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Beyond Domestic Violence: Can Marital Rape be Criminalized in India?

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ABSTRACT

*Marital rape is a critical issue in India that deserves urgent attention. From the ancient Anglo legal doctrine of coverture to an independent feminist culture, our world is full of perceptions, but how much of these have come to practice? Marriage is a religious sacrament that has come to define the moral, social, and economic obligations of the two individuals bound by each other in such matrimony. Our legal structure has molded the rights and obligations of the individuals involved in such an institution, while also maintaining the religious sanctity it carries. Despite the global recognition of marital rape, India remains among the 34 countries that have explicitly decriminalized this evil, whereas 77 countries have already criminalized marital rape. This paper aims to delve into India's incongruence which persists, even in the new *Bhartiya Nyaya Sanhita (BNS)*. While the *Domestic Violence Act* offers a crucial safety spectrum for victims of marital abuse, it cannot be equated with the violation of a woman's body and dignity through rape with a civil offense.*

Consent is essential for physical autonomy, which is an integral part of the right to make your own choices about your body. This includes decisions about medical treatment or sexual activity, among other things. At the end of the day, the individuals involved in the holy sanctity of marriage are two separate sovereign individuals who have decided to spend their lives together, thus criminalizing marital rape will be a step towards acknowledging the violation of a woman's bodily autonomy and dignity she carries within the marriage. India is indeed a vast religious diversity, with varying meanings attached to the institution of 'marriage', however, such definitions cannot override the basic fundamental essence of equality and dignity which every citizen has an intrinsic right to. Thus, criminalization is a crucial step towards recognizing marital rape as the violation it is.

Keywords: *Marital Rape, doctrine of coverture, decriminalized, consent, physical autonomy.*

I. INTRODUCTION

Marital rape is the non-consensual sexual intercourse by a spouse, regardless of gender, in many countries like USA, UK and Canada. It's not limited to physical violence; coercion, threats, and

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emotional manipulation to force sex can also constitute marital rape. This act violates a spouse's fundamental right to bodily autonomy and dignity. The outdated notion of a marital duty to have sex should no longer be valid. Even within marriage, consent is essential, and denying it constitutes a serious crime. This evil violates a woman's right to bodily autonomy and her inherent dignity, as consent is essential for any sexual activity.

This archaic idea of a woman having to give her implied consent for anything her husband consents to has risen from the *doctrine of coverture* wherein the woman had no independent legal entity of her own after her marriage, she gets 'covered' under the façade of marriage, she did not have her separate identity. Perhaps such coverage was necessary for her to survive in such an ancient society, as she was merely a property of her husband, and thus a weaker sex. Such a society was aptly showcased by the words of **Sir Matthew Hale**, who was the Chief Justice of King's Bench in **1671**, who expressed his notion on this evil as "*Husband can't be guilty of rape. By their mutual matrimonial consent and contract the wife has given up herself in this kind to the husband.*"² However, with change in time, it is necessary to bring about a change in the legislative setup of the country too.

Section 63 of the BNS, which defines the offense of rape, **includes Exception 2**, similar to Section 375 of the colonial era Penal Code of 1860. This exception states that sexual intercourse or sexual acts by a man with his wife, the wife not being under eighteen years of age, is **not** considered rape. The age of minority which was considered earlier on under the IPC has been increased by three years, which is from 15 to 18, which aligns with the broader legal framework recognizing 18 as the age of majority, but rather, creates an unequal situation where a wife's right to bodily autonomy is not protected in the same way as an unmarried woman's. Criminalizing marital rape would reinforce the right of a wife to choose freely and refuse unwanted sexual activity. The current law creates an unequal situation. If a woman outside of marriage experiences non-consensual sex, it's considered rape. However, a wife is denied the same protection under the law. This perpetuates gender inequality and reinforces the notion that a wife's body is somehow owned by her husband.

The Domestic Violence Act recognizes various forms of marital abuse. However, by excluding marital rape, the legal framework creates an inconsistency in protecting women from different forms of violence. Rape is a violent crime which leaves the victim with severe psychological and physical consequences. It deserves a stronger legal response than the civil remedies offered

² *Breaking Silence on Marital Rape: Status in India*, Legal Service India (July 17, 2024), <https://www.legalserviceindia.com/legal/article-8106-breaking-silence-on-marital-rape-status-in-india.html>.

under the **Protection of Women from Domestic Violence Act (herein referred to as PWDVA), 2005**. Not only does this evil consist of crime, but a spouse's fundamental right in itself is ruptured if such an evil occurs. Marital rape as a separate criminal offense would create a more balanced legal framework that would recognize the seriousness of marital rape within the context of other forms of violence. In this paper further, we will see the incongruence that exists when women are only given the option of civil compensation and actions for an activity they didn't even consent to.

While recognized as a crime globally in 77 other countries including the USA, UK, Canada, and Nepal, India remains one of the 34 countries that does not criminalize it, but rather very explicitly decriminalizes it.³ Much to our irony, the colony that had its claws deep-rooted in our country for two centuries, has a separate legal provision for marital rape but we don't. India has also ratified international human rights treaties like CEDAW (Article 11), that guarantee women's right to be free from violence, which were also referred to in the case of *Vishaka & Ors. v. State of Rajasthan*⁴. The decriminalization of marital rape contradicts these commitments.

Domestic Survey of MRE (Marital Rape Exception)

The National Family Health Survey (NFHS-5) 2019-21, was conducted in two phases by the Ministry of Health and Family Affairs — Phase I from June 2019 to January 2020 covering 17 states and 5 union territories and Phase II from January 2020 to April 2021 covering 11 states and 3 union territories. Under this survey, men were asked some additional questions to assess gender-egalitarian attitudes. In particular, men were asked, if a woman refuses to have sex with her husband when he wants her to, does he have the right to display each of the following four behaviors:

- i. get angry and reprimand her;
- ii. refuse to give her money or other means of financial support;
- iii. use force and have sex with her even if she doesn't want to; and
- iv. go and have sex with another woman.

In India, 6 percent of men aged 15-49 **agree** that men **have the right to display all four of these behaviors** if a wife refuses him sex, and 72 percent do not agree with any of the four behaviors. And, **19 percent of men do agree** that a husband has the **right to get angry and**

³ Marital Rape in India, Drishti IAS (July 17, 2024), <https://www.drishtiiias.com/daily-updates/daily-news-analysis/marital-rape-in-india-1>.

⁴ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241, available at <https://indiankanoon.org/doc/1031794/>.

reprimand a woman if she refuses to have sex with her husband.⁵

The percentage of men who agree with none of the four behaviors has decreased by 5 percentage points since NFHS-4 when it was 77 percent. More than four in five women (82%) can say no to their husbands if they do not want to have sexual intercourse.⁶

II. HISTORICAL CONTEXT OF MARITAL RAPE LAWS IN INDIA

(A) Pre-Independence Period:

British colonial laws largely ignored marital rape, reflecting societal norms that denied a wife's autonomy in marriage. As discussed above, the doctrine of coverture played a huge part in the legal identity of a woman in marriage. This paper does not aim to dwell on the past but rather focuses on India's present ignorance towards the explicit decriminalization of this evil, even after the government has claimed the new criminal laws are not colonial. Ironically, the colony that spent two centuries deeply ingrained in our nation has a distinct legal provision for marital rape, but we do not.

(B) Post-Independence Legal Landscape:

While the PWDVA, 2005, is ever ready for the protection of victims of domestic abuse, it falls short in effectively combating the horrible crime of marital rape. This essay wants to highlight the need for making marital rape a crime to defend a woman's physical autonomy and dignity in marriage. Recently, the Kerala High Court has granted 'marital rape' as a legitimate basis for divorce. These initiatives together aim to declare that women are autonomous beings with their own identities. A married person cannot use their marital status as an excuse to break the same laws.⁷

The current legal framework in India, primarily governed by the *Bhartiya Nyaya Sanhita* (BNS), similar to its predecessor of the colonial Indian Penal Code (IPC) of 1860, fails to recognize marital rape as a criminal offense. Exception 2 to Section 63, (Section 375 of the IPC) exempts non-consensual sexual intercourse by a husband with his wife who is above 18 years of age from the definition of rape. The BNS does make a positive change by raising the age of consent within marriage to 18. This means any sexual activity with a wife below 18 is considered rape. However, his archaic exemption stems from a bygone era that viewed marriage as a license for sexual access, irrespective of consent. It perpetuates the notion of a wife's inherent obligation

⁵National Family Health Survey (NFHS-5) 2019-21 India Report, Int'l Inst. for Population Scis. (IIPS) & ICF, https://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf.

⁶ *Id.* at page 19.

⁷ *Id.* at note 1

to submit to her husband's sexual demands, violating her fundamental right to bodily autonomy and dignity.

Recently, and also cited below is a case brief of the Bombay High Court, wherein the Court “opined that a relationship might be consensual at the beginning, but the same state might not remain so for all time to come. Whenever one of the partners shows their unwillingness to indulge in a sexual relationship, the character of the relationship as ‘consensual’ ceases to exist. The Court noted that the allegations in the present FIR did not demonstrate continuous consent on the part of the complainant. The allegations demonstrated that even though the complainant was desirous of being married to a petitioner, she was not inclined to indulge in a sexual relationship with him....”⁸ Then why is it so that the exception of marital rape persists? Fundamentally, a relationship between two adult persons does not certify one to sexually assault the other partner, so why is marriage considered any different than this?

Although the PWDVA acknowledges "sexual abuse" as a form of domestic violence, it doesn't explicitly criminalize marital rape. While Section 3(ii) of PWDVA⁹ can be interpreted to encompass forced sexual intercourse within marriage, the lack of explicit recognition creates ambiguity and undermines the severity of the offense. Seeking protection under PWDVA often involves a lengthy civil process focused on obtaining restraining orders or compensation, rather than criminal prosecution for the act of rape itself. This fails to address the core issue of marital rape as a violation of a woman's bodily integrity and her right to say no. On the other hand, Sections 85 and 86 of the *Bhartiya Nyaya Sanhita* (BNS)¹⁰ deal with cruelty against women. The former section, states, that whoever, being the husband or his relative, subjects a woman to cruelty can be imprisoned for up to 3 years and fined; and the latter section, defines "cruelty" to include both mental and physical harm that could cause grave injury or drive the woman to suicide. These sections are very similar to Section 498A of the IPC¹¹, which they replace. The Supreme Court has noted this similarity and expressed concerns about the potential misuse of exaggerated complaints, especially against innocent husbands and their family members.¹²

The Supreme Court's concern regarding safeguards for men falsely accused under PWDVA is a valid one. However, these concerns should not overshadow the need to protect women from

⁸ Relationship Between Two Adult Individuals Does Not Justify Sexual on Partner: BOMHC, SCC Online (July 1, 2024), <https://www.sconline.com/blog/post/2024/07/01/relationship-between-two-adult-individuals-does-not-justify-sexual-on-partner-bomhc/>.

⁹ Protection of Women from Domestic Violence Act, § 3(ii) (2005).

¹⁰ *Bhartiya Nyaya Sanhita*, 2023 § 85-86

¹¹ Indian Penal Code § 498A (1860), now repealed

¹² Consider Changes in Law to Avoid Misuse of Cruelty Against Women Clauses: Supreme Court, NDTV (July 17, 2024), <https://www.ndtv.com/india-news/consider-changes-in-law-to-avoid-misuse-of-cruelty-against-women-clauses-supreme-court-5583477>.

a far more prevalent and devastating crime. A well-drafted law criminalizing marital rape can incorporate clear definitions and robust procedures for investigation and prosecution, ensuring justice for victims while safeguarding against misuse. Frameworks can be established to differentiate between marital disputes and genuine cases of forced sexual intercourse. This evil inflicts deep psychological and emotional trauma on the victim. The violation of trust and intimacy within the marital space can lead to emotional imbalances or many disorders such as depression, anxiety, and post-traumatic stress disorder (PTSD). The fear of further assault can also hinder a woman's ability to assert herself and seek help. This continuous cycle of abuse not only affects the woman's well-being but also has a detrimental impact on the overall health of the relationship and the family unit.

III. RELEVANT CASE LAWS AND JUDICIAL PERSPECTIVES

(A) Constitutional Basis

This paper argues that criminalizing marital rape is not only morally imperative but also legally necessary to guarantee women their fundamental right to bodily autonomy and dignity. The grundnorm of our country, the Constitution has provided all of her citizens certain fundamental rights. This exemption blatantly undermines the right to equality in **Article 14** of the Constitution. By differentiating a wife's experience of sexual violence from that of an unmarried woman, the law creates a discriminatory loophole. Imagine a scenario where a wife is forced into intercourse – how is this act any less horrifying or degrading than rape outside of marriage? The harsh reality is, that these scenarios are true. It violates the right to life and dignity guaranteed under **Article 21**. Forced sexual intercourse, regardless of the marital status, is a horrific violation of bodily autonomy and privacy. Even if the husband and wife are separated, it seems unruly to punish a husband less than any other rapist, as provided under **Section 67** of the BNS, while comparing him to any other stranger.

Furthermore, the lack of criminalization perpetuates the harmful notion that marriage somehow negates a wife's right to consent. It is as if her consent to anything is concealed under the scope of her husband's consent, which compels us to fall back upon the doctrine of coverture. A husband does not have an inherent right to marital sex, and this unconscionable exemption normalizes marital rape, leaving wives vulnerable and with limited legal recourse. This legislative gap not only fails to protect wives from a traumatic experience but also reinforces a power imbalance within the marriage, creating an atmosphere of fear and silencing.

(B) PWDVA is an incomplete remedy

The limitations of the PWDVA in this context will be highlighted through a critical analysis of

relevant case laws and judicial perspectives, alongside the recommendations of prominent commissions discussed in this section.

The landmark case of **Independent Thought v. Union of India (2017)**¹³ serves as a testament to the evolving legal understanding of marital rape. Here, the court recognized non-consensual sex with a minor wife as rape, marking a significant shift. The judgment which was prospective in effect thus read down the marital rape exception. The age of consent has been discussed concerning marriage and maturity throughout the ruling, so removing any discussion of young people's sexual agency—especially girls and women who are only objects of the law—both inside and outside of marriage. And now, the BNS has also increased the age of the minor wife under this exception to 18 years (which previously was 15 years.) However, this progress remains incomplete. The exception under Section 63 of the *Bhartiya Nyaya Sanhita* (BNS) that exempts marital rape for women above 18 continues to be a glaring anomaly.

The PWDVA focuses on civil remedies like orders for residence, protection, and compensation. While these are important, they cannot replace the deterrent effect and punitive measures offered by criminal law. A husband who forces himself on his wife commits a crime no different from that of a stranger, irrespective of the circumstances of the marital relations between both of the spouses, whether living together or even separated. The emotional and psychological trauma inflicted is just as devastating. Denying criminal recourse for marital rape perpetuates the power imbalance within marriages, where a wife's refusal can be ignored or worse, met with further violence. The Gujarat High Court, in the case of **Nimeshbhai Bharatbhai Desai v. State of Gujarat**¹⁴, noted that marital rape was a disgraceful offense, but did not strike down the exception clause or did it urge the state to do so.

(C) Previous Commissions

Commissions like the Justice Verma Committee, formed after the horrific Delhi gang rape case, have unequivocally recommended criminalizing marital rape. They recognized that marital rape is a form of sexual assault and deserves the same condemnation and punishment as non-marital rape.¹⁵ Yet, these considerations did not manifest themselves in the Criminal Law Amendment Bill, 2012, as the Parliamentary Standing Committee refused to consider any suggestion for

¹³ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹⁴ *Marital Rape: A Husband Cannot Be Permitted to Treat His Wife Like a Chattel and Violate Her Dignity*, SCC Online Blog (April 18, 2018), <https://www.sconline.com/blog/post/2018/04/18/marital-rape-a-husband-cannot-be-permitted-to-treat-his-wife-like-a-chattel-and-violate-her-dignity/>.

¹⁵ Justice Verma Committee Report Summary, PRS Legislative Research (accessed July 17, 2024), <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>.

marital rape, on the ground of “entire family system will be under greater stress and the committee may perhaps be doing more injustice.”¹⁶

(D) Current Scenario

This lack of criminalization reinforces the outdated notion of a wife's implicit consent to sex upon marriage. It is surely not only a criminal matter but is a matter of Constitutional importance. For now, which is initial July 2024, a case lies in front of the honourable Supreme Court, which has sought the Centre's response on a petition challenging the marital rape exception under new criminal laws.

The Delhi High Court, an NGO RIT Foundation, collectively with other parties, filed petitions challenging the marital rape exception. On May 11, 2022, a Bench comprising of Justices Rajiv Shakti and C. Hari Shankar, delivered a split verdict in the case. Justice Shakti stated that the exception was unconstitutional as it was discriminatory and violated a woman's bodily autonomy and expression. On the other hand, Justice Shankar held that in the institution of marriage, sexual relations whether consensual or non-consensual, are a legitimate expectation making the exception to rape legal. Both Judges granted permission to the parties to appeal the decision at the Supreme Court.¹⁷

On January 9th, 2023 a Bench comprising Chief Justice D.Y Chandrachud and Justice P.S Narasimha clubbed these petitions and listed them all for hearing on March 21, 2023. A bench headed by the current Chief Justice D Y Chandrachud issued notice on the petition by the All-India Democratic Women's Association (AIDWA) and said it would be listed for hearing in July alongside other petitions seeking to criminalize marital rape. The court emphasized the constitutional significance of the issue, noting that it will remain relevant despite the implementation of the new laws. Besides the exception under the BNS, AIDWA has also challenged in the Supreme Court the constitutionality of section 67 of the BNS, which prescribes imprisonment ranging from two to seven years for married men who rape their separated wives. The plea, filed through lawyer Ruchira Goel, objected to the provision on the ground that the penalty is lower than the mandatory minimum 10-year sentence otherwise applicable in cases of rape.¹⁸

¹⁶ Criminalizing Marital Rape in India, The India Forum (accessed July 17, 2024), <https://www.theindiaforum.in/law/criminalising-marital-rape-india#:~:text=Constitutionality%20of%20marital%20rape,right%20to%20life%20and%20liberty.>

¹⁷ Challenge to the Marital Rape Exception, Supreme Court Observer (accessed July 17, 2024), <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception/#:~:text=On%20May%2011%2C%202022%2C%20a,woman's%20bodily%20autonomy%20and%20expression.>

¹⁸ SC Seeks Centre's Stand on Plea Against Marital Rape Exception in New Criminal Law, The Economic Times

Ignoring these recommendations leaves India lagging behind many other nations that have criminalized marital rape, and fails to uphold its obligations under international conventions on violence against women. Marital rape is a violation of a woman's fundamental right to bodily integrity and personal autonomy. Recognizing it as a crime is not just about legal parity, it is about recognizing the gravity of the offense and ensuring that all women, regardless of marital status, have the legal tools to fight back against this brutal act. India must move forward and criminalize marital rape to uphold its constitutional commitments and create a society where women are truly safe and equal.

IV. GLOBAL CONTEXT

(A) Current Indian Laws vs. Global Standards

The legal system in India has historically failed to adequately address the issue of marital rape, with continuous struggles by women's groups leading to only partial and conservative implementation of existing laws. India's laws still sustain a marital exemption for rape, unlike many other countries where marital rape is explicitly criminalized. International legal frameworks emphasize consent and bodily autonomy in marriage, setting a higher standard for protecting victims, and it is essential to note that, these did not develop within a night, but many considerations were taken forth, and precedents were set in to become a full-fledged offense. In this section, it is better if we examine landmark cases from around the world and compare them to the current situation in India exposing the urgent need for reform. The following cases from all around the world should act as cornerstones for India's legislative framework to be set up against the offense of marital rape:

In the United Kingdom, the English common law, which had set up independent India's laws, viewed marital rape to be impossible, and so the doctrine of the wife owning the conjugal duties persisted, till the growing women's rights movement challenged this notion. Before 1992, marital rape wasn't considered illegal and in **R vs R** (1991)¹⁹, the House of Lords established marital rape as a crime in the UK, with no take upon the marital status of the couple, be separated or together.²⁰ Another country's example would be the USA, wherein its law reflected the idea of a husband's implied marital right to sex. Many states had laws with marital rape exemptions until the 1970s. However, the feminist movement and growing awareness of domestic violence

(accessed July 17, 2024), https://economictimes.indiatimes.com/news/india/sc-seeks-centres-stand-on-plea-against-marital-rape-exception-in-new-criminal-law/articleshow/110216068.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

¹⁹ R v R, [1991] 1 AC 599.

²⁰ Marital Rape: Historical and Comparative Analysis, MSLR (accessed July 17, 2024), <https://mslr.pubpub.org/pub/vlo7anq8/release/1>.

played a crucial role. Cases like **People v. Bohmer** (1974)²¹ in Wisconsin chipped away at the exemption. Amidst this changing legal landscape, the case of **People v. Liberta** (1984) barged its way in the United States, wherein the New York Court of Appeals ruled that marital status does not affect a woman's right to refuse sex, abolishing the marital rape exemption in New York.

Canada's laws also reflected the marital rape exemption. However, reforms in the 1980s began to change this. In the landmark case of **R v. Ewanchuk (1999)**²², the Supreme Court of Canada emphasized the importance of consent in sexual relations, even within marriage. Similarly, in South Africa, in the case of, **S v. Mvamvu (1999)**²³, South Africa's Constitutional Court affirmed that marital rape is a criminal offense, aligning with international human rights standards. This case aligned South Africa with international human rights standards, criminalizing marital rape and recognizing women's bodily autonomy.

(B) Implications of Adopting International Standards

Adopting international standards can enhance protection for victims and promote gender equality. It can also shift societal perceptions towards recognizing the importance of consent in marriage.

The judgment is under the infamous case of **Vishakha & Ors. Vs Union of India**²⁴, the importance of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), came forth, particularly Articles 11 (right to work) and 24 (equality in work) which India had already ratified. India ratified CEDAW in 1993, proclaiming their commitment to upholding its principles of equality and equity. However, it is important to note that India, while bound by most of this statute, has a reservation on Articles 5(a) and 16, and, which, demands countries to eliminate traditional beliefs and practices that keep women unequal. However, India has limited itself in implementing some aspects that could potentially contradict specific religious laws for minority communities, which is further elaborated in India's reservation against Article 29 of CEDAW.²⁵

The justifications for the same are given in the journal published by IWRAW ASIA PACIFIC OCCASIONAL PAPERS SERIES, Volume 5, cited below. The intention of the government to

²¹ *People v. Boehmer*, 872 P.2d 1320

²² *R v. Ewanchuk*, [1999] 1 SCR 330.

²³ *S v. Mvamvu*, 1999 (1) SACR 54 (W).

²⁴ *Ibid* at note 3.

²⁵ The Validity of Reservations and Declarations to CEDAW: The Indian Experience, IWRAW Asia Pacific (accessed July 17, 2024), https://www.iwraw-ap.org/wp-content/uploads/2018/09/OPS_5-THE-VALIDITY-OF-RESERVATIONS-AND-DECLARATIONS-TO-CEDAW--The-Indian-Experience.pdf.

treat the statements made, as ‘declarations’ is apparent in the words used. In the declarations made to Articles 5(a) and 16, the government promises to “abide and ensure the provisions”. In contrast, the government indicates its intention to “not be bound” by the content of Article 29(1), which it terms a reservation. Thus, it is clear that they do not seek to exclude the legal effect of Articles 5(a) and 16. (pg 14). Under Article 28(2) of the CEDAW Convention: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted”. The declarations made by the government of India are vague and ambiguous in content. It has made its obligations under Articles 5(a) and 16(1) subject to an undefined and indeterminate “policy of non-interference”. Although such a policy is mentioned in the text of the declarations, the meaning and contents of such a policy have not been outlined anywhere. It is, therefore, difficult to understand the state’s objective and understanding of such a policy. Further, the ‘declaration’ also does not make clear what it means by ‘community’ and if such a ‘community’ is religious, political social, or of some other undefined nature. It is also uncertain if the government will restrict its policy to obtaining the consent of ‘minority communities’ as evidenced by the Indian State Party report or if it will extend this to the majority Hindu community as well. It is important to note too that there are no standards outlined for obtaining consent from these communities. In the absence of clear and well-defined standards and policies in this regard, the practical consequences of such action can be chaotic.²⁶

India’s reservation to Article 29(1) of the CEDAW Convention, which allows it to be excluded from the jurisdiction of the International Court of Justice when arbitration has failed, is permissible in law. Such a reservation does not contravene the object and purpose of the CEDAW Convention. It only removes the jurisdiction over the disputes from the international arena, as India has a written Constitution with guarantees of fundamental rights, including the right to equality and non-discrimination based on sex, which can be enforced in domestic courts of law. The core commitment of CEDAW is thus not violated by the reservation.²⁷ It is not India’s contention to be against equality, but rather her priorities have not yet been realized by the government in power. It is noted that the judiciary has taken note of the same, however, the impotence faced by women due to this evil not being a defined offense is still a dark impudence not cured.

²⁶ *Id.* on page 19

²⁷ *Id.* at page 20

V. WAY FORWARD FOR INDIA

(A) Societal and Cultural Barriers:

We've reached a point, wherein we call ourselves the world's largest democracy, and our country has been one of the few countries that did not distinguish individuals based on their gender, then why with such exception do we want to undermine the bodily autonomy of a spouse and deem it as a weaker sex? Deep-rooted patriarchal norms and traditional views of marriage still pose a significant challenge in our country. Public perception and stigma against recognizing marital rape as a crime needs to be addressed, not only in rural but urban areas too. This façade of public-private life should be distinguished from a constitutional basis, as discussed above, this exception creates a void in the fundamental rights of a woman (Articles 14 and 21 of the Indian Constitution).

(B) Legal and Policy Obstacles:

The argument of potential misuse of a criminal law against marital rape is often raised. However, this can be addressed through robust investigative procedures and safeguards against frivolous complaints, as every accused should be protected. The SC's concerns regarding husbands being falsely accused under this offense if one created is a valid one. However, the potential for misuse cannot be a reason to deny justice to a vast majority of women who are genuinely suffering. Concerns about potential misuse of laws and the impact on marital relationships must be balanced with the need for protection.

(C) Practical Implementation:

Law enforcement and judiciary would surely need training and sensitization to handle marital rape cases effectively. It is obvious that support systems, including counseling and legal aid, are crucial for victims, just like the measures adopted in POCSO (Protection of Children from Sexual Offences Act, 2012) for the protection of children and women, the victims of marital rape too, should also be provided with safe custody until and unless they are free from the threat of the accused harming them again. Along with the same, the accused should also not be coerced into any penalty until and unless proven guilty, or else the SC's fear of innocent men getting charged for this offense would come true, as also covered in the above pointer.

(D) Legislative and Policy Recommendations:

This paper aimed to bring to the limelight the issue of this evil persisting, and hanging in the air. The author being a mere student, cannot recommend proper legislative ideas yet, that is to be left at the hands of our esteemed Legislature and the Judiciary to be interpreted and

adjudicated as well. However, it is for sure, that this evil needs to be brought to light as a criminal offense as it overrides a spouse's bodily integrity and dignity. Thus, it is imperative to develop comprehensive policies that provide holistic support and protection for victims.

(E) Future Directions:

Continue research and dialogue to evolve the legal framework and enhance protections for victims of marital rape. But are protections for marital rape enough? If a law is to come into place, it is essential to have safeguards to protect the accused involved in a particular case against such cases.

VI. CONCLUSION

The criminalization of marital rape is not just a legal reform; it's a social imperative. It sends a clear message that a wife's body is not her husband's property. It acknowledges that marital status does not negate a woman's right to choose. It recognizes the devastating impact of marital rape on a woman's life and dignity. Domestic violence laws, while crucial in offering protection, cannot fully address the power imbalance and coercion inherent in marital rape. Only by acknowledging it as a crime can we begin to dismantle the culture of silence and impunity surrounding this heinous act. By criminalizing marital rape, India can move towards a future where marriage is based on respect, consent, and bodily autonomy, ensuring a just and equitable society for all.
