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Marital Rape Exception: Testing Constitutional Morality in 21st Century India

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Abstract: ***The Indian Penal Code has a rule that says spouses cannot be charged with a crime for -consensual sexual acts. This rule is still in place because of ideas, from the colonial days that assumed women always agreed to have sex. It also shows that men have power in relationships. The marital rape exception is looked at to see if it is fair according to what the Constitution of India says is right. The Constitution of India says that everyone should be treated equally and it is not right to treat someone just because of who they are. The marital rape exception goes against Articles 14 15 and 21 of the Constitution of India. The marital rape exception should not exist because it violates these rules. The Indian Penal Code and the marital rape exception need to be changed to make sure that everyone is treated fairly and that women are protected from -consensual sexual acts by their spouses. The paper says that what is right according to the constitution is more important than what society thinks is right. It looks at how courts have made decisions in the past what judges are doing now and how other countries do things. It also considers what India has agreed to do. The study uses a look at the laws and a careful analysis to show that the law that lets men rape their wives is not fair according to the constitution in India today. The marital rape exception is a problem and Indias lawmakers and judges need to do something, about it right away.***

Keywords: Marital Rape, Constitutional Morality, Bodily Autonomy, Article 21, Gender Justice

I. INTRODUCTION

In India people think of marriage as something special. They believe it is so special that no one should question it. The Indian society has a lot of respect for marriage. This respect for marriage has often meant that women are not treated fairly. Women rights and dignity are often ignored. A good example of this problem is the rule about rape. This rule is part of the Indian Penal Code 1860 which's a law that was made a long time ago. Section 375 of this law says what rape is. It says that rape is when a man has sex with a woman without her consent. It makes an exception for married couples as long as the wife is above a certain age. The Indian society and the Indian Penal Code 1860 are saying that marriage is so special that a husband can have sex with his wife even if she does not want to. This is a problem because it means that women who are married do not have the same rights, as women who are not married. The marital rape exception and the Indian Penal Code 1860 are part of the problem. The legal system does not always see women as people who can make their own decisions about what happens to their bodies. Married women are sometimes treated like they do not have the right to say no to advances. This means that the legal system does not think that married women have control over what happens to them in a way. The legal system treats women like they are not able to make choices, about sex.

The Indian constitutional law has changed a lot in the ten years. This is the big change it has seen. The Supreme Court of India has been using something called morality to strike down laws that are unfair to women and go against what people think is right. They did this because these laws were based on fashioned ideas that men are better than women. The Supreme Court has said it times that every single person deserves to be treated with dignity and respect. The Supreme Court also said that the Supreme Court believes every person is equal. The Supreme Court thinks that people should be able to make their decisions and have some privacy. The Supreme Court wants people to be able to do what they want without someone always watching them and the Supreme Court wants people to have dignity and respect. The law that says a husband cannot be charged with raping his wife is wrong. It should be abolished. This law goes against what the courts have said about rights for men and women. Even though the legal system has made progress in protecting women rights this law is still a problem. The Indian constitutional law and the Supreme Court of India have to get rid of this law because it is not fair, to women and it does not protect their rights. The study looks at whether the moral principles in the constitution can support the exception for rape. This exception goes against Articles 14 15 and 21 of the Constitution because it does not fit with what we think about consent and control over our bodies today.

The research takes a look at what the constitution says, what the courts have decided, what other countries have done and what international human rights rules require, all to understand the marital rape exception and constitutional provisions. The marital rape exception is really what the study is focused on. It is looking at this in relation, to constitutional provisions and international human rights obligations.

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A. Historical and Legal Framework

Origin of the Marital Rape Exception

The marital rape exception in law came from English common law. This law had a doctrine called coverture. The coverture doctrine said that when a woman got married her husband controlled her rights and responsibilities. People thought that when a woman married she was saying it was okay for her husband to have sex with her anytime he wanted. The marital rape exception in law is still based on this old idea. The marital rape exception is a problem because it says that the marital rape exception allows a husband to have sex with his wife without her saying it is okay. The marital rape exception, in law needs to be changed because it does not protect women from marital rape

The Indian Penal Code that was made in 1860 has some rules from the colonial days. It says that a man who has sex with his wife long as she is old enough is not committing a crime. There is a rule, Exception 2 to Section 375 of the Indian Penal Code that says this. The Indian Penal Code used to say that a man could have sex with his wife even if she was very young. The Supreme Court made a big decision in a case called Independent Thought v. Union of India in 2017. This decision said that men cannot have sex with their wives if they are under 18 years old. So now the Indian Penal Code says that the legal age for sex is 18 years old. If the wife is 18 years old or more then the husband is still allowed to have sex with her. The Indian Penal Code still has this rule to protect husbands who're married, to women who are 18 years old or more.

B. Statutory Sources

Indian Penal Code (IPC), Section 375 Exception 2: A husband who has sexual relations with his wife who is above 18 years of age cannot be charged with rape. The Bharatiya Nyaya Sanhita, also known as the Bharatiya Nyaya Sanhita has a rule in the Bharatiya Nyaya Sanhita 2023. This rule is, in Section 63 of the Bharatiya Nyaya Sanhita 2023. The Bharatiya Nyaya Sanhita 2023 says that the marital rape exception is a little different now. The Bharatiya Nyaya Sanhita 2023 requires that the victim of rape must be at least 18 years old or even older to qualify under the Bharatiya Nyaya Sanhita 2023. The law, in India still says that a husband cannot be charged with raping his wife. This is a problem because it means that women who are married can still be hurt by their husbands and the law does not protect them. Even though the government has tried to change the laws to make things better this one thing is still the same. The Indian criminal law still has this part that says a husband can do this to his wife and it is not considered a crime. This is what is known as the rape exception and it is still part of the Indian criminal jurisprudence.

C. Constitutional Rights and the Exception

The main reason is that the rules that say married people do not have to follow the laws about assault do not match the important rights that are written in the Constitution of India. The Constitution of India says some things that're not fair with the marital rape exception from the assault aspects. The marital rape exception from the assault aspects is the problem. The Constitution of India has rights and the marital rape exception, from the assault aspects does not follow these rights.

1) Article 14 – Right to Equality

The law provides equal treatment to all individuals who stand before it while protecting their rights to all legal safeguards. The marital rape exception creates an arbitrary classification between married and unmarried women by denying the former criminal protection against non-consensual sexual intercourse. Critics argue this classification lacks a rational nexus to any legitimate state objective (e.g., preservation of marriage or family values). A legal study found out that this rule does not make sense because it treats women differently than unmarried women when it comes to non-consensual sex. The study said that the rule is not fair to married women. The rule puts women in a group that is not protected from non-consensual sex but unmarried women are protected. This is what the study concluded about the exception for women and non-consensual sex. The exception, for women and non-consensual sex is just not a good rule.

2) Articles 15 and 21 – Gender Equality and Personal Liberty

Article 15 of the law prohibits discrimination based on gender. The exception only applies to heterosexual marriage which leads to institutionalized gender discrimination. The right to life and liberty as stated in Article 21 gives citizens the right to control their own body and make their own choices. This means Indian citizens have the right to dignity and the right to privacy. Some people who study this say that having sex with someone without their consent even if they are married is not right. It violates the citizens right to privacy and their right to control their own body. Indian citizens have the right to dignity and the right, to privacy. This should always be respected.

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The people who study the constitution and look into these things found out that the exception to our freedoms is not right because it thinks that when a married person says yes they cannot take it back. The constitutional commentators who studied this matter think that this exception to these freedoms is a problem because it treats marital consent, from married people as something that cannot be changed. This is a deal because it affects the rights of married people and the way we think about marital consent.

D. Judicial Responses and Constitutional Challenges

1) Supreme Court of India

The Supreme Court of India has not made a decision on the marital rape exception. The court system is looking at some cases that question whether the marital rape exception is really allowed by the constitution. These cases are about Exception 2 under Section 375 of the Indian Penal Code and a similar rule, in the BNS provision. The Supreme Court of India is still thinking about the marital rape exception. Has not yet decided what to do with it.

2) High Court Decisions

The Delhi High Court made a decision in the case of RIT Foundation versus the Union of India in the year 2022. The Delhi High Court decision in RIT Foundation, versus the Union of India was not agreed upon by all the judges it was a decision.

One judge said that the rule that says a husband cannot be charged with rape is very wrong. He thinks it is also against some parts of the law, like Articles 14, 15 and 21. The judge wants this marital rape exception to be completely gone from the law. He believes it is morally very bad and people should not have to live with it. The marital rape exception is what the judge wants to see removed from the law. The other judge maintained that the exception to the law functioned as an essential constitutional provision because he believed existing criminal and civil laws including domestic violence legislation provided sufficient protection against non consensual activities that occurred during marriage. The High Courts over India show that when judges think about this subject they often do not agree on what to do. This is because the judges are people too and they have ideas about what is right and wrong. The High Court decisions are different. This shows that people in India are still divided about this subject. The High Courts in India are making decisions that reflect what people, in India think and feel.

3) Government's Stand

The central government says it is right to keep the marital rape exception. It thinks that when people are married they should be able to work things out on their own. The government believes that saying yes or no to something is very important in any relationship. When it comes to marriage it needs to have its own set of rules. The government says that there are already laws, in place to help with problems that happen in a marriage, like assault and domestic violence laws. These laws can handle situations where one person does not want to do something. The other person does it anyway. The central government thinks these laws are enough to deal with -consensual activities that happen within a marriage. The marital rape exception is still something the central government wants to keep.

E. Socio-Legal Implications

1) Women's Rights and Bodily Autonomy

The marital rape exception is really bad for women. It affects their freedom and control over their bodies. The law seems to think that married couples always agree to have sex, which means a wife cannot decide how she wants to be with her husband in that way. People who do not like this law say it is not fair to women and makes men more in charge. This is because it treats wives like they belong to someone instead of being their own person who can make their own choices. The marital rape exception is a problem because it hurts womens autonomy and bodily integrity and it makes the marital rape exception a major issue, for women.

2) Domestic Remedies vs Criminal Sanction

Indian law provides non-rape criminal laws which address forced marital sex through Section 498A (cruelty) and specific sections of the Protection of Women from Domestic Violence Act, 2005 which protect victims from spousal violence and non-consensual sexual acts. The legal solutions which exist do not match the legal impact of criminal prosecution for rape and they impose different levels of punishment. Sometimes courts say that when a husband forces his wife to have sex it is a form of cruelty. They might also say it breaks laws. These cases are not treated the same as rape cases in the eyes of the law. The problem is that they do not have the legal weight as a rape case. For example courts have called forced sexual intercourse between married partners cruel. This is not the same as calling it rape. Forced sexual intercourse, between partners is still not fully recognized as rape in many places.

3) Cultural and Social Resistance

People have ideas about marriage that are very common in our society and these ideas are based on Indian culture. These common ideas and cultural beliefs make it hard for people to think that marital rape is actually a crime. Some people think that if we make rape against the law it will hurt the marriage and the relationships in the family. The points that are being made here show that people still do not want to think of rape as a serious crime instead they think of it as something personal that happens between a husband and a wife and this is the case, with marital sexual violence.

Feminist scholars and human rights activists think that laws should help spouses as individuals. They believe that laws should protect the rights of each spouse than just protecting the idea of marriage. The feminist scholars and human rights activists want to make sure that each person, in a marriage has their rights. They do not want marriage to be the thing that matters. The feminist scholars and human rights activists want the laws to focus on the rights of spouses like the rights of a wife or the rights of a husband instead of just focusing on marriage

F. Comparative Perspectives

International Law and Human Rights Standards

A lot of countries over 150 have made laws that say marital rape is not okay. These laws say that people who are married have to agree to any kind of activity with each other. The United States, the United Kingdom, South Africa and Canada treat rape as a crime. This shows what people think about consent and personal rights today. The United States, the United Kingdom, South Africa and Canada are very clear that marital rape is an offense. Marital rape laws are in place to protect people rights, in these countries, including the United States, the United Kingdom, South Africa and Canada.

The law in India that says a husband cannot be charged with rape is very different from what the rest of the world thinks is right. This goes against what many international agreements say, like the Convention on the Elimination of All Forms of Discrimination Against Women, which is also known as CEDAW. The Convention on the Elimination of All Forms of Discrimination Against Women says that countries must get rid of laws that treat women unfairly The Convention on the Elimination of All Forms of Discrimination Against Women demands that countries remove laws that do not treat women as equals. Other countries have laws that can help India make its laws better. India needs to make its laws fairer to women. It can learn from the laws of other countries to do this. The Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights treaties can guide India to develop its laws and make sure women are treated equally. India needs to develop its laws so that they're fair and just and this includes getting rid of the exception, for marital rape.

G. Legal Reform Debates in India

The parliament has gotten bills and proposals that want to make marital rape a crime. These proposals say that marital rape should be against the law because consent is the important thing. They want to get rid of the rule that says a husband cannot rape his wife. Instead they want to say that rape is when someone does not give their consent. The people who made these proposals think that consent is necessary for any kind of relationship. The proposals to change the law have met a lot of opposition so they have not been able to make these changes. Marital rape is still a problem because of this. The parliament and the people who made the proposals want to make marital rape an offense just like any other kind of rape. They believe that marital rape should be treated the way as any other kind of rape and that consent is necessary, in all cases.

H. Constitutional Morality and Legal Reform

What Is Constitutional Morality?

The idea of morality is that people need to follow the basic principles of the constitution. These principles are important. People should follow them without having to read the whole constitution. The legal system has to treat people with respect and make sure they are treated fairly. This means everyone is equal and has the right to be free. The legal system must do this when people in society do not always do the right thing and might still treat others unfairly. Constitutional morality is, about following these principles and the legal system has to make sure it does that for everyone dignity and autonomy and for their equality and liberty rights. When we talk about rape we have to think about what is morally right. This means we need to understand that just because someone is married it does not mean they cannot say no. A person has the right to control what happens to their body and this right is always there no matter if they are married or not. Marital rape is an issue and we need to remember that marriage does not mean someone gives up the right to say no. The idea of rape is closely tied to the fact that a person body is their own and no one else has the right to touch them without their permission regardless of whether they are married or not.

The marital rape exception constitutes a violation of constitutional morality because it gives priority to institutional preservation which refers to marriage over individual rights.

II. CASE STUDY

The issue of rape is being talked about all around the world because it is a problem that is hard to solve both in terms of the law and how people think about it. When we look at what has happened in situations we can see how people are starting to discuss this very sensitive topic. These situations will show us how the courts in India deal with rape, which happens between two people who are in a romantic relationship with each other. The details of these situations and what happens in court will give us information, about how people and the legal system think about marital rape and this will help us understand the problem of marital rape better. The problem of rape is something that we need to keep talking about and the legal system and society have a lot to say about marital rape. Each case study functions as a small part of the worldwide dialogue about marital rape recognition which demonstrates both the pathways to justice and gender equity progress.

The Independent Thought case in 2017 was a deal in Indias legal system. The Supreme Court of India made an important decision. They said that if a man has intercourse with his minor wife it is considered rape. This decision changed a rule in the Indian Penal Code. The old rule allowed a married couple to have relations when the woman turned fifteen but before she turned eighteen. The Independent Thought case marked a change, in the way India thinks about this issue. The Supreme Court of India looked at the Independent Thought case Decided that the old rule was not right. The court's judgment established new legal standards which defined marital boundaries while it emphasized that protecting girl children's rights and maintaining gender equality should remain the highest priority within the Indian legal system.

In Rajesh Sharma, issues were raised concerning the improper application of Section 498A of the IPC which prohibits dowry-related harassment. The court issued guidelines to prevent the misuse of this section and emphasized the need for family welfare committees to review complaints before any arrests were made. However, this decision was criticized for potentially weakening the safeguards against domestic violence.

The Supreme Court decriminalized adultery through its decision in Joseph Shine when it struck down Section 497 of the IPC which considered a man who had sexual relations with a married woman without her husband's approval to be guilty of a crime. The court held that treating women as the property of their husbands was archaic and unconstitutional.

The Supreme Court of India needed to create new laws for sexual offenses because the existing laws required complete reform according to its decision in Sakshi v. Union of India. The court recognized that women's rights constitute human rights and the government has to change laws to solve problems that include marital rape.

The case dealt with the legal question of whether consensual sexual activity becomes rape when unplanned situations between partners lead to that result. The case demonstrated how important it is to comprehend consent and how relationships develop through sexual experiences in marriage. The High Court of Karnataka dealt with a case about a woman who said her husband raped her. The court said she could not prove it. This decision went against what the law says about rape. The law has a part that says a husband cannot be charged with raping his wife. The court did not get rid of this part of the law. It did say the case against the husband could go forward. The husband had asked the High Court to look at the case after a lower court said he was guilty of rape under Section 376 which is the law about rape. The High Court of Karnataka made a decision, about the marital rape law. The marital rape law is a deal and the court decision was important. The woman said her husband raped her. The court said she could not prove that the husband raped her. Justice M Nagaprasanna of the Karnataka High Court stated that "A man is a man; an act is an act; every rape constitutes a rape" because "a husband who rapes his wife" must face prosecution. The court declared that the "outdated... regressive" belief which says "husbands control their wives' bodies minds and spirits should be eradicated."

The country of India does not have a law that says marital rape is a crime. In India there is no law for marital rape that makes it a separate crime like many other countries do. The rules that are already in place to deal with crimes also cover what happens when married people are involved. Because India does not have a law that makes marital rape a crime people in India are talking about it and are very concerned about this issue. India needs to think about making rape a criminal offense like other countries have done. The fact that India does not have a law, for rape is a big problem and people are discussing it all the time. Organizations and activists have been working to create new laws which will provide protection against sexual violence that occurs during marriage.

The case laws demonstrate how legal matters related to sexual violence and marital rape in India have developed through judicial decisions. The case laws have established important legal standards which society now uses to address these matters. The understanding of legal matters develops through changing times therefore people should consult current legal resources to access the most recent information.

The Delhi High Court got a case from RIT Foundation. This case was about the marital rape exemption in the Indian Penal Code. The court needed two judges to decide on this case. There were petitions that said this exemption was not fair.

The two judges had to make a decision about whether marital rape should be a crime or not. One of the judges Justice Shakdher wanted to get rid of this law. He thought it was not fair. The other judge, Justice Hari Shankar thought the law was okay because it made a difference between two groups of people.

Justice Shakdher said the marital rape exemption was not right because it went against the Constitution of India. On the hand Justice Hari Shankar thought the exemption was valid. He believed it made sense to differentiate between these two groups of people. The marital rape exemption was an issue in this case. The judges had opinions, about the Indian Penal Code and the marital rape exemption. Both judges authorized the parties to proceed with their Supreme Court appeal because they recognized that the case carried important legal consequences.

Some groups that help people called NGOs went to court to fight for what they think is right. They were against the RIT Foundation and the All India Democratic Women Association and two regular people. These people wanted to change the law so that husbands can be charged with rape like anyone else.

The people who started this court case were saying that the law is not fair to married women who are forced to have sex by their husbands. They think the law should be the same for everyone so they challenged the rule that says husbands cannot be charged with rape under Section 375 IPC, which is the law, about rape. The person who started the case said that married people should not be allowed to get with rape because everyone should be treated equally and have the right to live with respect. People should be able to make their decisions about what happens to their own bodies and lives. The Indian Constitution says that this is a right and it is protected by Articles 14 and 19 and 21. The people who took the case to court said that the law is unfair because it treats women differently than unmarried women. This is not right because a married woman should also have the right to say yes or no to sex. The people who started the case think that the law should be changed so that married women have the rights, as everyone else. The main point is that marital rape is a deal and people should talk about it. Marital rape is when someone forces their spouse to have sex without consent. This is not okay. The Indian Constitution and marital rape are connected because the constitution says that people have the right to live with dignity and make their decisions. The plaintiffs demonstrated that courts recognize individuals have the right to revoke consent at any point during sexual activity which makes the legal assumption about permanent consent "invalid.

The petitioners claimed that different relationships create reasonable expectations for sexual activity which should not be considered absolute consent until the end of a relationship. The petitioners established that this rule dating back to the time before the Indian Constitution began its operation should not be treated as existing constitutional law.

The government granted exemption for marital rape prosecution which Ian used as his defence. Their rationale encompassed safeguarding men against potential misuse of the law by their wives and preserving the sanctity of the institution of marriage. The Government path for broader dialogue because it exists as a requirement for this issue. The Central Government created a committee in 2019 to assess the nation's criminal laws according to the quoted statement and after the committee finished its final report, certain actions will be implemented

III. CONCLUSION

The legal system needs to abolish the marital rape exception because this practice originated from colonial and patriarchal legal systems which now contradict modern constitutional principles of equality, dignity, bodily autonomy, and personal liberty. The exception continues to exist in Indian criminal law through the IPC and the BNS despite judicial examinations and public demands for legal reform. The exception exists to protect married women from sexual violence through legal measures which provide them with lesser rights than other citizens.

The legal principle that all sexual relationships need consent applies to all people regardless of their marital status according to legal scholarship and constitutional interpretation and international human rights standards. The constitutionality of marital relations should terminate all legal protections that permit non-consensual sexual activities to continue within the institution of marriage. The Supreme Court's fundamental rights interpretation together with future criminal law reforms that match constitutional standards will determine how India resolves this situation.

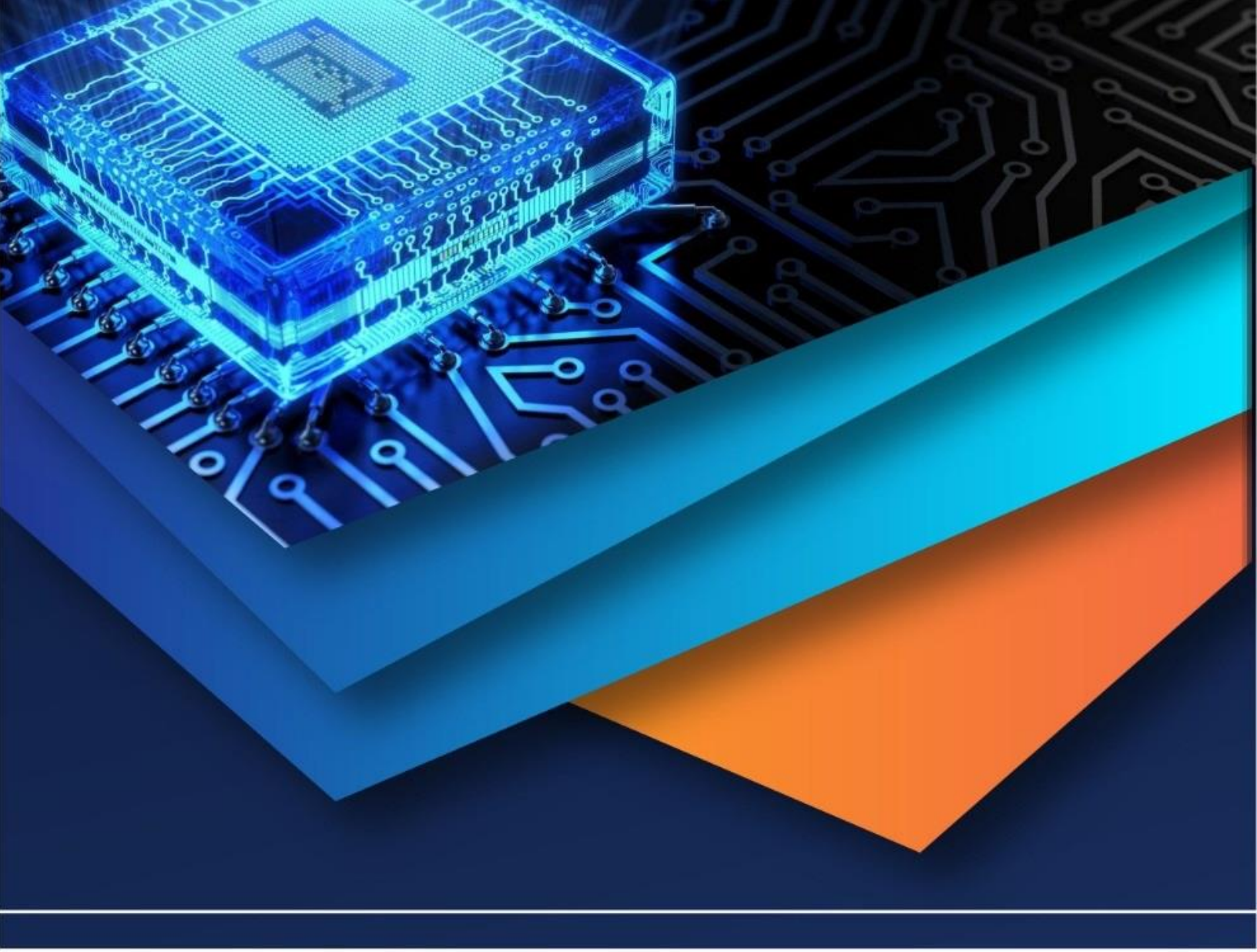
The social problem of marital rape needs to be solved through collective efforts that extend beyond existing legal frameworks. Deep-rooted power imbalances within marriages shaped by gender roles, cultural expectations, and social conditioning often suppress women’s autonomy and agency. Consent needs to be understood as an ongoing and revocable process which exists outside marriage to achieve this goal of eliminating structural obstacles

The process of achieving justice needs criminalization as its essential first step but this process requires additional elements to function effectively. The public needs to understand the law while authorities must protect survivors through their enforcement actions which together create sustainable progress. The fight against marital rape needs all members of society to work together, so they can create new definitions of marriage that treat all partners as equals and require them to show understanding and respect for each other's dignity and rights.

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