

MARITAL RAPE: THE BITTER TRUTH

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ABSTRACT

Marital rape is in existence in India, a disgraceful offence that has scarred the trust and confidence in the institution of marriage. A large population of women has faced the brunt of the non-criminalization of the practice. The Indian Penal Code makes an exception in the definition of rape given in Section 375. This paper highlights the practice of marital rape, the complexities involved and looks at the issue from a human rights perspective. The paper analyses the proposals made by different sections of the civil society to make the same a punishable offence by amending the Section in the I.P.C. The paper also looks at the two important committee reports, 172nd and the Justice Verma Committee. The paper also looks at the leading reports that highlight that marital rape is very much in existence and needs to be curtailed at the earliest. It also looks at the present legal stand available for women who face such abuse. Finally, the paper concludes with the opinion of the author on the said subject.

MARITAL RAPE

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.*” It is a non-consensual act of violent perversion by a husband against the wife where she is abused physically and sexually.

TYPES OF MARITAL RAPE

The following three kinds of marital rape, generally prevalent in the society:

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- **Battering rape:** In this type of marital rape, women experience both physical and sexual violence in the relationship and in many ways. Some instances are those where the wife is battered during the sexual violence, or the rape may follow a physically violent episode where the husband wants to make up and coerces his wife to have sex against her will. In most cases, the victims fall under this stated category.
- **Force-only rape:** In this type of marital rape, husbands use only that amount of force, as it is necessary to coerce their wives. In such cases, battering may not be a characteristic and women who refuse sexual intercourse usually face such assaults.
- **Obsessive rape:** In obsessive rape, assaults involve brutal torture and/or perverse sexual acts and are most commonly violent in form. This type has also been labeled as sadistic rape.

HISTORY

Marital rape was once widely condoned by the society. It was ignored by the law and was not criminalized. Today, it is opposed by many societies around the globe and is repudiated by many international agreements and conventions. These issues did not get the due recognition and thus issues like sexual and domestic violence within marriage was not accepted as a reality. It has come into existence from the second half of the 20th century and has gained considerable international attention. However, there are still many countries where marital rape is not a criminal offence and remains outside the realm of law. In some countries, it has been observed that even though it is criminal offense, there are hardly a few cases, which are reported and face the consequences of the commission of such a crime. It is generally accepted to be a damage collateral to the existence of the bonds of marriage.

The customary views of marriage and sexuality were unchallenged until the early 1960's. The western thought started to challenge such ideas and concepts and this was further forwarded by the by feminist movement, leading to an acknowledgment of the woman's right to self-determination. It meant that women have the right or control of all matters relating to her body, and thus a removal of the exemption granted in case of married couples. By the late 20th Century,

most countries criminalized marital rape and allowed prosecution of those guilty. The process occurred in various ways, including the removal of statutory exemptions from the definitions of rape, judicial decisions, and explicit legislative reference in statutory law preventing the use of marriage as a defense, or creating of a special offense for the conviction of marital rape. However, the crime is not enforced in our society due a plethora of reasons ranging from absolute lack of any awareness to the idea of sanctity of marriage and reluctance of authorities to prosecute the guilty.

INDIAN PERSPECTIVE

In India, marital rape exists de facto but not de jure. In India, while there is reluctance on the part of the legislature to criminalize marital rape, the judiciary has done its part in recognizing the existence of such a crime that plagues Indian society. In *Bodhisattwa Gautam v. Subhra Chakraborty*,² the Supreme Court said that; “*rape is a crime against basic human rights and a violation of the victim: most cherished of fundamental rights, namely, the right to life enshrined in Article 21 of the Constitution.*” However, the very same court negated the judgement by not recognizing it to be a crime.³ There have been advances in the Indian legislation in matters pertaining to domestic violence by passing 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. The Section 375⁴ of the Indian Penal Code has an exception for marital rape and thus, women who experience and wish to confront sexual violence in marriage are denied the right due to the said exemption.

According to the Indian government, marital rape cannot be applied in India, as marriage is considered sacred. The Minister of State for Home, Haribhai Parathibhai Chaudhary, stated the marital rape could not be criminalized and further added that there is no proposal to make it a criminal offence. “*It is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors, including*

² *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490

³ Tandon, N. & Oberoi, N., *Marital Rape: A Question of Redefinition*, Lawyers Collective, March 2000, p. 24.

⁴ Section 375, Indian Penal Code, Definition of “Rape”.

level of education, illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament, etc," said Chaudhary. His reply came as a response to a question by D.M.K. M.P. Kanimozhi in the Rajya Sabha. Kanimozhi asked the Home Minister whether the government would recommend a bill to amend the Indian Penal Code (I.P.C.) to remove the exception of marital rape from the definition of rape. She also asked whether the UN Committee on Elimination of Discrimination against women has recommended that India should criminalize marital rape. Chaudhary denied any such amendment and stated that, *"The Law Commission of India, while making its 172nd Report on Review of Rape Laws did not recommend criminalisation of marital rape by amending the exception to Section 375 of the Indian Penal Code and hence presently there is no proposal to bring any amendment to the I.P.C. in this regard".*⁵

The Supreme Court, following the trend, refused a woman's plea to declare marital rape a criminal offence, citing that the plea was for a *'personal cause and not a public cause'*.⁶ The woman, an executive from Delhi, was a victim of marital rape and suffered repeated sexual violence from her husband. However, the same could not be reported, as there is no provision for the same in the Indian Penal Code.

REPORTS

UNITED NATIONS

The United Nations in a report have quoted that every 6 hours; a young married woman is burnt or beaten to death, or driven to suicide from emotional abuse by her husband. The UN Population Fund states that more than 2/3rd of married women in India, aged 15 to 49 years have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their husbands or their husbands' families. Fifty six percent of Indian women

⁵ N.D.T.V., "Marriage Sacred in India, So Marital Rape Does Not Apply: Government", dated April 30, 2015
<http://ndtv.com/india-news/marriage-sacred-in-india-does-not-applu-gouvernement-759219>.

⁶ DNA, "Supreme Court rejects plea to criminalize marital rape", dated February 18, 2015
<http://www.dnaindia.com/india/report-supreme-court-rejects-plea-to-criminalise-marital-rape-2061993>

believed occasional wife beating to be justified. Recently, United Nations' Committee on Elimination of Discrimination against Women had recommended India to criminalize marital rape.

A study by the International Centre for Women (I.C.R.W.) and United Nations Population Fund's (U.N.P.F.A.), conducted in eight States (Punjab, Haryana, Uttar Pradesh, Rajasthan, Gujarat, Maharashtra, Madhya Pradesh and Odisha) asked 9,205 men, across caste, religious and income groups, whether they had ever forced a sexual act on their wife or girlfriend. One third of the men interviewed admitted to having done so.⁷

CHILD RIGHTS INITIATIVE FOR SHARED PARENTING

"There are different laws that help women against forced sex - domestic violence act, Criminal Procedure Code and section 498A of Indian Penal Code. People do not even believe that men can be victims of rape, let alone marital rape. If a man tries to fight back or tries to speak of the incident, he himself is labeled as rapist instead of being considered a victim," said Bangalore-based Kumar Jahgirdar, founder of NGO Child Rights Initiative for Shared Parenting (CRISP).

As early as in March 2000, the law commission had recommended that all laws relating to rape (Sec 375 I.P.C.) be made gender neutral, Jahgirdar pointed out. *"All that is required for our lawmakers is to replace the words like men and women by person and words like husband and wife by spouse. They don't need to rewrite any existing laws. It is surprising that despite frequent amendments being made to the laws, this simple change is taking so long to be made. This may be an indicator that the lawmakers are not convinced for the need to this,"* said Jahgirdar.⁸

⁷ The Hindu, "Marital Rape: the numbers don't lie", dated November 21, 2014
<http://thehindu.com/data/statistics-on-marital-rape/article6586829.ece/>

⁸ The Times of India, "Marital rape: Activists push for gender neutral laws", dated May 4, 2015.
<http://timesofindia.indiatimes.com/city/nagpur/Marital-rape-Activists-push-for-gender-neutral-laws/articleshow/47142900.cms>

181 ABHAYAM

While the status of marital rape as a criminal offence remains a grey area, data collected by the 181 Abhayam indicates that it definitely is not rare, with nearly 25% of the calls about domestic violence pertaining to sexual violence. However, authorities of the women grievance redressal helpline said that, unlike Shweta, most of their callers are unwilling to discuss the issue. Most women agree to this thought and find nothing wrong when their husbands insist on intercourse, said Roma Jamshed, project head for 181 Abhayam. *"When we tell them that they have equal rights to agree or disagree to a sexual act, more often than not 'pati ki baat manni padti hain na' is the reply we get,"* Jamshed added. *"Our society rests on the provision that women are supposed to be submissive and not complain. Men are given complete right over the wife's sex life. According to law, if the wife is older than 16 years of age, a forced intercourse is not a criminal offence,"* said Jamshed.⁹

PROGRESS OF THE WORLD'S WOMEN 2011-12

'Progress of the World's Women 2011-12', offers a comprehensive global review of women's rights around the world. It uses the issue of women's access to justice to highlight the many ways in which injustice against women is still rife, right across the globe – in the home, in the workplace, in politics and in justice systems.

The report contains case studies, statistics and graphics illustrating both positive examples of progress in women's access to justice, and areas where more action is urgently needed.

Outlawing marital rape: Forum for Women, Law and Development (FWLD), Nepal Case

Until 2002, when the NGO FWLD brought a case to the Supreme Court, married women in Nepal raped by their husbands had no recourse to justice. This case invalidated the provision of the Nepalese criminal code that exempted husbands from being charged with the rape of their wives. In rejecting the Government's argument that outlawing marital rape would offend Hindu

⁹ The Times of India, "25% of helpline calls about marital rape". Dated April 5, 2015
<http://timesofindia.indiatimes.com/city/vadodara/25-of-helpline-calls-about-marital-rape/articleshow/46810928.cms>

beliefs, the ruling also ended the conflict between the country's Muluki Ain civil code, based on Hindu religious principles, and the 1990 Constitution, which pledges to end all forms of gender discrimination.

New laws to combat violence

There are 19 countries and territories in the Asia-Pacific region that have passed laws to prohibit domestic violence. However, only eight countries and territories throughout the Asia-Pacific region explicitly criminalize marital rape, leaving millions of women exposed to abuse at the hands of their partners. Global data show that where laws are in place against domestic violence, prevalence of domestic violence is lower and fewer people think it is acceptable. A survey in Cambodia, where a new law was passed in 2005, found that whereas in 2005 64 percent of respondents knew a man who physically abused his wife, by 2009 this figure had dropped to 53 percent.¹⁰

LEGISLATIVE PROVISIONS

The section pertaining to rape is in Section 375 of the Indian Penal Code. The section is extremely archaic in case of the exception mentioned to Section 375 which reads as thus, "*Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.*" Section 376 of I.P.C. provides punishment for rape, which is imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine. The exception is made in case the woman who is raped is his own wife and provided that, she is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both. The legislature brought about comprehensive changes in the definition and punishment for rape. Nevertheless, the new definition of rape in the Indian Penal Code (I.P.C.) did not change the previous clause, which excluded forced sex within marriage in

¹⁰ UN Women report, "Progress of World's Women: Factsheet Asia Pacific, 2011-12"
[http:// progress.unwomen.org](http://progress.unwomen.org)

the definition of rape. In fact, it said explicitly "*sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.*" There is no legal protection accorded to the wife, in direct contravention of her human rights. The damage done by retaining the exclusion was, however, partially removed by a next subsequent provision, Section 376-A, which says that "*if a man has sexual intercourse with a wife, living separately after a legal decree, but without her consent, he shall be punishable with imprisonment ranging from two to seven years in addition to a fine.*" However, this has failed to appease feminists, who continue to stand by the criminalization of marital rape and consider its exclusion non-acceptable. Even though clause 376-A addresses the concerns and fears of women living separately, it is futile for women who suffer on a daily basis within the four walls of the household in a legally valid marriage. The very definition of Rape demands change. Women's organisations and feminists have criticized the narrow definition all across the world, who insists that including oral sex, sodomy and penetration by foreign objects within the meaning of rape would not have been inconsistent with nay-constitutional provisions, natural justice or equity. Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. The importance of consent for every individual decision cannot be over emphasized. A woman can protect her right to life and liberty, but not her body, within her marriage, which is just ironical. Women so far have had recourse only to section 498-A of the I.P.C., dealing with cruelty, to protect themselves against "*perverse sexual conduct by the husband*".

Under the Domestic Violence Act of 2005, sexual violence is a non-criminal violation. When an aggrieved wife files a complaint, the Court may call the husband for a hearing. He is given a fair and impartial hearing and once he is heard on the matter, the process of mediation commences. The court gives the parties an opportunity to amicably settle the dispute. If the complaint filed is proved true and genuine, and mediation fails, the Court may pass a Protection Order directing the husband to mend his behaviour. The direction of the Court is legally binding and it must not be violated. The wife has the right to approach the Court and complain of the violation of the Order.

Generally, such violation results in a term of imprisonment and the assistance of police authorities can be taken for the same. Nonetheless, the procedure remains a prolonged civil matter between the victim, the accused and the Court. This implies that even if the charges against the husband is proved and he is found guilty, he cannot be convicted of rape, only domestic abuse, the punishment of which is far more lenient than rape. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., ... mental, physical, or sexual.

It condones sexual abuse in marriage or a live-in, and holds the same punishable only if it is life threatening or grievously hurtful. Thus, the Domestic Violence Act fails to account for offenses like Marital Rape and it does not support the honour and dignity that every woman is entitled to in a marriage

RECOMMENDATIONS IN THE 172nd LAW COMMISSION REPORT

The 172nd Law Commission report had made the following recommendations for substantial change in the law with regard to rape.

- The term ‘Rape’ should be replaced with the term ‘sexual assault’.
- The definition of sexual assault contained in Section 375 should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.
- In reference to the Supreme Court judgement in the case of *Sakshi v. Union of India and Others*¹¹, sexual assault on any part of the body should be construed as rape.
- The laws relating to rape must be made gender neutral as the law of the land has neglected the concept of rape of young boys.
- There is a proposal to add a new offence, as ‘Section 376-E’, defining “unlawful sexual conduct”.

¹¹ Sakshi v. Union of India and Others , [2004 (5) SCC 518]

- The section 509 of the I.P.C. proposed to be amended to provide for higher punishment where the offences stated in the section are committed with sexual intent.
- The exception carved for Marital Rape in Section 375, should be deleted and be made a punishable offence. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence.

INDIAN EVIDENCE ACT

The Indian Evidence Act, under Section 122 protects the communication of a husband and wife during marriage a privileged communication. Thus, the parties are precluded from disclosing any matters between them in court, except when one married partner is being persecuted for an offence against the other. Since, marital rape is not an offence, the evidence is inadmissible, although relevant, unless it is a prosecution for battery, or some related physical or mental abuse under the provision of cruelty. It has been observed that proving the offence of marital rape is almost an impossible task due to these constraints put forward by the Evidence Act.

JUSTICE VERMA COMMITTEE

Justice Verma Committee was constituted to recommend amendments to the Criminal Law to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India. The Committee submitted its report on January 23, 2013. The Committee heeded the demand to criminalize marital rape. The Indian Government however, chose to turn away from it as it has the “*potential to destroy the institution of marriage*” and place the “*entire family system under great stress*”.

The Parliamentary Panel formed declined to term marital rape a crime, saying it could "disturb a family". It nevertheless said any sexual assault by a husband on his wife during the period of their judicial separation must be treated as a cognizable offence.

The major finding was that the I.P.C. differentiates between rape within marriage and outside marriage. Under the I.P.C., sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed and the section amended. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

LACK OF REPORTING

The Indian Penal Code and the National Commission for Women (N.C.W.) do not have any mechanisms, which facilitates the filing of cases of marital rape. A wife has to file a complaint under marital discord and then if a husband forces his wife to submit to his sexual demands against her wishes, it does not amount to rape but is treated as a case of domestic violence. The husband is tried under Section 498-A of the Indian Penal Code, which deals with cruelty by a husband towards a married woman. Unlike in custody rape, where the word of a woman holds good as evidence against the rapist, wives do not get the same consideration.

S.N. Koley, Member Secretary of the West Bengal Commission for Women (WBCW), a state commission for women's rights, says that theirs has been a constant fight against this social evil.

“Indian women are discouraged to file complaints against marital rape. It has taken them time to recognize [it as a crime]. The WBCW remains vigilant and we take up complaints of marital

rape which are reported by the media or lodged with the police - even if they don't come straight to us," says Koley.¹²

Social scientist Aashish Gupta with the Research Institute for Compassionate Economics compared National Crime Records Bureau (N.C.R.B.) statistics on officially reported cases of violence against women with data from the National Family Health Survey (N.F.H.S.), which asked women respondents whether they had faced any sexual or physical violence.¹³ Mr. Gupta found that while 157 per 1, 00,000 women reported to N.F.H.S. surveyors that they had experienced rape by men other than their husbands in the past 12 months, 6,590 said their husbands had physically forced them to have sexual intercourse against their will. This meant that just 2.3 per cent of all rapes experienced by women were by men other than their husbands. For both marital and non-marital rapes, however, the officially reported figures were extremely low, Mr. Gupta said in a working paper he shared with The Hindu. Comparing the N.C.R.B. and N.F.H.S. data in 2005, just 5.8 per cent of rapes by men other than the woman's husband were reported to the police and just 0.6 per cent of rapes by the husband. Since marital rape was not recognised as a crime in India, it was probably reported as "cruelty," Mr. Gupta found. Severe physical violence was equally under-reported, Mr. Gupta found. At the State level, Mr. Gupta looked at physical violence and marital rape, since the numbers on rape by men other than the husband were too small at the State level for statistical analysis. Delhi has the lowest actual incidence of violence against women and highest rates of reporting in the country. In general, States associated with gender equality — the North-Eastern States, Kerala, Tamil Nadu and Karnataka — had both lower levels of actual incidence of violence and higher levels of reporting, but no State reached double digits in its extent of reporting.

¹² Marital Rape: Still an Underreported Crime in India, dated October 5, 2009

¹³ The Hindu, "MARITAL AND OTHER RAPES GROSSLY UNDER-REPORTED" dated October 22, 2014
<http://m.thehindu.com/news/national/marital-and-other-rapes-grossly-underreported/article6524794.ece/>

The Delhi-based women's rights organization Jagori made similar findings in a sample survey in Delhi in 2011 — just 0.8 per cent of women who had been sexually assaulted, stalked or harassed reported it to the police.¹⁴ *“There have been some area-specific studies like ours, but the N.F.H.S. is really the only victimization study that India has,”* Kalpana Viswanath, researcher and executive committee member of Jagori. *“Our recommendation has been for the N.F.H.S. to expand their questions on violence and look at sexual violence other than rape too,”* she said.

The Social Legal Aid Research and Training Center (S.L.A.R.T.C.) is one of the country's most vocal forces and provides legal aid to socioeconomically disadvantaged women. S.L.A.R.T.C. executive director, Manabendra Mandal, feels that since women are now making the effort to fight marital rape, they need encouragement. He says that it is important to create mechanisms that will encourage women to speak out against their abusive spouses. *“It takes a lot of courage on the part of an Indian woman to be able to speak about things as intimate and personal as marital rape,”* says Mandal. *“Especially if the woman is financially dependent on her husband, she needs assurance that her case will be funded and if she has to leave her marital home, an alternative shelter is available until the case is in court.”*

PROBLEMS IN PROSECUTING MARITAL RAPE

The criminalization of marital rape does not necessarily mean that these laws are enforced in practice, with lack of public awareness, as well as reluctance or outright refusal of authorities to prosecute being common in many countries. There have been many problems with prosecuting the perpetrators of spousal rape; chief amongst them has been the reluctance of the various legal systems to recognize it as a crime at all. However, criminalization has opened a new set of problems. To take an example in the United Kingdom, such a category of rape was only recognized by a 1991 House of Lords decision known simply as *R v R*¹⁵. While most parties agreed with the House of Lords' motive in making the decision, many were of the opinion that

¹⁴ Supra note 12.

¹⁵ *R v. R* (1991 All ER 481)

the decision involved post facto criminalization, since the House of Lords were imprisoning spouses for doing what was once, according to the law, their right.

Another problem results from prevailing social norms that exist in certain cultures. In order for any law to be successfully enforced, the acts, which it prohibits, must be perceived by society as abusive. As such, even if a jurisdiction enacts adequate laws against marital rape, in practice, these laws are ignored if the act is not socially considered a crime. For example, in many parts of the world, where women have few rights, it is considered unthinkable for a woman to refuse her husband's sexual demands; far from being seen as an act of abuse of a wife, marital rape is seen as an incident provoked by the wife who refused to perform her duty.

Other problems arise from the fact that, even in countries where marital rape is illegal, many people are not aware of the existing laws. Because in most parts of the world marital rape laws are very new, many people do not know of their existence. In many cultures, traditional ideas about marriage are deeply rooted in the conscience of the population, and few people know that forcing a spouse to have sex is illegal.

JUDICIAL DECISION

In a welcome change, Additional Sessions Judge Kamini Lau held that non-recognition of marital rape is hypocrisy. In a Certain cases, while denying bail to a man accused of raping his wife, she Stressed on the need for a law to consider marital rape as a serious offense. She said that, “*Non recognition of marital rape in India, a nation set up upon the bedrock of equality, is gross double standards and hypocrisy in law which is central to the subordination and subjugation of women*”.¹⁶ In the given case, the victim was not only subjected to unnatural sex, but also to harassment as her husband took nude photographs of her. On the other hand, the man claimed that his wife had implicated him with the motive of creating a split in the family. Taking note of the fact that the woman had been married for eight months now, the court said, “*The physical and psychological damage caused to the complainant, a young girl married for hardly*

¹⁶ The Hindu, “Non recognition of marital rape is hypocrisy: court”, dated October 5, 2014.
<http://hindu.com/news/cities/Delhi/nonrecognition-of-marital-rape-is-hypocrisy-court/article6473013.ece/>

eight months, on account of this abusive relationship is unimaginable and hence calls for indulgence to the accused whose application for grant of bail is hereby dismissed". The judge further confirmed that a woman has full autonomy over her body and raising our voice against marital rape and other offensive sexual acts is the first crucial step to establish equality between men and women. "Marital rape is offensive to morality and liberty and any kind of sexual perversity requires to be exposed, addressed and condemned."

CONCLUSION

One cannot deny the truth that Marital Rape exists in our society and there are many who suffer in silence, as there are no legal provisions and a serious lack of support for this heinous crime. There is a need to amend Section 375, remove the exception, and thereby criminalize marital rape to help the victims achieve justice. The basic human rights of these women are violated in the name of marriage and marital duties. The opinion and notion that a woman is the property of the husband is lethal for the status of women in India. They are unable to take any action and are forced to endure the pain in silence due to lack of necessary legal provisions. Considering that the Indian society is burdened with discriminatory social norms and customs, the major change needed is in the outlook and perspective of citizens. Apart from judicial initiation; we primarily require generation of awareness. *'Educating boys and men to view women as valuable partners in life, in the development of society and the attainment of peace are just as important as taking legal steps protect women's human rights'*, says the UN. One of the main objectives of matrimonial laws is to preserve marriages and the confidence in the institution, but this purpose cannot be promoted at the cost of violation of the fundamental and human rights of the women. Women must have the right to determine and protect their bodily integrity. Thus, denying justice and protection for maintaining the sanctity of marriages is a total failure of the law to protect its citizens. The law should not encourage forced cohabitation and should not protect a raping husband. However, the implications of criminalizing marital rape in India cannot be ignored. If the misuse of Section 498-A is any precedent, the process of criminalizing Marital Rape will be a

larger threat and will have draconian implications. Marital discords generally conclude in a severe egoistic battle, when the husband or his relatives are arrested and are put behind bars on a complaint made by wife. The complainant, at times file false cases and exaggerates the matter to bring in more members of the family within the complaint to cause nuisance and harassment. Thus, there can be misuse of this provision by certain sections of society who may use it as a powerful weapon against the husband.

Thus, in conclusion it can be said that the solution does not lie in refusing to make the much-needed amendment due to the fear of its misuse by the society but calls for a more effective use of the law. The most eminent problem in our society is its implementation and thus, the law needs to be implemented for the reason of protecting the victims of abuse in marriage and not merely use as a tool for harassment. The genuine cases must be separated from the frivolous ones and it is the duty of the police to investigate matters properly and thoroughly. Marital causes deserve the needed relief and protection of the law. The test lies in truly realising the purpose and rationale of making marital rape a crime and not making a mockery of law by its abuse.