



Criminalising marital rape: a step towards turning the pseudo concept of gender justice into perceivable reality

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Abstract

It is thought that the Human Rights violations are recognized, however, gender-specific violence like marital rape remains to be out of the scope of both the criminal law sanctions and the human rights violation in most of the countries particularly, in a developing nation like India. The silence that prevails in this sphere of law gives men the legal impunity to sexually assault their wives or intimate partners at their own whims and fancies. The article sets out with the meaning and the historical origin of the concept of marital rape. It then attempts to set out the laws prevailing in India furthermore, examining the contemporary arguments both in favor and against the criminalizing of the Marital Rape exemption provided to the men. By making a comparative analysis of the laws prevailing in other countries, the article evaluates the need and the utmost necessity to criminalize marital rape in India. And, finally, the article analyzes the law in various perspectives and also recommends and suggests reforms to be made in the Indian Criminal Justice System.

Keywords: Conjugal, Crime, Criminalizing, Criminal Amendment, Law, Marital Rape, Sexual.

"Marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistresses of every house." (Mill, 1869, p21)

1. Introduction

Crimes against women have become a grave issue not only because of the concomitant sociological, psychological, and physical trauma but also because of the increasing acceptance and endurance exhibited by the society to such crimes; an endurance which is wedded in the current rule of Law. The wives in India are considered and treated as legal slaves in every household. A societal issue which in reality has received only limited attention by the state to bring into the mainstream form of Law, especially in India, is Marital Rape. India still aims to equip the men with all the conjugal rights and one such example is an exception clause in favor of the husbands raping their wives i.e. immunity conferred on the husbands from committing Marital Rape. The criminal justice system in



India deals with the cases of battery and rape, however, forced sexual intercourse i.e. Marital Rape still remains unaccounted for in India.

2. The Connotation of Rape & Marital Rape

Marital Rape is a contributor as well as a productive factor to Women's inequality in Indian society as well as internationally. The most heinous of all sexual offenses that can be thrust upon a person is Rape that robs the sufferer of her prestige, self-dignity, and respect. In a common man's dictionary, the definition of marital rape is "forced and unwanted sexual intercourse" (Mckinnon, 2006) and "coercion is considered as a fundamental factor in defining it as a crime of inequality" (Mckinnon, 2006). Rape is that crime which socially ostracizes a woman, leaving indelible psychological, physiological and sociological ramifications. In the words of Susan Brownmiller, "Rape became not only a male prerogative but man's basic weapon of force against a woman, the principal agent of his will and her fear. His forcible entry into her body, despite her physical protestations, became the vehicle of his victorious conquest of her being, the ultimate test of his superior strength, the triumph of his manhood" (Brownmiller, 1975).

Marital rape persists as long as the marriage lasts (Nico.P et al., 2015). One of the most ubiquitous and enduring types of crime is Marital Rape. According to Frieze et al. (1983), the idea apropos about Marital Rape is that "many find difficult to comprehend", individuals fail to consider the forced sex that exists in a marriage as a crime. From the legal perspective, the wife can never revoke her original consent given at the time of her marriage and her husband can therefore never be considered and held guilty of raping her (Frieze et al., 1983). A consent which cannot be revoked is given by the wife during her marriage. This consent is to have sexual intercourse with her husband under any circumstance as against her health or her state of mind and feelings at that particular point of time (Frieze et al., 1983). Unwanted intercourse where the perpetrator is the husband and the victim is none other than his wife it is known as Marital Rape. Marital Rape is considered to be a non-consensual act where the husband conducts violent perversion against the consent of her wife, as a result of which the wife is abused both mentally and physically. Marital Rape is considered to be the most heinous of all types of rape, which all the more is highly complicated to establish, which is discussed in the latter part of the paper. The relationship is considered to be very personal in nature between the husband and wife and therefore, it becomes even more difficult for the victim to see herself as a victim.

3. Theories and Problems of Marital Rape

According to Pracher et al. (1981) there exist various traditional theories which are used for legal justification of marital rape. The various forms of theories are the contract theory, the consent theory, the theory of marital unity and woman as property. The contract theory evaluates and emphasizes that the consent given by wife for sexual intercourse is an "inherent part of the contract of marriage" (Pracher et al. 1981) and also is "assumed in favor of the husband" (Yadav et al., 2012). The contract theory can be criticized on the very foundational basis that substantially, 'by a contract of marriage the



husband is receiving a license or an authority over the wife's sexual autonomy (Yadav et al., 2012). The implied consent theory emphasizes that a woman, after her marriage expressly or impliedly consents to have sexual intercourse with her husband and "at any time and under any circumstances". This theory propounds the dominant nature of the husband where the husband refuses to understand the circumstances of the wife when she refuses to have sex with him.

The point of view given by Jackson et al. (1994), it gives an absolute right to the husband over her wife, as has also been seen, in a case, where the wife had gone through a surgery (Adamo, 1989; Finkellor & Yllo, 1985). After returning from the surgery the wife was forced to have sex with her husband and then, later on, had to return to the hospital on the account of hemorrhage (Adamo et al. 1989; Finhellor et al. 1985). Thus, an implied consent theory may be considered a violation of the human rights of a woman. Unity theory as explained by Blackstone, "[b]y marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into [her] husband" (Jackson et al. 1994). This theory propounds women to be considered as nothing more than a chattel (Jackson et al. 1994). Critiques never fail to criticize any theory and therefore this theory doesn't fall short of that. At a time when women's rights are being emphasized throughout the world, this theory has received wider criticisms. Various courts, particularly, the English and the US Courts, have largely rejected this theory, observing that "in a modern society a woman cannot be looked at a mere marital property or demeaned by denial of a separate legal identity" (Jackson et al., 1994).

As stated by Siegel et al. (1995) there have been various arguments which find consonance with the exemption clause of the marital rape – that the criminalization of marital rape will have a tendency to increase the rate of false accusation; the degree and intensity of seriousness is considered to be less in marital rape when compared to other rape; the complication in proving the lack of consent or proving of marital rape "where a wife's word is placed against her husband's". However, these are considered to be the modern arguments, which have been recurrently argued to lack merit, have been formed "to foster the patriarchal notions about women in marriage" (Siegel et al. 1995). The aforementioned theories have been considered to be developed on the basis of the declaration given by Lord Matthew Hale, however, the declaration and the logic behind the Hale's argument was highly criticized and challenged on several occasions. The statement was given by Hale on marital rape exemption "was without other explicit supporting authority" (Pracher et al. 1981) and was, therefore criticized by the English Justice Field (Siegel et al. 1995) in the case of Regina v. Clarence ([1889] 22 Q.B. 23.). "The lack of authority" has also enchanted and welcomed the criticisms given by other courts which have made an observation that exemption is not "implicit in the common law" rather "husband has the duty to protect his wife" (Hasday, 2000). "Modern critics" make a point to the notion of Hale also emphasize that a woman may consent to sex after marriage but in any case or circumstance "she is most certainly not consenting to rape" (Finkellor & Yllo, 1985). A woman, consents to sex post marriage, however, this does not imply that she also consents for rape (that is when the husband has sexual intercourse with her wife without her



consent). As against Hale's declaration, there have been several theories have been promulgated and propagated to emphasize and explain the need for the criminalization of marital rape. Few among all the theories are the feminist theory, social constructionist theory, and sex-role socialization theory (Martin, Taft & Resick, 2007).

The Feminist theory emphasizes that women are subordinated in a marital relationship which leads to gender inequality (Hasday et al, 2000). The feminists in order to ensure gender equality propagate that women should also have the rights to set equal terms in sexual intercourse in a marriage (Hasday et al, 2000). Social Constructionists' theorists emphasize that marital rape represents those men who want to extend on holding to the "traditionally held power" (Martin et al., 2007) of being dominating over women which ultimately leads to gender inequality. The sex-role socialization theory evaluates that marital rape as an offense is an exaggeration of the sex-role socialization. This is so because the gender-specific behaviors of men are considered to be of a dominative character and the women's nature of behavior is considered to be that of submissive owing to their "wifely duties" (Martin et al., 2007). However, on a notion against to this, criticizing the concept of marital rape by these theorists, Simonson and Subich, "in a sample", found that "people perceive marital rape as less detrimental than a stranger, acquaintance and date rape" (Martin et al., 2007). "But it is important to consider here that rape in marriage, in the long term, may regulate the victim's and rapist's reaction instilling fear in the victim and aggression or obsession in rapist which may prove detrimental psychologically in the long run" (Miller, Williams & Bernstein, 2007).

4. Antiquity of the Tantalizing Cult

If considered from the notion of the past, then historically, a man raping his wife could not be prosecuted or held guilty (Mill et al. 1869). The exemption clause for Marital Rape has its foundational basis from the long-obsolete concept of marriage which regarded 'wives as no more than a chattel (property) of their husband'. Common Law coverture lays down that, (the legal status of a married woman, considered to be under her husband's protection and authority) a wife had given consent during her marriage to have sexual intercourse with her husband at his whims and fancies and this consent was considered to be irrevocable.

This can also be verified from the statement given by Sir Matthew Hales back in 1736. Sir Matthew Hale in his book *Historia Placitorum Coronae* (Hale, 1736) stated that, "The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract" (Hale et al., 1736). This particular statement of Sir Matthew Hales has received much criticism. The Modern laws and commentaries indubitably question the veracity of the statement given by Matthew Hales, however, this statement would still remain the basis for successful arguments against the spousal rape laws particularly in the Common Law Countries. To validate this point an example that can be referred to is: Massachusetts in the United States was the first state to invoke Hale's view. In 1857, in the case of *Commonwealth v. Fogerty* ([1857] 8 Gray 49); Massachusetts joined the other 49 states of the United States of America, adhered to the irrevocable consent



theory until the 1970s. Sir Matthew Hales wrote in a time when the women were considered to be no less than property for her husband. The legal fiction of marital unity which was established by the English jurist led to believe that post marriage, husband and wife unite. This marital unity led them to become one legal entity mostly in the form of the husband. Wives were not allowed to have a property in their name. In other words, if this legal incapacity of the women justified the exemption of the Marital Rape, it would not have survived outside 19th century, when the legislation in different parts of the world, including Britain, gave rights to women to have a property of their own. There have been several traditional forms of justifications for the marital rape exemption.

These were the common law doctrines which stated that women were nothing more than property to their husband and that the legal existence of women was "incorporated and consolidated into that of a husband" (Harvard Law Review [Harv. L. Rev], 1986). However, the Marital Rape exemption was for the very first time discussed in the superior most court of England in R v. Clarence ([1889] 22 Q.B.D. 23). 'The defendant wasn't charged with rape this case became a precedent for a wife to protect herself from non-consensual sex as opposed to Sir Hale's biased statement.' Furthermore, the first attempt to prosecute a husband for the crime of Marital Rape in England was in the case of R v Clarke ([1889] 22 Q.B.D. 23). It was in this particular case that the court did not find any reason to be applied for the exemption made by Sir Matthew Hales. In spite of this, it took years to criminalize Marital Rape in England. Marital rape exemption was abolished first in the case of R v R ([1991] UKHL 12) by the unanimous decision of the appellate court in the year 1991. It was held, that "the fiction of implied consent has no useful purpose to serve today in the Law of Rape". Hence, this was the beginning of the Criminalization of the Marital Rape and also it led to the destruction of the demand of the conjugal rights by men.

Most Common Law Countries have in some way or the other abolished the exemption clause in case of Marital Rape. However, the need for the criminalization of Marital Rape in India is still felt by many feminist philosophers, legislators etc.

5. International Frame of Reference

Husbands who rape their wives would never define themselves as a rapist because it is their belief that they possess a conjugal right that is to have sex with his wife even when the wife does not consent. There has been an exemption clause of Marital Rape that prevailed in the Common Law Countries (Britain) in which the husbands were provided with the immunity of not being liable for committing the offense of Marital Rape. In most of the major jurisdictions and laws, this immunity has been considered to be withdrawn. The House of Lords in England and Wales held in 1991 that the status of a woman who is married had changed beyond all recognition since Hale set out his proposition (Painter, 1991). Most importantly, Lord Keith, while speaking for the Court in the case R v R ([1991] UKHL 12) declared that "marriage is in modern times regarded as a partnership of the equals, and no longer one in which the wife must be subservient chattel of the husband." In the case of C.R. v. U.K., the judgment laid down that a rapist will always remain a rapist irrespective of his relationship with the victim.



In the U.S.A., prior to the 20th Century, there existed a law which exempted the men from marital rape. The States embraced the Model Penal Code and the first state to criminalize Marital Rape was Nebraska. However, the turning point was the case of New York in *People v. Liberta* ([1984] 100 A.D. 2d 741). Marital Rape became an offense and was considered a crime as of 5th of July, 1993, in all the fifty states under one or other section of the sexual offenses code. The provisions of the Criminal Code in Canada, that denied criminal liability for marital rape, were repealed in 1983. Marital Rape is now considered to be a crime in Canada. South Africa reversed the common law principle and has criminalized marital rape in 1993. The provision laid down in the common law or in the principle of marital rape immunity was legislatively abolished by the Australian Court in 1976. In 1991, the Australian High Court had no doubt that: "if it was ever the common law that by marriage a wife gave irrevocable consent to sexual intercourse by her husband, it is no longer the common law."

The "United Nations Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW), has emphasized that this type of discrimination against women (marital rape immunity) violates the principles laid down in the jurisdiction of the democratic nations like the principle of equality and the principle of human dignity. Further, the Commission on Human Rights has also emphasized in the resolution titled "The elimination of violence against women" that marital rape should be criminalized.

6. Marital Rape Exemption in India

By fact, marital rape exists in India but not by law. Though the legal jurisprudence in India has advanced in matters pertaining to domestic violence by the enactment of the Domestic Violence Act, the legislation has failed to criminalize the sexual abuse of such crimes and have concentrated more on the physical abuse. Section 375 of the Indian Penal Code lays down an exception for marital rape and therefore, women who experience and wish to confront sexual violence in marriage are denied the right owing to the said exemption. A wretched reminder of the inferior status given to the women in our society, which is almost akin to chattel is Section 375 of the Indian Penal Code.

Law Commission Reports

The 42nd Law Commission Report had proposed the consideration of including the sexual intercourse or conjugal assault committed by a spouse against the minor spouse to be a criminal offense. In any case, the Joint Committee had checked on the proposition but, expelled the thought proliferated by the Report. The Committee's contention was that the spouse can never be found blameworthy of assaulting his spouse irrespective of the age of the spouse. According to the Committee, sex appeared to be a part and parcel of a marriage. It was in 1983 that Indian Penal Code was revised and segment 376-A was included which criminalized the assault of a judicially isolated wife by her spouse. Be that as it may, this headway within the enactment does not annul conjugal assault and moreover, gifts a spouse to assault his lawful spouse as the exemption beneath Section 375 still remains. Furthermore, the Justice Verma Committee Report moreover suggested that the conjugal assault immunity ought to be criminalized. It too included and emphasized that a



relationship whether marriage or an intimate relationship cannot be respected as a mitigating factor which legitimizes lower sentences for committing assault. Subsequently, what can be induced from the over discourse is that all the suggestions concentrate on one common objective that's of raising the spousal rape. Non-endorsement of criminalizing marital assault within the Criminal Amendment Act 2013 is in itself an inadequacy within the Law. It is undoubtedly a factor of disappointment that the Criminal Amendment has failed to address the issue of conjugal rape indeed after a long time of talk and proposals. The different criminal law reports and the proposals have all fallen to deafening ears.

7. The Need for Criminalization of Marital Rape in India

A woman may be considered as a slave if she is trapped in a relationship in which she is constrained to have sex against her wishes. According to some, marital rape may be considered as a mirror which reflects the perversity of an individual, whereas others accept it to be a common fall-out of a sexist social order. The international instruments like the Vienna Declaration and CEDAW provide for the annihilation of clashes which may emerge between the "rights of the women and traditional or customary practices" and to curb all the practices that has its basis on "the idea of inferiority or superiority of either of the sexes" (Eriksson, 2010).

In accordance with the above mentioned international principles, nearly 76 states have criminalized marital rape a few of these nations include Canada, France, Argentina, Bhutan, Brazil and Iceland (Singh, 2013). The belief of the lawmakers is that criminalizing marital rape cannot be considered as plausibility in India because of several reasons like destitution, religious beliefs, social traditions and the mindset of the Indian Society to treat marriage as a sacrament, amongst other socio-economic issues. It is indeed shocking to know that, in the present time and in the 21st-century women are still treated and considered as a property. India is considered to be the world's largest democracy and the biggest majority ruled Government has passed innumerable gender-sensitive laws, be as it may, has not yet taken the cognizance that, when a woman's home turns into her hell, the law needs to be her most grounded bolster. For over more than half a century now, the rest of the world has understood this and hence, has criminalized marital rape. Poland had passed an enactment on criminalizing marital rape as early as in 1932, from thereon Czechoslovakia followed the suit in 1950 and then it was the Soviet Union to have followed the same.

Today, most countries all across the globe including religiously conservative ones like Ireland and Israel have passed laws criminalizing marital rape. So why do our legislators still drag their feet, ducking under excuses of marriage being sacrosanct? What is to be considered is that the concept of Femininity has come to be linked with submissiveness in sexual relationships i.e. the power of men and powerlessness of women. Though the Criminal Justice System of India deals with wife battery and rape, forced sexual intercourse between husband and wife is still not accounted for.



8. Socio-political Understanding and Public-Private Divide

Husband has a demand of conjugal rights and the legislative framework of India does not define marital rape in accordance with the Victim's experience. An Institution of marriage is considered to be sacrosanct and the state's posture of non-interference in this private realm only serve to reinforce the guilt that keeps the woman in this vicious, emotionally and physically dangerous situation (Shroff & Menezes, 2014). As in *R. v. Ahluwalia* ((1996) 96 Cr App R 133) many battered women go back to their families is at stake, failing to understand that these men who inflict the pain are closest to them.

In maximum cases, it is the woman who has more to lose (Shroff et al., 2014). Her private life is laid open to the public, a testimony regarding her prior chastity may be used to discredit her account, and ultimately it is just her word against his (Shroff et al., 2014). This does not definitely answer the equality mandate of Articles 14, 19 and 21 of the Constitution which requires the state to treat each individual equally and guarantee to every citizen the right to life and dignity and all that is compendious with (Shroff et al., 2014). The State's reinforcement of this divide is reflected its reluctance to interfere with personal laws, especially those relating to marriage. The fact that our founding fathers did not place the personal laws above our constitution shows that it had to govern the former and not the latter over the former. "Application of Constitutional Law will only weaken the bonds of marriage" as said in the case of *Harvinder Kaur v. Harvinder Singh* (A.I.R. 1984 Del 66).

It is also a fallacy to regard sexual relationships within the family as hitherto having been free of legal institutions S.377 of the Indian Penal Code which seeks to punish even the 'voluntary carnal intercourse against the order of nature with any man, woman or animal' in the context of failed relations. Thus, there is an inexplicable dichotomy in the state refusing to interfere in the situations where sex is obtained by force because the sex was natural, and on the other hand, it intervenes even if sexual relations were consensual because they are unnatural. The criticism lies on the fact that the state does intervene in the private affairs when it comes down to unnatural carnal intercourse however not when the sexual intercourse takes place by force between the spouses which in itself is a dichotomy.

9. Legal Response

In the case of *State of Rajasthan v. Narayan Kohit* (A.I.R. 1992 S.C. 2003), the Supreme Court as late as in 1992 reiterated this principle by saying that "it is not possible to believe that when a woman has sex with her husband in the privacy of her bedroom she would suffer abrasions on her body and vaginal walls" (Shroff et al., 2014). This emphasizes that forced sex without violence will not be accepted and more perplexingly violent sex in marriage is not possible (Shroff et al., 2014).

India is considered to have a social order characterized by strong familial ties and a sacrosanct marriage institution. Hence, criminalization of family problems would only result in the complete breakdown of a home. The truth cannot be denied that marital rape is difficult to prove especially when both the partners are known to have voluntarily



engaged in sexual activity in the past and the issue of the content arises at a later point when there is non-consensual sex. The present need is for the legislature and the judiciary to actively intervene in this area, by following the recommendations of the National Commission for Women and the draft bill suggested by them which should be implemented along the lines of the Canadian Model that combine marital rape with the offence of assault (Shroff et al., 2014).

It may also be said that the absence-of-consent clause is an essential feature of any criminalization of rape in marriage since the essence of the crime is intercourse against a person's will. Sex without consent, it may be claimed, is the same as sex against consent.

10. The Right to Privacy

An issue that challenges the marital rape exemption is the very existence of a violation of the woman's constitutional right to privacy. An argument can be made on the grounds that the marital rape exemption or immunity denies the married women rights which are accorded to a single woman. The Marital Rape immunity provided to the husband interferes with a woman's way of controlling her life. The state on a deliberate note denies access to the criminal justice system to the woman who has been sexually assaulted by her husband.

On this note, it can be said that the state directly or indirectly dictates her irrevocable consent to sexual relations with her husband. Nullifying a woman's decision to consent for the sexual intercourse effectively expropriate the woman's control over this area of her life. If a married woman is allowed to retain control over these decisions (to consent for the sexual intercourse with her husband), it would allow her to develop her own personal identity and hence, she'd be able to assert her identity in the immediate world, which may be considered as an essential aspect of control over one's life which is protected by the Right to Privacy. Some of the most important cases have struck down laws which infringed a person's decisions regarding his or her body.

Similarly, the marital rape exemption effectively violates a woman's interest in her bodily integrity. One must, including the woman must have the freedom to decide for herself, when to share her body and have the partner respect that decision. Therefore, when a married woman is denied the right to control an essential aspect of herself- her sexuality- the state interferes with her Right to Privacy.

11. Analysis

What further needs to be considered in this research is the provision laid down in Section 376-A of the Indian Penal Code. This Section traces down the punishment for the rape of a wife who is judicially separated. The punishment for committing this offense shall be imprisonment to two years. The legal domain has advanced to its utmost extent towards including provisions in the Act which is for the protection and safety of the women. However, the criticism lies in the fact that the provision was included only for those married women who were judicially separated and not those women who are still married. Including only married women who are judicially separated and not those who are still



married is a blind reflection of the mindset of the society that the married wives cannot deny to the whims and fancies of the sexual urge of the men if they are cohabiting.

Another aspect that needs to be looked after in the research is Section 498A. Section 498A has its basis mainly on the aspect of Cruelty. The lawmaking body by not including the marital rape in this particular domain of law has again left behind the shadow and blot in the legal system of India. Cruelty surely is an aspect that comes under the purview of Section 498A and marital rape which is accompanied by physical abuse can also, therefore, be included in the cruelty aspect. However, if the commission of rape takes place without the physical abuse and if the consent is obtained by the threat to hurt (which is considered as rape for strangers) then the wife cannot approach the Court for divorce or for a matter of fact even under 498A.

Significant legislation that needs to be considered is The Protection of Women from Domestic Violence Act, 2005. This Act proved to be a legal advancement in protecting the rights and the safety of the women. However, it led to the disappointment on the issue of marital rape. Under this Act, if the women do not suffer grievous hurt, or life-threatening act by the husband, the wife cannot claim any relief. Furthermore, what needs to be looked after is the recent judgment on Right to Privacy that is K.S. Puttaswamy v. Union of India (2017 S.C.C. 96). The most celebrated judgment of India leaves behind a few questions one of them being the issue of Marital Rape. It has laid down various principles which indirectly defends the sexual minorities. The question that arises ahead of us is, will the judgment provide a new ambit to include the offense of marital rape and hence, criminalize the same? Or, the earlier theories and constructions for not criminalizing marital rape would persist?

It is indeed a saddening issue that has been persisting in India. At a time when the entire world is taking an initiative to curb this issue including England (from where India is said to have borrowed the Laws), India still fails to address some serious issues like Marital Rape and leaves a blot on the entire judicial and legal system in India. What one fails to understand from a common man perspective is that every human being including the woman has their own shares of rights and duties. How is it that the lawmakers fail to provide with these rights to the women irrespective of their marital status.

12. Suggestions

Few reforms are to be made in the Indian Legal and Judicial system. Firstly, Sexual intercourse may be considered as an act of mutual desire and intense gratification both for the man and the woman. "It is not a wifely duty enforceable by a threat to bodily harm and the use of force, as female sexuality is not a man's property" (Brownmiller, 1975). Only when both partners desire sex, can there be a true response from the two individuals, moral and intellectual. What needs to be considered is that the wives should also be given the right to consent for sexual intercourse even after post marriage since she definitely has her own bodily integrity and privacy. Secondly and most importantly, the case of Marital Rape should explicitly and exclusively come under the purview of Criminalizing Marital Rape and not in any other Section like Section 498A.



This explicit nature of the crime will help women to understand their own rights and crime happening against them because in most cases of marital rape the victim that is the wife fails to see herself as a victim. Thirdly, to register and handle a particular case that is complained about by the wife there should exist special units which consist of woman officers to handle such cases. This suggestion is provided so that the woman can fearlessly lodge a complaint without being concerned about the male authority which exists in the police stations. Fourthly, the suggestion that can be made is that the marital rape cases be presided over by female magistrates so that the woman fearlessly could express herself and put forth the exact nature of the crime committed by her husband. Fifthly, Women who are dependent on the husband should be provided with help by the state. Furthermore, the state should provide the victims of marital rape with financial assistance, counseling (to help them get out of the trauma), shelter, medical help.

The offense of marital rape should not be considered based on the sole factor of the bruises and injuries on the private parts of the body of the women since there exist many a woman in India who submit themselves due to the pressure of the society. Furthermore, what needs to be emphasized upon is that the offense of marital rape should be made cognizable, non-compoundable and non-bail able. This is so as to make the individuals committing the offense to realize the severity of the crime. The married woman should be made aware of her own rights and also the crimes that are committed against her even if it is in the marital relationship. The state should take in the effort to sensitize the special units and the magistrates who will be handling these cases. The state should create enough funds for these women and also take the initiative to help them in every way possible right from their basic survival if they are dependent on their husband to creating opportunities for them so that they can earn their own bread.

13. Conclusion

The social outlook on the concept of marital rape needs to be changed particularly, in a country like India where women are taught to be submissive by nature. Marital rape reflects the blot that exists in the Indian Legal and the Judicial System. The Indian Legal and Judicial system fails to protect the dignity and the sexual privacy of the victim which is ravished by none other than her only husband. The only reasoning that the victim and the accused are in a marital relationship should not be the point to give a lesser sentence or relief to the husband. The international order and the development in the codes of the nations throughout the world demand that marital rape is criminalized in India leading the woman to be at par with her husband like in all the other developing and developed nations.

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