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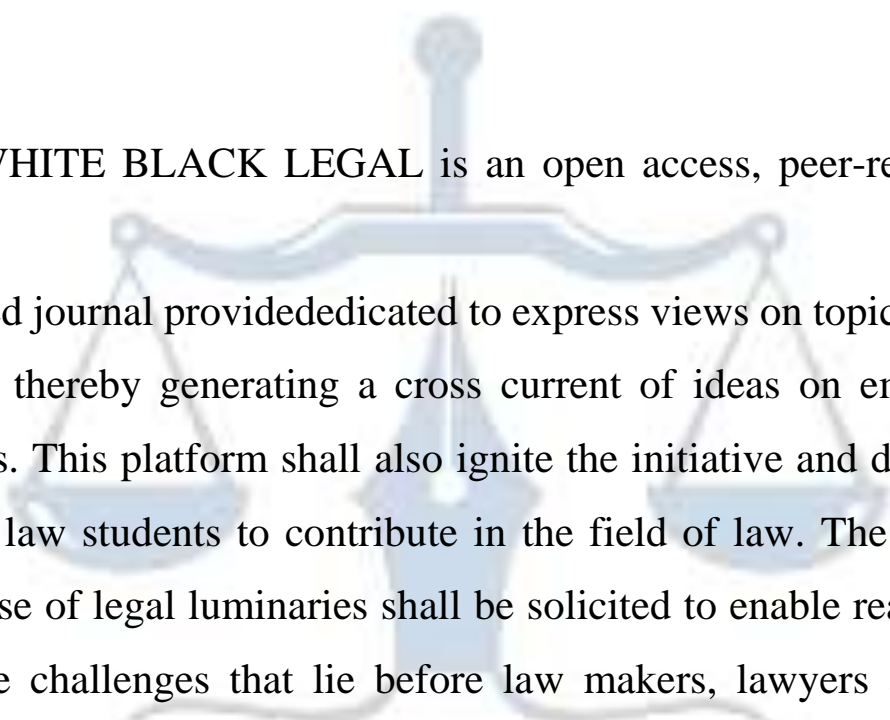


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **"UNVEILING THE SILENT SUFFERING: A CALL TO CRIMINALIZE MARITAL RAPE"**

AUTHORED BY - VIVECHANA CHAUHAN<sup>1</sup>

## **ABSTRACT**

*"Marriage is not a license to violate consent." This statement underscores a pressing global issue that continues to challenge the balance between personal freedoms and entrenched societal norms: marital rape. Despite growing awareness and advocacy for gender equality, the act of non-consensual sexual intercourse within marriage remains a legally and culturally contested topic in many parts of the world. Rooted in historical patriarchal beliefs that view marriage as granting irrevocable consent, marital rape is often dismissed or ignored, perpetuating indifference to women's bodily autonomy.*

*This paper delves into the complexities surrounding marital rape, arguing that the sanctity of marriage should not override an individual's right to consent. It examines the legal hesitations, societal implications, and cultural resistance that hinder progress, specifically focusing on the Indian legal framework and its global counterparts. By highlighting the urgent need for legal reform and cultural change, the discussion sheds light on the path toward a more equitable future where women's rights are safeguarded within the domestic sphere.*

## **I. INTRODUCTION**

Marital rape is a very contentious and deep-seated issue, referring to the non-consensual sexual intercourse between spouses, shrouded by varied legal and cultural difficulties. While the whole world is moving to recognize women's autonomy over their bodies, many legal systems still remain very chary in their attempt to criminalize marital rape fully. Historically, marriage served as an institution that provided implied and irrevocable consent to sexual relations. This, more often than not, meant subordinating women's rights in the face of male dominance within the domestic sphere. Unfortunately, this archaic view remains a part of the patriarchal traditions of most societies, and women remain more vulnerable due to a presumed marital obligation.

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As Catharine MacKinnon, a legal scholar, affirms, "The law of rape is the subordination of women made explicit." This quote by MacKinnon encapsulates the grim reality wherein consent, one of the most basic elements of sexual autonomy, is often discarded in marriage. The legal treatment of marital rape has been varied across nations; some still grant immunity to husbands. It points out that a shift in this regard toward gender equality is needed and recognizes that one's right to the integrity of the person is not nullified by marriage. Efforts at addressing marital rape would have to go beyond legal reforms to changing social attitudes still hanging on to the myth of ownership in the marriage contract.

The failure to criminalize marital rape demonstrates more comprehensive levels of societal indifference towards violence against women and reflects those strongly entrenched patriarchal norms that privilege male dominance. The criminalization of marital rape ensures legal protection for the victims, apart from conveying the powerful message that marriage cannot be used as an excuse for sexual violence. Consent cannot be presumed or implied in the marriage bond; it must be freely given and continually respected, and it is a human right by all means.

Legal debates on marital rape have been an ongoing debacle—a grim reminder of tradition versus progress, with the deconstruction of related myths serving to justify gender-based violence in the so-called sanctuary of married life becoming highly essential.

## **II. MARITAL RAPE IS RAPE PER SE**

Marital rape, often referred to as spousal rape, is the non-consensual act of sexual intercourse between a married couple, wherein one spouse, typically the husband, forces the other into sexual activity without their consent. This act violates the individual's bodily autonomy and dignity, occurring within the institution of marriage, which is traditionally seen as a space of mutual respect, trust, and partnership. Marital rape challenges the very foundation of consent, which should be a fundamental component of any sexual relationship, including marriage.

The primary distinction between marital rape and rape outside of marriage lies in societal and legal perceptions. In the broader context of rape, the lack of consent to sexual intercourse is universally understood as a criminal offense. However, within marriage, many legal systems—historically and in some present-day societies—have treated marital rape differently, often excluding it from the definition of rape. This stems from the outdated belief that marriage



entails a form of irrevocable consent to sexual relations, where a wife is perceived as having permanently consented to sexual access under marriage. This notion is rooted in patriarchal constructs that view a wife as the property of her husband, thus stripping her of individual autonomy within the marriage.

In contrast, rape outside of marriage has been more clearly recognized as a violation of personal autonomy, irrespective of the victim's relationship with the perpetrator. Laws governing rape in such instances are clearer, and there is generally broader societal agreement on the immorality and criminality of forcing sexual activity on a non-consenting person. According to a survey, one out of seven men has raped their wives<sup>2</sup>.

Marital rape, however, operates in the shadow of the "*implied consent*" doctrine, wherein marital contracts have historically been interpreted to imply sexual consent as part of a wife's obligations. Even in legal systems that recognize spousal rape as a crime, there remains a cultural reluctance in many societies to treat it as seriously as other forms of rape due to entrenched patriarchal norms and the sanctity traditionally accorded to the marital relationship. Furthermore, the trauma of marital rape is compounded by the emotional complexity of the relationship. Unlike other forms of rape, where the perpetrator is often a stranger or acquaintance, marital rape occurs within a bond of trust, leaving the victim grappling with feelings of betrayal, isolation, and shame. The emotional and psychological scars, therefore, can be deeply intertwined with the institution of marriage, complicating efforts to seek justice or leave the relationship.

### **III. STATUS OF WOMEN IN A PATRIARCHAL SOCIETY**

It won't be wrong to assert that we reside in a patriarchal world, where women, children, slaves, and the property of men and men are at the pinnacle of their family, and all are subordinate to him. Thus, the status of women was nothing below the property. Thus, any crime against the dignity of a woman is considered a theft of property whose owner are usually a father or a husband. The rights of women as an individual were not pondered upon. According to Sir Mathew Hale, "Marriage is a contract which incorporates irrevocable mutual consent, involved in a sexual activity is an obligation where she can't disavow." It gives the "*Right to Sex*."<sup>3</sup>

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<sup>2</sup> <https://www.theswaddle.com/marital-rape-inda-decriminalized-crime>

<sup>3</sup>Deborah C. England, The History of Marital Rape Laws [www.criminaldefenselawyer.com](http://www.criminaldefenselawyer.com), <https://www.criminaldefenselawyer.com/resources/criminal-defense/crime-penalties/marital-rape.htm>

Although women have consented to it or not. This could be associated with different cultures where there is No Right to consent for women; however, the control passes from her family to her husband after marriage. The control by husbands could be well depicted in the law for adultery, where English Lord Chief Justice John Hall said it to be the “highest property invasion.” Both adultery and Rape were considered violations of the Rights of the Husband, considering them as property of the husband. <sup>4</sup>This, however, is attended to ensure harmony and privacy among families and prevent state interference. Even in present Indian legislation, it is still a disputable issue that prefers not to criminalize to keep the institution of marriage in harmony. Former Chief Justice Dipak Misha said<sup>5</sup> that marital rape should not be criminalized in India because doing so would lead to complete chaos within families. The argument is that the country’s stability relies heavily on the family structure, which upholds traditional family values. Section 375 of the Indian Penal Code defines the offense of rape; however, the exception clause (2) states that "Sexual intercourse by a man with his wife, if the wife is not under fifteen years of age, is not considered rape."<sup>5</sup>

#### **IV. MARRIAGE IN INDIA: A CONTRACT OR A SACRAMENT**

The institution of marriage is always an enchanted issue that is depicted well with its sacrament effects, by its religious beliefs, customs, the mindset of society at different eras, and legal recognition. The Husband treats the wife as his property. As a result, it is considered that he was forceful, which women reluctantly suffer due to fear of being beaten up by their husbands. As per Hindu laws, marriage is sacramental in nature. Consequently, conjugal rights were bestowed, which were consensual, making sex between the spouses consensual irrespective of act whether consent was granted or not<sup>6</sup>. In 1890, an eleven-year-old bride was raped by her husband and died due to injuries. These brutal acts were common in the cases of child marriage, which triggered the lawmakers to incorporate the provision of consent with age. Thereafter, age was treated as an essential factor in determining consent.

In Christianity, the book of Genesis created an ideal description of man, women, and marriage, emphasizing his teaching God creates that man, so are the women, and in the case of marriages,

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<sup>4</sup> Jill Elaine Hasday, Contest and Consent: A Legal History of Marital Rape JSTOR (2000), <https://www.jstor.org/stable/3481263?origin=crossref&seq=1>

<sup>5</sup> <https://theswaddle.com/marital-rape-india-decriminalized-crime/>

<sup>6</sup> VVP Sharma, Marital rape cannot hide behind Hindu tradition: learn from Nepal News 18, (2015) <https://www.news18.com/blogs/india/marital-rape-cannot-hide-behind-hindu-tradition-learn-from-nepal-14000-985893.html>

the bond becomes robust, making them both one flesh<sup>7</sup>. The Doctrine of not two but one flesh in marriage is supported by the Gospel of Jesus<sup>8</sup> and in Epistles by Apostle Paul. Apostle Paul emphasizes that neither spouse in a marriage should refuse sexual relations to the other. He further explains that neither the husband nor the wife has sole authority over their own body, but they each have authority over one another's body. Paul advises that they should not withhold sexual activity from one another except by mutual consent, such as during times of fasting or prayer.<sup>9</sup> Thus, Christians prefer to elucidate the duty aspect of marriage rather than an individual right.

Islamic law, too, favors Marriage as an act where both parties should be patient and fulfill each other's sexual desires, whereas marital rape has again faced the closed doors<sup>10</sup>. The term "parties" is used in lieu of spouse as Marriage is contractual instead of sacramental, thus opening the door to negotiate their Rights and its dissolution.<sup>11</sup> However, a major setback to these laws occurred due to non-codification and was further misled by state reforms diminishing women's rights.

The institution of marriage across religions has historically placed the husband's authority over the wife, often legitimizing forceful sexual relations with little regard for the woman's consent. While Hinduism views marriage as sacramental, Christianity focuses on marital duties, and Islam sees it as a contractual agreement. Despite slight variations, all traditions have generally disregarded a woman's autonomy over her own body, perpetuating patriarchal norms. The 1890 case of child marriage-induced death marked a turning point in recognizing the need for age-related consent. However, the lack of codified laws and reforms in many societies continues to undermine women's rights, especially concerning marital rape.

## **V. CULTURAL CONTEXTS OF MARITAL RAPE: AN INTERNATIONAL OVERVIEW**

This brutal issue of marital Rape has haunted the women of each corner of the world. The root cause of exemption in almost every jurisdiction is that women are the property of the men, and

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<sup>7</sup> Hebrew Bible, 'The Book of Genesis'

<sup>8</sup> Matthew, The New International Version

<sup>9</sup> New King James, Corinthians.

<sup>10</sup> Muh Endriyo Susila, Islamic Perspective on Marital Rape, <https://doi.org/10.18196/jmh.v20i2.271>

<sup>11</sup> Saptarshi Mandal, The Impossibility of Marital Rape, (2014) <https://doi.org/10.1080/08164649.2014.958124>

their consent doesn't matter in every aspect, as they are slaves living in whips and fancies of their husbands. Thus, it is quintessential to delve into a comparative study of the status of marital rape since it is an international study that requires a holistic contribution to study how the world ponders this issue.

In the **United States**, rape laws were exempted from Marital rape, however, in the model penal code, modification took place and incorporated a provision related to marital rape and said, *A male who has sexual intercourse with a female, not his wife, is guilty of rape if<sup>12</sup>*. The exemption clearly states that the rape does not include the wife as a victim of rape. The ground breaking case of *Oregon v. Rideout<sup>13</sup>* marked the first legal challenge in the U.S. to the cohabitation clause related to marital rape. In this case, a husband was charged with raping his wife, making him the first person in American history to face such charges while living with his spouse. Subsequently, the courts deemed the marital rape exemption unconstitutional. In *People v. Liberta<sup>14</sup>*, the court ruled that "a marriage license cannot be interpreted as granting a husband impunity to forcibly rape his wife," asserting that married women have the same rights over their bodies as unmarried women. Likewise, in the cases of *William v. State<sup>15</sup>* and *Merton v. State<sup>16</sup>*, the marital rape exemption was also ruled unconstitutional, reinforcing the principle that all women, regardless of marital status, are entitled to equal protection of their bodily autonomy.

Around 1993, all the states of the United States criminalized Marital Rape, with Nebraska being the first and North Carolina being the last to criminalize Marital Rape, although they differ in penalties. The Rape victims were classified into three major classes 1. ***Unmarried individuals***, who received full protection under sexual offense laws. 2. ***Married individuals in abnormal marriages*** (such as those separated or in the process of divorce), These individuals were often treated in a middle ground, with some states offering them the same protection as unmarried individuals, while others classified them similarly to cohabiting spouses. 3. ***Married individuals cohabiting under typical circumstances***, many state laws were initially restrictive, only criminalizing the most severe forms of domestic sexual violence, such as those involving

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<sup>12</sup> The Model Penal Code (MPC) is a model act designed to stimulate and assist U.S. state legislatures to update and standardize the penal law of the United States of America.

<sup>13</sup> *Oregon v. Rideout* Marion County Circuit Court in 1978 in Salem, Oregon.

<sup>14</sup> *THE PEOPLE OF THE STATE OF NEW YORK, Appellant, v. MARIO LIBERTA* 1982

<sup>15</sup> *Williams v. State* 494 So. 2d 819 (Ala. Crim. App. 1986)

<sup>16</sup> *Merton v. State* 500 So. 2d 1301 (1986)

significant violence, serious threats, or injuries, and imposing harsher penalties for these offenses.

Despite these loopholes, The lawmakers took the pertinent initiative to prevent marital rape by criminalizing it. However, the liability varies by state. Therefore, whether the husband is charged with the brutal act of marital rape or not depends upon the law that applies to that particular state.

In the **United Kingdom**, Marital Rape was not considered violative to the rights of women till the 20<sup>th</sup> century based on an old notion that marriage gave the implied consent of the wife to involve in any marital activities and where consent has no role to play; Sir Mathew Hale expressed this view<sup>17</sup> and held that “a husband cannot be charged with raping his lawful wife, as through their mutual consent and marital contract, the wife has irrevocably given herself to her husband in this regard, and she cannot withdraw that consent.”<sup>18</sup>.

However, in 2003, The Sexual Offence Act 2003 was adopted, which incorporates every kind of sexual offense, whose sec 1 states that “man commits rape if

1. He has unlawful sexual intercourse with a woman who, at the time of the intercourse, does not consent to it; and
2. At that time, he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it, and references to rape in other enactments (including the following provisions of this Act) shall be construed accordingly.”<sup>19</sup>.

The landmark case of **R v. R**<sup>20</sup> redefined the legal understanding of rape in the United Kingdom. In this case, the husband pled not guilty to the charge of attempted rape against his wife, arguing that under the law, a husband could not be guilty of raping his wife since she had given irrevocable consent to sexual intercourse through the marriage contract, a consent he claimed could not be retracted. However, the court rejected this defense, holding the husband liable for rape and affirming that there is no marital exemption in English law. Furthermore, the word "unlawful" was removed from the definition of rape under Section 1 of the Sexual Offences

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<sup>17</sup> Sir Matthew Hale SL (1 November 1609 - 25 December 1676)[1] was an influential English barrister, judge

<sup>18</sup> History of the Pleas of the Crown

<sup>19</sup> The Sexual Offences Act 1976

<sup>20</sup> R v R [1991] UKHL 12

Act 1976, broadening the scope of legal protection. Thus, it can be concluded here that in the U.K., the lawmakers criminalized marital rape by removing the word “*UNLAWFUL*.”

In the *Indian* context, numerous provisions in the law protect women from the inhuman acts of their husbands, either under Penal laws or specific laws. Section 498A of the IPC grants relief to women against any cruelty by their husbands or relatives.<sup>21</sup> The scope of this provision is wide enough to encompass marital rape, as it is also recognized as cruelty under the law.<sup>22</sup> Section 354 punishes for using assault and criminal force who has outraged her modesty; the Gujarat HC has interpreted the word “any woman.” and held that “a person would be guilty of outraging the modesty of any woman, which could include a wife also.” Similarly, section 319 and section 320 deal with causing bodily pain, disease, or infirmity. It could be comprehended here that although there is no provision to criminalize marital rape, however, certain protection is provided through other provisions of penal laws.

There are ample specific laws based on various religions and faiths, section 13(1) of The Hindu Marriage Act, 1955, entitles the aggrieved party to seek divorce on the grounds after the solemnization of marriage treated her with cruelty<sup>23</sup>. This provision allows women to apply for a divorce with marital rape as a ground. In the same light, section 3 of The Protection from Domestic Violence Act, 2005 where it provides that “Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse<sup>24</sup>.” making it only Domestic violence and not a criminal offense.

In the case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, held that husband can't be guilty of the offense of Marital Rape but could be punished under section 354 of the Indian penal code; it was held in this case that making the wife rape illegal, or an offense will remove the destructive attitudes that promote the marital rape. Such an action raises a moral boundary that informs the society that a punishment results if the boundary is transgressed<sup>25</sup>, “Judiciary can't direct govt. to frame laws on marital rape.”<sup>26</sup>

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<sup>21</sup> Indian Penal Code, 1860, Section 498A

<sup>22</sup> <https://timesofindia.indiatimes.com/city/delhi/marital-rape-already-recognised-as-cruelty-under-law-delhi-govt/articleshow/62561452.cms>

<sup>23</sup> Section 13 in The Hindu Marriage Act, 1955

<sup>24</sup> Section 3 in The Protection of Women from Domestic Violence Act, 2005

<sup>25</sup> R/CR.MA/26957/2017

<sup>26</sup> <https://www.thehindu.com/news/cities/Delhi/judiciary-cant-direct-govt-to-frame-laws-on-marital-rape-hc/article28337275.ece>

## VI. NON-CRIMINALIZATION OF MARITAL RAPE.

This is a controversial issue that still prevails with the dilemma of whether a legal framework should be structured in a way that criminalizes marital rape; however, lawmakers, even after complete updating and modification, choose to prefer not to criminalize marital rape. There are ample of reason to encapsulate the old structure of law. *Firstly*, to maintain and sustain the institute of marriage in society. It is considered that the sanctity of marriage should remain intact without any external interference, being an old institute and fostering in maintaining harmony in the society. There is a concern that such laws might encourage marital discord, leading to an overall breakdown of family structures. *Secondly*, Cultural Norms and Societal Attitudes view marriage as a sacred institution, leading to the belief that consent is inherently granted within the marriage. This cultural norm often results in the perception that a husband has a right to sexual access to his wife, undermining the recognition of marital rape as a crime. *Thirdly*, Victims of marital rape may fear social stigma, isolation, or backlash from family and friends if they report the crime. This fear can lead to a reluctance to seek legal recourse or even acknowledge the violence they have experienced. *Fourthly*, Lack of Awareness and Education awareness about marital rape, both in the general public and within law enforcement and judicial systems. This ignorance can result in dismissive attitudes towards victims and a lack of training for those responsible for handling such cases; 9.4% of married women reported experiencing marital rape in their lifetime, and <sup>27</sup>around 30% of women have experienced physical and/or sexual violence by an intimate partner. This includes marital rape, which is a significant issue in many countries<sup>28</sup>. According to the National Crime Records Bureau (NCRB), in 2021, there were 31,677 reported cases of rape across India, marking a slight decrease from previous years. The NCRB's 2021 report indicates that out of the total rapes reported, approximately 9.7% were committed by husbands or intimate partners. *Fifthly*, Gender Inequality and Patriarchy, where Deep-rooted gender inequalities contribute to the non-criminalization of marital rape. In many cultures, traditional gender roles dictate that women are submissive to their husbands, making it difficult to challenge the notion of consent within marriage. Lastly, Judges and law enforcement personnel may exhibit biases that affect their understanding and handling of marital rape cases. This can lead to a lack of conviction in such cases or even outright dismissal, further perpetuating the cycle of silence and impunity.

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<sup>27</sup> National Family Health Survey (NFHS-5) 2019-2021

<sup>28</sup> World Health Organization (WHO)

## **VII. REPERCUSSIONS OF NON-CRIMINALISATION OF MARITAL RAPE**

The non-criminalization of marital rape has profound implications that extend beyond individual cases, affecting societal attitudes toward gender-based violence and hindering progress toward justice and equality. Addressing this issue is essential for fostering a legal and cultural environment that recognizes and protects the rights of all individuals, regardless of their marital status, as it has been seen that victims of marital rape often experience severe mental health issues, including depression, anxiety, and post-traumatic stress disorder (PTSD). The lack of legal recognition can exacerbate feelings of isolation and helplessness, hindering recovery and healing. Also, the absence of laws criminalizing marital rape perpetuates a societal belief that sexual violence within marriage is acceptable. This normalization can lead to increased tolerance of other forms of domestic violence and contribute to a cycle of abuse. It further has violated the fundamental rights of an individual, especially Article 14 and Article 21; non-criminalization reinforces gender inequality by perpetuating the notion that women's bodies belong to their husbands. This undermines efforts toward achieving gender equality, violating Article 14.

In the case of *State of Maharashtra v. Madhukar Narayan*<sup>29</sup> Supreme Court held that each woman has a Right to sexual privacy, and this right should be granted to every person irrespective of being married or not. Similarly, in the case of *Justice K.S Puttuswamy v. Union of India*, where Supreme Court asserted that one of the fundamental rights of all citizens, the right to privacy, encompasses "decisional privacy," which includes the ability to make intimate choices related to one's sexual and reproductive matters, as well as decisions regarding personal relationships.

## **VIII. ANALYSIS.**

Criminal laws have prevailed in society since the framing of laws; the main character of these offenses is based on the single instance that these are offenses against the state and could be undermined at any cost in society. Therefore, the state protected men, women, and children. The state, in order to protect women, framed gender-specific laws to narrow the gender gap. However, it gets wholly unstable due to patriarchal norms in the society. Marital rape has been deeply rooted in the society women were subjected to this cruelty by her husband because of

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<sup>29</sup> *State Of Maharashtra And Another vs Madhukar Narayan Mardikar* on 23 October 1990



implied consent. Since, in marriages, there is a moral obligation to fulfil each other marital obligation. At the same time, it is essential to ponder upon that there must to protection to individual rights. The women should be treated as victims of rape irrespective of the perpetrator. Sexual intercourse should never be seen as an obligation of the wife but an act based on the express consent of both parties. **Catharine MacKinnon**, a prominent legal scholar, argues that the traditional view of marriage subordinates women by implying irrevocable consent to sexual intercourse. She famously stated, *“The law of rape is the subordination of women made explicit”*, underscoring how the law has historically failed to protect women's autonomy within marriage. In marriage, the traditional notion that consent is irrevocably granted upon entering the union undermines the reality that individuals maintain their autonomy and rights to their bodies. Recognizing that consent must be ongoing and explicitly communicated helps dismantle the harmful belief that marriage equates to a license for sexual access. Legal frameworks that uphold the necessity of consent within marriage not only empower victims of marital rape but also promote a cultural shift towards understanding that sexual violence in any form is unacceptable. The acknowledgment that marital status does not nullify an individual's right to refuse sexual activity reinforces gender equality. Nussbaum states, *“Sexual autonomy is central to human dignity. Every individual, regardless of marital status, has the right to decide when and with whom to engage in sexual relations.”* Nussbaum argues that sexual relations should never be treated as a moral obligation imposed by the institution of marriage but as an act rooted in mutual respect and consent<sup>30</sup>.

Addressing marital rape through legal punishment poses a complex challenge, particularly within the context of maintaining the institution of marriage. To effectively tackle this issue, laws must recognize that marriage does not equate to relinquishing individual rights, particularly the right to bodily autonomy. Punishing marital rape is crucial not only for providing justice to victims but also for reaffirming the principle that consent is an ongoing requirement in any intimate relationship.

Legal repercussions should be calibrated to reflect the violation's severity while emphasizing rehabilitation over retribution. For example, implementing restorative justice practices could encourage couples to engage in counseling and conflict resolution, helping to address the underlying issues that may lead to such violence. This approach could help preserve family

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<sup>30</sup> Martha C. Nussbaum, *Sex and Social Justice* (1999).

integrity while ensuring accountability for the perpetrator. Furthermore, public awareness campaigns should accompany legal reforms, educating society about the importance of consent in marriage. By framing punishment as a means to foster healthier relationships and protect the sanctity of marriage, we can shift societal attitudes towards viewing marital rape as an affront not only to individual rights but to the values that underpin marital unity itself. Thus, effective punishment of marital rape serves to reinforce the notion that respect and consent are fundamental components of any marriage, ultimately contributing to a more equitable and just society<sup>31</sup>.

## IX. CRIMINALIZATION OF MARITAL RAPE

For women, the criminalization of marital rape is a vital step toward affirming their autonomy and bodily integrity. It empowers women to assert their rights over their own bodies, challenging the outdated notion that marriage implies irrevocable consent. When marital rape is recognized as a crime, it legitimizes the experiences of survivors, providing them with a legal framework to seek justice and support. This legal recognition is crucial for breaking the silence surrounding sexual violence within marriage, enabling victims to come forward without fear of social stigma<sup>32</sup>. It also serves to educate the public about the realities of marital rape, fostering a culture that respects women's rights and promotes healthy relationships based on mutual consent. Studies indicate that when marital rape is criminalized, there is a noticeable decrease in instances of domestic violence, as it sends a clear message that abusive behavior will not be tolerated (UN Women, 2019)<sup>33</sup>. The criminalization of marital rape significantly benefits women's mental health by validating their experiences and providing legal recourse against abuse. Acknowledging marital rape as a crime can alleviate feelings of isolation, shame, and self-blame often associated with such trauma. It empowers survivors to seek help and support, fostering a sense of autonomy and safety<sup>34</sup>.

From a societal perspective, criminalizing marital rape promotes gender equality and challenges deeply entrenched patriarchal norms. It signals a societal commitment to protecting women's rights, thereby fostering an environment where gender-based violence is addressed

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<sup>31</sup> Koss, M. P. (1993). *The Impact of Legal Reform on Sexual Assault*. *Journal of Interpersonal Violence*, 8(2), 191-204

<sup>32</sup> Hirsch, A. (2020). *Rape, Marriage, and the Law in the Twentieth Century*. New York University Press.

<sup>33</sup> UN Women. (2019). *The Shadow Pandemic: Violence Against Women During COVID-19*.

<sup>34</sup> Martha C. Nussbaum, *Sex and Social Justice* 103 (1999).

and reduced<sup>35</sup>. This legal shift can lead to broader changes in societal attitudes toward women's roles and rights, encouraging communities to advocate for equality and respect in all relationships. Additionally, it strengthens legal frameworks by aligning them with international human rights standards, enhancing a nation's credibility in the global arena. Ultimately, the criminalization of marital rape is essential for creating a just society where all individuals are treated with dignity and respect.

## X. CONCLUSION

The document explores the complex issue of marital rape, highlighting its status as a violation of individual rights and bodily autonomy within the context of marriage. It emphasizes the historical and cultural underpinnings that contribute to the reluctance of legal systems to fully criminalize marital rape, often viewing marriage as a contract that implies perpetual consent. This outdated perspective perpetuates patriarchal norms and undermines women's autonomy, leaving them vulnerable to abuse.

The analysis delves into various legal frameworks, illustrating how different countries have approached the criminalization of marital rape, with the United States and the United Kingdom making significant strides in recognizing the rights of married women. However, in India, despite certain legal protections, the non-criminalization of marital rape remains contentious, reflecting societal attitudes that prioritize family harmony over individual rights.

The repercussions of not criminalizing marital rape are profound, fostering an environment where sexual violence within marriage is normalized. Victims often suffer from mental health issues, further isolating them and perpetuating a cycle of abuse. The document ultimately calls for urgent legal reforms and a cultural shift to recognize and protect the rights of individuals within marriage, asserting that true consent must be continuously affirmed and respected as a fundamental human right. Addressing marital rape is not merely a legal issue but a critical step towards achieving gender equality and safeguarding individual autonomy.

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<sup>35</sup> Zweig, J. M., & Yahner, J. (2012). *The Relationship Between Intimate Partner Violence and the Criminal Justice System*. *Journal of Family Violence*, 27(4), 1-11.

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