

Marital Rape in India: A New Perspective

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ABSTRACT

Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. In India, Marital Rape is not an offence under the Indian Penal Code, 1860 and under Bharatiya Nyaya Sanhita, 2024. Marital rape is a huge problem in India. One Indian woman is raped by her husband every three seconds, while one in three men confess to raping their spouses. Ensuring the criminalisation of marital rape would improve access to justice for all women, regardless of their marital status. It might also strongly suggest that a woman always has the freedom to decide whether or not to engage in sexual activity with anyone she chooses. This Article focuses on the legislations and legal remedies available to a women victim of marital rape, the Constitutionality of the exception provided by the law.

Index Terms: Section 375 of the Indian Penal Code, Section 63 of BNS, Consent, life and dignity.

I. INTRODUCTION

Rape is a type of sexual assault in which the victim is usually the one who is sexually penetrated or has sex against someone without that person's permission. Physical force, coercion, the abuse of authority, or the use of force against someone who is not competent to offer informed consent—for example, someone who is unconscious, incapable of giving informed consent, has an intellectual handicap, or is not of legal age to give consent can all be used to carry out the act. The term *rape* originates from the Latin *rapere* meaning "to snatch, to grab, to carry off". The word 'rape' is legally defined under the Section 375(1) of Indian Penal Code, 1860 as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age." Under Section 375 of Indian Penal Code, merely the penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Rape is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, normally, the right to life contained in Article 21¹. It was observed by the Court that "A murderer kills the body but a rapist kills the soul." Section 375 deals with the essentials and exceptions of rape.

II. HISTORY OF MARITAL RAPE

Due to the promotion of second-wave feminism, there were notable changes in the way society in Western countries viewed marriage and sexuality in the 1960s and 1970s. During this time, legal protections for marital rape were removed, and women's autonomy over their bodies was acknowledged. In order to address this hitherto disregarded type of sexual assault, many nations started making marital rape a crime in the late 20th century. In Western countries, attitudes on marriage and sexuality started to change, especially in the 1960s and 1970s, thanks in large part to the promotion of second-wave feminism. Legal exemptions or defenses for marital rape were abolished as a result of this movement, which acknowledged a woman's right to autonomy over her body.

Many nations began making marital rape a crime in the late 20th century, a practice that had not been frequently covered by laws before. The elimination of exemptions from rape definitions, court decisions, clear legislative modifications, or the creation of particular marital rape offenses albeit frequently with less severe punishments were some of the ways that this law changed. In some jurisdictions, coercive non-consensual sexual acts may be prosecuted under more general laws addressing violence, such as assault and battery statutes, even though it is still unclear

¹Article 21 of the Indian Constitution

whether marital rape falls under general rape statutes in countries like Pakistan, Bangladesh, China, Laos, Haiti, Iran, Singapore, and Egypt, among others.

III. JURISPRUDENTIAL UNDERSTANDING OF THE OFFENCE

Investigating the historical, moral, and cultural foundations of the crime is necessary to determine whether it should be criminalized or not. This will provide a clearer picture of the origins of the concept of marital rape. Each person's thoughts on the concept have been dictated by these largely societal theories and conceptions:

1. Theory of Social Constructionism

By highlighting the impact of society on human perceptions and potential, social constructionism theory offers a cultural perspective on the roles we play. It recognizes that new behaviors and practices arise as a result of cultural shifts. This theory emphasizes how societal structures impact human perspective and knowledge, which are not innate. The ideas surrounding marriage frequently represent a patriarchal perspective, designed to further the objectives of the wealthy and influential members of society. Historically, women were considered dependent, like children or even slaves, with no control over their property or income, and were called "feme covert" in common law jurisdictions. Due to this deeply ingrained belief, women were interpreted by the law as being subservient to their husbands after marriage, which implied that they had given their presumed agreement to all marital behaviors, including sexual assault.

2. The Coverture Doctrine

The Western idea of coverture, which holds that a husband and wife combine their identities and are legally recognized as one person at marriage, lends credence to the social constructionist idea. The perception that women lack autonomy or agency is perpetuated by this doctrine, which treats women like property and subsumes their identities within that of their husbands. This view is based on the idea that women need to be protected at all times, and men in the family take on this responsibility because women are supposedly incapable of protecting themselves.

3. Theory of Sex Role Socialization

Particular gender norms are ingrained throughout time through social interactions and developmental processes. Within family structures, where male dominance is historically emphasized, women are frequently taught to conform and adjust to the expectations of men. In order to avoid upsetting the men in their families, women are taught to exercise caution and mindfulness. Wives are usually expected to play subordinate roles in marriage, while husbands are encouraged to take charge.

IV. INTERNATIONAL CONVENTIONS

India was encouraged to end legal impunity for marital rape by the UN Committee on Elimination of Discrimination Against Women (CEDAW) in 2013. Article 1 of CEDAW defines "Discrimination Against Women" as any gender-based distinction that prevents women, regardless of marital status, from exercising their fundamental freedoms and human rights in a variety of contexts. The Indian law's marital exemption clause runs counter to CEDAW's General Recommendation 19, which declares sexual and mental abuse of women to be discriminatory. It highlights how such harm prevents women from equally enjoying their fundamental and human rights. This is further supported by General Recommendation 35, which emphasizes that coercive components and the lack of voluntary consent are necessary for marital rape to occur. India is required by Article 2(f) to protect women's rights regardless of marital status even though it has not ratified the optional protocol of CEDAW. State parties are required to take particular steps to end discrimination against women under Article 2 Clause (f) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This entails taking all required steps to change or eliminate any laws, rules, norms, or practices that support discrimination against women, including passing new legislation or revising current ones. Put more simply, it calls on governments to aggressively examine and alter any laws or cultural practices that discriminate against or disadvantage women. In order to achieve gender equality and guarantee that

women have equal rights and opportunities in all spheres of life, this section emphasizes the significance of taking proactive steps.

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are also violated by India's marital immunity. Article 26 of the Covenant declares that all citizens, regardless of their marital status or other characteristics, must have equal protection of their dignity and standing. Marital rape is discriminatory since it distinguishes married from unmarried women. India is not allowed to violate any of the fundamental rights listed in Article 5 as a member state. Furthermore, because exception 2 to section 376 is discriminatory, India's legal system violates Article 1 of the Universal Declaration of Human Rights. Additionally, India's laws contradict the Beijing-hosted Fourth World Conference on Women, which calls on nations to implement CEDAW rules, particularly the Optional Protocol, and to repeal or modify discriminatory legislation.

V. MARITAL RAPE

Marital rape is the term used to describe situations in which a man has undesired intercourse with his own wife and obtains it by unlawful force, physical violence, threats of violence, or when she is unable to give her permission. The non-consensual act of violent perversion committed by a husband against his wife, causing her to endure physical and sexual abuse, is known as marital rape.

In *Bishnudayal v. State of Bihar*² where the victim, a girl of 13 or 14 years of age was forcibly 'married' to the appellant and had sexual intercourse with her, the accused was held liable for rape under Section 375 of the Indian Penal Code. The Supreme Court also read down Exception 2 to Section 375 of the Indian Penal Code and raised the age of consent to 18 for the purpose of the Exception.³

Since marital rape is not listed as a criminal offence under section 375 of the Indian Penal Code, it exists in India de facto but not de jure. In India, marital rape is a civil offence rather than a criminal offence. The two legislations that govern laws related to Marital Rape is the Section 498A of the Indian Penal Code and the Domestic Violence Act.

1. The Domestic Violence Act, 2005:

In order to shield women from domestic abuse, the Protection of Women from Domestic Violence Act was passed in 2005. Section 3 of the definition of "domestic violence" under the statute is wide and includes not just physical abuse but also verbal and emotional abuse, sexual abuse, and financial abuse. The primary objective of the law is to protect the wife or female live-in partner from abuse at the hands of her husband, male live-in partner, or his family members. However, it also covers other women who live in the same home, such as sisters, widows, etc. According to the Act, "sexual abuse" is defined as any sexual behaviour that breaches a woman's dignity or that mistreats, degrades, or humiliates her. A married woman can file a case against the husband for marital rape under this Act as marital rape is non-consensual and violates the dignity of the married woman. The Act is a civil law meant primarily for protection orders, rather than criminal enforcement. Pursuant to Chapter III of the Act, the aggrieved person has the right to:

- Apply for protection order, an order for monetary relief, a custody order, residence order, a compensation order.
- Free legal service under the Legal Services Authority Act, 1987.
- File a complaint under Section 498A of the Indian Penal Code, 1860.

2. Section 498A of Indian Penal Code, 1860:

Section 498A of the Indian Penal Code was introduced in the year 1983 to protect married women from being subjected to cruelty by the husband or his relatives. Section 498A of the Indian Penal Code (IPC) deals with the violence done on women after her marriage by her husband or her in-laws or any relative of the husband and provides

²*Bishnudayal v. State of Bihar*, AIR 1981 SC 39

³*Independent Thought v. Union of India*, (2017) 10 SCC 800

a punishment of three years and fine or both. The term "cruelty" has been interpreted broadly to encompass harming a woman's body or health, whether physically or psychologically, as well as engaging in acts of harassment intended to force the victim or her relationships to comply with any illegal demand for property or valuable security. The research state that much violence by the husbands lead to or is for sex. Women can initiate a criminal proceedings against their husbands for marital rape or cruelty related to thereof under this section of Indian Penal Code, 1860.

VI. CRIMINALISATION OF MARITAL RAPE

A spouse having sexual relations with their spouse without their permission is known as marital rape. Marital rape is illegal in practically every country in the world, where the legislation has either been added or amended to reflect this fact. Roughly 150 nations have made marital rape a crime through legislative reforms. India is one amongst those thirty-six countries who have still not criminalised marital rape. The Indian government should make marital rape a crime, according to a 2013 UN Committee on the Elimination of Discrimination Against Women (CEDAW) recommendation. Despite the fact that Indian law has progressed in every area, marital rape is still not regarded as a crime and the non-criminalisation of marital rape undermines the Protection and Constitutional Rights of the Woman. The debate on criminalization of marital rape is long- standing due to the rise of feminism and human rights against the cultural and religious beliefs present in the country. The people supporting the criminalization of marital rape have questioned the constitutionality of the exception.

VII. IS THE EXCEPTION CONSTITUTIONAL?

The Exception to the Section 375 in itself is a violation of doctrine of basic structure of the Constitution. It violates several fundamental Rights of the married woman.

Article 14

The IPC's Section 375 Exception discriminates against married women by establishing a new class of women who are not shielded from the law in the event that their husbands abuse them sexually. Since this law is elusive, unnatural, and arbitrary, it does not satisfy intelligible differentia. The Fundamental Right to equality before the law and equal protection under the law is guaranteed under Article 14 of the Indian Constitution for all areas of India. On the prejudice encountered by victims of marital rape, however, criminal law remains mute. The act of a husband raping his wife is not covered under Section 375. It is discriminatory and against Article 14 of the Indian Constitution to shield someone from the provisions of Section 375 of the IPC because of their marital status. The distinction made by exception two between married and single women also violates Article 14 because the new classification is illogical given the statute's main goals. The Supreme Court has held that any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that can be passed only if the classification has some rational nexus to the objective that the act seeks to achieve.⁴⁵But Exception 2 frustrates the purpose of Section 375 which is to protect women and punish those who engage in the inhumane activity of rape. Barring husbands from punishment runs completely counter to that goal. In other words, a woman who is raped will always suffer the same effects regardless of her marital status. Furthermore, because married women are financially and legally dependent on their husbands, it may be harder for them to leave violent situations at home. Exception 2 actually encourages husbands to coerce their wives into having sex because they are aware that the law does not forbid or penalise such behaviour. Because no rational nexus can be deciphered between the classification created by the Exception and the underlying objective of the Act, it does not satisfy the test of reasonableness, and thus violates Article 14 of the Indian Constitution.⁶

⁴*Budhan Choudhary v. State of Bihar*(1955) 1 SCR 1045(AIR 1955 SC 191)

⁵*State of West Bengal v. Anwar Ali Sarkar*,AIR 1952 SC 75

⁶Sarthak Makkar, Harvard Human Rights Journal<https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/>

Article 21

Article 21 of the Indian Constitution says that:

No person shall be deprived of his life or personal liberty except according to a procedure established by law.” The Hon’ble Supreme Court held that “the term “life” as used in Article 21 is something more is meant than mere animal existence”⁷. The Article 21 encompasses various rights such as the right to health, dignity, safe environment, sexual privacy, human dignity, among others. In the case of *State of Karnataka v. Krishnappa*⁸, the Hon’ble Supreme Court held that “sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female.”, it further held that rape in itself is a serious blow to the self-esteem and dignity of the victim and it degrades her, leaving behind a traumatic experience.

Right to Healthy and Dignified Life (Article 21)

In the case of *C.E.S.C. Ltd. v. Subhash Chandra*⁹, the Hon’ble Supreme Court held that One of the most crucial things to preserve a citizen's uniqueness in the nation is their right to a healthy and dignified existence, which is included in the right to life. The exemption to Section 375 violates a married woman's right to her own health since marital rape pushes a woman into despair and causes emotional, psychological, and physical issues for her. Sexual activity without a woman's agreement undermines her health and dignity, which is a clear infringement of her right to live a dignified and healthful existence. It also contradicts Article 21's fundamental framework and is illegal.

Right to Sexual Privacy

Right to Privacy is a protected right under Article 21 of the Indian Constitution. The Hon’ble Supreme Court in the case of *State of Maharashtra v. Madhkar Narayan*¹⁰, held that “every woman is entitled to her sexual privacy and the same is not open to for any and every person to violate her privacy”. It was also held that “a prostitute had the right to refuse sexual intercourse if she is being forced and the same is being done without her will; not withholding the same will amount to Rape”. This Right was also upheld when the age for marital rape was increased from 15 to 18 years for the protection of minor women.¹¹ However, the exemption of marital rape in the Indian Penal Code is violative to the right to Sexual Privacy of a married woman.¹²

VIII. AN ONGOING PROCESS

The Delhi High Court rendered a divided decision over the nation's criminalisation of marital rape. The current statute was declared illegal by Judge Rajiv Shakhder, who stated that a woman's right to life and liberty is fundamentally based on her ability to revoke her permission. Judge C. Harishanker denied the request to make marital rape a crime, pointing out that the government must enact the new legislation because the problem “requires consideration of various aspects including social, cultural and legal.” A constitutional bench of the Supreme Court, consisting of Justice P.S. Narasimha, Chief Justice D.Y. Chandrachud, and Justice J.B. Pardiwala, is now hearing the case.

A fundamental aspect of the application of constitutional rights is the division between the public and private domains. Women who are victims of marital rape are deprived of remedies when a private realm is established that is protected

⁷Kharak Singh vs The State of U. P. & Others, 1963 AIR 1295

⁸State Of Karnataka vs Krishnappa, ILR 1994 KAR 89

⁹C.E.S.C. Ltd. Etc vs Subhash Chandra Bose and Ors., 1992 AIR 573

¹⁰State Of Maharashtra and Another vs Madhukar Narayan Mardikar, AIR 1991 SC 207

¹¹Supra 4

¹²Soumali Roy, <https://blog.ipleaders.in/need-know-marital-rape/>

from the law. Once the topic of constitutionality is brought up, the cases come to a stop. The Law Commission dismissed the claim in 2000 that additional violent acts committed by a husband against his wife should also be criminalised, and that rape should be exempt from this rule. It voiced worries that making marital rape a crime might result in “excessive interference with the institution of marriage.” A break from the mainstream narrative was evident in 2012 when a group led by former Supreme Court judge J.S. Verma suggested making marital rape a crime. The Verma committee contended that exemption sprang from the antiquated belief that married women were their husbands' property and that they had given their unwavering agreement to their partners' sexual demands. The committee proposed eliminating the exception clause and ruling that a person's marital status should not be taken into account when determining whether or not permission was given.

IX. MARITAL RAPE IN BHARTIYA NYAYA SANHITA

Courts have refrained from challenging the exemption clause frequently. In *Nimeshbhai Bharatbhai Desai v. State of Gujarat*¹³, the Gujarat High Court declared that marital rape was an abhorrent crime, but it neither invalidated the exception clause nor urged the state to do so. According to the Delhi High Court ruling, a forced sex within a marriage cannot be taken as rape, hence no factual analysis is necessary. Under Rule 3B of the Medical Termination of Pregnancy (MTP) Rules, the Supreme Court of India in the case of *X v. The Principal Secretary Health and Family Welfare Department, Govt. of NCT of Delhi & Anr.*¹⁴, decided that unmarried women and survivors of marital rape had the legal right to end their pregnancies at 20–24 weeks. The Supreme Court has read Article 21 of the Constitution broadly in a number of decisions, going beyond its explicit guarantee of life and liberty. The Court has confirmed that rights including health, privacy, dignity, safe housing, and a clean environment are all covered by Article 21. Recent court rulings have acknowledged that these more general rights to life and personal freedom include the freedom from unwanted sexual behavior and the right to decline sexual contact. No amount of categorization or rhetorical wrangling can change the fact that rape is rape and that a rapist is still a rapist. Notably, married women do not have the same rights as other women, including sex workers, who can refuse consent and pursue rape charges.

X. WHY MARITAL RAPE IS UNCONSTITUTIONAL/SHOULD BE A CRIME

In *RIT FOUNDATION v. THE UNION OF INDIA 2022 DELHI HC*, Justice Rajiv Shakdher stated that, even after 162 years after the IPC was passed it would be unfortunate if a married woman's request for justice went unanswered. I believe that if this transformation is maintained, good and confident men have nothing to worry. Rape is a horrible crime that has serious negative medical implications and mental distress, among other repercussions. Decriminalizing marital rape on the grounds that a woman consents to an ongoing sexual relationship from which she cannot withdraw by entering into matrimony would be capricious. When determining whether or not a criminal offense has been committed, marital status cannot be taken into account. There is no justification for differentiating between married and single men who force women to engage in sexual activity. Section 67 of the BNS/ 376B IPC was unconstitutional because it distinguished between husbands who are not separated from their wives and those who are, placing the latter group of husbands under Section 63 BNS/375 IPC's definition of rape in relation to forced sexual relations while also imposing a lighter penalty for the offense. In any case, marital rape shouldn't be allowed to continue to be covered by the statute given the passage of time and a greater awareness of gender equality. Because it is impossible to prove that marital rape occurs because it sometimes occurs within the boundaries of a family, courts should not stop looking into whether the contested clauses are constitutional. Refusing to allow a married woman to claim that her husband has committed rape would be a violation of Article 21 of the Constitution, which guarantees her the right to life and liberty.

¹³ R/CR.MA/26957/2017

¹⁴ [2022] 7 SCR 686

XI. WHY MARITAL RAPE IS NOT UNCONSTITUTIONAL/SHOULD NOT BE A CRIME

Exception 2 to Section 63 BNS/375 IPC, The Supreme Court noted in the well-known *Dastane v. Dastane*¹⁵ decision fifty years ago that "sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony sense of fruition and fulfillment." Adding the possibility of the husband being regarded as the wife's rapist into the marriage would be completely contrary to the institution of marriage as understood in this country, both in fact and in law. Not only is it unfounded, but it is also implausible to assume that a wife who is coerced into having sex with her husband on a specific occasion when she does not want to feels as outraged as a woman who has been raped by a stranger. Nonetheless, the existence of such a conjugal expectation to regular sexual encounters, paired with the special relationship of marriage, offers an understandable distinction that has a logical connection to both the purpose of the contested exception and the purpose of Section 63 BNS/375 IPC itself. Articles 14, 15, 19, and 21 of the Constitution are satisfied by the reasonableness and comprehensibility of the distinctions made by the legislature in the classification and handling of marital sexual abuse. These distinctions are "grounded in respect for the complexity of the institution of marriage."

XII. A NEW PERSPECTIVE

The discussion surrounding India's decision to make marital rape a crime is framed by two main issues. First, can a woman be forced to have sex with her spouse by the state? Second, regarding women's fundamental rights under Articles 14 and 21 of the Constitution, what role does the judiciary play? By maintaining a strict public-private split, the judiciary supports a vertical approach in the case of women's rights against marital rape. With time, this perspective on constitutional rights has evolved into the norm. Due to the agreement between the state and its citizens, constitutional rights are presumed to be a defence against the state. Even though the judiciary is hesitant to bring constitutional rights into the domestic atmosphere in the cases of marital rape, selective state infiltration nonetheless occurs. Take into consideration the court-imposed spousal rights reparations. Section 9 of the Hindu Marriage Act, 1956 states that if a husband and wife does not live together "without any reasonable excuse," a court may order compensation. This is a disadvantageous component for women because they are often pressured to reconcile with their husbands. Perspectives are provided by a horizontal approach to constitutional protections. These rules, which are frequently hierarchical in nature, allocate positions, responsibilities, and power to specific players. Institutions establish and maintain hierarchies of dominance and subordination that are persistent, hard to overturn, and permanent. As a result, the law ought to consider the purportedly illegal actions between two parties in light of the underlying institutions and each person's relative standing within them (such as caste, patriarchy, and class).

Chandrachud mentioned the discussions held in the Constituent Assembly about the "untouchability" clause (Article 17). He maintained that there were two reasons why the Constitution's framers chose not to further define the idea of "untouchability." First, "social norms which subjugated individuals into stigmatised hierarchies" was what Article 17 sought to resist. Second, building on the previous point, those circumstances in which "social exclusion of the worst kind has been practiced and legitimised on notions of purity and pollution" may fall under the purview of Article 17. Consequently, Chandrachud defended menstruation women's constitutional right to engage in "key social activities" by using the similar patriarchal rationale that discriminates against them based on their sex.

"Sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape," according to Section 63 of the BNS, which allows for an exception to rape. The phrase "the wife not being under eighteen years of age" is substituted with "the wife not being under fifteen years of age" in the IPC's analogous section, which also covers marital rape. Therefore, the wife's age must be raised from fifteen to eighteen in order to qualify for the exception, which is the only modification made to the BNS. By raising the wife's age to eighteen, the ruling in *Independent Thought v. UOI*¹⁶ has essentially been upheld. In the case of *RIT Foundation vs. The Union of India*¹⁷,

¹⁵ (1975) 2 SCC 326

¹⁶ AIR 2017 SC 4904

¹⁷ 2022 (Del) 310

the Delhi High Court has been deliberating. Two judges of the Delhi High Court began hearing cases on petitions submitted by private citizens and civil society organizations challenging an exemption in the aforementioned ruling. A contentious split ruling was reached in the aforementioned case, with one judge supporting the criminalization of marital rape on the grounds that it violated a woman's right to agree and the other opposing it on the grounds that marriage implied permission. The case was then taken all the way to the Supreme Court.

XIII. PROPOSING REMEDIES FOR THE ISSUE OF MARITAL RAPE

A holistic strategy that addresses both legislative reforms and societal attitudes is needed to address the problem of marital rape within legal constraints. First and foremost, legislative measures are necessary to guarantee that marital rape is recognized as a criminal offense, giving victims legal protection and recourse. This means making non-consensual sexual conduct within marriage a clear crime and eliminating any marital immunity provisions in current legislation. In order to protect kids from sexual exploitation in marriage, legislation should also be changed to guarantee that the age of consent is the same for everyone, regardless of marital status. Furthermore, judicial activism is necessary to interpret current laws in a way that protects people's rights and dignity, such as the freedom from sexual assault in marriage and the right to bodily autonomy. In order to provide a strong legal foundation for dealing with marital rape, courts should read constitutional provisions, such as Article 21, broadly to include the freedom to refuse sexual contact and to be free from unwelcome sexual behavior.

XIV. CONCLUSION

The testimony of the individual as the essential unit of rights is evident in the Constitutional Assembly Debates. Since the fundamental goal of constitutional rights is the emancipation of the individual, it is imperative that the focus be shifted from the private sphere to a language of individual liberty. The Constitution was brought with three goals in mind: to democratise public and private spheres, to combat conservative tendencies in society, and to act as a tool of freedom from colonial rule. The United Nations (UN) in the year 2019 stated that only 4 in 10 countries criminalize Marital Rape thereby making home, the most dangerous place for women. Sadly, this has been the situation even when the Hon'ble Supreme Court of India had held in *Shyam Narain v. State (NCT of Delhi)*¹⁸ that the basic expectation in a civilised society is that the reputation of a woman would be respected. This is the time to amend the law for the protection of women inside their own homes. Though there have been a few reportable cases of rape, the percentage is very low when it comes to marital rape. There are many reasons, such as family loyalty or fear of the husband, financial dependence on the husband, lack of support from family members, societal pressure and safeguarding the future of their children¹⁹. It would be unfair to not legislate a law just because of the fear of false accusations and cases. The law as of now is detrimental to the rights of the women and also to the future of the society. Legislation to criminalize marital rape is the need of the hour.

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¹⁸*Shyam Narain v. State (NCT of Delhi)* (2013) 7 SCC 77

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