

Why is marital rape still legal in Bangladesh?



TAQBIR HUDA

RAPE is undoubtedly among the most heinous offences against the human body and yet Bangladeshi law is yet to criminalise the act of marital rape. Far from criminalising it, the law in fact explicitly exempts marital rape from the offence of rape itself.

The exemption can be found in the section 375 of the Penal Code, which is the chief provision for the definition of rape and lists five scenarios which would amount to rape. The list is followed by a categorical exemption for marital rape from the offence of rape, which explicitly states that "sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape."

This is problematic for a number of reasons. First, the exemption clause makes it legally impossible for a man to rape his wife who is over thirteen years of age. Since wives are generally over thirteen years of age in Bangladesh, it means that the overwhelming majority of married women in Bangladesh will be incapable of seeking recourse in law if they are raped by their husbands.

Second, this exception is inconsistent with the age of consent found in the Section 375(2) which covers statutory rape and clearly states that sexual intercourse with a woman "with or without her consent, when she is under fourteen years of age" is considered to be rape. One may wonder why a lower age of consent applies to child brides since marital status does not automatically increase a girl's capacity to consent to and engage in sexual acts.

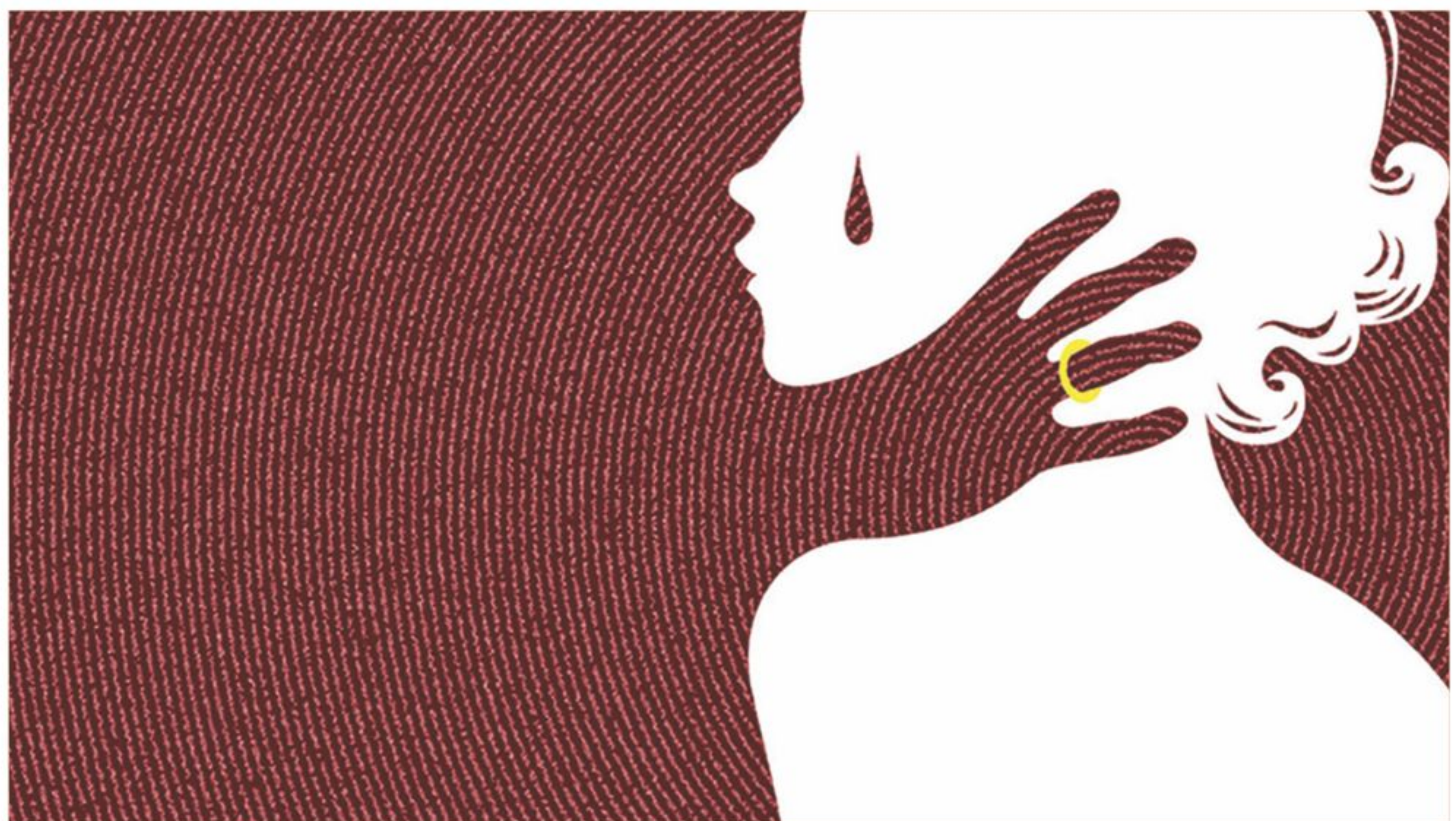
Third, it is also inconsistent with section 376 which prescribes the punishment for rape. It states as a qualifier when ascribing the punishment for rape. The general punishment for rapists is life

imprisonment or a prison sentence up to ten years, and a fine "unless the woman raped is his own wife and is under twelve years of age in which case he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both." Here again there is inconsistency as to the precise age a wife must be for marital rape to be punishable since the exemption clause in section 375 sets it at under thirteen years but section 376 states it to be under twelve years. This coupled with the fact that punishment can at most only be a two-year prison sentence (or even just a fine) shows that even in the very narrow sense in which marital rape is criminalised, the punishment remains shamefully minimal.

The marital rape exemption was inserted by British colonial rulers when they enacted the Penal Code in 1860, and it illustrates the nineteenth century mindset of English lawmakers. As Sherri Davis explains in Marital Rape: The Legislative Battle, the matrimonial consent theory was justified by the English common law assumptions that upon marriage, a wife became the property of her husband or that the spouses became one entity. Legally, then, a husband could not be guilty of assaulting or raping his own chattel, and in the latter case, the "one entity" principle made it impossible to charge a husband with rape.

The legality of marital rape finally came under scrutiny in the mid-twentieth century and England itself outlawed marital rape as late as 1991, in the case of *R v R*, while the British-mandated marital rape exemption still remains in force in Bangladesh. Interestingly, the original age stipulated in the Penal Code's marital rape exemption clause has been amended time and time again by local lawmakers post-independence, presumably in accordance with changing social norms.

Furthermore, certain newer laws which although sought to empower women and alleviate their suffering (such as The Prevention of Oppression against Women and Children Act 2000)



SOURCE: INDIANWOMENBLOG.ORG

still referred back to section 375 of the Penal Code and thereby maintained the marital rape exemption.

Thus it would be improper to simply blame the British and presume that the marital rape exemption is merely an archaic colonial remnant that has only survived since it never came under the purview of lawmakers after enactment. Rather, Bangladeshi lawmakers have had ample opportunity to remove it but seem to have consciously chosen to retain it instead. Supporters of the exemption tend to justify it based on the argument that allowing prosecution of husbands for rape would disrupt or impede reconciliation of troubled marriages. It is difficult to conceive how charging a husband with the crime of rape can be considered to be more disruptive to marriages than the heinous act of rape itself (as was highlighted by the Supreme Court of Virginia in the case of *Weishaupt v. Virginia*, 1984 when outlawing marital rape).

The situation in Bangladesh can be contrasted with that of Pakistan which, despite inheriting the same Penal Code from the British Raj, does not have the marital exemption clause today. The Protection of Women Act 2006 attempted to repeal anti-women rape laws and amend the infamous Hudood Ordinance by reintroducing the rape laws from our commonly inherited colonial Penal Code. While reinserting section 375, the Pakistan Parliament quite simply removed the exemption clause from it, thereby relinquishing the legal safeguard that was enjoyed by husbands who raped their wives. Such an erasure would also be advisable and quite achievable in the case of Bangladesh. Unfortunately, there is nothing to suggest that any such reform is even remotely on the horizon, which is precisely why we need to start a discussion and engage in dialogue.

We need to acknowledge that the reluctance in our country to criminalise marital rape is rooted in the medieval

notion that upon signing the marriage contract, a wife perpetually and irrevocably consents to sexual intercourse with her husband whenever he so demands. It is reflective of our society's wider perceptions on the subjugated role of the wife within the institution of marriage and the sexist power dynamics patriarchal cultures seek to preserve.

We need to realise how marital rape has the potential to be even more traumatic and scarring for a victim than rape by a stranger. Indeed, this was poignantly highlighted by Dr David Finkelhor in his testimony supporting the criminalisation of marital rape: "When you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband, you have to live with your rapist."

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PROJECT SYNDICATE

Britain En Marche?



BILL EMMOTT

WE live in a politically turbulent age. Parties barely a year old have recently swept to power in France and in the huge metropolitan area of Tokyo. A party less than five years old is leading opinion polls in Italy. A

political neophyte is sitting in the White House, to the profound discomfort of establishment Republicans and Democrats. So where will the political earth shake next? The answer could be—indeed, *should* be—the United Kingdom.

Even as the UK faces the upheaval of Brexit, nobody is talking about remaking—much less replacing—the established political parties. Many deny that they would even consider such a thing. Former Prime Minister Tony Blair—a pro-European centrist innovator who won three general elections for his Labour Party in the 1990s—took great care in a recent article to stress that he is "not advocating a new Party."

But Blair, or someone like him, should be doing just that. After all, while the British political system does put formidable barriers in the path of any new party, the chances of success are greater now than at any time in the last 40 years. In a political system still feeling the aftershocks of two major earthquakes—the June 2016 Brexit referendum and, a year later, the humiliating electoral setback of the Conservative Party that spearheaded it—there



Britain's youth mobilised in the recent general election to deliver the Conservatives a catastrophic result. One of the lessons from the election is that people care more about jobs and welfare than Brexit.

SOURCE: LONDON EVENING STANDARD

is a clear opportunity for newcomers.

Already, the Conservatives are locked in an internal battle that they can only try to obscure. In the Labour Party, too, rebellions are erupting. Now is the moment for a new party, styled after French President Emmanuel Macron's "La République En Marche," to capitalise on the division, disarray, and distrust in the established parties. Now is the moment for a photogenic young British man or woman to follow in the 39-year-old Macron's footsteps, making history by casting aside the old guard.

Of course, as Blair suggested, Britain's first-past-the-post electoral system, based on single-member constituencies, implies huge advantages for the established political parties. A new party could well find—after spending huge sums of money and energy, and perhaps even securing a sizable chunk of the vote in its debut general election—that its voters are spread too thinly across the country to deliver more than a handful of parliamentary seats.

That is what happened the last time a new centrist party entered the fray. In the early

1980s, four defectors from Labour, alarmed by their party's leftward shift and anti-EU stance, created the Social Democratic Party. Capitalising on the unpopularity of Prime Minister Margaret Thatcher's early economic policies, the new SDP—in alliance with the small Liberal Party—won 25 percent of the national vote in the 1983 general election. But they ended up with a mere 23 seats. It was all downhill from there.

That memory is discouraging political innovation today. Those in Labour who are deeply suspicious of the left-wing economic and foreign-policy stance of their popular leader, Jeremy Corbyn, still think the most sensible strategy is to be patient and, when the opportunity arises, to recapture their party. The same goes for Conservatives who think Brexit is leading the country to disaster.

But the history of the SDP can and should be read in a different way. At one point in 1982, the party was attracting the support of more than 50 percent of voters in opinion polls. Many senior Conservative figures were saying privately at the time that they thought the SDP was going to win the next election in a landslide.

Then came the Falklands War, which amounted to a major victory for Thatcher. So it was the Conservatives who ended up winning the 1983 election in a landslide—a result that launched the still-unpopular Labour's long trudge back toward the political centre.

Today, no major victory looks to be in the cards for Labour or the Conservatives. Moreover, the recent election—in which the Conservatives' 20-point lead disappeared

seemingly overnight, as voters, especially young people, threw their support behind Labour—suggests that British voters are up for grabs.

The recent election held another important lesson: Europe and Brexit is not the issue that British voters care about most today. Corbyn's Labour ran on the same Brexit policy as May's Conservatives. But on issues like jobs, hospitals, schools, and the welfare state, their approaches contrasted sharply.

To defeat the establishment parties, therefore, a new political movement would have to stand, first and foremost, for restoring public services, reviving the economy, and rebuilding trust. A strong relationship with the EU should be pitched as a means to advance these goals, not as a goal in itself.

In the next few months, an opportunity to create such a movement may well present itself. It depends, first, on whether leadership ambitions and divisions over Brexit consume the Conservative Party and, second, on whether the recent rebellion of more than 50 senior Labour members over Corbyn's Brexit policy escalates.

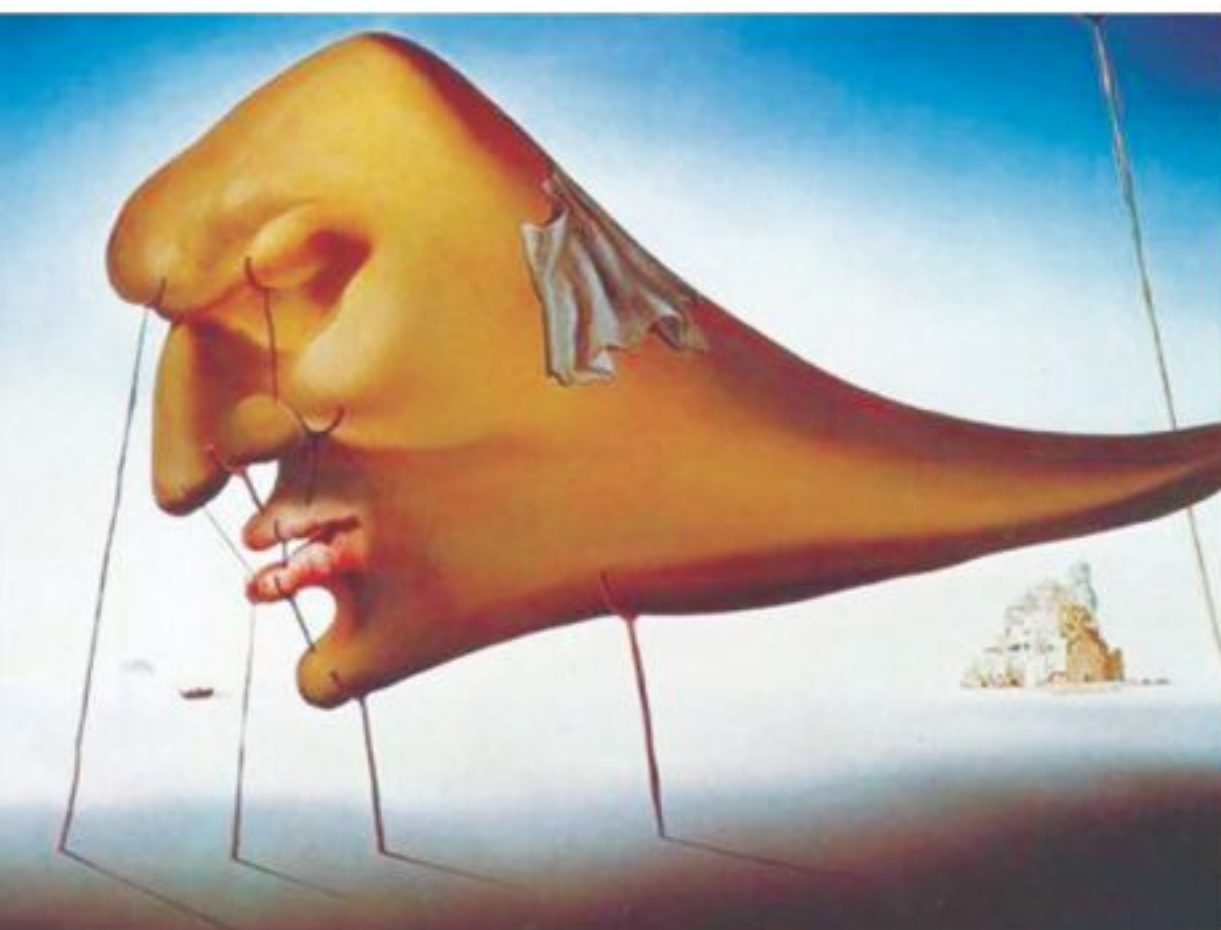
Anyone considering such an opportunity should remember the Falklands, and wonder what the SDP might have become had Argentina not invaded. And they should recall the motto of the British special forces: "Who Dares Wins."

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A WORD A DAY



SOPORIFIC
adjective

tending to induce drowsiness or sleep

CROSSWORD BY THOMAS JOSEPH

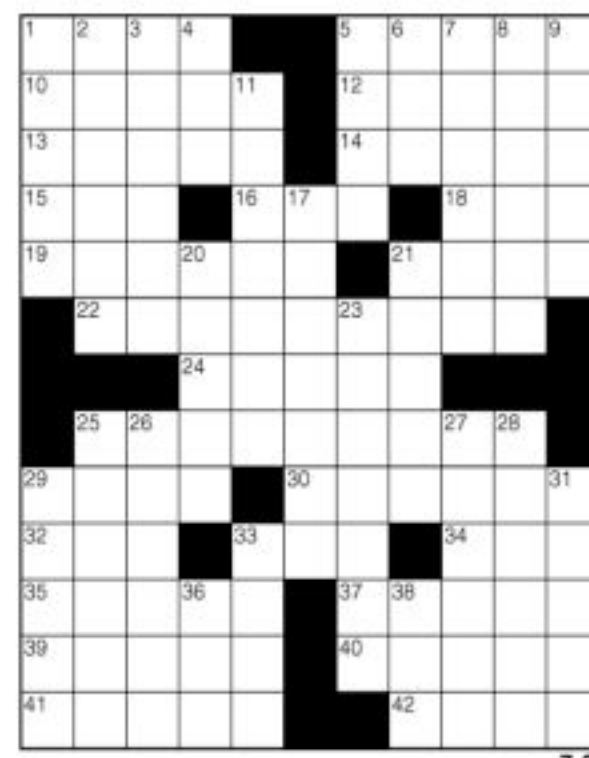
ACROSS

- 1 Stairs alternative
- 5 Touches down
- 10 Bye, in Baja
- 12 Concerning
- 13 Apartment sign
- 14 Paris subway
- 15 Pitcher's stat
- 16 Strike caller
- 18 Writer Hecht
- 19 Answer to "Gracias"
- 21 Relaxed
- 22 Easily angered folks
- 24 Unsuitable
- 25 Influence of a popular person
- 29 "Dog-gone!"
- 30 Sci-fi baddie

- 32 Colony member
- 33 Bud
- 34 Overly
- 35 Blown away
- 37 "Cats" creator
- 39 Like some situations
- 40 Aunt, in Arles
- 41 Sailing hazards
- 42 Some babies

DOWN

- 1 Sized up
- 2 Cherishes
- 3 La Scala setting
- 4 "The Gold Bug" writer
- 5 Bed table item
- 6 Jurist Fortas
- 7 "Impressive!"
- 8 Coercion
- 9 Unemotional
- 11 School attendee
- 17 Title meaning "great spirit"
- 20 Opera songs
- 21 Weird AI song
- 23 Shoulder ornament
- 25 Big shooter
- 26 Northern capital
- 27 Telemundo viewer
- 28 Arrogant
- 29 Monsoon weather
- 31 Lugs
- 33 Corrals
- 36 Fake locks
- 38 Techs' place



YESTERDAY'S ANSWER



BEETLE BAILEY

BY MORT WALKER



BABY BLUES

BY KIRKMAN & SCOTT

