

## GLOBAL PROSPECTIVE ON MARITAL RAPE: A CROSS-CULTURAL EXAMINATION

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### ABSTRACT

This abstract provides a synthesized overview of the multifaceted global landscape surrounding marital rape, considering legal, cultural, societal, and human rights perspectives. The study delves into the diverse legal statuses across countries, highlighting the evolution of laws that either criminalize or fail to address marital rape explicitly. Cultural and societal attitudes play a pivotal role in shaping the prevalence and reporting of marital rape, with traditional norms and gender roles influencing recognition and response. From an international human rights standpoint, marital rape is increasingly recognized as a violation of fundamental rights, prompting global initiatives and agreements to address gender-based violence within marital relationships. Challenges such as underreporting, legal enforcement, and cultural barriers are explored, emphasizing the impact on survivors' access to justice and support services. The abstract also touches upon the progress made through increased awareness, policy reforms, and activism, while acknowledging the ongoing disparities in the pace and extent of change. Lastly, the abstract underscores the importance of acknowledging the physical and psychological consequences of marital rape, emphasizing the need for comprehensive support systems. The study suggests that the global perspective on marital rape is dynamic and requires sustained efforts for legal reforms, cultural shifts, and international collaboration to protect the rights and well-being of individuals within intimate relationships.

**KEYWORDS:** Global Prospective, Global Initiative, Marital Rape, Human Rights, Consequences.

### INTRODUCTION

Globally the institution of marriage is well recognized as the bond that intertwines the very fabric of society. However, from times immemorial, women have been perceived as naïve, sexual objects who are dependent on men for their worth and validation.

Various mythologies have various depictions of the two genders. Islam and Christianity, both have the concept of Adam and Eve, portraying Eve as second in position to Adam, portraying the belief that this is a world made for men while women exist to serve them.<sup>3</sup> This is in stark contrast to the Hindu Vedic teachings, which portray women as a mother- the creator of life and has been given the status of *Laxmi* of the home, the *Ardhangani*-the better half of a man.

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<sup>3</sup>Rani, U. and Ranjha, M.I. (2020) 'Representation of men and women in English proverbs: Analysis of Power Relationships', Journal of English Language, Literature and Education, 2(02), pp. 35–62., Available at: <https://www.researchgate.net/publication/350485898>. Last accessed- 07.12.2023.

Historically, women have been designated as the manipulator of the men showing Eve as the one who convinced Adam to taste the forbidden fruit thus becoming the reason for exile; the Trojan War, where Helen is taken away by Paris of Troy, becoming the reason for fall of the empire or blaming Draupadi for the war of Mahabharata. History has made people believe that women are supposed to be dependent on men and act as fragile and beautiful beings to attract marriage suitors. In all societies, a woman who is considered conventionally gorgeous and young is harassed by the opposite gender and this is why often, young, unmarried women are not allowed by families to stay in the public domain and often impose restrictions on the them, in order to protect them. This has also served as the fundamental rationale for the *purdah* system. This dependence was not limited to India and could also be observed in the status of women in English society, especially during the reign of Queen Elizabeth, where it was a patriarchal society and women were under complete control of men. Marriages back then were mere contracts where women were used to bring wealth to families<sup>4</sup> and the taboo truth remained that even after marriage, a woman was not safe.

Through the prism of nature, in their very primitive sense, the man is seen as someone who has been assigned by nature the duty of acting as an earning hand that is capable of building a shelter for his family thereby becoming the ruling gender, therefore, for most of their life, it is a woman who sacrifices for her relationship, bear the obligation to follow the command of her caretaker, including performing marital obligations, even if such command is against her wish. The warmth and loving nature of women which is imparted in them by the divine force is something to which not all men are equally capable. Women have naturally been given this element of spreading love and this is why they are labelled as homemakers. The demarcation in the roles of the two genders was first established when men were hunter- gatherers while women had the responsibility of family rearing and nurturing. A man's role in a relationship has since then evolved to provide the woman protection and care. However, often men fail in performing this role under the garb of their right to have sexual intercourse with his wife as wife is not seen as an equal but rather a property which now belongs to the husband.

Marital rape is not new terminology. In fact, as long as the institution of marriage has been around, marital rape has existed. Earlier, marital rape was justified under the Implied Consent Theory as given by Lord Matthew Hale Chief Justice of England in the 17<sup>th</sup> century; Unities of Persons Theory which says that husband and wife are the same, they are the unison i.e., becoming one<sup>5</sup> and the Property Theory or the Coverture Doctrine which said that woman is man's property<sup>6</sup>. With the development of human rights at a global level and the advancement of the society, the rights of women were acknowledged and recognised at national and international levels and now

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<sup>4</sup>*Id.*

<sup>5</sup> *One flesh by Jay Adams, Ligonier Ministries. Available at: <https://www.ligonier.org/learn/articles/one-flesh>, Last Accessed: 07 December, 2023.*

<sup>6</sup> *Earlier Roman-Dutch law, a woman had no legal identity outside of her husband 's and was treated in law as a perpetual minor.*

the position stands that though sexual intercourse is a necessary marital obligation and it is a right that can be demanded by the husband, but the husband has no right to take it forcefully.

## HISTORY OF INSTITUTION OF MARRIAGE

It is true, indeed, that family institutions have all along depended and still depend on sex for reproduction and economy. A merely temporary union of the sexes like that of lower animals would not create the life of a home. Women have played a prominent role as an embodiment of moral and spiritual force in originating the life at home and thereby a cultured society, at least in the Vedic period, as elsewhere cannot be gainsaid. Sage Viśvāmitra sang highly of the wife, equated with home, the source of all wealth and pleasures.<sup>7</sup> The researches of modern scholars like Starke and Westermarck have established that at least the Vedic Aryans had long passed the stage of promiscuity, if any. The concept of patnīva (wifeness) is a new status of the wife incorporated into the gotras of her husband through religious rites. The Vedas state that the new status secures her the right to address the family council (Vdathamā Vidāthah).<sup>8</sup>

Whereas from the history of ancient Rome, we learn that brides were obtained by sham purchase or by capture, the practices prevalent among the Plebians and gradually accepted by the Patricians. Similarly, in ancient India, this inferior form of marriage by purchase was in practice among the Semitic people. It is not unlikely that these immigrants came and settled in India in the Vedic period and their institutions were gradually incorporated into the Vedic society.<sup>9</sup>

On the other hand, under the Imperial Chinese law, the fathers of the bride and groom were contracting parties to a marriage and marriage symbolised 'submission of maturing children to family roles and filial duty'. The wife's consent played no role and no Chinese jurist thought it necessary to ponder upon the concept of absence of consent and marital rape at any point.<sup>10</sup>

The institution of marriage is founded upon the Tripartite Legal System comprising of: Customary Law, the Religious Law of individuals and the Statute as framed by the concerned government. Despite being protected by law, the facts remain that marriage is a social institution based primarily on faith, though under the Islam and Christianity marriage is a contract. However, under the Hindu law, marriage is a sacrament which involves performing sacred religious obligation (*saptapadi*) before formally becoming husband and wife.

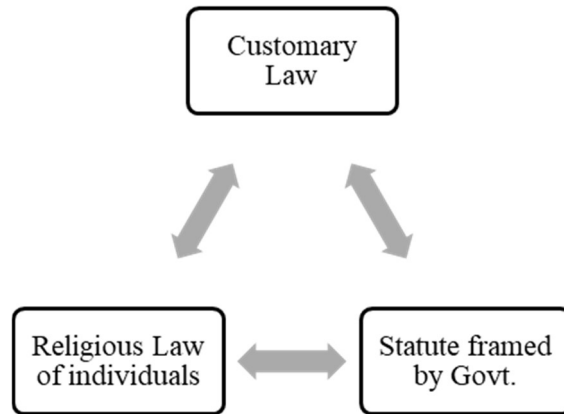
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<sup>7</sup> *Jāyedastam Maghavan-sedu yoni-s-taditvā yuktā harayo vahantu - Home is not home, wife makes its Home. (Rigved 3/53/4)*

<sup>8</sup> *Vedic India Political and Legal Institutions In Vedic Literature by Hari Pada Chakraborti, Sanskrit Pustak Bhandar Calcutta (April 1981). Pg. 275.*

<sup>9</sup> *Id.*

<sup>10</sup> *VASANTHI VENKATESH AND MELANIE RANDALL, Normative and International Human Rights Law Imperatives for Criminalising Intimate Partner Violence: The Marital Rape Impunity in Comparative and Historical Perspective Electronic copy available at: <https://ssrn.com/abstract=3201074>*



### ISSUE OF MARITAL RAPE

The issues related to the institution of marriage have always been polemical & controversial, however, the most severe issue i.e., marital rape, has always been kept behind the veil of conjugal rights. However, the fact remains that it is the worst form of sexual violence to which a woman is subjected to by her caretaker himself who violates her dignity and the woman is left remediless, broken and traumatised.

The barriers to reporting sexual violence, particularly in the context of intimate relationships, include fear of the perpetrator, of not being believed or of being blamed and fear for the family, shame and guilt, and loyalty to the perpetrator.<sup>11</sup> Still, the primary obstacle in the attainment of equality between men and women and the prevention of violence against women is the deep-rooted patriarchal and social attitude of inferior treatment to women by men. Moreover, the lack of a uniform approach at the international level has further delayed the recognition and criminalisation of marital rape.

Irrespective of the degree of coercion used or the relationship between the assailant and the injured party, non-consensual sex represents a violation of sexual autonomy and bodily integrity and is therefore a violation of his/her human right. Non-consensual sex undermines not only the autonomy of the individual but also their dignity and personhood, values deeply inscribed in the international human rights corpus, therefore, instead of shrouding the prevalence of marital rape it should be made visible by defining marital rape as unacceptable which was earlier acceptable and ignored and should insist that marital rape is a gross violation of human dignity rather than naturalising it.<sup>12</sup>

In countries such as Tunisia, Cameroon and Bulgaria, perpetrators of rape are exempted from criminal charges if they marry the victim. Sexual assaults committed against a spouse remain entirely legal in countries like Sri Lanka, India, Bulgaria, Kenya, and Malawi. When passing

<sup>11</sup> Monica McWilliams and Fionnuala Ní Aoláin , *Human Rights Meets Intimate Partner Sexual Violence*, available at: <http://ssrn.com/abstract=2765432>.

<sup>12</sup> *Id.*

legislation to address domestic violence in 2014, Lebanon not only declined to criminalize marital rape but legally entrenched a “marital right of intercourse”.<sup>13</sup>

A global survey conducted by the United Nations Population Fund (UNFPA) in 2018 found that 23% of women between the ages of 15 and 49 had experienced physical and/or sexual violence from an intimate partner in the past 12 months. The survey also found that 16% of women had experienced sexual violence by an intimate partner. Similarly, a global study conducted by the United Nations Office on Drugs and Crime (UNODC) in 2018 found that 37% of female homicide victims were killed by an intimate partner. The study found that intimate partner violence was the most common motive for homicide against women and that sexual violence, including marital rape, was a significant factor. { insert footnote }

### **A STEP TOWARDS RECOGNISING THE RIGHTS OF WOMEN**

The cause of both World Wars was not the women’s manipulation but the clash of men’s egos. The profound violation of human rights made the United Nations (UN) usher its deep concern about the equality of women and men which is why the preamble of the UN Charter reads: ‘*We the peoples of the United Nations...reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.*’

The origin of the challenge to marital rape exemption is traceable to 1970. 19th-century feminists waged a campaign that was both vociferous and systematic against the exemption and argued that economic and political equality would prove hollow if women did not win the right to set the terms of marital intercourse<sup>14</sup>. This agitation was aimed at offsetting the age-long and deeply rooted common law prerogative. However, as radical as this campaign was, it was not very successful.<sup>15</sup> Later on, the General Assembly proclaimed the year 1975 as the International Women’s Year and in the same year the First International Conference on Women was held in Mexico where it was proclaimed that ‘*equality between women and men means equality in their dignity and worth as human beings, as well as equality in their rights, opportunities and responsibilities*’, followed by the UN Decade for Women (1975–1985)<sup>16</sup> in which numerous strategies, policies, declarations and commitments were made internationally and regionally to enhance gender equality across all levels of the economic, social and political spectrum.

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<sup>13</sup> Melanie Randall & Vasanthi Venkatesh, *The Right to No: The Crime of Marital Rape, Women's Human Rights, and International Law*, 41 *Brook. J. Int'l L.* (2015). Available at: <https://brooklynworks.brooklaw.edu/bjil/vol41/iss1/3>

<sup>14</sup> <https://thetransformedwife.com/was-this-truly-marital-rape/>

<sup>15</sup> L. M. Bulus & V. P. Wuyep, *Marital Rape: Evolving Trends And The Way Forward*, available at: <https://ssrn.com/abstract=4111656>

<sup>16</sup> *Supra* 9

Compared to international instruments like the Universal Declaration of Human Rights (UDHR 1948)<sup>17</sup>, the International Covenant on Civil and Political Rights (ICCPR 1966)<sup>18</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)<sup>19</sup> which recognised the rights of women in general terms, instruments like Convention on Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)<sup>20</sup> and Declaration on the Elimination of Violence against Women (DEVAW, 1993)<sup>21</sup> categorically recognised the right of sexual autonomy and bodily integrity of women. However, the CEDAW does not explicitly address the State's responsibility for ending violence against women but the General Recommendation 19<sup>22</sup> adopted in 1992 by the CEDAW Committee is the most important document relating to the consideration of intimate violence. This recommendation recognised the fact that gender-based violence is a reality that disables women from full enjoyment of their human rights based on equality with men. General Recommendation 19 identifies obligations of the State in order to ensure 'appropriate and effective' measures to overcome all forms of gender-based violence, including the legal prohibition of family violence, rape, sexual violence, and other gender-based violence; providing protection and support services to the victims of violence; and giving judges and law enforcement officials effective training to enable them to be gender sensitive when addressing violence against women. Recommendation 19 creates a communicative space enabling violence against women to be confronted through the State reporting process and States are also encouraged to collect statistics and support research addressing the extent, causes, and effects of violence against women.<sup>23</sup>

Regrettably, State reporting processes have little success in compelling the States to meet their responsibilities or to facilitate meaningful social change. States often report late or inadequately to the CEDAW Committee and frequently fail to heed the advice or critique of the Committee as they are non-binding. These actions of the States underscore the broader point that women often

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<sup>17</sup> *Universal declaration of human rights, United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Dec 14, 2023).*

<sup>18</sup> *International Covenant on Civil and Political Rights- United Nations, [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf) (last visited Dec 14, 2023).*

<sup>19</sup> *International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited Dec 14, 2023).*

<sup>20</sup> *Article 16 of CEDAW obligates State Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular, to ensure on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution. Article 16(e) the rights to decide freely and responsibly on the number and spacing of their children and have access to information, education and means to exercise these rights.*

<sup>21</sup> *Marital Rape Exemption In Kenya: Some Lessons From International Law by Nqobizwe Mvelo Ngema Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html> ISSN 1923-6654 (print) ISSN 1923-6662 (online).*

<sup>22</sup> *General recommendations adopted by the Committee on the Elimination of Discrimination Against Women (no date) United Nations. Available at: <https://www.un.org/womenwatch/daw/cedaw/recommendations/index.html> (Accessed: 14 December 2023).*

<sup>23</sup> *Supra 9*

experience the uneven application of legal rules and standards and that moving toward accountability entails additional responsibilities in dealing with gender-based violence.

More robust forms of enforcement from the CEDAW Committee are now found in its Optional Protocol capacity. The Optional Protocol enables communication whereby an individual woman (or group of women) can submit claims of the rights protected by the convention to the Committee. The procedure is enabled by States allowing persons within their territory to bring individual complaints before the committee to adjudicate the merits and (as appropriate) find violations and issue remedy recommendations. Additionally, the protocol creates a procedure that enables the Committee to initiate inquiries into situations of gross or systematic violations of women's rights. In the context of intimate violence, the Committee has been active and articulate in its communications function. In *Şahide Goekce (deceased) v. Austria*<sup>24</sup>, a communication involving an Austrian national who had experienced years of domestic abuse and was eventually murdered by her husband was deemed admissible, despite significant challenge from the Austrian government. The CEDAW Committee found Austria responsible for the death of and the violence experienced by Ms. *Goekce* as a result of its failure to provide due diligence in legal and institutional oversight.<sup>25</sup>

On the other hand, DEVAW specifies that UN members have a duty to exercise “*due diligence to . . . punish acts of violence against women,*” even if those acts are perpetrated by private persons. Subsequently, Beijing Declaration and Platform for Action (1995)<sup>26</sup>, adopted by 189 UN Member states further recognises that violence against women, including marital rape, “*is a manifestation of the historically unequal power relations between men and women*” and demanded that states enact or reinforce sanctions that punish perpetrators and provide women with access to justice. Sexual violence perpetrated against intimate partners is a violation of fundamental human rights and interferes with or entirely undermines the enjoyment of all other rights.<sup>27</sup>

Established in 1953, the European Court of Human Rights is the oldest regional human rights judicial body, however, this court also did not initially recognise women's rights. It was in the highly controversial case of *Aydin v. Turkey*<sup>28</sup> which changed the view as the case involved rape and sexual harm inflicted on a young Kurdish woman while in Turkish police custody. The case set an important marker in international law with its finding that rape constituted torture under the prohibitions contained in the European Convention.<sup>29</sup>

<sup>24</sup> Communication No. 6/2005, Date of Decision: 6 August 2007

<sup>25</sup> *Supra* 9

<sup>26</sup> Beijing Declaration and platform for action\* resolution 1 resolutions ..., <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (last visited Dec 14, 2023).

<sup>27</sup> Melanie Randall and Vasanthi Venkatesh, SYMPOSIUM ON THE INTERNATIONAL LEGAL OBLIGATION TO CRIMINALIZE MARITAL RAPE CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS: STATE OBLIGATIONS UNDER HUMAN RIGHTS LAW available at: <http://ssrn.com/abstract=2712838>

<sup>28</sup> Case no. 57/1996/676/866, judgment 25 September 1997

<sup>29</sup> *Supra* 9

In a similar vein, the Committee against Torture<sup>30</sup> has emphasized that when condoned by the State, gender violence by non-State actors constitutes a violation of the Torture Convention<sup>31</sup>. The Committee includes rape and gender violence in its definition of acts of torture, and asserts that the State should be considered as the “author” of such acts when it has failed to “exercise due diligence to prevent, investigate, prosecute and punish” them. The Committee is categorical that Articles 1 and 4 of the Convention require states to make the offence of torture punishable as a criminal offence, which therefore extends to marital rape. State’s failure to criminalize marital rape also represents encouragement or *de facto* permission for the crime, as per the Committee’s interpretation of state inaction towards acts of torture by private actors. Furthermore, because marital rape can be an act of torture, a state’s obligation to prohibit it is absolute and non-derogable.<sup>32</sup>

In 2015, the UN adopted ‘gender equality’ as one of the Sustainable Development Goals<sup>33</sup> to be achieved by 2030. It was viewed as a basis for creating a peaceful, progressive and sustainable world. It stressed the fact that achieving gender equality and providing equal access to women to education, healthcare etc. will be beneficial for societies at large and help in achieving the aim of sustainable economies. In 2016, the UN Program Chief, Helen Clark stated that India would not be able to achieve the Sustainable Development Goals it has adopted if it fails to criminalize marital rape. Thus, India being a member state signatory to the CEDAW must fulfil the international standards as far as the criminalization of marital rape is concerned.<sup>34</sup>

Failure to criminalize sexual violence perpetrated by a husband (or intimate partner) effectively facilitates and condones a private legal space within spousal relationships where sexual assault and coercion are permissible.<sup>35</sup> For example, in Australia, a person can apply to a judge or magistrate for an order allowing him/her to marry if he/she has reached the age of 16 years. However, by 1991 every state in Australia had abolished the marital rape exception. Similarly, in New Zealand, a person under 20 years of age but over 16 years old can only marry with parental consent. The age of sexual consent for women is also 16 years. There is no exception for marital rape in the

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<sup>30</sup> Committee Against Torture- OHCHR, <https://www.ohchr.org/en/treaty-bodies/cat> (last visited Dec 27, 2023).

<sup>31</sup> Convention against torture and other cruel, inhuman or degrading treatment or punishment, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (last visited Dec 27, 2023).

<sup>32</sup> *Supra* 25

<sup>33</sup> The 17 goals | sustainable development, United Nations, <https://sdgs.un.org/goals> (last visited Dec 27, 2023).

<sup>34</sup> *Criminalizing Marital Rape in India: A Step towards Sustainable Development* Karan Dhillon, OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada. ISSN 1923-6654 (print) ISSN 1923-6662 (online) [www.oidaijsd.com](http://www.oidaijsd.com) Also available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

<sup>35</sup> *Supra* 25



Crimes Act, 1961<sup>36</sup> of New Zealand. The marital rape exemption was abolished in 1985. Before 1983 in Canada, it was legally permissible for a man to rape his wife without criminal sanction, but, the last codification of the common law immunity for marital rape appeared in Canada's 1970 Criminal Code<sup>37</sup>, and provided that '*A male person commits rape when he has sexual intercourse with a female person who is not his wife ... without her consent*', subsequently, sexual assault reforms Bill passed as Bill C-127 criminalised marital rape.

So far as India is concerned, Macaulay was engrossed with the English Criminal Law system and Victorian notions of morality emphasizing the low status of women in society and thereby, failed to realize the injury which could be caused by the wordings of the same. Under the heading "Offences Against Human Body", sections 359<sup>38</sup> and 360<sup>39</sup> of the draft law could do injury to the female populace of India as this provision, based on common law, was not suitable to Indian conditions and the final version of rape in Section 375<sup>40</sup> of the Indian Penal Code, 1860, differed little from Section 359. The only amendments effected were in clause fifthly, wherein the age was fixed at ten years, and the exception which read as: "*Sexual intercourse by a man with his own wife, the wife not being under ten years of age is not rape*".<sup>41</sup> Subsequently, the age of ten years was increased to fifteen years and has remained unchanged ever since. Even England, which gave the Indian Penal Code abolished marital rape way back in the year 1991 after the case of R v. R<sup>42</sup>, however, in India marital rape has not been abolished to date.

## CONCLUSION

The sophisticated jurisprudence on intimate violence establishes that marital rape strikes at the very foundation of human dignity and bodily integrity of women which is most important to them and that is why recent years have witnessed a significant change in the culture and the recognition of rights of women have also made the State obligated to perform its duty of not only convicting the criminal who has violated the dignity of his wife but also support the women's who have been raped to recover and rebuild their lives as well as develop an effective mechanism of investigation, prosecution and speedy redressal of grievances.

<sup>36</sup> Crimes act 1961 - New Zealand legislation, <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html>

<sup>37</sup> The Criminal Code of Canada, Open Government Portal, <https://open.canada.ca/data/dataset/3abb5c74-3bbf-4647-b1c1-fe8390e98223>

<sup>38</sup> S. 359. Kidnapping.—Kidnapping is of two kinds: kidnapping from 1[India], and kidnapping from lawful guardianship.

<sup>39</sup> Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

<sup>40</sup> Indian Penal Code, 1860, S. 375

<sup>41</sup> Dipa Dube, LICENSE TO RAPE: THE INDIAN VIEWPOINT, available at- <http://ssrn.com/abstract=888964>

<sup>42</sup> R v R [1991] UKHL 12

A study of various international instruments shows that the State is obligated not only to protect against intimate partner violence but also to eliminate its “causes”—that is, gender discrimination at structural, ideological, and operational levels—and to bear responsibility for addressing its consequences. The criminalisation of marital rape is only the first step in engaging the law to end this human rights violation in women’s lives, the second step must be towards breaking down the formidable social, cultural and legal barriers to achieve real justice for women and granting them equal status as envisioned under UN Sustainable Development Goals.

Nature’s law that both genders are made to rely on each other and the role of a woman in the life of a man is very important. A woman has a nurturing and nourishing nature; she is capable of ruling the heart and mind of man and this is why a woman has always had a great share of credit in the success of man. The culture and tradition of India emphasize on strength, not abuse, equality, power and control. If such heritage is to be reinstated in Indian life, women must find a place of respect. As said by Manu, “Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious rites become useless. Women must be honoured...”<sup>43</sup>

Last but not the least, it is now globally settled that the perpetrator’s rights cannot supersede women’s human rights to life and to physical and mental integrity, therefore, the broader strategy for combating marital rape has to go beyond criminalization, to include public education and rights awareness, professional training about appropriate system responses, the provision of adequate victim services, and the eradication of institutional and cultural structures, practices and norms that entrench male dominance, including in marriage.

There can be no doubt that sexual assault is one of the most heinous crimes committed against women. It becomes even more serious when it occurs within a marriage which is supposed to be the union of two souls. However, when the protector himself becomes the violator, the legal regime has to protect the victim. Therefore, marital rape has to be recognized as a criminal offence which violates the dignity of a woman just as rape outside marriage. Keeping in mind the global scenario where a large number of countries are increasingly recognizing the offence by doing away with the marital rape exemption, India must also follow the same. The international obligations of India also demand that it takes the step towards sustainable development by creating an environment in which women are treated as equals and not as chattels. The age-old notion that a husband cannot commit rape on his wife is nothing but the manifestation of a patriarchal order which has no place in the future world based on the principle of sustainability.

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<sup>43</sup> *Supra* 39