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Marital Rape: Rape in a Social Language

SAUMYA¹ AND GARIMA²

ABSTRACT

When it comes to marital rape then the current legal situation will be taken into notice. Evolution of Indian Criminal Law began from legal system of Britishers then to UK and then it was adopted in adoption in The Indian Penal Code of 1860 drafted by Macaulay that keeps it (IPC). Recent legislation has aimed to promote rights of women to escape from domestic violence (PWDVA) and such acts are named as the Protection of Women from Domestic Abuse Act of 2005. After checking on the history of legal responses of India, this paper will dig into the question that how Indian culture predicted claims on patriarchy. Before making argument that if immunogenicity should be abolished or not, this paper focuses on the basics of concepts and theory of legal system, bringing assertions from our law of land that is Indian constitution and Bill of Rights.

I am being sexually abused by my husband on daily basis. Even on my periods, he forces himself upon me every single day. Even when I was having his child in my womb, he did not have mercy on me until the baby was born.

Today, India's 'rape culture' has received a lot of attention in the international media. The Delhi gang rape of 2012³, which aroused international anger and brought a lot of attention to India's archaic laws that failed to protect women from sexual assault, is one of the most recent issues. Among the variety of issues surrounding sexual assault in India, one important but unresolved issue is the judicial system's continued acknowledgment of men who sexually abuse their wives with the legal immunity that is provided by our country itself.

In India, marital rape is defined as "unwanted intercourse by a man on his wife, gained by force or threat of force, or physical assault, or when she is unable to provide consent," according to the current legal definition given below⁴. While many countries have repealed the immunity of rape by husband in response to demands for gender equality and shifting societal standards, observers have raised worry that India remains stuck in a 'time capsule,' clinging to the immunity so as to save the holy institution of marriage.

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³ Timmons, H., & Gottipati, S. (2012). Woman dies after a gang rape that galvanised India. The New York Times (online)

⁴ Shrivastava, A. (2013). Marital rape: A legalised sin. Indian Journal of Applied Research, 12(3), 249– 251.

I. INTRODUCTION

The common law origins of exemption of husband from rape can be traced back to the time period of Matthew Hale who wrote his summary of the law in his leading treatise: 'The husband cannot be guilty of a rape committed by himself upon his lawful wife, for the wife hath given up herself in this kind unto her husband, which she cannot retract'. Despite the fact that Hale did not identify any reference for this assertion, it became considered as an accurate statement of English common law.⁵

In decisions like *Regina v Clarence*⁶, where Justice Wills declared that rape amongst married couples was not 'impossible,' courts were able to identify cases when the immunity no longer applied or was withdrawn based on the facts. In *R v Clark* and *R v Miller* in the twentieth century, the English courts emphasised that a wife's implicit assent given at marriage might be rescinded by a judicial order of legal separation. Due to the rise in critical feminist researches in last two decades of twentieth century, this marital rape immunity is being directly challenged⁷. This resulted in legal challenges in England and Australia: in *RvR*, the House of Lords considered if it was suitable to admit some further certification to the protection based on both parties' conduct in that case.⁸

Instead of accepting additional restriction to the privilege, the Privy council declared the exemption to be a "legal system myth that has grown outmoded and insulting" in England. In Australia, the legal system status of the sexual offences exemption was disputed in familiar manner, but by the early nineties, every State / Local legislature had repealed the immunity, although prospectively. Yet, the issue of exemption like a form of legal system remained unanswered. In the case of *RvL*⁹, its existence as it relates to state family matters was questioned. The High Court of Australia in *RvL* questioned whether spousal rape exemption was ever part of Australian common law, and even if it was, the court determined that it was legitimate in rejecting an idea that was "so out of keeping with the position society presently takes"¹⁰.

Women throughout Asia in 19th century were regarded as 'continual teenagers,' regarded unable of working as people in society without the safety of a male role model, such as their father,

⁵ Anderson, M. (1998). Lawful wife, unlawful sex – Examining the effect of the criminalisation of marital rape in England and the Republic of Ireland. *The Georgia Journal of International and Comparative Law*, 27, 139–166.

⁶ *Regina v Clarence*. (1889). 22 Q.B.D. 23

⁷ Bronitt, S., & McSherry, B. (2010). *Principles of criminal law* (3rd ed.). Sydney: Thomson Reuters

⁸ *RvR*. (1991).

⁹ *RvL*. (1991). 174 CLR 379.

¹⁰ Bottomley, S., & Bronitt, S. (2012). *Law In Context* (pp. 46–51). Annandale: The Federation Press.

husband, or son, which depicts that under civil and common law, this was the status of women¹¹. What a woman was supposed to do according to ancient laws? treat her husband as God, following all his orders even if that were harmful for her and nurturing his family and take care of children. To close the gap between "the conquerors and the conquered" was the desire of Lord Macaulay who was also a member of council of governor general of India¹². He argued that India's cultural variety was jeopardising Benthamite principles of equity. Macaulay's codification project resulted in the Indian Penal Code 1860 (IPC), which is still in effect today. Macaulay wanted the IPC to be written in a way that ensured "clarity and availability of principles, as well as uniformity of interpretation and implementation".¹³

The Macaulay Rule, which was written almost a century and a half ago during a volatile period of British administration in India, was a "result of a unique moment, location, social, and philosophical environment." Dhagamwar claims that the Macaulay Code showed a lack of awareness to local situations, claiming that the Code embodied "Victorian ideas" when it came to sexual offences¹⁴. The IPC, on the other hand, should not be seen as a conservative formal agreement. According to top criminal procedure historian Stanley Yeo, Macaulay's Code took a liberal approach on rape legislation, which safeguarded women more than any other jurisdictions. The IPC, for example, places the legal burden of proof on the defendant to show if he knew or should have known she had granted agree to sex intercourse. As previously stated, standardization assumes the burden of enshrining legal standards in a legal term that will become increasingly obsolete with period, and the rule's stability will become an obstacle to revision. To prevent this, rules should be reviewed and reformatted on a regular basis. However, in the case of the IPC, such an examination had never been such a political focus. Section 375 of the IPC declared that marital rape is not a crime in India, echoing the traditional understanding of nineteenth-century English law. The IPC recognised two exceptions: the first (section 375), which recognised that the immunity did not apply to a wife under the age of fifteen; and the second (section 376A), which barred sexual intercourse without consent while separated. Until recently, there had been no major challenge to the IPC's immunity. The 'Nirbhaya case,' a group rape case in Delhi in 2012, changed that. A 23-year-old physiotherapy

¹¹ Wolpert, S. (1991). *India*. Berkeley: University of California Press. Chan, W., Wright, B., & Yeo, S. (eds). (2011).

¹² Wing-Cheong Chan, Barry Wright and Stanley Yeo (eds), *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform*. Surrey: Ashgate Publishing

¹³ Peers, D. (2013). *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* ed. by Wing-Cheong Chan, Barry Wright, and Stanley Yeo (Review). *Victorian Studies*, 55(4), 749–751

¹⁴ Dhagamwar, V. (1992). *Law, power and justice: The protection of personal rights in the Indian Penal Code*. London: Sage Publications.

student was killed in New Delhi in 2012 after being brutally gangraped in a moving vehicle, Known as 'Nirbhaya' by the Indian people.

Her savage violence and murder gained international attention and whipped the country into a fury. It was particularly popular among younger Indian women, who associated strongly with Nirbhaya. The scandal increased pressure on politicians to provide 'rapid justice' in terms of offender punishment¹⁵. The Indian government also commissioned a significant examination of the law that governs rape against women, and the Justice Verma Committee presented the Indian Prime Minister with a Report on Amendments to Criminal Law in 2013¹⁶. The exception to spousal abuse should be repealed, according to the Verma Report. The Indian government, on the other hand, flatly refused the proposal. 3 The IPC's position on marital rape was not changed, due to which women facing the same did not have any legal protection. How could this 'freedom to sexual assault' survive a broader need for law reform and revitalisation?

II. HOW CULTURE AND RELIGION SHAPES GENDER VIOLENCE AND LAW REFORM IN INDIA

Gender disparity in India is examined in this section as a result of cultural concepts that are strongly ingrained in Indian society¹⁷. In India, violence against women is a severe concern. According to a 2013 study, one out of every three women aged 15 to 49 had experienced physical abuse, and one out of every ten has faced physical violence.¹⁸ According to Saksena, this high prevalence of assault is the result of established, misogynist public values: an Indian women is viewed as a sex object who is always available to the guy. After marriage, the man gains permission to own her and make physical relations with her anytime he chooses, regardless of the wife's wishes.¹⁹ These mindsets are not unusual in other jurisdictions; but, there is an additional factor in India. Gender violence is frequently excused as a matter of culture and religion both by temporal and devotee leaders.

According to the view of Minister of State for Home, Haribhai Parthibhai, the notion of spousal abuse, cannot be appropriately implemented in the Indian context because of various factors, some of which includes, educational level, lack of education, economic hardship, range of social customs and values, religious beliefs, and the society's mind-set to treat marriage as

¹⁵ Trivedi, I. (2014). *India in love: Marriage and sexuality in the 21st century*. New Delhi: Aleph Book Company.

¹⁶ Justice Verma Committee. (2013). *Report of the Committee on Amendments to Criminal Law*. New Delhi

¹⁷ Chhichhia, B. (2012). Gender rights in post-colonial societies: A comparative study of Kenya and India. *African Journal of Political Science and International Relations*, 6(8), 204–216.

¹⁸ Naidu, P. (2013). Domestic violence against women in India: A human rights violation. *Asia Pacific Journal of Social Sciences*, 5(1), 135–151.

¹⁹ Saksena, S. (2014). Married to rape? *The Pioneer*.

sanctity. In the midst of a national discussion, the Indian government continues to deny that the idea of marital rape immunity applies to India, resisting demands to criminalise the practise²⁰.

"It is the privilege of the man to appreciate his asset - the wife's body" after he is married, as per Sarkar.²¹ Earlier married women in India had a legal recognition same as a married women in England until the late nineteenth century. 'A concept of public norms and behaviours in which males rule, oppress, and exploit women²²'. It is the product of India's severe type of patriarchy. The greater rights, advantages, and authority that men claim to hold legitimise male supremacy in society²³. Gender violence occurs and is legitimised as a result of India's deep-rooted gender imbalance. Males frequently argued that a woman's inability to carry out her anticipated womanly tasks was a "trigger" for family abuse. According to recent national polls in India, Indian men's views about women appear to be linked to rates of violence against women and girls. When compared to males from other nations in the research, Indian men exhibited the most inequitable attitude toward gender equality, according to the Global Men and Gender Equality Survey (IMAGES), performed by the International Centre for Research on Women (ICRW).⁶ According to the poll, 20% of Indian males admitted to sexual abuse against with a female partner, the highest percentage of any nation.²⁴

Because of the widespread belief in India that "true rape" is an act of violence perpetrated by outsiders, as in the Nirbhaya case, the idea that rape occurs only between husbands and wives is reinforced²⁵. The emotional and psychological consequences of marital rape are trivialised further, largely by society as a whole, but also by relatives, colleagues, and the society as a whole. The notion that men have the authority to control women's bodies and behaviour maintains a patriarchal society conducive to gender inequality, which promotes women's helplessness and allows for violence as an outgrowth of the view that men have the capacity to rule bodies of women and conduct.

²⁰ Marital Rape Can't Be Applied to India. (2015). *The Times of India*, 9.

²¹ Sarkar, L. (1994). Rape: A human rights versus a patriarchal interpretation. *Indian Journal of Gender Studies*, 1, 69–92

²² Sharma, R., Pardasani, R., & Nandram, S. (2014). The problem of rape in India: A multi-dimensional analysis. *International Journal of Managing Projects in Business*, 7, 362–379.

²³ Babu, B., & Kar, S. (2009). Domestic violence against women in eastern India: A population-based study on prevalence and related issues. *BMC Public Health*, 9, 129

²⁴ International Centre for Research on Women. *Evolving Men: Initial Results from the International Men and Gender Equality Survey (IMAGES)*

²⁵ Kehn, A., & Ruthig, J.C. (2013). Perceptions of gender discrimination across six decades: The moderating roles of gender and age. *Sex Roles* 69(5),

III. HOW RELIGION IS PRESERVING MARITAL RAPE

In India, religion has a contradictory role. Though, devotion and devotion of deities is a long-standing Indian tradition. Yet, religion is blamed for many of India's repressive cultural norms impacting women, which are then perpetuated and legitimised by the patriarchal culture²⁶. Many senior legal figures have noted the dilemma of religion's treatment of women – as 25 years ago Ranganath Mishra, who is Chief Justice of the Supreme Court of India observed, women once were idolised as divinities, but their stance has been circumvented over time; only "when women are women, the globe would then emergence."

In India, religion is seen as a roadblock to legal change in a variety of areas, which includes family and criminal law. Religion is inextricably linked to Indian customs, legislation, and worldviews for many Indians²⁷. Religion was considered as a conservative factor that would stymie reform attempts during the creation of the Constitution of India, as "tightly linked to the entirety of the fabric of society of India". As a result, the country's constitution became secular. The Hindu religion's doctrines are sometimes blamed for the widespread belief in India that marriage is a "religious ceremony" exempt from democratic governance. In explaining its unwillingness to prosecute spousal abuse, the Indian government said that such reformation would need revisions to religious regulations, such as the Hindu Marriage Act of 1955, which mandates that the woman engage sexual relations. As a result, there is widespread concern that such a reform will destabilise the 'idea of marriage,' putting the entire family structure under strain.²⁸ These debates indicate that there is still a dispute between two distinct judicial obligations: on the one side, the right to non-discrimination and equality²⁹, art 14, 15, 21, 51A(e)), and on the other, the right to preserve and protect local religion and culture, art 25, 29, and 51A(f)). However, it would be a mistake to believe that such activities are tolerated just in India. Indeed, established hegemonic masculinity tends to leave an everlasting effect on criminal law in other nations, as well as those wherein spousal rape protections have indeed been eliminated. The English woman's situation was akin to India's consideration of the daughter as "her husband's estate" until the 19th century. The conception of 'women as commodity' - the woman being viewed as a type of property handed through parent to husband

²⁶ Komath, R. (2013). Religion as a barrier in Women's empowerment. *The Hindu* (online). <http://www.thehindu.com/books/books-reviews/religion-as-a-barrier-in-womens-empowerment/article5364865.ece>.

²⁷ Brekke, T. (2009). The concept of religion and the debate on the rights of women in the constitutional debates of India. *Nordic Journal of Religion and Society*, 22(1), 71–85

²⁸ Garg, M., & Singla, N. (2013). Marital rape under Indian law: A study. *International Journal in Management and Social Science*, 2(1), 59–68.

²⁹ The Constitution of India 1949 (India).

– was enforced on English women in the Middle Times, influenced by Christian doctrines.³⁰

After a woman is married, she and her husband become one entity according to legal terms, which means that after marriage, her legal existence is dissolved, or at least integrated and centralised into that of the husband, under whose protection, and encompass she is supposed to behave and do all of her duties. Even though official subordination of married women has did end, there are still many areas where the legal system fails to acknowledge women to be treated equally: as one prominent Australian feminist points out, the legal system persists to acknowledge that a husband's marital rights have not been extinguished, as well as the courts continue to regard "male behaviour as irresistible." In addition, Australia continues to deal with an entrenched societal acceptance for relationship sex assault.

While rape in the home is clearly a crime, it is not reported many times, and even though it is investigated and a verdict is obtained, some courts have treated the rape's 'domestic nature' as a factor that reduces, instead of increasing, the offender's punishment. The large number of legislation and institutional rules are aimed towards violent rape, treating spousal rape as being something exemplary, according to victimisation studies. Sexual violence by spouses (who are either in a civil marriage or unofficial domestic partnership) and members of the family far outnumbered perpetration by strangers. Actions of assault (non-consensual sexual acts) could even become a "regular" component of the marriage for some women in such situations, despite the belief that it is not rape when the attacker is your spouse.

Women may feel powerless to end a marriage, so they defend, justify, or reject their partner's aggression.³¹ Although the immunity from marital rape has been technically abolished in England and Australia, it 'still controls wives from the dead'. In Western nations, the struggle between the 'law as written' and enduring aristocratic beliefs is a constant battle, both at house and even in the courtroom. The history, society, and social economic norms of a society influence 'real rape' tales and myths. However, based on the preceding debate, it appears that 'cultural tolerance' of spousal rape is not limited to India. In many countries, progress in this area has been slow: as the law begins to question social support of certain cultural norms, opinions against spousal rape have started to shift among men and women.

The criminalization of marital rape has been an important incentive for confronting engrained social and cultural views in nations such as the United Kingdom, Australia, and many other common legal systems that inherited Hale's notion of sexual offences immunity. Clearly, nor

³⁰ Schelong, K. M. (1994). Domestic violence and the state: Responses to and rationales for spousal battering, marital rape and stalking. *Marquette Law Review*, 78, 79–120.

³¹ Eastaerl, P. (2010). *Women and the law in Australia*. Sydney: Butterworths.

religious or traditional beliefs should be used to justify sexual abuse in India against women, just as they should not be used to justify or excuse sexual abuse in England or Australia against women.

IV. THE CASE FOR GENDER EQUALITY AND ABOLITION OF MARITAL RAPE IMMUNITY

This section will lay emphasis on the gender equality and why is there a need to repeal spousal rape exemption in our country. All the statements will be based on Indian Constitution, and also international legal obligations of India under CEDAW. The Indian Constitution, promulgated in 1949, reflects a developing and law-abiding society. The Constitution of India serves a foundation for democratic, peace, and prosperity, while also allowing for changes in society,³² which also reflects Gandhi's ideal of a humanitarian democratic in which the "poorest will have the equal chance as the powerful"³³. Indian Constitution's part third safeguards fundamental rights, such as the life and liberty, that has been understood to entail the freedom to live a dignified and violence-free existence life³⁴. It claims to provide India's citizens with security, including clauses aimed at ending gender discrimination in the legal system. Nonetheless, whenever our country's record on female fairness and equality is challenged, the Indian government is eager to highlight the Constitution's core equality provisions, as well as the legislative authorities instead of punishing them. But Indian Penal Code has failed to penalise spousal abuse and to provide women any suitable methods to protect their rights which further exacerbates discrimination against women that violates their rights that our Indian Constitution purports to safeguard. However, public participation and the court have been working together to build competence and 'constitutional space' for interest of the public lawsuits.

When Indian courts created Public Interest Litigation (PIL), 1980s, they thought of a method, by which the public might strive to defend their rights protected by the constitution. Judicial activism was signalled in India, with the goal of making the legal system more open to the public and allowing groups of people to 'flex the public sphere' to their liking and to bring the reforms they want to see in the country. While the PIL's logic advocates liberal social and legal change, its real track record is in significantly reshaping the culture still in doubt. PIL has

³² Brekke, T. (2009). The concept of religion and the debate on the rights of women in the constitutional debates of India. *Nordic Journal of Religion and Society*, 22(1), 71–85

³³ Pantham, T. (1983). Thinking with Mahatma Gandhi: Beyond liberal democracy. *Political Theory*, 11(2), 165–188.

³⁴ Abeyratne, R., & Jain, D. (2013). Domestic violence legislation in India: The pitfalls of a human rights approach to gender equality. *Journal of Gender, Social Policy & The Law*, 21, 333–378.

highlighted problems about the right system of courts, particularly defining the extent of judges to participate in local politics, from the law standpoint. Despite PIL gave fairness and equality to underprivileged, still it carried the danger of destroying democracy by possibly hurting the law and order by its liberal judgements³⁵. PIL has so far been unsuccessful in bringing a court case against sexual offences legislation. In 2015 February, the Rit Institute, a non-governmental organisation, filed a petition in the Delhi Court contesting the spousal rape exemption under article 375 of the Indian Penal Code. The NGO maintained that this exemption was unlawful, as it violated Article 14 of the Constitution's Right to Equality. The Justice declined to hear this case, stating that identical cases filed well before Tribunal were all rejected before.

There is a "extremely minimal number of legal rulings that accept forced sex by husbands onto wives" in India's case history on marital rape³⁶. To date, there has been no substantive challenge to the legitimacy of the marital rape immunity in any of the Indian High Courts. When the subject comes up in court, judges are quick to say things like "such issues are better left to the realm of the Legislature and the judgement thereon is not for the courts", and then they don't say anything further. In the case of *Rihana v Azzimuddin & Ors* (2015), The Delhi District Court stated that "the idea of marital rape is not recognised in the criminal justice system in India"³⁷ to the complainant's allegations that her husband had frequently raped her. A written case claiming marital rape was also rejected by the Kerala High Court. The Court pronounced the couple's divorce case a "matrimonial issue that stands settled for all time," referring to the couple's divorce application. This isn't a case of rape³⁸. International human rights accords, which India has ratified, are also significant in addition to local constitutional legislation.

Reforms are not only requiring in IPC but law enforcement actions and processes, particularly those who are in place to protect victims and punish perpetrators, must also be improved. Even in situations involving dowry murders and rapes, the police in India have a cultural aversion to investigating domestic violence; they are generally hesitant to file domestic violence as a crime, instead seeing it as a private family matter³⁹. And although sexual infidelity has indeed been made illegal in Australia for decades, ongoing discriminatory attitudes among law enforcement officials and the judges constitute substantial barriers to bringing marital rape perpetrators to

³⁵ Liviatan, O. (2009). Judicial activism and religion-based tensions in India and Israel. *Arizona Journal of International & Comparative Law*, 26(3), 583–621.

³⁶ Mandal, S. (2014). The impossibility of marital rape: Contestations around marriage, sex, violence and the law in contemporary India. *Australian Feminist Studies*, 29(81), 255–272.

³⁷ *Rihana v Azzimuddin & Ors*. (2012). DDC.

³⁸ Crime No. 1369/2015 of Varappuzha ... vs Joji Jose. (2014). Kerala HC.

³⁹ Bhandare, S., & Bhandare, M. C. (2010). *Struggle for gender justice: Justice Sunanda Bahndare memorial lectures*. New Delhi: Penguin Group.

justice⁴⁰. Family abuse is more common in locations like Eastern India, where lesser literacy has been linked to the frequency of domestic abuse. Looking at Kerala, which has the lowest percentage of domestic abuse in India, exemplifies the value of education. The southwestern area of Thiruvananthapuram has a literate population of 85 percent⁴¹. Tamil Nadu also is recognised for a number of characteristics that set it apart from the Indian union, that too includes its lengthy tradition of men's reading skills, the value and autonomy bestowed on women in the this region, including the augmentation of schooling to women, and the practising of matriarchal inherited wealth, in which the property interest is passed down to the daughter.⁴² As a culture, we must examine within to discover what is so dreadfully wrong with us, and how we might not only bring perpetrators to justice, but also reform together as a community⁴³. The above comment, written in the wake of societal unrest after the Nirbhaya case, shows the gradual but steady growth of the global push for spousal rape legislation reform. Kenya is now dealing with issues comparable to those faced by India, with academics advocating for the criminalization of marital rape and more protection for married women. The CEDAW Committee has also called on Lebanon to change its Penal Code that sexual infidelity is deemed illegal⁴⁴. Spouse sexual crimes has far-reaching effects for factors such as physical, biological, sexually, and mental wellbeing. The prevalence of marital rape protection is today accountable for an ongoing cycle of distraught Indian women giving birth or raising their kids in a hostile atmosphere. When a mother thinks that her daughter will grow up to be subjected to the same abuse, the arrival of a girl is a tough occasion to rejoice. India would not be able to attain its maximum potential and its path toward progress will be hampered as long as female's ability to fully participate as equal members of society is denied to them. The IPC must be revised and updated to punish spousal abuse in conformity with both local (legal) and global (CEDAW) legal norms in order to eliminate this outmoded defence. Marital rape has been characterised by feminist theory professors as a sort of power and domination over women that gives males a "licensed to rape" without fear of repercussions⁴⁵.

⁴⁰ Bronitt, S., & McSherry, B. (2017). *Principles of criminal law* (4th ed.). Sydney: Thomson Reuters

⁴¹ Abeyratne, R., & Jain, D. (2013). Domestic violence legislation in India: The pitfalls of a human rights approach to gender equality. *Journal of Gender, Social Policy & The Law*, 21, 333–378.

⁴² Komath, R. (2013). Religion as a barrier in Women's empowerment. *The Hindu* (online). <http://www.thehindu.com/books/books-reviews/religion-as-a-barrier-in-womens-empowerment/article5364865.ece>.

⁴³ Talwar, R. (2013). *Courting injustice: The Nirbhaya case and its aftermath*. New Delhi: Hay House India

⁴⁴ CEDAW Committee. (2008). *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Lebanon*. CEDAW/C/LBN/CO/3.

⁴⁵ Martin, E., Taft, C., & Resick, P. (2007). A review of marital rape. *Aggression and Violent Behavior*, 12(3), 329.

V. CONCLUSION

Through the Indian Penal Code, this article examined India's current attitude on marital rape and in the process, it has traced down the evolution of the country's criminal law, from a very past time that is the colonial laws and landed on to recent legislations that outlaws gender-based violence. There has been so many attempts by various countries like UK and Australia to abolish the provisions that protect husbands for raping their own wife and to portray and strengthen the notions on equal treatment between men and women , our criminal law is still stuck by trapped by chauvinistic rules and morals that actively support violence against women, in the face of saving the holy institution of marriage and prevent the sacred bond between husband and wife to be broken creating an immunity from prosecution for sexual offences that is incompatible with India's Constitution.

India's refusal to provide legal protection to women who have been subjected to marital rape is not based on culture or religion. Protecting a violent and abusive marriage is everything but 'sacrosanct'. India cannot continue to reject the UN's repeated pleas that it fulfil its CEDAW duties. India must address the problem of marital rape legislation reform as soon as possible. Gender violence prevention is critical, but criminalization must also be a part of the answer; as Bhagwad Park recently stated, "do away with marriage rape, just as we don't have "marital murder".

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