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Constitutional Validity of Marital Rape in India with respect to Section 375 of Indian Penal Code, 1860

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ABSTRACT

Marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Even though, Marital rape is a very heinous and atrocious crime, still it has not been criminalized in a number of jurisdictions, with India being one of them.

This paper attempts to highlight the core issues of Marital Rape by highlighting the history, the role of our current society and various judicial pronouncements, which has led to the current problem of Marital Rape in our Society by not addressing the issue properly, and in a sense turning a blind eye to it by the Courts.

This paper, along with addressing the issue of Marital Rape, also attempts to provide suggestions in order to guide the Legislature and to create awareness about such a grievous issue, which is still treated as a Taboo in the Indian society instead of a heinous crime, leading to a regressive state of development of the society as a whole instead of progressive. This Paper attempts to bring to light the current scenario of the Indian Criminal Jurisprudence.

Keywords- *Marital Rape, Constitutional Law, Criminal Law, Legislature, Women*

I. INTRODUCTION

Rape is the most atrocious offence committed against a woman. Usually, in every case of rape, the Prosecutrix, is discriminated against and made to feel as if it is, she who is the “criminal”, even though it is not her fault

Due to our society’s view on rape and its opinion against the rape victim, every woman dies within, when she is raped. Marital rape is a taboo subject, which is rarely discussed, yet it affects millions of women. Marital rape is occasionally given the legitimacy or validity of other forms of sexual violence but it can be just as devastating.²

Indian Law does not criminalize marital rape, i.e. the Indian Penal Code, 1860 does not

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²“The Dark Consequences of Marital Rape”, The American Journal of Nursing, vol. 89, no. 7, 1989, pp. 946–949. JSTOR, by Campbell, Jacquelyn C., and Peggy Alford.

recognize that it is a crime for a husband to rape his wife. The reasons for this are numerous and can be found in various reports of the Law Commission, Parliamentary debates and judicial decisions. The reasons range from protecting the sanctity of the institution of marriage to the already existing alternative remedies in law. Through an analysis of Article-14 of the Constitution of India, which guarantees equal protection of law to every citizen of India as well as foreign aliens, and is a Fundamental Right of every citizen, it is clear that the marital rape Exception clause, found in Section- 375 of the Indian Penal Code, 1860 is wholly unconstitutional, since the victim is not able to avail the justice which should be readily available to her, as she is not able to claim equal protection of law guaranteed to every citizen of India under Article- 14 of the Constitution of India. Further, there is a lack of existing alternative remedies for a woman to seek redress, if she is raped by her husband.

II. WHAT IS MARITAL RAPE?

Marital rape refers to rape committed when the person responsible for rape is the victim's spouse. The definition of rape remains the same, as illustrated under Section- 375 of IPC, 1860 i.e. sexual intercourse or sexual penetration when there is lack of consent or when the consent is extorted by threats or fear of bodily harm.

Therefore, an essential ingredient to prove the crime of rape is to prove the absence of consent. However, the burden to prove the absence of consent often rests upon the victim. In some instances, as in the case of minors, it is presumed that consent does not exist as they are presumed by law to be incapable of consenting to such sexual acts. On the other hand, there are also instances when consent is presumed to exist, and often, this presumption exists when the victim and the culprit are married.

The offence of marital rape is one of the most gruesome and brutal crimes perpetrated against women. Marital violence has been recognized universally as a severe public health concern with disturbing consequences affecting the physical, reproductive, sexual and psychological health of women.³

In light of the above, it is sad to say that, India is one of the few countries in the world, which continues to exempt husbands from being charged with rape committed against their wives. Even though many countries, such as India, Bahamas⁴, Lebanon⁵ etc. still permit husbands to

³ Painter and Farrington

⁴Section 3 of Bahamas' Sexual Offences and Domestic Violence Act of 1991, states that Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse

(a) without the consent of that other person;
(b) with consent which has been extorted by threats or fear of bodily harm;
(c) with consent obtained by personating the spouse of that other person; or

rape their wives with little or no consequence, but there is a growing trend that the marital exemption is unjust and has no place in a civilized society.

Recently, in February, 2017, the Committee for Administration and Justice of the Lebanese parliament declared the abolition of Article 522. But, the Article is still upheld in two situations, which are Article 505, which states that when the sexual assault is practiced with a girl between the age of 15 and 18 years, and prior to the sexual act the girl has given her consent and the other in Article 518, which states that, when the sexual relation is practiced with a girl between the age of 15 and 18 years, and prior to the sexual act there has been a promise of marriage. In both the cases, a valid marriage consented by the minor and her parents would prevent the imprisonment of the male for the offence of rape.

At present, only 52 countries have laws recognizing marital rape as a crime. However, in many jurisdictions across the world, including India, marital rape is still not recognized as a crime by law and society, even though such countries recognize rape as a grievous crime and prescribe penalties for the same, they exempt the application of that law when there exists a marital relationship between victim and perpetrator. This is known as the ‘Marital Rape Exception Clause’.

Across these jurisdictions, there are a few major justifications advanced for not criminalizing marital rape. However, a number of these justifications are not valid in present day situation due to progressions made with respect to gender equality. The first justification stemmed from the understanding that the wife is a subservient, obedient or submissive to her husband. Along with this justification, the Unities theory also existed, which rested on the idea that after marriage, the identity of the woman fused with that of her husband, and therefore, law did not give the married woman a personality distinct or independent from her husband. However, post 1970s and the feminist revolution, these justifications were no longer at the forefront of the advocacy to not criminalize marital rape. This was because women were recognized as equal citizens as men.

Instead, more nuanced theories have become the justifications. The Implied Consent theory is one such justification, which considers Marriage to be a civil contract and consent to sexual activities is thought to be an essential element of this contract.

Another justification, which is the most recent, is that criminal law must not interfere in the

(d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.

⁵ Article 522 of Lebanon Penal code, 1943 allowed men, who had been convicted of committed sexual assault, abduction, or statutory rape against a woman, to avoid penalty of no less than five years of hard labor if a valid contract of marriage could be provided.

marital relationships between the husband and wife, since it is a private sphere which the law must not infiltrate into.

III. HISTORY OF THE MARITAL RAPE EXCEPTION IN THE INDIAN CONTEXT

The Indian Penal Code in Section-375 criminalizes the offence of rape. It is an extensive definition, which consists of penetration, no matter how slight, of the vagina or anus with any body part or object, oral penetration by a sex organ of another person, without the consent of the victim, within the definition of Rape.

However, Exception-2, prevents the application of this section on sexual intercourse or sexual acts between a husband and wife. Consequently, a wife under Indian law does not have recourse under criminal law if her husband rapes her. The Exception 2 states that, “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”

Exception- 2 of Section-375 of the IPC i.e. the Exception clause does not state any specific reason for the exclusion of sexual intercourse or sexual acts between a man and his wife from the purview of rape. While the law does not criminalize marital rape, a specific form of marital rape is criminalized, i.e. non-consensual sexual intercourse when the wife and husband are living separately on account of judicial separation or otherwise.⁶

There have been numerous legislative debates and reports of the Law Commission of India surrounding marital rape. The first report, which dealt with this issue was the 42nd Law Commission Report. Since the law has been amended at various intervals subsequent to this report, the importance of this report is restricted to understanding the prism, through which the Law Commission views marital rape.

The Law Commission was directly faced with the validity of the exception clause in the 172nd Law Commission Report. Here, during the consultation rounds, arguments were advanced regarding the validity of the exception clause itself. It was argued that when other instances of violence by a husband toward wife were criminalized, there was no reason for rape alone to be shielded from the operation of law. The Law Commission rejected this argument since it feared that criminalization of marital rape would lead to “excessive interference with the institution of marriage”

This report sheds light on the interplay between marital rape and the sanctity of the institution

⁶ Section- 376A of the Indian Penal Code, 1860 states that, whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

of marriage. In 2012, a committee was constituted under Justice J.S. Verma (Retd.) advocated for the criminalization of marital rape. This committee was formed in light of the nation-wide agitation seeking to make criminal law more efficient to deal with cases of heinous sexual assault against women. The committee published the Report of the Committee on Amendments to Criminal Law ('J.S. Verma Report') in 2012. It observed how this immunity has been withdrawn in a number of jurisdictions and in the modern concept of marriages between equals, such an exception clause cannot stand.

In light of this, the Criminal Law Amendment Bill, 2012 was drafted. In this Bill, the word 'rape' was replaced with 'sexual assault' in an attempt to widen its scope, but the Bill did not contain any provision to criminalize marital rape. The Amendment Bill, 2012 did not take into account the suggestions laid down in the J.S.Verma Report.

The Parliament Standing Committee on Home Affairs in its 167th Report ('Standing Committee Report') reviewed this Amendment Bill, 2012 and also organized public consultations. Here, it was suggested that Section-375 must be suitably amended to delete the Exception Clause. However, the Standing Committee refused to accept this recommendation.

The Standing Committee Report argued that, first, if they did so, the "entire family system will be under greater stress and the committee may perhaps be doing more injustice". Second, the Committee reasoned that sufficient remedies already existed, since the family could itself deal with such issues and that there existed a remedy in criminal law, through the concept of cruelty as under Section-498A of the IPC, 1860.

Recently, in 2015, this argument was reiterated by the Ministry of Home Affairs in reply to a bill proposed by a Member of Parliament which aimed to criminalize marital rape. It was considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context, and one of the reasons specified for this was the "thinking of the society to treat the marriage as sacrament".

The Supreme Court in *Saroja Rani v. Sudarshan Kumar Chada*⁷, attempted to settle the issue and ultimately upheld the constitutionality of the RCR (Restitution of Conjugal Rights). The Court agreed with the outcome in *Harvinder Kaur*⁸. Nevertheless, on a closer analysis, it is slightly different from the Delhi High Court decision. Here, the Court holds that the purpose of RCR is to preserve a marriage, and hence, when analyzed from this perspective, it

⁷1984 AIR 1562

⁸AIR 1984 Delhi 66

does not violate Article- 14. The Court argues that the purpose of the law justifies a separate law for married women and this does not violate Article- 14 since there is a reasonable classification. Conveying this to the marital rape debate, an analysis of the abovementioned argument construes that, even though the law treats a married woman and an unmarried woman differently with respect to their rights, it would not be in violation of Article- 14, in the sense that marriage serves as a reasonable classification. It is imperative to state, that the argument is not that rape as such is not unconstitutional, but rather that marriage satisfies the criteria laid down for reasonable differentia under Article- 14 of the Constitution. Therefore, despite rape being a violation of Article- 21, it is justified when it is Marital Rape, since it amounts to a reasonable classification.

Recently, in *Independent Thought v. Union of India & Anr.*⁹, the Court somewhat partly struck down a part of the Exception Clause in Section-375 of IPC. Under the Protection of Children from Sexual Offences Act, 2012 ('POCSO'), it is illegal to have sexual intercourse with a child under the age of eighteen. However, the Exception Clause allows for this in the event a girl is married and is between the ages of fifteen to eighteen. The Court noted that this differential treatment to the girl on the basis of marriage was wholly unconstitutional. Although, the Court was keen on noting that the judgment was not for adult marital rape, it is encouraging that the Court has recognized that women cannot be deprived of their rights on the basis of marriage. By this standard, it has been established that there exists no pre-supposition of consent to sexual activities in a marriage. Moreover, to not criminalize marital rape, just to protect the institution of marriage when there is a constitutional right at stake and when other forms of violence have been criminalized would be arbitrary and unjust. Thus, this fails the test of Article- 14 and marriage as a ground of reasonable classification and the Exception Clause is hence, unconstitutional.

IV. KINDS OF MARITAL RAPE

Marital rape is generally sub-divided into 3 categories-

- A.** Rape, involving a degree of violence.
- B.** Rape, which involves enough force to control the victim, known as 'force-only' rapes.
- C.** Sadistic rapes.

(A) RAPE, INVOLVING A DEGREE OF VIOLENCE

Violent rape occurs, when the abuser uses enough physical violence to cause injury to the

⁹ (2017) 10 SCC 800

victim, apart from any injuries due to the rape itself, i.e. injuries to the genital area or breasts.

(B) FORCE-ONLY RAPE

It is usually understood to include only enough force used on the part of the abuser to control or hold his wife in position, e.g. holding down the victim by her arms or wrists to prevent her from defending herself or escaping. This form of rape is common where there is a major difference between the physical size and strength of the abuser and that of the victim, or in abusive relationships where physical violence is frequent. In most cases of 'force-only' rape, coercion plays a huge part, as such the victim becomes confused and numbed by constant emotional and physical abuse, that she simply does not know how to act or react in a situation, when sex is forced on her.

(C) SADISTIC RAPE

It may or may not involve further violence. Sometimes, buggery is considered as a sadistic form of rape, since its effect on victim is often particularly humiliating. Pornography is often involved in this kind of rape. It is also known as Obsessive rape.

Finkelhorand Yllo, in their book *Men Who Rape* have added, apart from the aforesaid kinds of rape, two more types of the same. They are-

1. ANGER RAPE

It is committed primarily to express hostility to women, to retaliate against them and to hurt them. In this type of rape, the husband degrades the victim/wife as much as possible. He may also force her to commit other sexual acts which are particularly degrading, such as sodomy or fellatio, meaning bestiality.

2. POWER RAPE

It is committed to assert dominance and control over women. The rape reflects a kind of sexual conquest, which is not necessary in a normal healthy relationship. But in this case, the husband needs it due to his own feelings of inadequacy. That is why, when a wife with passage of time become more assertive, indignant or rebellious, this kind of rape is more likely to happen.

V. CAUSES AND EFFECT OF MARITAL RAPE

One of the elementary grounds of marital rape is that, in a male dominant relationship many husbands use sexual violence as a way to maintain power. Another important factor for raping an unwilling spouse, may be a result of sexual jealousy of a man as a woman's sexual

reluctancy may suggest to him that she is having consensual intercourse with another man i.e. Adultery. Also, abusive men with the history of alcohol or drug problems are pertinent to abuse their spouses sexually when drunk or sober.

It is imperative to mention at this point that the long-term effects of marital rape include negative feelings toward men, low self-esteem, feeling of fear, anxiety, guilt, embarrassment and outrage, changes in behaviors, including an increase in drinking and a refusal to consider remarriage, and depressions in the victim/wife.

Women are at a particularly high risk for being raped by their partners under the following circumstances-

1. Women married to domineering men who view them as "property".
2. Women who are in physically violent relationships.
3. Women who are separated or divorced.
4. Women who are not independent.

VI. MARITAL RAPE EXEMPTION IN INDIA

The amendment of Sections 375 and 376 as suggested in the 42nd report provided for Explanation 2 which explicitly stated that, "a woman living separately from her husband under a decree of judicial separation or by mutual agreement shall be deemed not to be his wife for the purpose of this section." This becomes relevant because the amendment of the section provided by the commission stated that, "a man is said to commit rape that has sexual intercourse with a woman other than his wife."

However, there were some serious flaws in the reasoning of the 42nd Law Commission. The reasoning of the commission in making forced sex with judicially separated wife punishable seems to be based on the presumption that she is no longer the "wife" and hence the husband has no right to forcibly enforce his conjugal rights. Such an approach closes all the doors for making rape within marriage punishable, since such an act of sexual violence would be considered as Rape and not Marital rape.

The 84th Law Commission's Report on Rape claims to be adopting a different and wider scheme as compared to the 42nd report. However, there does not seem to be any wider scheme that has been proposed in this report. Regarding marital rape they suggest the same changes i.e. rape of minor wife and rape of a judicially separated wife. The only substantially different aspect they had proposed, was to make punishable any rape committed by a man on his wife, if she is below 18 years of age, although the age condition of 18 years has not been included

in the IPC. It needs to be appreciated that the changes proposed in these reports were incorporated in the form of exception to Section-375 and Section 376A of the IPC.

Finally, the 172nd Law Commission's Report on Rape was prepared in response to the directions of the Supreme Court in 1998, where it was required to address issues that were raised in the case of *Sakshi v. Union of India*¹⁰. In this case, reference was also made to the famous English case of *R v. R*¹¹ with respect to marital rape, to corroborate the argument that "criminals go unscathed due to mere technicalities of law." In the report, the Law Commission had recommended that the Exception to Section-375 should be retained in its form.

As regarding the modification of Section-376A, the punishment was proposed to be enhanced to being not less than two years and may also extend to seven years with fine. This was done in accordance with the reasoning put forth in the case of *Sakshi v. Union of India*, in which it was stated that, "When a man who causes hurt or any other physical injury to his own wife is liable to be punished for such offence like any other person causing such hurt or physical injury, why should a husband who sexually assaults his wife be not punished like any other person."

The Commission, while appreciating the force of these arguments, refused to delete Section-376-A on the pretext of "not ignoring" the fact that even in such a case the bond of marriage was un-severed. Therefore, they elected to enhance the punishment while retaining the section. Thus, this report¹² upholds the recommendations of the previous Commissions but fails to keep pace with the changing laws on rape. Furthermore, in Indian cases even though there has been no reporting of marital rape cases, it has been observed by a few courts that under various treaties and conventions, they are expected to criminalize marital rape. Such backwardness of rape laws in India gets further enhanced, when seen in comparison to the rape laws in various other jurisdictions where marital rape has already been criminalized.

VII. LACK OF CRIMINALIZATION OF MARITAL RAPE IN INDIA

Marriage is considered to be a sacred institution that forms the foundation of our society. The State doesn't compel any two individuals to marry or divorce. However, the refusal of the State to enter this private space even in certain specific dangerous instances can be challenging. For instance, if a wife is subject to cruelty in a marriage, then the State will have to enter this private sphere to criminalize this act, and if the State does not do so, then the

¹⁰ AIR 2004 SC 3566

¹¹ R v. R, (1992) 94 Cr App R 216

¹² 172nd Law Commission's Report on Rape

woman will have no legal recourse. Thus, it is imperative for the State to pierce this private sphere on certain occasions. Marital rape is also a violation of the Fundamental Rights of a woman specifically under Articles 14 and 21 of the Constitution of India. If the State does not penetrate this private sphere, then a woman is left without remedy when subject to rape by her husband. It is necessary to examine the reluctance of the judiciary to engage with fundamental rights in the private sphere by tracing the course of the decisions with regard to “Restitution of conjugal rights”. This is because the constitutional law issues that arise with regard to RCR are parallel to the debate on marital rape. It is an apparatus, through which a court may pass an order compelling a married couple to live together, a restitution of a spouse’s conjugal right against the other. In India, this is found in Section-9 of the Hindu Marriage Act, 1956. The essence of the section is that, if a husband or wife is not living with their spouse ‘without any reasonable excuse’, then the court can grant a decree of RCR. RCR has been known to work to the disadvantage of women, as women are often forced to resume conjugal relations with their husbands, who maybe abusive or dominating. Here, similar to the debate on marital rape, the central question is whether the State can compel a woman to have sexual relationships with her husband, through the mode of RCR. This question has confronted High Courts and the Supreme Court and they have had to continually deal with challenges to its constitutionality.

The case of *T. Sareetha v. T. Venkata Subbaiah*¹³ was the first case to strike down the constitutionality of the RCR as given in the Hindu Marriage Act. The issue before the Court was that the Section-9 of the Hindu Marriage Act violated Articles 14, 19 and 21 of the Constitution. The Court agreed with this argument. The Court held that the RCR remedy was unconstitutional since it shifted the right of choice to indulge in sexual intercourse from the woman to the State. This violates Article- 21 of the Constitution since it infringes upon the personal autonomy of an individual. Furthermore, the Court accepted that women would be upset by this provision and notes the importance of sexual autonomy for a woman. The Court also states that “no positive act of sex can be forced upon the unwilling persons, because nothing can conceivably be more degrading to human dignity and monstrous to human spirit than to subject a person by the long arm of the law to a positive sex act”. Interestingly the Court also notes that even within the realm of marriage, the concept of forced sex can exist.

In the case of *Harvinder Kaur v. Harmander Singh*¹⁴, the Delhi High Court was also confronted with a petition challenging the constitutionality of the RCR. Departing from

¹³AIR 1983 AP 356

¹⁴AIR 1984 Delhi 66

Sareetha case, the Court upheld the constitutionality of Section-9 of the Hindu Marriage Act. In this case, the Court stated that the purpose of RCR is not to coerce a person to stay with their spouse, but rather to “protect the institution of marriage”. The court also refuses to accept that a decree of RCR would result in women being forced to resume conjugal relationships with their husband. However, the Court takes a progressive stance by mentioning that sexual relationships are not the only kind of relationship that encompasses a marriage. Nevertheless, again, the Court uses this ‘progressive’ understanding of marriage to ignore the fact that, when a woman is forced to live with her husband, there is a very high probability that she would be forced into sexual relationships as well. The Court turned a blind eye to this form of abuse by simply subscribing to the theory of Marital Privacy. The Court emphasized that the introduction of constitutional law into the ordinary domestic relationship of a husband and wife would strike at the very root of that relationship and would be a source of disagreement and quarrelling. By doing so, the Court refuses to even engage with the question of sexual and personal autonomy of the female, simply because it distances the debate of RCR from the constitution. Here, the Court has created a private sphere where the Constitution and the fundamental rights have no significance.

These cases indicate two views, which averts marital rape as an infringement of fundamental rights. First, that there is an impenetrable sphere known as the Marital Sphere, where constitutional law has no application. The impact of this is that while rape is seen as a violation of the fundamental right of a woman, this argument ceases to hold in the Marital Sphere. Traditionally, it was thought that law could not regulate certain private affairs of the family, and was thought to regulate mainly public affairs. However, this is now understood to be a misplaced notion of the role of law. There is no foundation for such an argument that constitutional law does not have place in the realm of the family matters. The Constitution assures equality and abolished practices such as untouchability even in private spaces, indicating the intention to break down these public private barriers. The PWDVA, 2005¹⁵ and Section-498A of the IPC already provide a range of civil and criminal remedies for women who are victims of forms of abuse in the marital sphere. This was to protect the rights of such women. Thus, the argument that there exists a sphere without any constitutional rights does not hold anymore and has lost its relevance in the present scenario. It is merely employed as an instrument to continue to cover certain forms of violence in the marital sphere that both the judiciary and the legislature are uncomfortable to acknowledge and address. Therefore, it can be argued that the Exception Clause in Section-375 of the IPC can be adjudged on the

¹⁵ Protection of Women from Domestic Violence Act, 2005.

basis of constitutional law.

VIII. ARGUMENTS AGAINST THE CRIMINALIZATION OF MARITAL RAPE

The general arguments against the criminalization of marital rape in different societies are as follows-

1. Criminalization would destroy the sacrosanct institution of marriage and disturb the balance of conjugal rights and obligations in a marriage.
2. Penalization of rape within marriage would enable the state to interfere and would be violative of the "right to privacy" understood to be granted under the Constitution.
3. It would deny the husband the right to have sex with his wife and would lead to encouragement of the offence of adultery as the husband would need to satisfy his sexual needs outside the marriage.
4. It would give an opportunity to the women to punish their husbands by threatening to file a complaint of marital rape against them.
5. The law would also have to rely upon the word of the wife, which complicates matters further since the wife could misuse the laws i.e. similar to the misuse of dowry laws and other rape laws.

The majority of the above arguments for not criminalizing marital rape are ridiculous, and suffer from serious drawbacks.

IX. THE ROLE OF CULTURE IN DETERMINING WHETHER MARITAL RAPE MUST BE CRIMINALIZED

Throughout history, Law and Culture have shared a symbiotic relationship with each influencing and being influenced by the other. However, the arguments against the criminalization of marital rape due to its impact on the cultural norms i.e. it being a private affair is irrelevant. First, because the matter of criminalization of marital rape is a matter relating to fundamental rights enshrined in the Constitution. Second, because having a law that moves against established cultural ideas is not unknown in our legislative history. The argument that a crime is culturally acceptable is not a reason to not criminalize it. If anything, it should act as a catalyst to the criminalization since it indicates a culture which is accepting toward a crime. This argument is especially relevant while discussing matters of rape simply because of the 'rape culture' that exists in society, more so, in cases of spousal rape. Just because our 'culture might not permit rape', does not undermine the unconstitutionality of

doing so.

X. PREVENTION OF MARITAL RAPE

Prevention of the abuse must occur at each of these levels i.e. Personal, Community and Society. At the Personal level, eradication of sexual violence necessitates men to recognize women as equal partners in relationship.

1. Changes in the behavior of men can be brought only when Courts, State and other National Legislative bodies hold men responsible for their behavior and work towards empowerment of all individuals regardless of gender.
2. Preventive measures at the Community level could highlight equality between the sexes
3. At the Societal level, prevention calls for an improvement of societal institutions and requires the development and implementation of strategies for creating socio-political change.
4. Women need to come out of the social taboos and develop a very pragmatic temper.
5. The judiciary should be trained and sensitized to treat women, especially on such delicate issues with empathy sympathy rather than as per the rigid technicalities of law.
6. The Women's Commissions and NGO's should be engaged in making the Legislature realize the need of passing specific laws to combat marital rape.
7. Recommendations already made on this issue need to be implemented and the opinion of the international forum on this should be respected.
8. The term marital rape often conveys the idea that it is only the woman, who is at the suffering end, but in today's changing world the concepts should not be given a constrained meaning, but should be assigned the broadest possible explanation. In respect of the above, marital rape should also be so defined that the victim of rape involved in marital relationship can be of either sex.

XI. CONCLUSION

The debate of marital rape is crucial in establishing substantive equality for married women who are otherwise relegated in public and legal discourse to the confines of their home. It is crucial to recognize that this is a major lacuna in criminal law at present defeating the constitutional provisions that grant women equality and autonomy. There have been rigid

political, legal and cultural arguments against criminalization. The provisions of the **Protection of Women from Domestic Violence Act, 2005** should be linked to the criminal provision i.e. **Section- 375 of the Indian Penal Code, 1860**, which will help all affected women in the country much more than the introduction of a separate charge of marital rape.

The criminal jurisprudence in our country should shift its view from the concept of criminology i.e. complete focus on punishing the culprit and towards victimology i.e. more focus is on providing complete justice to the victim in the form of both compensation as well as rigorous punishment to the culprit. The main roadblock in the way of a successful marital rape legislation is the outdated Exception-2, which has been appended to Section-375 of the Indian Penal Code, 1860, and must be either removed or amended, so as to include any such conditions or situations involving marital rape, so as the relationship of husband and wife between the culprit and the victim is not a defense to protect the culprit from the charge of rape and justice is provided to the victim.

Today, India's priority are economic reforms, that may have brought new fiscal policies, new economic strategies, but it fails to bring the much-needed change in the Freedom of Women. There needs to be a shift of focus from economic reforms towards social reforms in order to improve the status of women in our society and to be on a more progressive path instead of a regressive path by providing the much-needed justice to the victims of such a horrendous crime and shift the attitude of the society from Patriarchal norms to Matriarchal.
