

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 3 | Issue 4

---

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Decoding Exception 2: In Light of Legislative and Judicial Opinions and Suggestive Measures for a Better Tomorrow

---

CHHAVI SOMPURA<sup>1</sup> AND SHUBHANGI GEHLOT<sup>2</sup>

## ABSTRACT

*Sexual violence is one of the most prominent violence against women and a form of control over women. Sexual violence or sexual overpower is way to show dominance over women and most common in male dominant societies. It not only harms women's self esteem but also hazardous as it prevails in a society, widening the gender gap and inequality. A husband is supposed to be the protector of a woman but when he turns on her as a destructor; it leaves her hopeless and vulnerable to many such mental and physical disorders. In this article, through a doctrinal research we've tried to point out how big and serious the issue of marital rape is? What are the provisions in the current criminal law dealing with it? The infamous Exception 2 of Section 375 that has been the bone of contention. Further, we discussed what has been the legislature and the judiciary's take on it with a critical analysis. Lastly, we concluded with some suggestive measures for a better tomorrow.*

## I. INTRODUCTION

The concept of “marital rape” in India is the personification of an ‘implied consent’ where marriage between a man and a woman in India implies that both have consented to sexual intercourse and it cannot be otherwise, leading to encourage the patriarchy and orthodox family institutions. Indeed it is the harsh and discomfoting reality of many of the married women in India.

According to RIT Foundation, 1 in 3 men in India admit to raping their wives and one Indian woman is raped by her husband every 3 seconds<sup>3</sup>. These numbers are accelerating in a distressing manner. Dilaasa, a counseling centre based out of K.B. Bhabha Hospital in Bandra whose domestic violence data shows 60% married women report sexual violence, forced sex being its most common form. While marital rape gets documented in hospitals, cases are rarely

---

<sup>1</sup> Author is a student at Faculty of Law, Maharaja Sayajirao University Of Baroda, India.

<sup>2</sup> Author is a student at Faculty of Law, Maharaja Sayajirao University Of Baroda, India

<sup>3</sup> *Marital rape is not a crime in India. It needs to be*, EQUALITY NOW (Jan. 31, 2020), [https://www.equalitynow.org/marital\\_rape\\_is\\_not\\_a\\_crime\\_in\\_india\\_it\\_needs\\_to\\_be](https://www.equalitynow.org/marital_rape_is_not_a_crime_in_india_it_needs_to_be).

registered, since it is excluded from the India Penal Code's (IPC) definition of rape, says an analysis by Dilaasa<sup>4</sup>. Also, In a survey and reassessment of the laws of 82 countries, Equality Now found 10 countries in which forcing your spouse into sex is perfectly legal<sup>5</sup>. Unfortunately India is one of those ten countries.

With many debates and public uproars and petitions after petitions in recent past decades brought in significant positive amendments to the rape laws in India. But each and every time the bodies failed to recognise Marital Rape as a crime. With some sections of society standing for criminalisation and some against it, both putting forth respective opinions ranging from rational arguments to absurd statements. The issue is still a matter of debates in our country.

## II. MARITAL RAPE

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under given circumstances but it unequivocally avoids marital rape from its ambit. Marital rape which is forced sexual intercourse by spouse without the consent of other partner in the sanctity of marriage. It is violating the constitutional principle and rights of every possible victim of this heinous crime. Though it is transgression against a person's life, liberty and freedom but in Indian context it is mostly patriarchal in nature and is a part of domestic violence which determines forceful control of another individual's body and mind. Marital Rape literally means 'rape pertaining to marriage'. In case of marital rape the definition of rape doesn't change, it is the victim that makes all the difference. The fact that it is committed on spouse makes it immune from penalization.

**Section 375<sup>6</sup>** of the Indian Penal Code defines the offence of rape and provides the necessary ingredients for the constitution of the said offence. It includes all kinds of penetration and sexual assault upon the body of a woman. Earlier the code used to be very inconsiderate about the special need of laws for women but with the advent of movements and public uproars demanding amendments, the amendments of 1983 and 2013 took place as a result, in the criminal substantive and procedural laws. One of the features of amendment of 2013 which were recommended by the late J. J.S. Verma commission is that it broadens the definition of rape in section 375 and defines newer offences. This committee recommended several changes in the criminal law structure of the country, many of which the legislature approved and

---

<sup>4</sup> Roli Srivastava, *Marital rape: the statistics show how real it is*, THE HINDU (Updated: Sept. 16, 2016, 17:04 IST), <https://www.thehindu.com/news/cities/mumbai/Marital-rape-the-statistics-show-how-real-it-is/article14410173.ece>.

<sup>5</sup> Emily Shugerman, *There Are Still 10 Countries Where It's Legal To Rape Your Spouse*, REVELIST (Mar. 26, 2019, 01:26 PM), <https://www.revelist.com/world/countries-marital-rape-legal/7073>.

<sup>6</sup> Indian Penal Code, 1860 S. 375.

disapproved of. Though the definition is more inclusive yet it fails to serve most of the women in this country who have been raped. The reason is them being married and raped by their own husbands because this section excludes marital rape from being criminalized within its define. Marital rape is not a crime under Section 375 but there's one more provision in this code which partially criminalizes marital rape, **Section 376B**<sup>7</sup>, as it renders marital rape an offence during the period of judicial separation or during a period in which husband and wife are living separately either judicially or in observance any custom or tradition. In *BishnuDayal V. State of Bihar*<sup>8</sup> Supreme Court held having non-consensual and forceful sex with a wife living separately is punishable under Section 376B. Hence, living together raises a presumption that the wife has consented to sexual intercourse by the husband<sup>9</sup>. This is mostly because of the patriarchal nature of the society and the insecurity of the lawmakers mostly being males. Lawmakers in India have always been inconsiderate and insensitive towards the issues of women in society. This roots back to the thought that marriage is a contract and a wife in a marriage contracts to have conjugal relations with the husband and hence gives implied perpetual consent to the conjugal activities. Sir Matthew Hale writes in his *History of the Pleas of the Crown* (1736) — “But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract<sup>10</sup>.” Similar observations were made by Lord Halsbury and Lord Macaulay, the architect of the IPC as he didn't find it fit to consider marital rape within purview of rape in section 375 and while defining punishment for rape in section 359 and 360, however he did criminalize marital rape committed on child brides below the age of 10 years. Unfortunately this ideology and thought persists till now in the minds of lawmakers and they haven't considered criminalizing marital rape in India yet. Parliamentarians in the current government such as “Maneka Gandhi stated the inability to make marital rape an offence or even a ground for divorce is because of the immature, illiterate and poor condition of society, that is bound by countless customs, values and religious beliefs and considers marriage as a sacrament doesn't allow the legislature to interfere within this institution<sup>11</sup>”. The question arises whether they consider marriage as a contract which provides eternal consent on behalf of the wife or a sacrament that is so private and holy to intervene in?

---

<sup>7</sup>Indian Penal Code, 1860 S. 376B.

<sup>8</sup>*BishnuDayal V. State of Bihar*, AIR 1981 SC 39.

<sup>9</sup>Raveena Rao Kallakuru & Pradyumna Soni, *Criminalisation of Marital Rape: Understanding its Constitutional, Cultural and Legal Impact*, 11 NUJS L. Rev. 4 (2018).

<sup>10</sup>Deya Bhattacharya, *Marital rape: Legitimised by law, protected by courts*, FIRSTPOST (visited on: July 20, 2020), <https://www.firstpost.com/long-reads/marital-rape-legitimised-by-law-protected-by-courts-3401002.html>.

<sup>11</sup>*Id.*

Are poor and illiterate people not entitled to bodily autonomy?

But in reality, for Hindus the sacred nature of marriage got disrupted way back and for Muslims its always been a contract, so the idea that the nature of society and that of marriage is a reason for not criminalizing marital rape or making it a ground for divorce is vague, confused and shadowed by the insecurity, insensitivity and normalization of the issue.

### **III. THE INFAMOUS EXCEPTION 2 AND THE LEGISLATIVE AND JUDICIAL VIEWS ON MARITAL RAPE:**

In the allegedly sacred relationship of marriage, it is generally expected by patriarchal stereotypes from the wife to be caring, helpful, always available at the service of the husband taking care of his needs. Very often these kinds of expectations have the most misguided and fallacious intentions. Society disguise all this up with some random titles for women such as 'Homemaker' and wraps these titles with 'sheets of honour' to make them look like something of real honour when in reality it is nothing but a trickery to trick women and make them feel like whatever they are doing by losing their own identity, choices, likes and dislikes is the most honoured and privileged thing to do. Those women who do not conform to these ideas are 'bad wives' and shunned by society's stereotypical thoughts and acts. Girls herein are taught from the very beginning till they come of age to be a good wife and by good wife they mean the caring and servile one.

Lawmakers as well as jurists in India have a similar bias and have always refrained from answering the question of marital rape. Be it judiciary or legislature both in very many instances denied the women of this country their bodily rights. Where on part of the legislature, neither did it pay any heed to repeal or strike down the infamous Exception 2 of Section 375 nor did it criminalize marital rape, showing the utmost insincerity towards half of its citizens. On the other hand, the judiciary, the last resort of any aggrieved person also denied women a fair deal. There are many cases wherein judiciary tried to bypass the cases presented before and refrained from making any comment in this matter. However, there were also cases in which the judiciary did take a step ahead towards equality. The bone of contention in this matter is this exemption given to husbands under section 375 of IPC which provides that husbands can rape their wives whenever, wherever and whatever times they want with impunity. This Exception reads, *Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*<sup>12</sup>.

---

<sup>12</sup>supra note 5.

This exception is the sole reason married women in this country get trapped into abusive marriages and cannot get out of it as this exception legalizes rape committed on married women by their own husbands. This doesn't only is a hurdle between justice and the aggrieved person but also a demeaning factor to Section 375, the sole purpose of which is to protect women. It defeats the objective of the said section, further; it is discriminatory towards the women as it creates reasonless classification among women and violates the fundamental rights given in Article 14, 15 and 21. The Apex Court in *State of Bengal v Anwar Ali*<sup>13</sup> held that 'any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that can be passed only if the classification has some rational nexus to the objective that the act seeks to achieve'<sup>14</sup>. Ideally it should've been repealed for being unconstitutional within definitions of Article 13, which says; 'any law in derogation of fundamental rights shall be void'. Here it is violating fundamental rights of almost half the population and it is not removed yet. Some parliamentarians like Haribhai Choudhary have gone on record to say the most bizarre things. He unabashedly argued against the criminalization of marital rape and then went on to say that, "Government is proposing to dilute of Section 498A of IPC because as per the law commission this important provision is being misused"<sup>15</sup>. While these comments are proof of the tone deafness of the government towards women, the media's welcoming of these comments is shocking and distressing. The only opposition to this comment came from Maneka Gandhi as she stated that any such dilution will be detrimental since the said section is the only criminal provision available to women's redressal. In another such instance when Delhi HC while hearing a petition to criminalize marital rape it sought a reply from the government, the centre through an affidavit replied, "It has to be ensured adequately that marital rape does not become a phenomenon, which may destabilise the institution of marriage apart from being an easy tool for harassing the husbands"<sup>16</sup>.

While there are these depressing incidents, there are also some incidents which are not less than a bright ray of hope in a dark cell, the recommendations given by the late JS Verma J. Commission.<sup>17</sup> The committee also commented on the exception in law saying, "the exemption

---

<sup>13</sup>State of Bengal v Anwar Ali, AIR 1952 SC 75.

<sup>14</sup> Sarthak Makkar, *Marital Rape: A Non-criminalized Crime in India*, HARVARD HUMAN RIGHTS JOURNAL (Jan 1, 2019), [https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/#\\_ftn1](https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/#_ftn1).

<sup>15</sup> Agnes, F., *Section 498A, marital rape and adverse propaganda*, RESEARCHGATE (2015), [https://www.researchgate.net/publication/297921541\\_Section\\_498A\\_marital\\_rape\\_and\\_adverse\\_propaganda](https://www.researchgate.net/publication/297921541_Section_498A_marital_rape_and_adverse_propaganda)

<sup>16</sup>PTI, *Criminalising marital rape may destabilise institution of marriage, Centre tells HC*, THE HINDU (Updated: Aug 29, 2017 18:55 IST), <https://www.thehindu.com/news/national/criminalising-marital-rape-will-destabilise-marriage-govt-tells-hc/article19581512.ece#>.

<sup>17</sup> Justice J.S. Verma Committee, Report of Committee on Amendments to Criminal Law (January 23, 2013).

for marital rape stems from a long outdated notion of marriage, which regarded wives as no more than the property of their husbands<sup>18</sup>.” While considering the changes proposed by the committee parliament approved many of the changes barring this one. It just didn’t consider making marital rape an offence or even a ground of divorce. The recommendations of the commission after a public outrage and demand to amend the criminal laws following the brutal Delhi gang rape are surely the ones to look to while thinking about modifying the laws to favour women’s better condition in the country. This three member panel suggested that, “The law ought to specify that marital or other relationship between the perpetrator or victim is not a valid defense against the crimes of rape or sexual violation,” the committee said in its report. The committee said the “relationship between the accused and the complainant is not relevant to the enquiry into whether the complainant consented to the sexual activity and the fact that the accused and the victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape<sup>19</sup>.” The recent private member’s bill, ‘The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018<sup>20</sup>’ introduced by MP Dr. Shashi Tharoor proposes to criminalize marital rape and many other rights to women of this country. As Mr. Shashi rightly said and I quote, ‘Marital rape is not about sex, but about violence; it is not about marriage, but about lack of consent. Rape is rape and it should be penalized whenever and wherever it occurs<sup>21</sup>.’ This kind of bill surely boosts confidence of human rights and women’s rights activists and gives a kind of assurance that there will be a time when we’ll not have to struggle for basic rights.

Unlike the legislature, the judiciary is not a privileged body. It cannot make laws, it can only give suggestions, guidelines and render provisions which are against the spirit of the constitution as unconstitutional. Despite all these judicial activism is at its peak in today’s era. Judiciary in India is the guardian of fundamental rights of its citizens and regarded as the last resort to settle disputes and claims. Talking about marital rape or rape in general the Indian Judiciary has evolved over the years; coming out of the colonial mindset to establishing benchmarks; it has seen and been through all. The evolution of judiciary and of case laws in

---

<sup>18</sup>Special Correspondent, *Marriage is not a valid defence against rape, says committee*, THE HINDU (updated: Sept 06, 2016 12:26 IST), <https://www.thehindu.com/news/national/marriage-is-not-a-valid-defence-against-rape-says-committee/article4351148.ece#:~:text=Verma%20committee%20has%20said%20marriage,against%20sexual%20crimes%20like%20rape.&text=%E2%80%9CAccording%20to%20the%20common%20law,her%20husband%20at%20his%20whim.>

<sup>19</sup>*Id.*

<sup>20</sup>Dr. Shashi Tharoor, M.P, *The Women's Sexual, Reproductive And Menstrual Rights Bill, 2018*.

<sup>21</sup>Utkarsh Roshan, *‘Marital Rape Is Not About Marriage, But About Lack Of Consent’*: Shashi Tharoor, THE CITIZEN (Jan 10,2019), <https://www.thecitizen.in/index.php/en/NewsDetail/index/7/15986/Marital-Rape-Is-Not-About-Marriage-But-About-Lack-Of-Consent-Shashi-Tharoor>.

respect to rape and marital rape has been equally dramatic. The way we got our most important amendments in criminal law i.e. after the infamous case of *Tukaram and Anr v. State Of Maharashtra*<sup>22</sup> that resulted in The Criminal Law Amendment Act, 1983 and after three decades The Criminal Law Amendment Act, 2013 shows the incapacity of our lawmakers and our society to look far enough to acknowledge the need to make and amend laws in a way to protect the women of our society. Talking about the cases directly taking on marital rape, *State vs. Vikash*<sup>23</sup> a case from a Special Fast track Court in Delhi ruled that intercourse between husband and wife, even if forcible, is not rape<sup>24</sup>, it observed that if the marriage is valid and legal and the wife is not a minor then the sexual intercourse between the two even if forcible doesn't make it culpable or the husband liable in any case. Such a ruling is perfectly not something which encourages the disparity between the two genders. Here, they completely overlooked the violation of basic human rights and constitutional guarantees. Another most recent PIL filed by lawyer Anuja Kapur to amend Section 376B to change it to a provision protecting married women against forced and non-consensual sexual intercourse by their husband in the course of her marriage and not particularly during separation. She also sought for making laws and bylaws regarding marital rape as a ground for divorce and to decide appropriate punishment and penalties<sup>25</sup>. The Supreme Court in return refused to entertain this plea and directed her to approach any High Court. We certainly don't know the reason behind the refusal and directions of the Apex Court but these instances show the resistance on behalf of the judiciary to address the matter.

It's not that the judiciary has always been indifferent towards women; indeed there have been many cases in which the courts upheld the interests of women. In cases like *State of Maharashtra v Madhkar Narayan*<sup>26</sup> in which Supreme Court talked about women's sexual privacy and bodily self-determination, also in case of *Bodhisattwa Gautam versus Subhra Chakraborty*<sup>27</sup> it held that rape is a crime against basic human rights and violation of right to dignified life under under Article 21 of constitution. In the case of *Justice K.S. Puttaswamy (Retd.) v Union of India*<sup>28</sup> held that the right to privacy also includes the right to sexual privacy.

---

<sup>22</sup>Tukaram and Anr v. State Of Maharashtra, 1979 AIR 185.

<sup>23</sup>State vs . Vikash, In the Court Of Sh. Virender Bhat, A.S.J. (SPECIAL FAST TRACK COURT), Dwarka Courts, New Delhi, 2014.

<sup>24</sup> *supra* at 9.

<sup>25</sup>Original Source:IANS, *SC refuses to entertain PIL seeking law against marital rape*, OUTLOOK (updated at Jul 4, 2019, 4:36 PM), <https://www.outlookindia.com/newsscroll/sc-refuses-to-entertain-pil-seeking-law-against-marital-rape/1565608>.

<sup>26</sup> State of Maharashtra v Madhkar Narayan, AIR 1991 SC 207.

<sup>27</sup> Bodhisattwa Gautam versus Subhra Chakraborty, 1996 SCC (1) 490.

<sup>28</sup> Justice K.S. Puttaswamy (Retd.) v Union of India, AIR 2017 SC 4161.

In the recent case of the *Independent Thought v Union of India*<sup>29</sup> wherein the Supreme Court extended the age of wife from 15 years to 18 years under Section 375, which means rape committed on a minor wife (below 18) will amount to rape under Section 375 and will be prosecuted. This ruling was a trendsetter in itself as it criminalizes rape on minor wife and includes child brides under the POCSO Act, providing them the desired protection from the cruelty of rape. Further in 2018 J. JB Padriwala in the case of *Nimeshbhai Bharatbhai Desai v. State of Gujarat*<sup>30</sup> said the attitude that promotes rape in a marriage can be removed only by making marital rape “illegal or an offence”. He also observed that “a wife is not a chattel and a husband having sexual intercourse with his wife is not merely using a property, he is fulfilling a marital duty with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing his wife to engage in a sexual act without her full and free consent<sup>31</sup>”. Such observances made by these eminent jurists shows that our judiciary is way ahead of our legislature and now it's time our legislature realize it. In the case of *Rafique v. State of UP*<sup>32</sup> Justice Krishna Iyer observed “When a woman is ravished what is inflicted is not merely physical injury, but the deep sense of some deathless shame” “...Judicial response to human rights cannot be blunted by legal bigotry<sup>33</sup>.” He also made a similar observation when he said, “that the Constitution embraces substantive equality, it is desirable that a married woman is treated at par with other women by defying the myth of irrevocable consent to marital rape<sup>34</sup>”. Addressing a petition filed by NGO RIT Foundation and All India Democratic Women’s Association to criminalise marital rape, division bench of Acting Chief Justice Gita Mittal and J. C Harishankar reasoned the issue very well. J. Gita Mittal stated, “Nowadays [the] definition of rape is completely different. [That] rape by husband has to [be] accompanied with force is a myth<sup>35</sup>,” further, the bench retorts the respondents’ arguments saying; “A rape is a rape. Is it that if you are married, it is okay but if you are not, then it’s a rape? ... Force is not a precondition for rape<sup>36</sup>.” The case is still sub-judice and we hope with this kind of reasonable and just judicial observations it ends in favour of women of this country.

---

<sup>29</sup> *Independent Thought v Union of India*, AIR 2017 SC 4909.

<sup>30</sup> *Nimeshbhai Bharatbhai Desai v. State of Gujarat R/Criminal Misc. Application Nos. 26957, 24342 of 2017 and R/Special Criminal Application No. 7083 of 2017.*

<sup>31</sup> Saba, Marital rape: A husband cannot be permitted to treat his wife like a chattel and violate her dignity, Scconline (Apr 18, 2018), <https://www.scconline.com/blog/post/2018/04/18/marital-rape-a-husband-cannot-be-permitted-to-treat-his-wife-like-a-chattel-and-violate-her-dignity/>.

<sup>32</sup> *Rafique v. State of UP*, 1981 S.C.R. (1) 402.

<sup>33</sup> Shivika Choudhary, *Marital Rape: An Evaluation of the Patriarchal Injustice in the Criminal Law (Amendment) Act, 2013*, Christ University Law Journal, 3, 2 (2014), 97-112 ISSN.

<sup>34</sup> *Id.*

<sup>35</sup> Urviya Banerji, *Delhi HC on Marital Rape: “A Rape Is a Rape.”*, THE SWADDLE (Jul 18, 2018), <https://theswaddle.com/delhi-high-court-on-marital-rape-a-rape-is-a-rape/>.

<sup>36</sup> *Id.*

Getting this kind of support from these eminent scholars not only boosts our confidence but also revives our faith in the Indian judiciary and judiciary has not failed in doing that from time to time. All these cases are definitely a step ahead in protecting, empowering and uplifting women.

#### **IV. SUGGESTIVE MEASURES AND CONCLUSION**

It is a necessity to understand that Marital Rape is a socio-legal mishap which needs to be criminalised because by limiting the offence to women who are not married to the perpetrator, rape laws become discriminatory and deny equal protection to a class of persons (married women), on the account of their marital status leading to prima facie violation of Article 14 and 21 of the Indian Constitution. Also by not criminalising we are sending an utter wrong message that forced conjugal relations; even violent encounters are a socially acceptable behaviour which they are obviously not. Not criminalising impliedly means that women lose their bodily rights and privacy the moment they enter into a marriage. Marital rape is not only an issue of women's autonomy over their body but also poses great threats to their gynaecological and mental health. With this, the scope of health and criminal justice must be widened to reach and support victims.

Prevention approaches need to engage male members regarding women and girls', sexuality, and sexual entitlement, premarital counselling about healthy and respectful sexual relationships, increased national and local surveillance to track sexual violence victims.

Moreover, there is lack of both authentic research and government data on domestic violence specifically on marital rape which poses a major hindrance in making efforts and legislation by the government. In this case the data collected by the NGOs and other such organisations should also be given importance in determining the conditions and they are promoted and well funded so that they can spread awareness & help women at ground level.

The second most frequent problem is the inactivity of police departments in such cases and not just police, judiciary and elected representatives also often remain insensitive and indifferent to such problems, for this a compulsory gender sensitive training should be given to all three bodies for sound and effective practice.

Centre for Complaints should be made in every district or in such vicinity that they are accessible by women. Also an effective planning and implementation is required to sensitise the society and spread awareness.

There's an urgent need to break the ceiling of institutionalisation of marriage and the private

sphere overshadowing human rights, also we need to combat the social stigma surrounding marriage and separation.

There's also a lack of constructive discussion on marital rape in the parliament that results in a stagnant position of the issue. Also we need to address the dearth in numbers of women parliamentarians (currently 78 and 25 out of the total in Lok Sabha and Rajya Sabha respectively).

After reading and studying extensively on the issue all we can conclude is that there is an urgent need to criminalise marital rape and of course we do have alternatives but our focus shouldn't be alternatives but a concrete law. The relationship of husband and wife is, was and will never be a valid defence for the offence of RAPE. At last, all we can agree is with Vrinda Grover when she says, "You can't lodge a criminal complaint of rape against the husband, it is written in the law<sup>37</sup>." We hope with our fingers crossed that someday this statement will be negated.

\*\*\*\*\*

---

<sup>37</sup> *supra* note 9.