**Authors Information**

1. Name: **Amit Anand**

Designation: PhD (Law) Researcher

Institution: Lancaster University, UK

Email: a.anand1@lancaster.ac.uk

Address: Room No: C-62, Lancaster University Law School

Lancaster University, Lancaster

United Kingdom LA1 4YN

2. Name: **Preethi Lolaksha Nagaveni**

Designation: PhD (Law) Researcher

Institution: Lancaster University, UK

Email: p.lolakshanagaveni@lancaster.ac.uk

Address: Room No: C-64, Lancaster University Law School

Lancaster University, Lancaster

United Kingdom LA1 4YN

3. Name: **Tripti Bhushan**

Designation: Academic Tutor & TRIP Fellow

Institution: O.P. Jindal Global Law School

Email: triptibhushan21@gmail.com

**Marital Rape in India: A Socio-Legal Analysis**

Abstract

As per data published by the National Family Health Survey 2015-16 which receives technical guidance from the Ministry of Health and Family Welfare, Government of India, 83% of married women between the ages of 15 and 49 who have suffered sexual abuse cite their current husbands as the perpetrators. The hard truth that emerges from this figure is that a large number of crimes against women in India takes place in their respective homes. In a society, like India, where family and family values form the centre of human bonding, it must be noted that, due to preconceived notions of gender, sexuality, hierarchy etc., it is believed that families not only prepare women to be submissive to male authority but also expect male violence and tolerate it. Women are often taught to preserve the distance between the private (family) and the public sphere.

The issue of marital rape in India is one example of violence against women where the victim suffers both physically and psychologically at the hands of somebody close to them. But, unfortunately, marital rape is not recognized as a crime under the Indian law. While many countries responding to demands for gender equality and changing societal norms have criminalized marital rape, India refuses to do so taking the argument that marriage in Indian society is considered a sacrament and criminalizing marital rape would destabilize the institution of marriage.

The present paper focuses on examining some of the vital socio-cultural and legal reasons that play a significant role in prohibiting criminalization of marital rape in India. Further, in light of India’s commitment both domestically and internationally to safeguard the interest of women, this paper concludes by making an argument for criminalization of marital rape considering the increase in sexual offences against women in India and their overall status in the society.

**Keywords:** Marital Rape, Women, Marriage, Patriarchy and Indian Penal Code

**Introduction**

The condition of women in India is disturbing because on one hand they are worshipped as goddesses, while on the other, they are beaten, burnt alive and killed in their own homes (Report of the High Level Committee on the Status of Women in India – Vol 1, 2015). As per data provided by The National Crime Records Bureau [NCRB], in 2019, as many as 7,115 women died in India due to dowry harassment and a total of 1,25,298 incidents of cruelty by husband or his relatives came to light. Further, a total of 3,792 incidents of cruelty were reported in the national capital alone in the same year (Crime in India 2019: Statistics Vol 1, 2019). Note that, having a male child is still seen as a blessing while a girl child is considered a burden in the Indian society. It is believed that, boys will grow up to add fame and wealth to the family name while girls are no more than a financial burden on the family for whom money needs to be given away in the form of dowry (Grey, 2013). Indian society is largely patriarchal in nature and is governed by beliefs, practices, customs and traditions that often find themselves in contradiction with modern laws. More importantly, these beliefs, practices, customs and traditions that have developed over centuries and still continue to flourish are made and controlled by men (Johnson and Johnson, 2001). Men exercise control over the economic, political, religious, social and cultural institutions in the Indian setup which results in the reinforcement and legitimization of female subordination and discrimination. This control is exercised through the strict adherence of a combination of factors such as caste, religion, family and community norms which gives rise to discriminatory practices against women (Report of the High Level Committee on the Status of Women in India – Vol 1, 2015). As observed by Segal (1999),

‘In India’s clearly patriarchal society, males are valued more, and preference is for a male child. Men act as heads of households, primary wage earners, decision makers and disciplinarians. Male children, especially the eldest male, grows with the knowledge that, upon the death of his father, he will become the head of the household, and will also be responsible for his mother, female relatives, and younger siblings. He is expected to model his behaviour after that of his father. Women in the family are subordinate and serve as caretakers. As children, they are groomed to move into, and contribute to, the well-being of the husband’s family’.

In short, men as decision makers in the family not only exercise control over the use and distribution of wealth but also dictate women and their life choices (sexuality, mobility etc.,) which not only diminishes their full potential but also increases the likelihood of violent practices against them (Saravanan, 2002). With respect to the issue of criminalization of marital rape in India, the arguments on both sides also revolve around the overall status of women, bearing in mind, the control exercised over their life choices and bodily freedom within the family (Bhattacharya, 2017).Marital rape is generally referred to as rape committed by the victim’s husband. Note that, lack of consent is an essential aspect in the definition of rape in any jurisdiction. Then again, there are instances where consent is presumed to exist. Marriage is considered as one such example where the presumption of consent for sex is believed to be present. Hence, in such a situation, the idea of marital rape is said to become an impossibility (Mandal, 2014). At present, India does not have a law recognizing marital rape as a crime (2011-2012 Progress of the World’s Women, 2011).

The two justifications that are often cited by those who advocate against criminalization of marital rape in India are: (1) the concept of marriage in India is different from how it is viewed in the western world; and (2) marriage is a private matter, therefore, the law should not interfere in it (Bhat and Ullman, 2014). The present paper focuses mainly on examining the socio-cultural and legal reasons that play a significant role in prohibiting criminalization of marital rape in India. Section 1 of the paper briefly highlights the current legal position on marital rape in India. Section 2 of the paper attempts to further understand marital rape in India by placing the offence within the larger socio-cultural context, primarily, reviewing it through the structure of patriarchy and the existence of the public-private sphere. Finally, section 3 of the paper makes an argument for criminalization of marital rape keeping in mind India’s domestic and international commitment to put an end to violence against women.

**Section 1. Marital Rape Exception in India**

As per data published under the National Family Health Survey 2015-16, ‘31% of ever-married women have experienced physical, sexual or emotional violence at the hands of their spouse. 52% of women and 42% men are of the view that violence by the husband is justified. Further, 83% of married women between the ages of 15 and 49 who have suffered sexual abuse cite their current husbands as the perpetrator’ (Prasad, 2018).

There is no widely accepted definition of marital rape under the Indian law. Though, researchers have used terms such as spousal abuse, domestic violence, cruelty while explaining marital rape (Bhat and Ullman, 2014). However, for the purpose of this paper, the term marital rape is understood as rape committed against the wife by the husband. Section 375 of the Indian Penal Code, 1860 [IPC] defines the offence of rape. It is also an expansive definition. But, Exception 2 of the said section, states that sexual intercourse or sexual acts between a husband and wife is not rape.

In its current form Exception 2, Section 375 IPC reads as follows: ‘Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape’. However, as per the recent Supreme Court decision in Independent Thought v Union of India, AIR 2017 SC 4904, Exception 2 was partly struck down because it allowed for sexual intercourse with a girl who is married and is between the age of 15 to 18 which the court found to be unreasonable, arbitrary and unconstitutional. Therefore, post the decision in Independent Thought, Exception 2 should be read as: ‘Sexual Intercourse by a man with his own wife, the wife not being under 18 years, is not rape’ (Yadav, 2018). In addition, the Supreme Court categorically mentioned that the decision in Independent Thought had no bearing upon the issue of adult marital rape. Note that, Exception 2 does not provide any justification for excluding sexual intercourse or sexual acts between a man and his wife from the definition of rape. Since, the focus of Section 375, IPC is primarily on consent, it is possible that the decision to exclude the operation of this section from married relationships might have been based upon the existence of presumption of consent vis a vis marriage. More importantly, the decision to exclude might also have rested upon the notion of sacred nature of marriage as per the ‘Indian culture’ (Kim, 2017). The reports of the Law Commission as well as debates on criminal law amendment to the Indian Penal Code, 1860 will further shed light on the understanding of the marital rape exception in India. The validity of Exception 2 came up before the Law Commission of India in its review of rape laws in the country (Reddy, 2000). In its 172nd report, the Law Commission stated that ‘criminalization of marital rape would lead to excessive interference with the institution of marriage.’ In 2012, as a result of a nationwide agitation, a committee was constituted to propose amendments to criminal law in order to put an end to heinous crimes against women (Verma, 2013). Following are the recommendations of the committee in relation to marital rape:

‘The preliminary recommendation was simply that the exception clause must be deleted. The second suggestion was that the law must specifically state that a marital relationship or any other similar relationship is not a valid defence for the accused, or relevant while determining whether consent existed or not and that it was not be considered a mitigating factor for the purpose of sentencing’ (Verma, 2013).

The committee in its report argued that by granting immunity to the perpetrator only because he is the husband of the victim would strengthen the notion that women are still the property of men. Further, this immunity to husbands also goes against the principles of gender equality enshrined in the Constitution of India. In light of this report, the Criminal Law Amendment Bill, 2012 was drafted. However, the Bill did not contain any provision to criminalize marital rape. In addition, the Parliamentary Standing Committee on Home Affairs which reviewed the Criminal Law Amendment Bill, in its 167th Report also stated that, if marital rape is criminalized, the entire family system will be under greater stress (Naidu, 2013). In 2016, this argument was also reiterated by Ms. Maneka Gandhi, the former Union Minister for Child and Development, Government of India wherein she stated that, ‘the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors, like level of education or illiteracy, poverty, myriad social customs and values, religious beliefs, the mindset of the society to treat the marriage as a sacrament, etc’ (Sen, 2016). Therefore, the broad theme running through the arguments advanced against criminalization of marital rape is concerned mostly with safeguarding the institution of marriage. But, apart from stating that criminalization would act as a great threat to the family system in India, there has not been any justification which is grounded either in constitutional law, criminal law or family law. As mentioned above, the uniqueness of Indian society and the sentiment attached to marriage and family values is often cited against criminalizing marital rape. The following section, therefore, examines the impact of India’s socio-cultural setup especially the role of social structures and their influence on laws governing an individual.

**Section 2. The Lacunae in the Grounds for the Retention of the Marital Rape Exception**

This section focuses upon the legal and social justifications advanced against criminalization of marital rape in India.

**A. Common Law and The Marital Rape Exception**

The basis for distinction between marital rape from other forms of rape can be traced back to some of the theoretical foundations of the Common Law tradition (Ryan, 1995). The twin concepts of the doctrine of coverture and implied consent are often advanced as the justification for exempting marital rape from criminalization as rape (Ryan, 1995).

As per the doctrine of coverture, the identities of the husband and the wife get merged upon marriage and they are considered one individual for the purpose of law. The wife’s identity is said to have merged with that of the husband. The doctrine rests on the premise that ‘women are chattel’ of the dominant male member of her family (Siegel, 1995). This notion of ‘women as chattel’, is based on the assumption that a woman is forever in need of male protection. Traditionally, the belief has been that women are incapable of taking care of themselves and therefore, cannot hold property or enter into contracts (Harless, 2003). Essentially, ‘the law of rape served as the legal framework for protecting the property interests of the dominant male’ (Ryder and Kuzmenka, 1991). It was not the dignity of the women but her sexuality that became the object to be protected by the law. The basis behind rape laws was the social value attached to her sexuality that warranted protection as any other form of property (Sitton, 1993). Since, the husband was using his ‘property’ i.e., woman, the proposition of him raping her was considered absurd (Siegel, 1995).

Far more widely accepted is the theory of implied consent which considers marriage as a social contract, in which the woman freely submits her autonomy in exchange for protection (MacKinnon, 2016). This theory established the notion that such consent, once given, is irrevocable and complete (MacKinnon, 2016). In short, the wife’s complete subjugation was therefore considered a prerequisite to the marriage.

Both, the doctrine of coverture and the theory of implied consent are untenable when put to test against the contemporary idea of marriage which is a union between equals. The doctrine of coverture and the theory of implied consent are premised on the patriarchal notions of superiority of the male which places women in a subordinate position and perceives her as an object in need of male protection. Such a construction ensures that the wife is left powerless and completely at the mercy of the husband (O’Donovan, 1995). Moreover, both these concepts, are focused on the centrality of sex i.e., treating marriage solely based on sexual relations. This view also goes against the dignity and freedom of the individual (Ryder and Kuzmenka, 1991). The theory of implied consent, especially, rests on a selective use of consent. The woman is said to have given her unconditional consent to sexual relations to the husband upon entering into marriage. This narrow view of consent treats entering into marriage as a termination point for self-autonomy of a woman (Ryder and Kuzmenka, 1991). Even if, a woman is said to have retained her self-autonomy in matters other than sexual relations in a marriage, this again, elevates the sexual aspect of the marriage over everything else, which is inconsistent with the contemporary understanding of marriage as an equal partnership.

Going by both theories, the ability to determine the time and nature of sexual relations is completely in the hands of the husband within the marital relationship, which also negates the proposition of marriage as a union between equals.

**B. Socio-Cultural Restrictions**

More prominent than the legal objections to criminalizing marital rape are the socio-cultural reasons that are often advanced for continuing with the exception in India.

‘The typical marital rapist is a man who still believes that husbands are supposed to “rule” their wives. This extends, to sexual matters: when he wants her, she should be glad, or at least willing, if she is not, he has the right to force her. But in forcing her, he gains far more than a few minutes of sexual pleasure. He humbles her and reasserts, in the most emotionally powerful way possible, that he is the ruler and she is the subject’ (Choudhury, 2018).

The most cited reason is the need to preserve the traditional Indian family structure and how doing away with the marital rape exception will strike a blow not only to the family structure but also to the traditional understanding of the institution of marriage in India. For instance, as per the Hindu culture, marriage is said to be sacred, it is irrevocable, which means that parties to the marriage cannot dissolve it. Both the husband and wife are bound to each other until the death of either of them and the wife is supposed to be bound to her husband even after his death (Sharma, 2004). In most cultures in India, marriage is viewed not only as a union between two people but a union between two families (Mandal, 2014). As a result, even when there is a domestic dispute, it is believed that it is best to solve such disputes within the family rather than taking a legal recourse which might lead to breaking up of relations (Johari, 2015).

But, often an argument is made that, criminalizing marital rape will go against the Indian idea of marriage which considers marriage as a religious sacrament. This argument is in fact quite misleading. Note that, marriage is seen as a sacrament only in the Hindu religion and India as a nation has varying beliefs and customs with different religions and cultures (Mandal, 2014). Further, to suggest that the family is the appropriate forum for settling domestic disputes takes away the right of victims to avail legal remedies. Also, advocates of complete privacy within the family contend that the State should not interfere in private matters such as a dispute between the husband and wife. However, with passing of legislations such as the Dowry Prohibition Act, 1961 and the Protection of Women from Domestic Violence Act, 2005 by the Parliament to protect women who are victims of abuse in the marital sphere, it is very clear that family matters, especially those which involves the fundamental right to life with dignity, cannot remain outside the purview of the law. There is also Section 498-A of IPC which was brought in to punish the offence of cruelty to married women which governs marital relationships. Thus, the argument that there can be no State interference in the affairs of the marital home has no relevance.

In India, reform in the so called private sphere has always been obstructed by taking the defence of religious personal laws (Kim, 2017). Now, even if marriage is considered a sacrament for Hindus, comparatively, Nepal, which is a Hindu country, has already recognized marital rape to be a crime. The Supreme Court of Nepal in Forum for Women, Law and Development, Thapathali v His Majesty’s Government, Writ No 55 of the year 2058 BS [2001-2002], held that ‘the marital rape immunity was unconstitutional, and violated Nepal’s obligations under international human rights instruments. The Supreme Court of Nepal also noted that despite religious and traditional beliefs, the law, especially that regulating familial affairs, had consistently developed to align with changes in social, economic and cultural contexts.’ Going by the observations of the Supreme Court of Nepal, the traditional religious and cultural narrative of marriage adopted by the Indian government is not an adequate justification for non-recognition of marital rape as a crime. Further, even if the argument of protecting the sanctity of marriage is to be considered, the same cannot be done at the cost of sacrificing constitutional rights such as liberty, equality, dignity and autonomy. It has also been held by the Supreme Court of India in Joseph Shine v Union of India, [2019] 3 SCC 39 that, ‘the purported aim, the preservation of the sanctity of marriage, was effectively reinforcing patriarchal stereotypes by perpetuating the idea that women have no sexual freedom or autonomy within the marital relationship’.

**C. The Public-Private Divide and The Right to Privacy**

The privacy argument within the family structure or the need to protect the ‘private’, is one of the main contentions that often acts as an obstacle in gender justice claims (Olsen, 1993). State interference in domestic matters is believed to damage the sanctity of the marital home. It is also contended that, the State has no business in the private affairs between the husband and the wife (MacKinnon, 1983).

But, these arguments are the result of misinterpretation of the nature of the right to privacy. The public-private divide argument is often invoked to find out where the alleged violation has taken place; the private sphere of the home or the public sphere of life. However, this approach, narrows down the right of privacy to spaces rather than individuals within those spaces. Privacy as a right protects an individual’s ability to decide which parts of his/her life are accessible to others and which parts are not. The denial of the right to privacy should focus on the curtailment of one’s self-expression rather than reducing the question to where the said violation has taken place. Privacy does not protect spaces so much as it protects individuals within those spaces. It would protect the sexual acts within the confines of the marital bedroom, from the unwanted gaze of a stranger. Where the dignity and autonomy of one of the individuals within a marital relation is jeopardised, privacy cannot be manipulated to protect the interest of one against the other.

**Section 3. Marital Rape Exception and Women’s Human Rights**

Marital rape is a serious issue not only because it causes physical, emotional and psychological trauma that endanger the well-being of the victim, but also because it is being tolerated in a country whose Constitution provides an elaborate list of Fundamental Rights most of which are dedicated to ensuring gender equality and non-discrimination (Bhat and Ullman, 2014). The principle of gender equality is embedded in the Indian Constitution and is reflected in its Preamble, Fundamental Rights and the Directive Principles. The chapter on Fundamental rights, ensures equality before the law or equal protection of law and prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, among other rights. The Constitution guarantees fundamental rights which are basic human rights to all citizens, including the right to life under Article 21, which has been given a wide interpretation by the higher judiciary to incorporate the right to live a life with dignity. This section firstly tests the marital rape exception against the right to equality and non-discrimination under Articles 14, 15 and 21 of the Constitution and secondly, discusses India’s international obligations in relation to protecting the rights of women.

**A. Marital Rape Exception and The Constitution of India**

The marital rape exception is violative of Article 14 of the Constitution which guarantees equality before the law or equal protection of the laws. There are two tests that are applied to ascertain whether there has been a violation of Article 14. These are the *reasonable classification test* and the *standard of* *arbitrariness*. Applying the reasonable classification test, it becomes evident that, the marital rape exception classifies married women in a separate category from unmarried women. The classification done solely on marital status is irrational. In order to pass the reasonable classification test as mentioned in State of West Bengal v Anwar Ali Sarkar, AIR 1952 SC 75, ‘the law must clearly distinguish between the groups classified on an intelligible basis, and such a classification must have a rational correlation or nexus with the object sought to be achieved by the law’. The distinction between married and unmarried women does not have a rational nexus to the goal of criminalizing rape. The object of rape laws is to prevent and punish the act of rape and not to protect the sanctity of the institution of marriage. The marital rape exception is also arbitrary in nature. The exception is irrational as it provides immunity to married husbands for non-consensual sex, while the very same act is criminalized in case of unmarried couples or strangers. It creates an artificial hierarchy between the sexual activities within and outside marriage.

The marital rape exception is violative of the wider understanding of the non-discrimination clause of Article 15 of the Constitution. As stated by Chandrachud J. in Navtej Johar v Union of India [2018] 10 SCC 1,

‘discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex’.

The marital rape exception rests on the notions of hierarchy between husband and wife as shown from the discussion in Section 2 of the paper. The status of married women within marriage, especially, with respect to sexual relations is clearly reflective of a stereotypical understanding of ascribed gender roles within the marital framework. Here, the notion of patriarchy is also closely tied to the protest against criminalization of marital rape, since, patriarchy plays a significant role in not only assigning specific gender roles to both men and women in society but also creates a social structure that expects men and women to adhere to their assigned roles. For example, in marital relations, the wife should be dependent upon the husband and her role is to take care of the needs of the husband and his family (Manchandia, 2005). The adherence to such traditional role by women within marriage is evident of the patriarchal mindset that requires her to be passive and curtails her sexual autonomy.

Article 21 of the Constitution does not merely guarantee the right to life, but it guarantees the right to life with dignity. Life with dignity is an essential component of Article 21 and we believe that as a constitutional value dignity is closely related not only with the right to privacy but also with the right to self-autonomy. The notion of dignity requires that the State must ensure removal of certain conditions that do not allow individuals to enjoy the full extent of all rights. It is important that the right to bodily integrity is therefore ensured so that married women are not precluded from living a full and dignified life.

Note that, the Supreme Court of India has called rape as ‘the most hated crime’ in Shri Bodhisattwa Gautam v Subhra Chakraborty 1996 AIR 922 [10]:

‘A crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt…rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects’.

Rape is considered a heinous crime that derogates not merely the right to bodily integrity of the victim but also has a severe impact on her mental wellbeing. While these observations are fundamental in case of rape by a stranger, spousal rape we believe does even a greater harm due to the element of trust involved with the perpetrator-husband. When rape is committed by the husband in whom the victim places her faith, the impact on her mental wellbeing is more severe.

Intrinsic to personal autonomy is also the issue of sexual autonomy and the right against intrusion with the sexual choices of a woman. The Supreme Court of India on this issue has made the following observation in State of Maharashtra v Madhukar Narayan Mardikar [1991] 1 SCC 57:

‘Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also, it is not open to any and every person to violate her privacy as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law’.

Another important aspect of the debate around marital rape worth highlighting is the defence of the existence of other remedies under Indian law such as the laws on domestic violence which are available to the victim. And, therefore, there is no need to enact a separate law on marital rape. Though, it is true that there are alternatives existing under the law, but, this by no means is enough to justify sticking with marital rape exception (Sen, 2016). The commission of one criminal act is not dependent on another. The presence of ‘other remedies’ does not explain the reluctance to call rape what it is. The availability of other criminal remedies against the husband and his relatives within criminal and other areas of law, is an acknowledgement of the fact that cruelty within marriage is part of our social reality. To acknowledge that cruelty exists but deny a particular form of cruelty to be legislated upon is inconsistent and duplicitous. Furthermore, a wife who has been subjected to rape, should have the opportunity to choose the best available remedy under the law.

**B. India’s International Human Rights Law Obligations and Marital Rape Exception**

India has also signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly. As a State party, India is obligated under Article 2 of CEDAW to ‘condemn discrimination against women in all its forms, and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to (a) embody the principle of the equality of men and women in its domestic legislation and to ensure, through law and other appropriate means, the practical realization of this principle; and (b) to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.’ As a signatory to CEDAW and other international human rights treaties and conventions, India is under the obligation to not only protect women from violent crimes but also respond to human rights violations by taking appropriate actions against the perpetrators (Naidu, 2013). Note that, a key challenge for international human rights regime is to resolve the tension between State’s obligation to protect human rights on one hand and the preservation of cultural or religious practices, on the other (Shivdas and Coleman, 2010). This tension between the two competing interests was explicitly recognized under CEDAW, and an attempt was made under Article 5(a) to ensure that all practices that harm women are to be removed regardless of how deeply they are embedded in culture.

In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women, ‘recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings’. The General Assembly was of the opinion that violence against women was an obstacle in the full realization of the aims and objectives of CEDAW. The Declaration brought marital rape within the ambit of violence against women under Article 2. As mentioned under Article 2: ‘Violence against women shall be understood to encompass, but not be limited to, the following: (a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation’. Further, Article 4 of the Declaration prohibited the State Parties from invoking ‘custom, tradition or religious consideration to avoid their obligations with respect to elimination of violence against women’.

However, India has put a declaration to Article 5(a) of CEDAW stating that, ‘with regard to Article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure this provision in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent’. The CEDAW Committee in February 2007, made recommendations that India should pass comprehensive legislative reforms and widen the definition of rape in order to bring marital rape within its domain (Concluding comments of the Committee on the Elimination of Discrimination against Women: India, 2007). The CEDAW Committee while considering the combined fourth and fifth periodic reports of India, in its concluding observations stated that ‘India should amend the Criminal Law (Amendment) Act, ensuring that marital rape is defined as a criminal offence, expanding the scope of protection of the law to cover all prohibited grounds of discrimination’ (Concluding observations on the combined 4th and 5th periodic reports of India: Committee on the Elimination of Discrimination against Women, 2014). India, however, has not addressed the issue of marital rape despite the recommendation made by the CEDAW Committee.

The marital rape exception in India is a threat to human rights of women as it creates a constant atmosphere of fear under which women have to go through an endless cycle of abuse at the hands of their husbands. Therefore, in light of its domestic and international obligations to guarantee women the full protection and enjoyment of their human rights, India can no longer hide behind the excuse of ‘socio-cultural norms’ for not undertaking legislative measures for the criminalization of marital rape.

**Conclusion**

The issue of marital rape in India is vital for ensuring equality for married women who have otherwise been neglected and allowed to suffer within the confines of their home. As explained in this paper, the legal and cultural arguments against criminalization have tried to condone violence against women in the name of protecting tradition and culture which goes against the principles of gender equality under the Indian Constitution and the rights under CEDAW and other international treaties and conventions to which India is a party. Patriarchal values, cultural norms and tradition cannot be used as a shield to cover human rights abuse.

Therefore, India cannot continue to ignore its domestic and international obligations and must address the issue of marital rape because its criminalization is a necessary step in the fight to end gender-based violence. In addition to an immediate criminal law reform, there is also the need for strengthening current criminal law procedures so that victims of marital rape feel supported and do not hesitate in reporting such matters. Along with law reform, prevention of such offences is also critically important, which can be done by creating social awareness about the harm caused by promoting patriarchal and feudal values which results in gender-based violence.

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