¹¹ In this context, a recommendation has been made to modify section 375 by removing the exception clause. Nevertheless, the Standing Committee declined to accept this recommendation. According to the Standing Committee Report, one key argument is that implementing such a measure will result in an increased burden on the entire family system, thus leading to more unfairness. Additionally, the Committee's rationale was based on the assertion that adequate remedies were already in place since the family had the capacity to address such matters internally. Furthermore, the Committee highlighted the availability of a remedy within criminal law, namely through the notion of cruelty as defined in section 498A of the Indian Penal Code.

The Ministry of Home Affairs reaffirmed this position in 2015 in response to a bill put forth by a Member of Parliament seeking to classify marital rape as a criminal offence.¹² The press release stated that it "*was considered*

⁹ Law Commission of India, Review of Rape Laws, Report No. 172 (March 2000), available at <http://www.lawcommissionofindia.nic.in/rapelaws.htm> (last visited on September 1, 2023).

¹⁰ Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2020-pdfs/rs-11032020/1959.pdf> (last visited on September 1, 2023).

¹¹ Standing Committee on Home Affairs, Fifteenth Lok Sabha, Report on The Criminal Law (Amendment) Bill, 2012, One Hundred and SixtySeventh Report, available at https://prsindia.org/files/bills_acts/bills_parliament/2012/SCR_Criminal_Law_Bill.pdf (last visited on September 1, 2023).

¹² The Criminal Laws (Amendment) Bill, 2014, 28 of 2014. (This Bill was a Private Member Bill proposed by Ms. Kanimozhi on the 28th of November, 2014).

that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context".¹³ One of the justifications provided for this phenomenon was the prevailing societal inclination to regard marriage as a sacred institution. Moreover, it is worth mentioning that a private bill was presented on this subject in December of 2015. During the subsequent discourse, the Home Minister asserted that the matter was under consideration by the Law Commission, and any determination would be made solely subsequent to the release of the Report. One notable feature of his discourse was his allusion to the preexisting legal provision of 'cruelty' as outlined in the "Indian Penal Code". In 2016, the Home Minister faced further inquiry on the presence of the marital rape exception and the potential legislative measures to criminalize marital rape. Once more, the Home Minister reiterated that the issue was under examination by the Law Commission and no definitive action had been taken to render it a criminal offence, as the Parliamentary Standing Committee had previously determined against such a course of action.¹⁴

The aforementioned perspective about the criminalization of marital rape is not limited solely to the legislative branch, but also encompasses the Court. While there is no explicit confirmation of the constitutionality of the exception clause in section 375, there have been instances where courts have chosen to circumvent this issue. They have either dismissed petitions seeking to invalidate this exception clause or have utilized it as a means to evade addressing inquiries regarding spousal rape.¹⁵

Upon examining the justifications put forward by the Government and the assessments conducted by multiple Law Commission reports, it becomes evident that there exist three overarching themes in the counterarguments against the criminalization of marital rape. One aspect pertains to the objective of safeguarding the institution of marriage and, by extension, refraining from intervening in order to preserve its sanctity. This phenomenon is evident in both the "Indian Penal Code" and the reports published by the Law Commission. The second aspect pertains to the available alternative remedies that women can pursue within the family and legal framework, including section 498A of the "Indian Penal Code", the "Protection of Women from Domestic Violence Act, 2005", and other relevant personal laws concerning marriage and divorce. This argument posits that the significance of criminalization in cases of marital rape is diminished due to the availability of alternative avenues for women, hence diminishing the urgency of advocating for the prosecution of such acts. The final aspect centers on the cultural values prevalent in India, highlighting the argument that these values serve as a deterrent against the criminalization of marital rape.

Marital Rape: A Threat To Fundamental Rights

Marriage is often regarded as a revered establishment that serves as the fundamental cornerstone of our societal structure. The concept of personal space is widely seen as highly intimate, and governmental authorities exhibit caution in intruding into this fragile domain. The preservation of citizens' privacy is a paramount concern, and any encroachment by the State in this domain would undermine this fundamental Right. Therefore, the State does not enforce the marriage or divorce of any two persons. Nevertheless, the State's reluctance to intrude into this realm of personal privacy, even in select circumstances, may provide challenges. In instances where a spouse experiences cruelty inside the confines of a marital relationship, it becomes necessary for the State to intervene and prosecute such acts of cruelty within the private domain. In the event that the State fails to take action, the woman will be devoid of legal recourse. Therefore, it is imperative for the Government to intrude into this realm of personal privacy under specific circumstances. Marital rape constitutes a breach of the inherent rights of women, particularly as outlined in Articles 14 and 21 of the Constitution of India. Despite the occurrence of marital rape within the confines of the private realm of marriage, it is incumbent upon the State to intervene and breach this sphere of privacy. In the absence of state intervention inside the private sector, a woman is deprived of recourse in cases of marital rape.

¹³Press Release, Press Information Bureau, April 29, 2015, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=119938> (last visited on September 1, 2023).

¹⁴Lok Sabha Debates, Question on Marital Rape, 2016, Question No. 2872, March 15, 2016, available at <http://164.100.47.190/loksabhaquestions/annex/7/AU2872.pdf> (last visited on September 1, 2023).

¹⁵In a judgment delivered by Justice Virender Bhat, an Additional Sessions Judge of the Special Fast Track Court, he noted that forced sex cannot be considered rape in a marriage and hence, an analysis of the fact situation was not required. See Apoorva Mandhani, Marital Sex Even if Forcible is Not Rape; Delhi Court, Livelaw (Delhi) May 14, 2014, available at <http://www.livelaw.in/marital-sex-even-forcible-rape-delhi-court-read-judgment-close-look-law-relating-marital-rape-india/> (last visited on September 1, 2023).

Nevertheless, a thorough examination of judicial rulings pertaining to subjects conventionally linked to the private realm of marriage and family reveals the judiciary's reluctance to incorporate fundamental rights within this domain. The judiciary has established a conceptual private realm in which it declines to enforce and interpret fundamental rights. The consequence of this has been to nullify the inquiry of whether marital rape constitutes a violation of fundamental rights. The absence of fundamental rights within the perceived marital realm is the underlying reason for this phenomenon.

Article 14 of the Indian Constitution ensures the fundamental Right of "equality before the law" and "equal protection of the laws" within the territorial boundaries of India. Nevertheless, the current state of criminal legislation fails to address the issue of discrimination experienced by victims of marital rape. The Exception to Section 375 of the "Indian Penal Code" can be regarded as a law that exhibits discriminatory tendencies towards married women. This law establishes a distinct category of women who are denied legal protection in cases of sexual harassment perpetrated by their husbands. The absence of an intelligible differentiating factor renders this law unjust, artificial, and vague in nature. Section 375 does not encompass instances of sexual assault perpetrated by a spouse against their marital partner. The act of shielding an individual from the jurisdiction of Section 375 of the "Indian Penal Code" solely on the grounds of their marital status is an act of discrimination and a violation of Article 14 of the Indian Constitution. Rape and marital rape are essentially synonymous, differing mainly in the marital status of the victim in the latter scenario. Otherwise, the elements and characteristics of both acts are mostly comparable. Married women have considerable challenges as they are compelled to endure a lifelong association with the perpetrator and are reliant on their husbands. In actuality, this legal loophole serves as an incentive for spouses to engage in non-consensual sexual acts, as they are aware that such actions are not subject to legal consequences. Therefore, it can be argued that marital rape is a direct infringement of Article 14 of the Indian Constitution, as it fails to provide equal protection to female victims and does not meet the criteria established in Article 14 in terms of "intelligible differentia and reasonable nexus."

According to Article 21 of the Indian Constitution: "[N]o person shall be deprived of his life or personal liberty except according to a procedure established by law."¹⁶ In the case of *Kharak Singh v. State of Uttar Pradesh*¹⁷, the Hon'ble Supreme Court held that "[b]y the term 'life' as here used something more is meant than mere animal existence." Numerous instances exist in which the Supreme Court has engaged in the interpretation of this particular article significantly. Article 21 of the constitution grants numerous rights to citizens, encompassing but not limited to the Right to health, dignity, a safe environment, sexual privacy, and human dignity. In the case of *State of Karnataka v. Krishnappa*¹⁸, the Hon'ble Supreme Court held that "[s]exual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female." Additionally, the Court recognized that rape, as an act, inflicts significant harm upon the victim's self-esteem and dignity, resulting in a degrading experience that leaves behind lasting trauma.

In the legal matter of *C.E.S.C. Ltd. v. Subhash Chandra*¹⁹, the Honorable Supreme Court determined that the Right to Life encompasses the Right to lead a wholesome and respectable existence, thereby upholding the fundamental aspect of an individual's identity within the nation. The exemption to Section 375 infringes upon the fundamental Right to the well-being of married women, as it allows for the perpetration of marital rape. This form of sexual violence can lead to a range of adverse consequences, including psychological, emotional, and physical harm, often resulting in depression. Additionally, instances of coerced sexual intercourse carry the inherent risk of transmitting sexually transmitted diseases to the victim. The Honorable Supreme Court has addressed numerous issues discussing rape as a crime against society and a violation of Article 21 of the Indian Constitution. Therefore, the exemption to Section 375 of the "Indian Penal Code" is a direct infringement upon a woman's fundamental Right to lead a healthy and dignified life. Engaging in sexual intercourse without the woman's consent not only undermines her dignity but also poses a threat to her well-being. Consequently, this exemption contravenes the fundamental principles enshrined in Article 21 and is deemed unconstitutional.

The Apex Court has rendered multiple decisions affirming that the constitutional protection of the Right to Privacy falls within Article 21. Hence, engaging in any form of non-consensual sexual activity towards a woman is a breach

¹⁶ The Constitution of India, art. 21.

¹⁷ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

¹⁸ *State of Karnataka v. Krishnappa*, (2000) 4 SCC 75.

¹⁹ *C.E.S.C. Ltd. v. Subhash Chandra*, (1992) 1 SCC 441.

of her personal privacy, as her body is her own and she possesses the inherent Right to provide or withhold consent and safeguard it. The issue of sexual privacy has been addressed by the Hon'ble Supreme Court in the case of *State of Maharashtra v. Madhkar Narayan*²⁰. The Court ruled that "[e]very woman is entitled to her sexual privacy and the same is not open to for any and every person to violate her privacy". Nevertheless, the inclusion of an exemption for marital rape under the "Indian Penal Code " is deemed to infringe against the fundamental Right to sexual privacy of married women, as it disregards the principle that no individual should be compelled to engage in sexual intercourse without their consent. Hence, this exception contravenes the Right to Privacy and so warrants constitutional invalidation.

Recent Judicial Stance

The Supreme Court of India rendered a significant verdict on October 11, 2017, in the case of *Independent Thought v. Union of India*²¹ and Others. This judgment upheld the fundamental Right to bodily dignity for all girls and established the criminalization of rape in cases of underage marriage. In this judicial ruling, the Supreme Court conducted an assessment about the classification of sexual intercourse between a man and his spouse, who is a female aged 15 to 18, as an act of rape. The Supreme Court of India has addressed the discrepancy between the "Indian Penal Code" and the "Protection of Children from Sexual Offences Act, of 2012". Specifically, the Court has limited the scope of Exception 2 to Section 375 of the IPC and raised the minimum age of consent for marital sexual intercourse to 18 years. This decision aims to protect and uphold the human rights of married girls who are still children. The Court adopted a deliberate approach in its decision to invalidate Exception 2 to Section 375 of the Indian Penal Code.

In the case of *RIT Foundation v. Union of India*²², a Division Bench of the Delhi High Court issued a judgment concerning the legality of the marital rape exception (MRE) outlined in Exception 2 to Section 375 of the "Indian Penal Code". The Bench's decision was divided, with each Judge offering distinct viewpoints. A petition challenging the ruling has been submitted and scheduled for hearing at the Supreme Court. The judgment is currently subject to extensive debate due to the divergent perspectives on marital rape expressed by the two judges on the Bench. Additionally, the judgment provides an insightful interpretation of the theory of judicial review, particularly in relation to the application of the presumption of constitutionality in the context of pre-constitutional laws. Justice Rajiv Shukla made an observation regarding the rational nexus between the differentiation of married and unmarried couples and the objective of Section 375. The exception for marital rape fails to satisfy the nexus test, as it provides immunity for an act that would otherwise be considered rape just because it occurs inside the context of marriage. He said, "***The classification, is unreasonable and arbitrary as it seems to convey that forced sex outside marriage is real rape and that the same act within marriage is anything else but rape***". The act of a woman declining non-consensual, coerced sexual intercourse is considered a moral entitlement. The assertion that the perpetrator of sexual assault is the spouse of the victim does not diminish the harmful, demeaning, or dehumanizing nature of the conduct, therefore constituting a violation of Article 21. The exception for marital rape is a violation of Article 15, as it perpetuates discrimination against women on the basis of their marital status. It is also in contravention of Article 19(1)(a) as it infringes upon the constitutional assurance of freedom of expression, particularly for married women who have citizenship in this nation.

In a recent legal case titled *Hrishikesh Sahoo v. State of Karnataka*²³, Justice M. Nagaprasanna of the Karnataka High Court delivered a noteworthy ruling. "**A man who is well acquainted with a woman performs all the ingredients as is found in pre or post amendment to Section 375 of the IPC, can be proceeded against for offences punishable under Section 376 of IPC. Therefore, a man sexually assaulting or raping a woman is amenable to punishment under Section 376 of IPC. The contention of the learned senior counsel that if the man is the husband, performing the very same acts as that of another man, he is exempted. In my considered view, such an argument cannot be countenanced. A man is a man; an act is an act; rape is a rape, be it performed by a man the husband on the woman wife**", Justice Nagaprasanna opined.

²⁰ State of Maharashtra v. Madhkar Narayan, AIR 1991 SC 207.

²¹ Independent Thought v. Union of India, (2017) 10 SCC 800.

²² RIT Foundation v. Union of India, (2022) SCC online Del 1404.

²³ Hrishikesh Sahoo v. State of Karnataka, MANU/KA/1175/2022.

Conclusion And Suggestions:-

The discussion surrounding marital rape holds significant importance in the pursuit of achieving substantive equality for married women, who are often confined to their domestic sphere and marginalized in public and legal discussions. It is imperative to acknowledge that the current deficiency in criminal law represents a significant gap, which undermines the constitutional provisions that guarantee women's equality and autonomy.

In the case of *Rafiq v. State of Uttar Pradesh*, Justice Krishna Aiyar made the statement that "A Murderer kills the body but a Rapist kills the soul".²⁴ The State asserts that the sanctity of marriage is not inviolable and is primarily the concern of the married couple. The State has already enacted legislation pertaining to several aspects of marriage, including dowry, infidelity, abuse, and divorce. Including marital rape on the roster would represent a significant achievement for India in fostering sound psychological growth. The state further asserted that the criminalization of marital rape would have the potential to disrupt the institution of marriage and could be susceptible to misuse as a means to unjustly target husbands. When an action has been taken to compromise the sanctity of marriage, how would seeking justice for that action potentially disrupt the stability of the marital union between the two individuals involved? The marital union has experienced a state of destabilization subsequent to the occurrence of sexual abuse perpetrated or attempted by one spouse against the other. Fast-track courts and expedited trials can effectively address the issue of husbands engaging in harassment. The establishment of more fast-track courts nationwide would contribute to the resolution of the issue pertaining to bogus cases. However, when the Government itself is resistant to adopting any measures to address the issue of marital rape, the process of criminalizing such acts can be prolonged and time-consuming. The criminalization of marital rape is crucial since it enables married women to seek legal recourse for their problems. The criminalization of marital rape hinges upon a comprehensive understanding of the differentiation between rape and marital rape.

Given the aforementioned circumstances, the author posits a theoretical framework aimed at the criminalization of marital rape. Firstly, it is recommended that the exception clause be removed. Furthermore, it is imperative to emphasize that the marital relationship between the accused individual and the woman in question shall not serve as a valid defence. Thirdly, it is recommended that the punishment policy remains consistent. Lastly, it is imperative to consider some revisions in the Evidence Act to adequately address the intricacies involved in prosecuting cases of marital rape.

²⁴ *Rafiq v. State of Uttar Pradesh*, 1980 Cr. L.J. 1344 SC.