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Marital Rape and Draconian Indian Laws: A Blatant Transgression of Right to Life, Liberty and Dignity of the Wife

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ABSTRACT

The term Marriage has been defined by various sociologists and jurists time and again, yet the pith of it has remained pristine throughout. It implies the union of two souls. The sanctity of every relationship including the institution of marriage is built around trust, understanding, love, and consent. The thread that holds the bonding firmly is the mutual understanding and the consent of the two individuals. But the very foundation of this sacred institution gets disintegrated the moment trust and consent dissipate. Marital rape or to be more precise, non-consensual sexual intercourse is certainly the menace that jeopardizes the basic human rights of the wife especially her right to life, dignity, liberty, and her right to say no. The lacunae present in the Indian laws because of which such a menace as marital rape is perpetuated and immunized from penalization reverberate the archaic patriarchal notions that regard the wife as the property of her husband and also exemplify that marriage is nothing but a license given to the husband to satiate his desires by meting out inhumane treatment to his wife. This paper will strive to throw light upon the ongoing contentions revolving around marital rape laws in India while discussing the latest judicial pronouncements, the constitutionality of the non-criminalization of marital rape and it'll also attempt to underscore the need for an amendment in light of the existing legislations on marital rape in other countries. This paper will also discuss the public-private dichotomy and how marital rape in India is still viewed as a domestic violence. In the end, this paper will attempt to draw an outline of the probable roadmap and the way forward that can safeguard the victim's basic fundamental and human rights from this menace.

Keywords: Marriage, Sanctity, Consent, Penalisation, Patriarchal, Human Rights.

I. INTRODUCTION

Throughout the centuries, marriage has continued to hold a significant position in every sphere of society, transcending the borders and boundaries of the nations. The Hindu Personal Law considers marriage as a sacred bonding/relationship and a religious sacrament created between

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the husband and the wife because in Hindu Law marriage becomes valid only when rituals and ceremonies are performed. The very structure of the marriage stands upon trust, understanding, and consent. Marriage is regarded as a sacrament, the bonding that comes with responsibilities and obligations to each other but it all becomes a myth the moment marriage is used as a tool/weapon for satiating sexual desires, especially by men.

Gendered violence against women has been commonplace in society both in private and public spheres yet marital rape is that form of gendered violence that continues to be underrecognized in one-third of the world's countries where this menace happens to be immunized from penalization. This legal opacity gives men a legal impunity who sexually abuse or rape their spouses. This is a human rights issue that begs for resolution on both a legal and social level. Marital rape is a heinous offense against women that questions the very institution of marriage as defined by some that marriage is nothing but a social contract entered into by the man and the woman where the woman gives her irrevocable consent to the husband, although not express one, yet it gives a license to the husband to treat his wife in whatever way he wishes to treat, be it giving her the status of a respected wife or a sex slave.

The bodily autonomy of a woman somewhat gets buried six feet under the moment she enters into the institution of marriage. Yet the question arises, why does India still fail to recognize this offense as a separate offense and doesn't strive to safeguard the human rights of women by formulating a stringent protocol to tackle this menace? Whether it's the societal stigma or the deep-rooted misogyny that makes the legislators indifferent toward this issue? Is it just the indifference of society towards the deplorable status of women in both public and private spheres? Perhaps we still don't have answers to these questions.

II. OFFENSES AGAINST WOMEN AND ITS HISTORICAL SIGNIFICANCE

The discussion or contentions on Marital rape postulates the discussion of the position of women in the society. The subjugation of women has perpetually been prevalent and commonplace in every society be it in the third world countries or the first and second World. The indomitable domination perpetuated by men echoes their indifference toward the condition of women and also makes it evident that it has never been an objective for them to uplift the status of women rather it has always been exactly the opposite.

As far as the historical interpretation of the freedom of women or their societal status is concerned in the **Vedic period**² women enjoyed a fair amount of liberty and equality in respect

² Rao, M. (2019) 'Position of Women', in *Law relating to women and children*. 4th edn. Lucknow: Eastern Book Company, pp. 25–30.

of education and their other pursuits. That is why the Vedic period is also commonly known as the period of feminine glory. Women were allowed to participate in all spheres the same as men. However, since the **post-Vedic era**, women's status in society has been declining, and it has suffered a setback as a result of various restrictions placed on their rights and privileges. In that regard, it's pertinent to mention how women were looked down upon in the glorious texts of Manu where it stated that women should never be independent. The subservience and domination of the women by their fathers, husbands, and sons were normalized in his texts as well. However, it was further added in the text of Manu that along with being “loved”, women should equally be “protected” which implies how women had always been considered inferior and second-class citizens. Even women underwent great disabilities and obstacles in the **Medieval period**³ as well. They were treated as chattels or property. Social evils like **Sati and child marriage** also increased in numbers. During the medieval era, patriarchal families and the feudal social structure subjugated women.

In the **British period**⁴, a massive change was noticed in society especially in the status of women, with the advancement of education and the impact of Western ideas on the socio-cultural life of India. The status of women was uplifted through the introduction of the ideology of liberalism which secured liberty, equality, and respect for every citizen irrespective of caste, class, sex, or ethnicity. Eminent personalities, educationists, and other intellectual personalities like **Raja Rammohan Roy, Ishwar Chandra Vidyasagar, Mahatma Phule, Aurobindo, and Swami Vivekananda** came forward for the upliftment of women in society and they also believed that social change could only be brought about by giving women access to education and through proper implementation of the enacted legislation.

Around 1900 BC, the first rape legislation was established in Babylon. According to the **Code of Hammurabi**⁵, a man should be executed if he forcibly sexually assaulted another man's wife or a virgin who "is living in her father's house" (Gold). Given that women were seen as property, this established the legal precedent that rape was essentially a kind of robbery and vandalism. The notion of a husband "forcing sexual intercourse" upon his wife was therefore considered the man's legal right. Rape was seen as ethically repugnant in ancient civilizations because it damaged male honor rather than harming the victim's feelings. Women who had been raped were perceived by society as damaged commodities and “unmarriageable” assets.

³ Ibid 1

⁴ Ibid 2

⁵ *Catholic University Law Review - columbus school of law*. Available at: <https://scholarship.law.edu/cgi/viewcontent.cgi?httpsredir=1&article=3151&context=lawreview> (Accessed: 08 October 2023).

The Hebrews stoned people who committed rape. A virgin who had been sexually assaulted inside the city walls, where she could have shouted for aid, was stoned alongside the perpetrator. If she lived outside the city, she was required to wed her rapist, and he was required to pay her father the wedding price. In contrast, if the virgin had already been betrothed, the rapist was stoned and the woman was cheaply married. Married women who were raped were stoned together with their attackers for adultery, and their husbands were not allowed to intervene to save them. Roman law initially viewed rape as a violent property crime but later the concept of consent in rape gained importance.⁶

However, with time, although the rape laws evolved but the status of women in the eyes of the society remained the same perpetually. Rape has always been viewed as an offense that women face outside the household, as it's perceived that rape possibly can't take place in a marital relationship. Through entering into the institution of marriage, a woman gives herself up to her husband and loses her bodily autonomy. These fundamentally flawed ideas nurtured by society reiterate its implied acceptance of acts of violence against women, including marital rape.

III. MARITAL RAPE AND INDIAN LAWS

India has come a long way and has made a lot of advancement and progress in every sphere of society yet the sexual violence that women undergo in their matrimonial home is still considered to be a private affair that isn't subjected to public institutions like courts. In India Marital rape isn't a crime and married women who are sexual assault victims aren't treated as victims by the criminal justice system. The offense of marital rape is frequent yet terribly underreported. Despite the fact that many officials are reluctant to accept it, evidence shows that marital rape is frequent in India as it's in the other countries of the world.

The discussion of the constitutionality of the marital rape exception takes us back to a heinous and ghastly case that took place in 1881. This marital rape case was of an 11-year-old child bride Phulmoni Dasi.⁷ The importance of the case must be highlighted while throwing light upon the present legislation as it received a lot of attention from both society and legislators. The facts were that Phulmoni Dasi was bled to death after her mid-thirties old husband Hari Mohan attempted to consummate the marriage, despite knowing that his wife was just a child. Although the postmortem report listed a ruptured vagina as the cause of the death, the

⁶ Flagler, B. and Flagler, B. (2019) *The Feminist Poetry Movement*. Available at: <https://sites.williams.edu/engl113-f18/flagler/a-brief-history-of-rape-law/> (Accessed: 08 October 2023).

⁷ *Marital rape and its current legal status Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-7032-marital-rape-and-its-current-legal-status.html> (Accessed: 08 October 2023).

husband was ultimately cleared of the rape acquisition since marital rape wasn't included within the ambit of the IPC. At that time this exception wasn't there, hence the rape laws of that time permitted a man to have sexual intercourse with his wife, irrespective of her consent, as long as she had attained the age of 10. However, Hari Mohan was subsequently charged with violating Sections 304, 304A, 325, and 338 of the IPC. In this case, the Court decided that a man did not have the right to enjoy the person as his wife without considering the issue of her health and safety.

The case of Phulmoni Dasi raised concerns concerning the age of consent for child brides in particular. The need was felt for the very first time to bring a massive change through an amendment to extend protection to female teenagers from human trafficking, gendered acts of violence like prostitution, etc. The amendment that was brought by the colonial govt aimed at increasing the age of consent from 10-12 both in marital and extramarital circumstances.

With the passing of the Amendment Act of 1925, the distinction between the age of consent between rape outside the marriage and in marital rape. This change couldn't bring that noticeable impact because the husband could still only be imprisoned for a maximum of two years. Additionally, the said exception for married women between the ages of fifteen and eighteen persisted until 2018, when the Supreme Court (SC) of India ruled in a landmark decision that engaging in any type of sexual activity with one's wife while she is between the ages of fifteen and eighteen constitutes rape. For the first time, sexual assault of a girl received official legal recognition. However, any woman over the age of 18, who may also become the victim of marital rape by her husband, is not protected by this. Because there is no legal provision for marital rape of a woman above the age of 18, instances of this nature are common throughout the country and frequently go unreported or unpunished.⁸ Indian Penal Code, 1860 was drafted by Macaulay under the influence of the regressive and misogynistic attitudes of Ancient Colonial India. Section 375 of the IPC criminalizes the offense of rape. However, it categorically excludes Marital rape from its ambit. The exception itself is archaic in nature which states "**sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age isn't rape.**"⁹ This very exception that immunizes marital rape from penalization is violative of Article 21 as it transgresses the right to life liberty and dignity of a woman and most importantly her right to say no. There have been different activist

⁸ *The reality and existence of martial rape in India* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-7182-the-reality-and-existence-of-martial-rape-in-india.html> (Accessed: 08 October 2023).

⁹ R, M. *Marital rape: The dilemma of courts*, *Deccan Herald*. Available at: <https://www.deccanherald.com/opinion/marital-rape-the-dilemma-of-courts-1217000.html> (Accessed: 09 October 2023).

movements so far that endeavored to change the outlook of society and fought for equality by bringing necessary legal amendments. To some extent, it had been successful in bringing changes in India's anti-rape laws in 1983, 2002, 2012, and in 2013, but every effort eventually failed to criminalize Marital rape.

The concept of marriage in Indian society invalidates the importance of consent and presumes that the moment a woman enters into the institution of marriage, she gives her absolute irrevocable consent to her husband which the husband can use to dominate his wife including the sexual subjugation of the woman as well. It's often seen that TV channels, media, and movies always try to reinforce the mindset that the threat of rape or any form of sexual violence comes from "**monstrous outsiders**". The sexual violence that takes place within the four walls of the matrimonial home continues to be underrecognized. The bulk of violence against women, whether committed by husbands or common-law partners, is, according to research, committed by men the victims know or belong to the known circle of the victims. The amount of the specifically sexual component of violence against women in intimate relationships, including rape in marriage, is significantly underrecognized, despite the fact that domestic violence is accepted as a human rights issue deserving of legal intervention. Research literature, legal reform initiatives, and human rights advocacy have paid relatively less attention to sexual assault in intimate relationships. In the absence of adequate legal solutions, it continues to be a human rights issue. The fact that cases of rape be it within a marriage or outside of it half of the time unreported proves that there's something fundamentally wrong with the structure of the criminal justice system and most importantly with the procedures that are adhered to by the court of law and authorities afterward. However, the immunization of marital rape from penalization is nothing but a grim reminder of Victorian morality and the sexual repression perpetuated by it. The implied consent hypothesis forms the basis of the institution of marriage which is also put on the same footing as a contract. Marriage is often considered as a social contract. This very notion solidifies the ground upon which marital rape gets the safeguard from the rigidity of the legislation.

As previously indicated, the NFHS has found that physical and sexual violence often coexist, hence it records marital sexual violence under the heading of spousal violence. The most typical kind of spousal violence used to coerce a wife into engaging in sexual activity, per the survey, is physical abuse. Although the report does explain the decrease in occurrences, it also emphasizes that women's experiences remained the same. In the cases that have been documented, 45.4% of married women have been victims of both physical and sexual abuse, resulting in cuts, burns, broken bones, missing teeth, and other traumas. The most recent NFHS

publication shows that spousal sexual assault is still an issue today. 82% of married males abused their spouses sexually, while 13.7% of ex-husbands did the same. Research in the field has also consistently shown that the relational context in which sexual assault occurs has a direct bearing on how individuals perceive its occurrence, seriousness, and effects. The clarity about its wrongfulness is lessened the tighter the relationship between the offender and victim. There is a clear tendency to minimize the harm of sexual assault in the context of intimate relationships due to the fixation on "stranger rapes" as the more serious issue, according to other research documenting popular perceptions about rape (depending on the relationship between the perpetrator and the victim).¹⁰

IV. MARITAL RAPE AND THE CONTENTIONS AROUND IT

Apart from discussing, interpreting, and attempting to dissect the basic definition of Marital rape, and what it had meant to the ancient lawmakers and to the public at large, it's pertinent to mention that marital rape has continued to be a matter of debate throughout centuries. A large number of people who are against the criminalization of marital rape have put forth their stances, irrespective of how problematic those are, time and again. The hostility and staunch opposition against the criminalization of marital rape has been perpetually going on in Indian society which is backed by the archaic regressive outlook of the people in authority. In 2012, in response to a judicial committee's recommendation to criminalize marital rape, a parliamentary standing Committee responded by saying that the criminalization of marital rape would put the entire family system under stress. Even after that, several politicians stuck to their views and stated that this would lead to the breakdown of families and would cause absolute anarchy by destroying marriages. However, with the recent contentions going around the concept of Marital rape after the split judgment of Delhi HC, the debate around it has once again been brought to prominence. Before delving into the debate, it must be discussed, what's the status of Marital rape and its laws in other countries.

If we go by the statistics, then we'd see that 42% of the countries globally have explicit legislation that criminalizes marital rape¹¹. There are 74 countries around the world that have provisions for women to file rape cases against their husbands. There are 34 nations that don't yet have a law on marital rape or a provision on that. India is one of those 34 countries. Through

¹⁰ *A ruling on marital rape in India is coming up. here's why you should be watching closely* (2023) *Equality Now*. Available at: https://www.equalitynow.org/news_and_insights/a-ruling-on-marital-rape-in-india-is-coming-up-heres-why-you-should-be-watching-closely/ (Accessed: 09 October 2023).

¹¹ *Delhi HC's split verdict on marital rape: Highlights of what the 2 judges said* (no date) *The Wire*. Available at: <https://thewire.in/law/delhi-hcs-split-verdict-on-marital-rape-highlights-of-what-the-2-judges-said> (Accessed: 09 October 2023).

different feminist movements for anti-rape laws, albeit a sea of change has never been possible to be brought, yet it inspired most countries to adopt stringent provisions that explicitly or implicitly deal with the offense of marital rape. In 2019, in some way or another, more than 150 countries became successful to criminalise marital rape. While some nations adhere to the footsteps of explicit criminalization of this offense, in other nations, even while marital rape isn't explicitly understood as rape, there are penalties for the husbands who use force and proceed to have non-consensual intercourse with their wives.

While throwing light upon the contentions revolving around marital rape, it must be mentioned that the question on the constitutionality of marital rape exception enumerated in the IPC dates back to a landmark **case Independent Thought vs Union of India 2017**.¹²

In this case, a woman accused her husband, Mr. Hrishikesh Sahoo, of numerous offenses under the Indian Penal Code, 1860 (IPC), including rape, cruelty, and issuing ominous threats, in a complaint she filed against him in 2017. In addition to being charged with sexual assault under the Protection of Children from Sexual Offences Act of 2012 (POSCO), he was also accused of assaulting their daughter. Mr. Sahoo filed a writ petition at the Karnataka High Court while the case was still ongoing at the Sessions Court. He pleaded for the accusations against him to be dropped and used the IPC's provision for marital rape. However, Justice M. Nagaprasanna dismissed the petitioner's argument on February 23, 2022. The Justice J.S. Verma Committee's 2013 report, which the court cited, advocated eliminating the exception for marital rape. The exception, according to the court, was that the woman was inferior to her husband and violated the wife's right to equality. No legal exception "can be so absolute as to become a license for the commission of a crime against society," the High Court ruled. On May 10, 2022, Mr. Sahoo submitted a Special Leave Petition to the Supreme Court of India contesting the judgment of the High Court. On July 19, 2022, a three-judge bench that included former Indian Chief Justice N.V. Ramana, Justices Krishna Murari and Hima Kohli issued an interim stay on the High Court's decision. However, the State of Karnataka filed an affidavit endorsing the judgment of the High Court.

The chief justice of the court, Justice Rajiv Shakti, invalidated Exception 2 to Section 375 (rape) of the Indian Penal Code [IPC] for violating Articles 14, 15, and 19(1)(a) of the Constitution. He insisted that his announcement would take effect immediately once he made a choice. However, Justice C. Hari Shankar made the decision to reject Justice Shakti's position. He concluded that Section 375's second exception does not contravene Article 14 and

¹² [2017] 10 SCC 800, AIR 2017 SC 4904

is supported by an intelligent distinction that has a rational connection to the subject matter of both the contested exception and Section 375 itself. He added that Articles 19(1)(a) and 21 are not violated. He claimed that none of the justifications for overturning a statute could be used. A number of petitions on marital rape have already been filed to the SC for hearing. The appeal against the Delhi HC split verdict and the Karnataka HC's ruling are also included. Last but not least, there are several public interest litigation petitions and intervening petitions contesting the IPC's broad exemption for spousal rape. The main issue that the supreme court will address is whether or not a woman's right to equality is violated by marital rape immunity because it denies her the same legal protections as an unmarried woman and thus constitutes marital status discrimination. Second, it will discuss whether this exception robs married women of their right to sexual and personal autonomy as well as their ability to express themselves. Thirdly, the Supreme Court will consider whether this exception infringes on a wife's right to privacy.¹³

V. PUBLIC-PRIVATE DICHOTOMY IN THE LIGHT OF MARITAL RAPE

The debate and contentions revolving around marital rape bring us to the elaboration of the public-private dichotomy. As it's been stated time and again that rape, sexual assaults that take place within a marriage must be excluded from the purview of the criminal law as it's said that it tarnishes the sanctity of marriage as marriage is regarded as a sacred bond. Marriage is a private familial issue that is kept away from the rigors of law. The disadvantaged, inhumane condition of women in their matrimonial home is often neglected on the basis of this public/private dichotomy as the private sphere is never taken into consideration when it comes to acknowledging an offense taking place within a marriage as an offense. It, therefore, shields the ghastly offense like marital rape from penalization and normalizes such torture in a very indifferent manner. The marital privacy is often used as a tool to legitimize sexual assaults and even rape. The marital rape exception does that. This aspect of privacy repeatedly tries to obstruct every legislative attempt that endeavors to protect the rights and liberty of women. Marital Privacy wasn't recognized as a fundamental right till 1975¹⁴ and the Constitution didn't explicitly mention anything about it either. The discussion regarding the public-private dichotomy in the light of ongoing discourse on marital rape highlights the significance of one of the most important fundamental rights which although hasn't been explicitly defined in the

¹³ *Sacrificing woman's sexual autonomy to save marriage: Reflections on delhi high court's split verdict on marital rape exception – part I* (no date) OHRH. Available at: <https://ohrh.law.ox.ac.uk/sacrificing-womans-sexual-autonomy-to-save-marriage-reflections-on-delhi-high-courts-split-verdict-on-marital-rape-exception-part-i/> (Accessed: 09 October 2023).

¹⁴ *The uses and abuses of marital privacy* (2023) *Supreme Court Observer*. Available at: <https://www.scobserver.in/journal/the-uses-and-abuses-of-marital-privacy/> (Accessed: 09 October 2023).

constitution yet post-Puttuswami judgments continues to uphold its relevance in the life of a human being and the definition of privacy in the constitution itself also has undergone a sea change which leaves no room for any ambiguities. In 1975 the case of **Gobind v State of Madhya Pradesh**¹⁵ for the first time gave recognition to the right to privacy under Article 21. Although it widened the scope of discussions and deliberations the vagueness of the verdict failed to have a far-reaching impact. Later on, various questions regarding the protection of marital privacy of individuals came up in cases challenging the constitutionality of Section 9 of the HMA (Hindu Marriage Act, 1955).¹⁶

In **Harvinder Kaur v Harmander Singh Choudhry**,¹⁷ Section 9 of HMA was once again challenged and its constitutionality was questioned too. This particular section concentrates on the restitution of conjugal rights of either the husband or wife, who withdraws from the society of the other without any reasonable cause. But the question of law that was taken up in this case was whether the State has a decisional autonomy to compel an adult to return to their matrimonial home without their consent.

In that regard another landmark case must be talked about, that is, **T Sareetha v T. Venkata Subbaiah**.¹⁸ In this case, by the Hon'ble bench, Section 9 of HMA was struck down for being unconstitutional as it was observed that this section usually compels the woman to return to the matrimonial home even if she had left it on her wish. This section however by compelling to reconstitute the conjugal rights, further exposes the woman to violence and sexual assault. Even though Justice P Choudhary made exactly the right point in regard to marital privacy in this case, yet his perspective was paid little to no attention even in the subsequent cases.

VI. VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW

Over the past three decades, the understanding that violence against women constitutes a serious violation of human rights has grown and been substantiated. It is founded on the understanding that gendered violence interferes with or completely negates the enjoyment of all other rights in addition to the fact that it directly violates certain fundamental rights that call for legal protection. The rights to life, freedom from torture, liberty and security of the person, equal protection under the law, equality within the family, health, and reasonable and suitable working circumstances are only a few of these rights, although they are by no means exhaustive. Therefore, by definition, every one of these essential rights are also violated by marital rape.

¹⁵ AIR 1975 SC 1378, (1975) 2 SCC 148

¹⁶ Ibid 13

¹⁷ AIR 1984 Delhi 66, ILR 1984 Delhi 546, 1984 RLR 187.

¹⁸ AIR 1983 AP 356.

The offense of marital rape is a blatant transgression of jus cogens norms and the basic fundamental rights of a woman that includes the basic rights like right to life, liberty, property, security, and well-being of a woman as well.¹⁹ It also contravenes the right to health and equality of a woman within the family. The mental harassment and torture that marital rape pose to the women are neglected by the law and people in authority. Marital rape also violates the countless other rights that national laws, transitional courts, regional human rights instruments, and domestic courts have all recognized. These include the freedom to choose one's own sexual and reproductive activities, human dignity, humane treatment, effective judicial remedies, safety, physical and mental integrity, integrity of the person, and health. The United Nations has frequently mentioned that any form of gendered violence that takes place against women, irrespective of the public or private sphere, severely affects or nullifies their ability to exercise their "fundamental freedoms" and their basic human rights. Gender violence has been particularly mentioned by the CEDAW Committee as impairing or completely eliminating certain rights. These rights are guaranteed by the fundamental human rights agreements that the majority of nations have ratified. The ICCPR, ICESCR, Convention Against Torture (or "Torture Convention"), and CEDAW²⁰ are the main international treaties defending human rights. Human rights conventions obligate states to control private actors' behavior. Marital rape is not specifically specified in the treaties, like all other particular human rights offenses. The prior section demonstrated that pact bodies monitor state compliance and provide substantive content for the rights and the nature of obligations through general comments and recommendations. The freedom from rape and domestic abuse is a part of the right to be free from torture and other inhuman or humiliating treatment. The Committee against Torture has emphasized that gender violence or rape by non-state actors constitutes a violation of the Torture Convention. As stated in Article 1 of the Convention Against Torture, marital rape satisfies all of the requirements for an act of torture because it involves (1) the infliction of severe pain and suffering, (2) its use for a prohibited purpose, such as coercion, intimidation, or discrimination, and (3) the consent of or support from a state actor. Marital rape is "intentionally inflicted" and is an act that has the potential to impose "severe pain and suffering," both physical and mental, even though the Convention Against Torture does not require both physical and mental suffering for an act to qualify as an act of torture.

¹⁹ Bjil (2021) *Marital rape in India: An international human rights law violation*, *BJIL*. Available at: <https://www.berkeleyjournalofinternationallaw.com/post/marital-rape-in-india-an-international-human-rights-law-violation> (Accessed: 09 October 2023).

²⁰ *Marital rape & state party obligations under CEDAW - UN Human Rights Office*. Available at: <https://www.ohchr.org/sites/default/files/2023-08/marital-rape-state-party-obligations-under-cedaw.doc> (Accessed: 09 October 2023).

VII. PROBABLE ROADMAP AND CONCLUDING REMARKS

As recently three bills have been introduced that intend to replace IPC, CrPc and Indian Evidence Act, it's once again very important to underscore the fact that how it has left the inclusion of marital rape provision neglected.²¹ Although it did include new sections which are structured to tackle violence against women, but such an important topic like marital rape received little to no importance in these bills. Not only that, even a basic discussion which is very much needed for the criminalization of marital rape has taken place during the deliberations and discussions of these three bills. The fact that the legislators of the nation are reluctant to come up with a stringent and separate provision to contain such a menace proves that the people in authority are least bothered about the safety of the women and they try to justify their inaction by showing the excuse like “marital privacy”

This reality is evidenced by the adoption of provisions to guard against marital cruelty in the IPC (498A) and through the domestic violence statute. These rules give the State and Courts the power to breach the wall of marital secrecy to safeguard against abuse. The State cannot once more use the false public-private dichotomy to its advantage and use the preservation of marriage as an excuse for non-intervention because marital rape is also a form of violence. Whether it occurs in the public or private sector, the State must protect its citizens against violence that is just as important if not more so.²² It is important to note that there is no information available on the number of reported occurrences of marital rape in the absence of a law. It is important to remember that the States apply criminal law, which is included in the Concurrent List. The cultures of the states are incredibly diverse. As a result, it is imperative that the State Government take strict action in this area. That in the period of legal reforms and revolutions, it is crucial to take action to make marital rape a crime so that we can advance on the path of real progress. Such a reform is essential in a nation like India. Such a change is far from being implemented in a nation like India since neither its legislators nor its court system are equipped to distinguish between marital rape and other types of rape, both of which are horrible crimes that could leave their victims permanently scarred. But, the primary initiatives must be taken up by both the administration and legislation of the states. Even though the criminalization of this offense is a far-fetched dream, yet issuance of certain guidelines and

²¹ Randall, M. and Venkatesh, V. *The right to no: The crime of marital rape, women's human rights, and international law*, BrooklynWorks. Available at: <https://brooklynworks.brooklaw.edu/bjil/vol41/iss1/3/> (Accessed: 09 October 2023).

²² Mishra, A. (2018) *Law on marital rape – a much needed reform in our legal system - crime - India, Law On Marital Rape – A Much Needed Reform In Our Legal System - Crime - India*. Available at: <https://www.mondaq.com/india/crime/691482/law-on-marital-rape--a-much-needed-reform-in-our-legal-system> (Accessed: 09 October 2023).

reporting of the cases can provide women with a minimum safeguard from this menace.
