

# LEGALFOXES LAW TIMES

## MARITAL RAPE: THE LAW STILL BEARS

*“If we are to fight discrimination and injustice against women we must start from the home for if a woman cannot be safe in her own house then she cannot be expected to feel safe anywhere.”*

— Aysha Taryam

### **ABSTRACT**

This is a societal belief as well as a spurious perception followed by generations, that if a woman has married a man then she has impliedly given her consent to have sexual relations with him whenever, wherever and in whichever way he desires. But does it end on desire only? Because usually it doesn't and turns out into violence rather than a desire that constitute marital rape.

Marital rape refers to a sexual intercourse that a husband has with his wife, either forcefully or against her will. In India, rape is recognised as well as penalised having strict punishment for it under Section 375 & Section 376 of Indian Penal Code, 1860 but still the law has failed to recognize marital rape as a crime to be penalised.

This paper attempts to cynsure the dilemma of married women in India and justifies the criminalization of marital rape. The paper achieves strength from the fact that more than 150 member countries of United Nations have already recognised marital rape as a severe crime and penalised it. Also, the research paper emphasizes the drawbacks in the very law itself, as it is one of the exception of Section. 375, that it will not be applicable on the husband even if he uses force or any other means to indulge his wife in a sexual intercourse with him. Moreover, the paper talks about the fact that India being a patriarchal society, it tends to give men a dominant position over women.

## **INTRODUCTION**

From the time immemorial, it has been observed and noticed that the position of a woman in the society always tells the true worth of the society. It is an unavoidable fact that the position of women in India is at developing pace, and so does the nation itself. Women have never been given importance in India. Indeed, things are turning into a better state now, but only in urban cities. Still there is about 60 % of the population living in rural areas, where women are, mostly, subjected to physical and psychological atrocities. Women in India have always been pondered subservient to men which led India developed with male invidious ideologies. Women have been subjected to atrocities, and they are still being subjected. It is an evident study which tells that in ancient period the women were not considered as a person but a burden, from the time of birth to the time of death. The culture and society raised women in a way that they were always dependent on masculine society. Firstly, on the father, then on the husband after marriage and then on the sons in old age.

Historically, the concept of ownership was implied regarding women. Women were considered as a property, either precious or worthless, and that is the reason, why the concept of having multiple wives was practiced, because when a property gets old or worthless, the man buys another. And similar were the circumstances of women. If cruelty in any way was committed by the husband, it was never considered to be wrong because a wrong cannot be done against one's own property, and men had all ownership rights over their wives. The same archaic ideology is still accompanied by the male society, at large.

This gives men an undue advantage over women which makes the situation even worse for women because the law which was supposed to protect them, consists of enormous loopholes

that it is in itself discriminating and humiliating when it comes to protect the dignity and respect of woman. It also sounds biased as it tends to give a dominant position to men. According to Personal laws (Hindu & Muslim) in India, an existence of a woman stems from her relation to a man, means that every woman has their origin related to a man.

As marriage is a religious sacrament, both the husband and wife vows together to live happily and peacefully maintaining their relation with stability. Because that is what marriage is all about, according to Indian culture, to bring stability and prosperity in one's life. It doesn't aim to unstable the wife by means of harassment, violence, abuse, etc. who is brought to purvey stability in the house or in the marital relationship. The sacrament of marriage is based on love, trust and will. But according to the facts and news that we come across in our day to day life, it tells a different story. Married women are subjected to cruelty, violence, threat, abuse in either of the way, mentally or sexually or physically by their husbands or in-laws.

The picture of sacred and unimpeachable marriage is not that much fervent as portrayed in India, because the truth hides behind the veil of sacrament. Marital rape is one of the truths hidden behind the veil that lies deep down under the bed covered with sheets of fake smiles and pillows of bogus relationship and these truths become hopeless, in many scenarios, to find reassuring support against such kind of cruelty due to the fear of family, children's future or society. The research argues in favour of penalising marital rape as it must be understood that women aren't being treated as they should have been. Men will never be able to perform any kind of cruelty on their sisters or mothers because it's the respect and dignity that makes them to act within the limits. Then why they discreet in such manner when it comes to their own wives? Aren't they females? Then why there exists cruelty, physical or psychological, on those who bears the next generation of a family, nurtures the future of a family and does everything to keep them safe, secure and successful.

In India, the law as well as the society is of same orthodox philosophy, with regard to marital rape, that is, a non-consensual sex between man and his wife may be perceived as a rape by the wife, but it would not be from society's point of view as sexual intercourse between spouses is a matrimonial obligation, hence, voices against such demeaning act are not heard with proper consideration, instead some of them are suppressed as the current law is unable to envisage the camouflage present.

## **MARITAL RAPE AND RAPE – MEANING AND DISTINCTION**

Marital rape refers to a sexual intercourse between a man and a woman, who are legally accepted as husband and wife, where the woman does not give consent for such intercourse. It is also known as spousal rape where a spouse rapes over the other. In other words, marital rape is an offence of rape committed by the husband against his own wife. It is considered as an injury, as there exists physical contact, which is assisted by force, towards a woman's body without attaining the consent or will of that particular woman, and therefore it is a harm or injury committed against the body of that woman. In brief for a marital rape to be established, three essentials are required: -

1. Sexual intercourse between husband and wife
2. Sexual intercourse is against the will of wife or a non-consensual sex
3. Use of force or any other means by husband to have sexual intercourse

Rape, on the other hand, is defined and penalised in India under section 375 and section 376 of Indian Penal Code, 1860 respectively. Section 375 states that a man is said to commit rape over or against a woman, when;

1. He does so without receiving the consent of hers,
2. He does so against or without attaining her will,
3. Her consent is attained, but by undue influence or coercion,
4. Her consent is clinched but with a fraudulent approach,
5. At the time of giving consent, she was not in a capacity to foresee the consequences of her assent,
6. The woman is under 18 years of age, even if the consent was obtained, as a minor is not of a proficiency to envision the consequences of her actions. In such matters mere attainment of the consent is no defence.

But along with these provision there is one exception in this section that is; "sexual intercourse by a man with his own wife is not rape, if the wife is not under 15 years of age".

The only difference between rape and marital rape is that in marital rape the perpetrator/abuser is the husband himself as he commits rape on his own wife by using the amount of force to suppress

the resistance of his wife to indulge her into sexual intercourse. While on the other hand, rape is legally recognised and is penalised crime in law that can be committed over a woman, girl, minor, by any person. It means anyone falling under any of the clauses provided in Section 375 will be held liable for the crime of rape and will be punished with rigorous imprisonment or penalty as there is no such exception for the abuser provided if he is not the husband of the victim because our own law provides a licence to every man in a form of marriage, to rape their wives and come out clean with succour of loopholes in the law itself.

### **TYPES OF MARITAL RAPE**

- I. Battering Rape: In battering rapes, women experience both physical and sexual violence in the relationship and they experience this violence in various ways. Some are battered during the sexual violence, or the rape may follow a physically violent episode where the husband wants to make up and coerces his wife to have sex against her will. The majority of marital rape victims fall under this category. The use of force by the abuser is very prominent in this kind of rape as he may use force or grievous act to hurt the wife, for instance beating and hurting female genital parts or using any instrument to do so. It embarks to conceive a submission, in physical entirety, from the wife towards husband. This kind of rape is also known as “Violent Rape’, as the ingredients it consists of are truly violent.
  
- II. Force-only Rape: In force-only rape, husbands use only the amount of force necessary to coerce their wives. Battering may not be a characteristic of these relationships. The assaults are typically after the woman has refused sexual intercourse. The abuser uses the force to hold the wife in position so as to stop her from resisting or escaping. Many a times, the victim is confused and shocked as how to react in such situations. This is because these relationships include constant use of emotional abuse of the character of wife, and thus it is very difficult for the for the victim to deal or to cope with such relationship.
  
- III. Obsessive Rape: Many women experience, what has been labelled sadistic or obsessive rape. These assaults involve torture and/or perverse sexual acts and are

often physically violent. This kind of rape is also common in country like India as India is predominantly a patriarchal society. In the occurrence of this type of rape, obsession plays a vital role. Further, it involves actions or gestures and acts which are, in its totality, humiliating towards the dignity of a woman. For instance, like using of objects and indicating several deeds to comply with which further humiliates dignity and self-respect of the victim.

- IV. Power Rape: It is a very commonly known fact that many men use sex or intercourse to eject out the frustration or rage inside them due to some deeds or acts of their wives. This asserts dominance or control over the woman of her man, it may include several disintegrating approach of sex without the intention to harm or hurt but for sure has the motive to show the power and control as sex becomes a play of conquest for men, most of the times.
- V. Anger Rape: This occurs when the victim becomes the subject of severe degrading acts of the abuser. It usually includes hostility towards the victim and use of force, which may turn violent, to commit shameful or undignified sexual acts such as sodomy or anal sex.

### **CAUSES OF MARITAL RAPE**

There are many reasons behind the occurrence of such atrocities against a woman's body as well as her dignity. The research shows that in many marital relationships, household factors contribute maximum in the commission of marital rape. Such factors may vary from situation to situation and from region to region but there exists reliable data and statistics that confirms in many cases the reasons behind these acts are quite similar. One such factor is that, there has been a history of violence against women and many of us may be brought up seeing such incidents of violence over women in our families, relatives or neighbourhood but no one stood against it. That shows how the male dominance and patriarchal philosophy has controlled the society by not giving equal amount of respect, dignity and opportunity to women.

Also the education and literacy factor plays an important role in these cases. Study shows that around 65-70 % of the violence and forced sex occurs in relationships where the average education qualification of the husband/man ranges from pre-elementary to elementary education (up to class 8<sup>th</sup>-10<sup>th</sup> or below). A man with less education and reasoning will be, for sure, less wise and less concerned about the condition of his wife's health, either physically or mentally. All that he would be concerned about, will be his own desires, obedience over his command and his superiority over his wife.

Believe it or not, but financial or economic instability is another reason behind the sexual cruelty when it comes to marital rape. An earning woman in comparison to a non-working one, may not encounter such type of sexual cruelty or violence. But, in cases where the woman is solely dependent on the earnings of her husband, she has a greater probability of experiencing such incidents. Moreover, it should be understood that the image our country holds regarding women have not reached the top yet, it is on a developing pace unlike the western states or European states. Thus, the unemployment rate of women plays a vital role because that is what forces a woman to hold on to such kind of relationships. Financial incapacity or inability to earn or sometimes the responsibility of future of the children (in cases where the victim is a wife as well as a mother) makes her helpless, thus leaves her with no choice but to stay with a man who rapes her frequently.

The most prominent and prevailing factor behind these abusive and violent act is that of intoxication caused by consumption of alcohol and other drugs. Also, the frequency of such incidents may increase if the excuse of intoxication by the husband, is accepted by her wife. Several researches show that there exists proximity between a patriarchal approach and alcohol. Men with drinking habit are more likely to dominate their wives and behave in an absurd manner. The problem changes from bad to worse when all of the acts happen in front of the children. In such cases, the mental growth of the children gets effected and they also perceive wrong habits as they grow up watching abusive deeds of their father on mother.

That is why it is important to get away with domestic violence as it effects children, and they may repeat such acts on their partners, dates, wife, etc. as they learnt it from their parents.

## **EFFECTS OF MARITAL RAPE**

Marital rape involves extreme trauma. Many people consider marital rape less traumatic than other types of rape, but studies show that the opposite is true. Being raped by a spouse is a betrayal of one's trust, one's humanity, faith, and relationship. This is a whole other level of trauma as the victim feels helpless and can't even rely for safety on the person to whom she swore to live her rest of the remaining life with. According to a report of NFHS (National Family Health Survey) in 2015, 83% of married women from the age of 15-49 were the victims of sexual abuse by their husbands.

Victims of marital rape have very little of the support that other rape victims can access. Many people around the victim may not believe it was rape at all. Victims of marital rape find themselves in nearly total isolation. The effects of marital rape may broadly be discussed as;

- I. Physical outcomes-victims who are battered and raped by their husband undergo drastic health issues and problems. A research shows that women who have gone through akin experiences of spousal rape were two times more likely to have gynaecological problems than those who have not. Some of the gynaecological problems are; smelly discharge, pain in lower abdomen, prolapsed uterus, dysfunctional urine problem, miscarriage, infertility, bladder infections and other medical issues. Apart from these health issues that a woman may sustain due to spousal rape, there are other physical or bodily injuries that are far intense and inexorable because of grave use of force and violence. Some of the injuries may include; broken bones, runny bloody nose, blackened eyes, wounds of sharp objects as knives, pins, etc.
  
- II. Psychological outcomes- The other side of the suffering takes the pain to another higher level. It is well known fact that wounds given on a heart are much bigger and deeper than those given on a body. It means that psychological sufferings are much more torturous than the physical pain. In marital rape cases, the victims are the wives of their own husbands. The sense of betrayal and cruelty performed by the husband tore apart the trust that she had vested in her husband for her security. The psychological effects can also be classified in two broad categories that are; short

term effects such as; nervous shocks, intense fear, traumatic stress, suicidal ideations, fits, etc. and long term effects such as; insomnia, eating disorders, depression, sexual dysfunctions, fear of men, lack of interest in sex, etc.

Even after going through such harsh experiences, many women find it difficult for themselves to report these issues to police or discuss it with the relatives or family members (elders). There are number of factors, either social or legal, which plays a vital role in underreporting of marital/spousal rape. They are-

- I. Marital responsibilities: Many women often misunderstand or misinterpret the “sacred duty of a wife”. They believe that they are only the one to bear all kind of social and sacred responsibilities in a marital relationship. It is a quite evident fact that most of the Indian women, find it as an obliged duty to fulfil the impulsive desires of their husbands as the vows and oaths of marriage has obligated them to submit to all kind of sexual acts despite of the fact of being violent or forceful in nature.
- II. Reluctance to accept victimization: It is as plain as a pikestaff that a woman who seeks support and love from a man, would find it very devastating to accept that she has been “raped” or “sexually assaulted” by the same man. Usually women try to hide the reality behind a smiling veil in order to live with less painful and violent experiences.
- III. Loyalty towards husband or dependence: Loyalty is an essential part of marital life. If it shatters, the lives become somewhat sadistic which often used to be joyful. Women in marital relationships, usually don’t discuss such issues with their relatives as it might portray a negative light on their husbands. Also the fear of being left by the husband (divorce, affairs, cheating, adultery, etc.), in cases where a woman is fully or even partly dependent on the husband either financially or emotionally or mentally, can be a painful experience because confronting such acts of the husband will only add up to her sufferings.

- IV. Uncertainty about what constitutes forceful sex: Many women first of all don't even gauge the difference between a forceful sex and conjugal/consensual sex due to inexperience or due to "let go" attitude. That is why most of the times victims may not even realise or recognise that they have been raped by their own husbands because in an emotional attachment or relationship, thoughts cloud the vision of reality and thus it becomes more arduous for women to believe the facts. There is a very thin line of difference between the two that is, in consensual intercourse between a man & wife, it does not include any kind of force or coercion and most importantly that, "he stops, when she says". On the other hand, a forceful intercourse is usually painful, violent, abusive and it may involve use of objects and degrading sexual acts. The abuser, most importantly, doesn't stop even after facing resistance.
- V. Privacy of the family: Privacy is one of the most important concern for everyone. So does it is for women also. Sharing or discussing such incidents of spousal rape to relatives, elders or reporting it to the police involves plenty of gossips and interrogation which may destroy the image of the family as well as of the relatives. And in a typical society like India, the chances are much higher for this to happen than anywhere else.

### **MARITAL RAPE IN COMMON LAW COUNTRIES – A COMPARITIVE STUDY**

Regardless of the fact that around more than 110 member countries of United Nations have either outlawed the exceptions of spousal rape or have criminalised it via statutory reforms. Still India along with several other commonwealth countries are struggling with penalising marital rape in spite of recognition of marital rape as heinous offence against a women's bodily freedom in many of the principle common law countries.

#### **UNITED STATES OF AMERICA**

The United States began to acknowledge marital rape, in late 20<sup>th</sup> century, around 1970s itself as many of the feminist groups and organisations rose their voices against the domestic atrocities

being committed on women. According to a survey report conducted in United States, it shows 25% of all rapes accounts for marital rape.

In 1993, all the 50 states abolished marital rape, under at least one sexual offence codes. But they did it in their own modus operandi. Because out of 50, 20 states have completely abolished marital rape exceptions in its entirety while most of remaining states still allows some exemptions to husbands from a rape trial. The resistance requirement, in most American states, still applies due to “voluntary social companion” rape exemption which means that the occurrence of rape is impossible between a non-stranger with whom the victim already has a relationship.

#### UNITED KINGDOM(England, Wales, Northern Ireland)

In England, despite the absence of statutory acknowledgement of marital rape, judicial reforms have contributed a lot in acknowledging the dignity of women regarding their bodily freedom after the marriage also. In 1991, The House of Lords in the landmark case of *R. v R.*<sup>1</sup> abolished the general rule which was promulgated by Sir Matthew Hale, that a woman cannot be raped by her lawful husband as she has given her consent for sexual intercourse which cannot be retracted by her as an integral part of marriage contract. The court held that this general rule was offensive and anachronistic as well to the common law principles. Further the decision was also affirmed by the European Court of Human Rights in *SW. v UK.*<sup>2</sup>

#### SCOTLAND

The attempt to change the common view of looking at marital rape remoulded in 1983. Although there has been no statutory approach but the judiciary has taken some remarkable decisions as in *H.M. Advocate v Duffy*<sup>3</sup>, Lord Robertson held that the Hume’s view on rape that a husband cannot rape his own lawful wife does not stand strong in current times and recognised the concept of spousal rape. Further the similar approach was adopted by the High Court of Justiciary

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<sup>1</sup>R v. R, (1992) 1 AC 599; (1991) 4 All ER 481 (HL).

<sup>2</sup>SW v. UK, (1996) 21 EHRR 363.

<sup>3</sup> H.M. Advocate v. Duffy, 1983 S.L.T. 7.

in *S. v H.M. Advocate*<sup>4</sup>, where the court strongly declared Hume's view of spousal immunity to be unjustified in modern era.

### AUSTRALIA

In New South Wales and Victoria, there has been statutory reforms made in the rape laws considering marital rape also. Firstly in New South Wales in 1981, as the Crimes (Sexual Assault) Amendment Act, 1981 described three categories (*61(B)*, *61(C)*, *61(D)*)<sup>5</sup> under which a husband can be prosecuted for the charge of rape upon his wife and punishment would be awarded according to the level of hurt, harm and violence committed against her because the law abolished spousal immunity in marital rape. Secondly, in Victoria in 1985 the Crimes (Amendment) Act, 1985 excluded the exemptions which were given to the husband in marital rape trials. However, Tasmania and South Australia still sustains marital rape exceptions which are applied in different approaches varying situations.

### CANANDA

Canada represented most straight forward and direct approach regarding respect of married Canadian women and towards their dignity. In 1983, The Parliament of Canada amended the criminal code to abolish marital rape exemption. There is no demarcation drawn between a stranger rape and a spousal rape, the husband would be prosecuted like a rapist and will be awarded severe punishment as the law itself won't allow any exceptions to be considered in marital rape cases.

### SOUTH AFRICA

South Africa somehow followed the Australia-Tasmanian approach in dealing with marital rape laws but there has been a shift from Australian point of view towards women's integrity and her right over her body. Firstly in *S. v H.*<sup>6</sup>, *Judge Nienaber* held that this archaic position of law that a husband cannot rape his wife is contrary to the present day reality and morality as well. Secondly, South African Law Commission report recommended that spousal immunity should be

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<sup>4</sup> *S. v. H.M. Advocate*, 1989 S.L.T. 469.

<sup>5</sup> Crimes (Sexual Assault) Amendment Act of 1981, N.S.W. Stat. (Austl.).

<sup>6</sup> *S v. H.*, South African Law Reports 750 (1985 (2)).

abolished in its entirety as it gives undue privilege to one individual over bodily freedom of the other.

### NEW ZEALAND

Just like Canada, New Zealand has also made statutory reforms in its rape laws regarding marital rape. The country outlawed marital rape exemptions in 1985 through enactment of *Section 128(4) to the Crimes Amendment Act, 1985*. Which states that a person may be convicted of sexual violence or rape against another person notwithstanding that those people were married to each other at the time of occurrence of the offence.

### **LACUNAE IN INDIAN LEGAL SYSTEM**

Despite of the various attempts made to outlaw the marital rape exception, India lacks an uninformative approach towards criminalising marital rape as it has become an enigma for the law. The reasoning behind this enigma lies within the argument made by Government that the interpretation of “marital rape” as it is interpreted in other nations cannot be embraced in Indian context due to religious beliefs, customs and the mind-set of the society. There are ineluctable flaws within the laws which should be dealt in most considerable manner by the legislature and judiciary as well, they are;

- I. The laws are still being governed by customs, societal beliefs and old traditions which is not a manifestation of a progressive nation-state. The legal system should be proportionate to the dynamic social system, which India lacks regarding delivery of justice in matters related to spousal rape.
- II. Section 375 of Indian Penal Code, 1860 defines rape but exempts marital rape from the ambit of the definition as it clearly states the exception that “sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape”. Now there are two cruxes in the section, firstly that the law prescribes that a man will be held liable for the offence of rape if he had sexual intercourse with a woman, with or without her consent, who is under eighteen years of age while the exemption of marital rape violates the very provision of 375(6) as the age of the wife, according to law, should not be under fifteen years of age. Secondly, that the exception of marital

rape itself violates the rule of a statutory law that is Prohibition of Child Marriage Act, 2006.

- III. Due to the absence of statutory provisions in Indian Laws regarding marital rape, the only optimism left with married women is to file a case under Domestic Violence Act, 2005. But the court, under the jurisdiction of the act, can only grant reliefs innature of civil remedy in spite of recognising sexual abuse within a marriage, which is an offence that has stricter punishments if the same act was committed by a stranger.
- IV. Section 13(2) (ii) of The Hindu Marriage Act, 1955 provides that a wife can move to court for dissolution of her marriage by a decree of divorce on the grounds that the husband has been guilty of rape, sodomy or bestiality. The law seeks to separate the victim from the culprit, but the relief squanders as the accused walks out free from the court of justice without even getting a bare sentence for the sexual crimes he committed on her wife.
- V. The Judiciary lacks audacious approach in making binding precedent regarding abolishment of marital rape exemption due to paucity of legislative support. There are several cases in which the issue has been acknowledged by the judiciary but yet lacks awarding comforting reliefs as seen in;
- a. *RIT Foundation v Union of India, 2017*<sup>7</sup>, in this casea division bench of Delhi High Court comprising of acting Chief Justice Gita Mittal and Justice C. Hari Shankar said that  
*“in a relationship like marriage, both man and woman has a right to say “no” to physical relations”*. Further they added, *“Marriagedoesn’t mean that the woman is all time ready, willing and consenting for establishing physical relations”*.
- b. In *Bhodisattwa Gautam v Shubra Chakraborty*<sup>8</sup>, the Supreme Court said the crime of rape is nefarious against humankind and such an act violates Article 21, the

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<sup>7</sup>RTI Foundation v. Union of India, (2017) WP 284 of 2015.

right to life, of the Indian Constitution to the depth which is a fundamental right guaranteed to every individual citizen by the state. Although, the law as well as the State fails to protect this right in the case of marital rape due to lack of legal provisions and absence of judicial reforms, which violates the very embodied principle of Article 21 that is “Right to life with dignity, personal liberty” of married women.

- c. Sr. Supreme Court Judge, Chandrachud, J. has also argued that the right to say “no” should be a right after marriage too.
- VI. International Committee like CEDAW (Committee on the Elimination of Discrimination against Women) as well as Justice J.S. Verma Committee, both have recommended for abolishing the marital rape exemption from Section 375 of the Indian Penal Code, 1860 but the government argues criminalising marital rape would dismantle the institution of marriage.

## SUGGESTIONS

- I. The Parliament should manifest a modernistic approach towards making statutory laws criminalising marital/spousal rape.
- II. The approach adopted by New South Wales, Australia should be considered by Indian Criminal Law drafting committees which has been the most appropriate form of dealing crimes regarding stranger and non-stranger rape.
- III. Abolishment of marital rape exemption from Section 375 as recommended by Justice J. S. Verma Committee.
- IV. Appropriate as well as proportionate amendments should be made in laws regarding matrimonial relationships.
- V. The Government should focus on ensuring gender equality atmosphere and try to pace up the literacy rate which would make the younger generation aware and understanding.
- VI. The Judiciary should make judicial reforms in spite of the fact that the legislature lacks contribution towards it. As in many countries, judiciary has ruled out the

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<sup>8</sup>Bhodisattwa Gautam v Shubra Chakraborty, 1996 AIR 922, 1996 SCC (1) 490.

exemption of marital rape and also the general principle supporting the spousal immunity.

## **CONCLUSION**

As the nation lacks the recognition of marital rape in a statutory form, victims of marital rape in India face draconian procedures and outcomes when a case is filed against it in court. Due to paucity of legal provisions defining “marital rape” or “forceful intercourse upon wife by her husband”, it is difficult for the courts to grant relief to victims. Although law provides civil remedies to the victims but it isn’t enough, in a form of relief. The reasoning of the courts and legislature, unfortunately, doesn’t seem to de-stress the circumstances of victims of marital rape as their arguments tend to uplift sacred marital institutions more than the dignity of married women.

Social support is also necessary and inevitable, without it the suffering and trauma increase for the victim and gradually end up in isolation from the society. Marital rape should be recognised by societies in spite of their traditional social customs and it should adhere to the changing world to cope up with the pace of legal administration rather than dark-age administration.

It is the law of the nature, the pillars of justice that seek to give equal rights and opportunities to every individual but here in the case of marital rape it seems to be a textual concept because the different regimes of government from a long time have vowed and promised safety and equality for women everywhere but failed to protect women from sexual atrocities committed against them in their own houses by their lawful husbands. The exemption of marital rape, in its totality, is not justifiable in 21<sup>st</sup> century where the law is perceived as supreme and right to live with dignity and personal liberty as one of the basic fundamental rights.

Thus, there exists an immediate need to criminalise marital rape via statutory means. Also, it will not be possible without elucidating the general myth from mind-set of the masses that “a wife cannot be a subject of sexual cruelty by her lawful husband”.

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