



A UNIT OF
LAW LABORATORY

FEBRUARY 2022

Law Laboratory

Research Journal of Law & Socio-Economic Issues

ISSN: 2583-0783

VOLUME 1 | ISSUE 2

WWW.LAWLABJOURNAL.IN



MARITAL RAPE: A BLOT ON THE DIGNITY AND AUTONOMY OF A WOMAN

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ABSTRACT

Women have been prone to violence and abuse in almost every county. They need extra legal safeguards to protect them from violence and other such atrocities that are carried against them. In India, the domestic violence has been an entrenched problem and it has only been intensified in the recent years. We can consider marital rape as one such exemplification of this domestic violence. Marital rape can be explained as an act of having forceful sex with the spouse without her proper consent. It is not just the most pressing issue in the realm of women's rights right now, but it also breaches a number of fundamental prohibitions. It is that aspect of marriage that is presently unanswered by current legal provisions. There are many dissenting views on the subject of marital law, but few believe that penalizing it would menace the sanctity of marriage institution, and that courts aren't authorized to interfere with what happens between a husband and wife. In India, a separate law on marital rape is required, which must also comply with international standards on the subject. Women have been allowed the opportunity to defend for their safety, but her own husband, whom she married with complete faith, tries to harm and humiliate her by having forcible sex with her without her consent, endangering her health and well-being. In today's world, there is no basis or applicability for the concept of total marital exemption. This research paper discusses the need of criminalizing marital rape and how it should be established by legislation that rape can take many forms. The paper throws light on the present laws and the deficiency of it to criminalize marital rape along with judicial perspective on the matter.

INTRODUCTION

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“The typical marital rapist is a man who still believes that husbands are supposed to rule their wives.”

– Morton Hunt, American Psychologist.

Domestic violence, or violence perpetrated inside the limits of the family, has always concerned law makers, not just in the West but also in India. The marital rape exemption clause, which gives the spouse entire security and the advantage of the doubt, has been heavily disputed and challenged in recent years. The most fundamental reason for disregarding marital rape as any other form of rape is that it occurs within the socially sanctioned concept of marriage.²

As a result, it is widely understood that accepting a marriage proposal constitutes a woman's permanent permission to sexual intercourse. The core fallacy of human-created democratic structures is found here. The lawfully married couple will go through a variety of events throughout their marriage, including social, psychological, and emotional turmoil. Nevertheless, it was believed that married females never would complain and would surrender their most basic right at the shrine of matrimony due to the legislator's keen prudence throughout the enactment of rape legislation.³

In the last few years, the rate of spousal rape has risen. The psychological anguish of getting raped, the humiliation of being attacked by her own spouse, the despair of staying silent, and the lasting scars of these episodes are all key parts of marital rape. Indians are protected from crimes conducted on the outside, but women are vulnerable to crimes done within their own homes that go undiscovered.⁴

India is one among the 36 countries that has not criminalised rape yet, although it is a signatory to both the UN Declaration on the Elimination of Violence against Women and the Beijing Declaration, and these are considered as the two most important international Acts on women's rights. UN Declaration on the Elimination of Violence Against the Women has even recognised that non-criminalisation of marital rape results into violation of the concepts of human dignity

² Sarthak Makkar, *Marital Rape: A Non-criminalized Crime in India*, HARVARD HUMAN RIGHTS JOURNAL (Last visited: Oct.16, 2021), <https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/>

³ Kshitij Naikade & Garima Pal, *Issues and challenges related to marital rape in India*, 7 IJHSSI 58, 58-59, (2018).

⁴ G.V. Akshaya & M. Kannappan, *A study on Marital Rape in the Indian Legal Scenario*, 119 IJPAM 1089, 1090, (2018)

and equality, which has been explicitly stated in our Constitution.⁵ In 2013, the UN Committee on Elimination of Discrimination Against Women (CEDAW) recommended Indian government should criminalise marital rape.

In the recent report published by National Crime Records Bureau, the incidences of crime against women in the year 2020 has plummeted. According to the report, offence against women declined between the year 2019 and 2020 by almost 8.3%. In 2020, number of cases of offence against women were 3,71,503 as compared to 4,05,326 cases in 2019. The NCRB observed in its report, “The country remained under complete lockdown from March 25, 2020, to May 31, 2020, due to COVID-19 Pandemic (First Wave), during which movement in public space was very limited. The cases registered under Crimes against Women, Children and Senior Citizens, Theft, Burglary, Robbery, and Dacoity have therefore declined...” But if we see the report of National Commission for Women, there has been increase in domestic violence cases against the women. Therefore, we can consider this dip as a hoax as during the pandemic there was lockdown which resulted into under reporting of cases and also a rise in the crime against the women in the domestic sphere.⁶

REVIEW OF LITERATURE

K.D Gaur, *The Indian Penal Code*, Lexis Nexis Publications (7th Edition, 2020): the provisions of the Penal Code have primarily been taught through case law and illustrations. This book has been a lifesaver in terms of dispelling any uncertainties and gaining a firm grasp on the principles. The book mostly focuses on explanations and examples connected to the Penal Code, but it does provide references to other statutes to help the reader understand the topic.

Dipa Dube, *License to Rape: The Indian Viewpoint*(2006). This study analyses the crime of rape, which is one of the most heinous and barbaric crimes committed against women. Marital rape destroys a woman's entire bodily and psychological equilibrium, reducing her to a living corpse. The legislators had been ignoring the demand of justice by women in the institution of marriage.

⁵ Rashmi Bagri, *Consent, Rape, And Marriage: What Is India Doing?*, LiveLaw (Oct 17, 2021), <https://www.livelaw.in/columns/marital-rape-consent-marriage-criminalization-of-184103?infinitemscroll=1>

⁶ Priyanka Ishwari, *How To Read the Latest Crime Against Women Data?*, (Last visited: Oct 17, 2021), <https://www.theleaflet.in/how-to-read-the-latest-crime-against-women-data/>

Shivani Garg, *Marital Rape*(2012): Marital rape is a horrific offense in India;however, it is not a punishable crime in India. The only option is to claim damages. This is not a reason to obtain a divorce decree. In India, there has been considerable resistance to incorporate Marital Rape as crime.

Sumati Dhingra, *Criminalisation of Marital Rape in India* (2015):The primary need is for the Indian Penal Code to criminalise marital rape. The true objective of making marital rape a crime can only be realised if society confronts the prevalent misconception. Marital rape must be considered sexual harassment, and Indian culture cannot keep supporting societal stability by glorifying women.

RESEARCH OBJECTIVES

The present article's goals are to:

- Determine the scope of marital rape in India.
- Investigate domestic rape legislation at the national level.
- Propose actions and remedies to improve the sociological, psychological, and legal mechanisms in place.

RESEARCH QUESTIONS

- Whether victims of marital rape, are neglected in India's legislative framework?
- Whether the present rules are insufficient regarding marital rape and is there a need to enact legislation to criminalise Marital Rape in India?

RESEARCH METHODOLOGY

The researcher's methodology will be doctrinal, analytical, and descriptive. The study will primarily concentrate on original sources such as statutes and committee reports, as well as secondary sources such as books, articles, journals, decided cases and websites.

CONCEPT OF MARITAL RAPE

The term rape originates from the Latin term *rapio*, which means “to seize”.⁷ Rape should be seen as the utmost serious sort of weird sexual brutality towards females, as well as an excessive embodiment of a spectrum of sexual aggression that obliterates gender equality and empowering women. Rape is an issue that threatens both men and women, and this is caused by oppressive conventions and attitudes. It's a socio-political concern that originates from male-female power imbalances. It is an aggressive conduct and violence whereby the sufferer's ability to control his or her own body is forcibly removed.⁸

The term marital rape itself denotes a form of sexual assault. Marital rape is when one spouse commits forcible sexual abuse or violence against the other. Marital rape is aggressive and severe, and the usage of compulsion by the husband against his wife in order to have physical relations with her is a crucial part. As a result, the only method an accused can execute an assault is by the application of excessive restraint, and the omission of it does not constitute an act. Furthermore, marital rape is non-consensual, i.e., one or more persons participating in the act deny or refuse the act.⁹

Marital rape is *de facto* but not *de jure* in India. Whereas the parliament in India is hesitant to criminalise marital rape, the court has played a role in understanding the nature of this conduct that affects Indian culture. In *Bodhisattwa Gautam v. Subhra Chakraborty*,¹⁰ the SC 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.”

LAWS REGARDING MARITAL RAPE

⁷ Dr. Chandra Sen Pratap Singh, *The laws on rape and sexual crimes*, LUCKNOW UNIVERSITY (Last visited: Oct 18, 2021), <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202005151744272048Chandra%20Sen%20Pratap%20Singh-The%20laws%20on%20rape%20and%20sexual%20crimes.pdf>

⁸ Dr. Vandana, *Marital Rape- Exemption under Indian Penal Code: Quest for recognition and liability*, 2 ILI LAW REVIEW 2, 4, (2017).

⁹ Ketan Tewari & Mansi Bisht, *Marital Rape: License to Rape or Not?* 4 IJLMH 366, 366-367, (2021).

¹⁰ (1996) 1 SCC 490.

The history of Marital rape not being considered as a crime in common law was laid by Chief Justice of England, Sir Matthew Hale¹¹. He wrote: “the husband cannot be guilty of a rape committed by himself on 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.” Sir Hale’s “Implied Consent Theory” found its way into the legislative framework of all former British colonies that followed the common law system.¹² House of Lords in the case of *R versus R* overturned marital exception to rape in light of changing social, economic and cultural developments. The court observed that “for a person to be penalised for rape the relationship between parties is immaterial,”

Marital rape is not recognised a crime in India, despite the fact that we have progressed in every imaginable discipline. Despite modifications, law commissions, and proposed laws, among the most demeaning and crippling actions in the world is not considered a crime in India. As it pertains to the alternatives open to a female in a marital relationship to safeguard oneself, we will observe that the regulations are generally non-existent or vague, leaving all up to the judge’s discretion.

“Section 375. Exception 2- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”.¹³

“The Protection of Women from Domestic Abuse Act was approved in 2005, which classified marital rape as a type of domestic violence but did not make it a criminal. If a woman has been the victim of marital rape, she can seek judicial separation from her husband under this Act. This is simply a patchwork of laws, and the Parliament must do much more to address marital rape”.¹⁴

As a reason, it is evident that the legislation that is often referred to as the victim’s protector is inefficient and ineffectual in protecting survivors of spousal rape. The primary justification in favour of these rules is that becoming married immediately entails consenting to sexual conduct. On either side, implicit consent to engage in sexual behaviour doesn’t really entail consent to be

¹¹ *The History of the Pleas of the Crown*, published in 1736.

¹² Shalini Nair, *Marital rape a crime in many countries, an exception in many more*, *The Indian Express*, (Last visited: Oct 19, 2021), <https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>

¹³ Section 375, Indian Penal Code, 1860.

¹⁴ Monika Arora, *Impossible to determine when a wife withdrew consent behind closed doors*, *TIMES OF INDIA* (Oct 19, 2021), <https://timesofindia.indiatimes.com/india/face-off-should-marital-rape-be-a-crime-impossible-to-determine-when-wife-withdrew-consent-behind-closed-doors/articleshow/86457605.cms>

exposed to sexual assault. Females are often considered to have welcomed the severity of marital rape, just as they are with other forms of forced sexual practise.

However, Rape and sex are not distinguished merely based on aggression. Women surrender to sex because of their fear and mistrust of abuse that is not the equivalent as consenting to sex. Her regret over not satisfying her husband's eagerness could heighten her fear. The distinction between agreement and non-agreement in diametric opposition is significant in criminal law.¹⁵

42nd LAW COMMISSION REPORT

The LCI suggested in its 42nd proposal that marital rape ought to be removed from Section 375's reach. As per their statements, convictions for this crime are incredibly uncommon. We think that this conduct should be eliminated altogether from Section 375's ambit, and that it could not be called rape in whatsoever strict sense. The penalty for this offence may well be defined in a special section.¹⁶

Several women's organisations, as well as the National Commission for Women, have asked for the withdrawal of exception provision in Section 375 of the IPC. Nonetheless, the Government of India's Woman and Child Department's Task Force on Women and Children believes that this issue should be discussed more broadly. The goal of the Task Force was to review all existing women's legislation and programmes. Like the Law Commission, the Task Force did not recommend that marital rape be included in the proper form.¹⁷

172nd LAW COMMISSION REPORT

Indeed the 172nd Law Commission report, released in March 2000, included recommendations for considerable reforms in rape legislation. Section 375 of the Indian Penal Code's explanation (2) should be repealed. Compelled sexual contact between a married couple must be recognized as an offence, as any violent assault by a spouse on his wife. For the same reason, Section 376 A

¹⁵ Bhavish Gupta & Meenu Gupta, *Marital Rape: Current Legal Framework in India and the need for change*, 1 GJLS 16, 22, (2013).

¹⁶ Report, <https://lawcommissionofindia.nic.in/51-100/report84.pdf>, (Last visited on Oct 20, 2021).

¹⁷ Aishwarya Anand & Rahul Kumar, *Marital Rape- Position in India in Comparison with stands in First World Countries*, 1 IJACR 133, 141, (2016).

would have to be abolished. When it is claimed that a complainant approved to a sexual interaction but the victim denies it, the judge is presumed for so under the Indian Evidence Act (IEA).¹⁸

JUSTICE VERMA COMMITTEE

The Justice Verma Committee was formed to suggest changes to the Criminal Code that would allow people convicted of sexual assault against women to be tried more quickly and receive harsher penalty. Justice Leila Seth, a former High Court judge, and Gopal Subramaniam, a former Solicitor General of India, were the other members of the Committee. On January 23, 2013, the Committee submitted its report. The Committee agreed to consider making marital rape a crime. The Indian government, on the other hand, chose to ignore it since it has the potential to destroy the institution of marriage and put the entire family system under tremendous stress.¹⁹

Marital rape may "disturb a family," according to the Parliamentary Panel, nevertheless it is not treated as an offence. However, any physical attack by a spouse towards his wife throughout their judicial separation must be handled as a criminal matter, according to the ruling. The I.P.C. differentiate among rape within and without marriage, which was the most crucial finding. It prohibits sexual activity without consent.²⁰

Conversely, there is an exemption to the unlawful act in the case of illegal sexual contact between a married couple. The exemption to marital rape must be abolished, and the clause must be revised, according to the Committee. Marriage must not be viewed as a binding agreement to engage in sexual behaviours. As a result, the victim's connection with the accused must not be considered when determining whether the complaint agreed to the sexual conduct.²¹

CONSTITUTIONAL PROVISIONS

¹⁸ Review of Rape Laws March, 2000, <https://lawcommissionofindia.nic.in/rapelaws.htm> (Last visited: Oct 22, 2021)

¹⁹ *Justice Verma Committee Report Summary*, PRS INDIA (Oct 26, 2021), <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>

²⁰ Bharati, *Marital Rape*, LAW TIMES JOURNAL (Oct. 29, 2021), <https://lawtimesjournal.in/marital-rape/>

²¹ Saif Rasul Khan, *Marital Rape: The Bitter Truth*, IJLLJS (Oct 29, 2021), <http://ijlljs.in/wp-content/uploads/2015/06/MARITAL-RAPE-final-draft.pdf>

Marital rape's non criminalization emerges from the British era. It was determined and derived from the Doctrine of Coverture, where the woman's identity is merged with that of her husband. When this exception was drafted in the IPC, 1860, the status of woman was that of a dependent entity. This exception to Section 375 of the Indian Penal Code of 1860 was founded on Victorian patriarchal ideals that did not treat men and women equally and did not allow married women to hold property.²²

The entire legal system concerning rape is riddled with inconsistencies. The following are the main legal problems that protect females from having able to defend themselves against marital rape: -

Judicial explanations have vastly broadened the reach of Article 21 of the Indian Constitution, and the freedom to live with human decency is covered by this article. Marital rape plainly breaches a female's right to reside with decency, and exemption specified in "Section 375 of the Indian Penal Code, 1860, is thus said to be in violation of Article 21 of the Constitution. The Supreme Court recognised the right to privacy as a fundamental right of all citizen in ***Justice K.S. Puttuswamy (Retd) v. Union of India***. The right to privacy includes "decisional privacy reflected by a capability to make intimate decisions largely comprising of one's sexual or procreative nature and decisions in respect of intimate relations."

The basic principle of equality before the law and equal protection of the laws is guaranteed by Article 14 of the Constitution, which stipulates that the government shall not refuse any individual inside India's jurisdiction justice before the law or equal treatment under the law.

As an outcome, Article 14 safeguards an individual from harassment by the state. However, when it pertains to rape protections, the exclusion under Section 375 of the Indian Penal Code, 1860 differentiates against a wife. As a result, it is contended that the exception provided under Section 375 of the Indian Penal Code, 1860 is not a reasonable categorization, and thus violates Article 14 of the Constitution. This exception of Section 375 of IPC generates difference between women based on their marital status and also protects the actions executed by men against their wives. It restricts the objective of Section 375, which is to provide protection to the women against inhumane activity of rape. As the consequence of rape is same irrespective of the marital status of a woman, therefore not considering Marital rape as a crime cannot be justified.

²²*Marital Rape In India*, 2020, (Last visited: Oct 29), <https://www.drishtiiias.com/daily-updates/daily-news-editorials/marital-rape-in-india>

Despite the fact that the Constitution makes it a vital obligation for every citizen to repudiate actions detrimental to the integrity of a woman, it appears that domestic abuse and spousal abuse do not fall within the notion of decency.

JUDICIAL PERSPECTIVE AND THE CONFLICTING VIEWS

The issue of Marital rape in India has not been resolved yet and thus the courts have different opinions in this regard. Marital rape need not be an offence was pronounced by *Former Chief Justice of India, Dipak Mishra*. He was quoted as saying, “Because some country has made marital rape an offence...I don’t think it should be regarded as an offence in India. In villages, it will create absolute anarchy in many families. Our country is sustaining because of the family platform. We still have family values... we still respect the family background and many other facets...”²³

Another statement made by the *Ex Chief Justice of India, SA Bobde*, on 1st March, 2021, while hearing a case, where a government servant was accused of raping a minor girl, was asked whether he was ready to marry the victim? “You should have thought before seducing and raping the young girl. You knew you are a government servant. We are not forcing you to marry. Let us know if you will, otherwise you will say we are forcing you to marry her,” the ex CJI said. This statement shocked many advocates and women right activists.²⁴

In *T. Sareetha v. T. Venkata Subbaih*²⁵, it was held by the Andhra Pradesh High court that restitution of conjugal rights under the Hindu Marriage Act of 1955 to be unconstitutional as the husband could misuse the decree for enforcing sexual intercourse with his wife. However, the Supreme Court overruled it and held that the institution of marriage stood for much more than just a sexual congress. Marital Union does not abridge the privacy rights. As a result, there is no penalty for marital rape, and the resolution is up to her.

²³*Marital rape needn’t be an offence: Ex Chief Justice of India Dipak Mishra*, 2019, (Last Visited: Nov 01, 2021), <https://timesofindia.indiatimes.com/city/bengaluru/no-need-to-make-marital-rape-an-offence-ex-cji-dipak-misra/articleshow/68785604.cms>

²⁴*Shocker as SC asks alleged rapist if he’ll marry victim*, The New Indian Express, 2021, (Last visited: Nov 01, 2021), <https://www.newindianexpress.com/nation/2021/mar/02/shocker-as-sc-asks-alleged-rape-if-hell-marry-victim-2270923.html>

²⁵AIR 1983 AP 356.

The SC, in *State of Maharashtra v. Madhukar Narayan Mandikar*²⁶, the right to privacy over one's body has been mentioned. In this instance, a prostitute was found to have the right to decline sexual intercourse. What's more, all outsider rapes were already criminalised, and all ladies, excluding husbands, have been granted the protection to privacy over their bodies, implying the ability to decline sexual intercourse and withdraw permission.

In *Nimishbhai Bharatbhai Desai v. State of Gujarat*²⁷, the Gujarat FC held 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.”

In *Independent Thought v. Union of India*²⁸, it was declared that even if the girl had given her assent, the court ruled that intercourse between a man and his wife constitutes a rape if she is under the age of 18. As a result, the court increased the age from 15 to 18 years old, which was contrary to the IPC.

On the 9th of July, 2019, the Delhi High Court dismissed a petition asking the Centre to issue guidelines for filing a FIR for marital rape as well as laws for making it a ground for divorce. The PIL was dismissed by a bench of Chief Justice D N Patel and Justice C Hari Shankar, who stated that the court cannot guide the formulation of legislation because that is the responsibility of the legislature, not the judiciary.²⁹

In a recent landmark judgment³⁰, Kerala High Court had upheld that “although marital rape is not penalised but it is considered as a good ground to claim divorce”. While empathizing with the woman's position, a Division Bench of Justice A. MuhamedMustaque and Justice KauserEdappagath observed that “*a husband's licentious disposition disregarding the autonomy of the wife is marital rape, albeit such conduct cannot be penalised, it falls in the frame of*

²⁶ AIR 1991 SC 207.

²⁷ 2018 SCC OnLine Guj 732.

²⁸ W.P. (Civil) No. 382 of 2013.

²⁹ Delhi HC dismisses plea to make marital rape a ground for divorce, 2019, (Last visited: Nov 02, 2021), <https://indianexpress.com/article/cities/delhi/delhi-hc-dismisses-plea-to-make-marital-rape-a-ground-for-divorce-5822261/>

³⁰ Decided on 30th July 2021.

physical and mental cruelty."³¹ They was also of the opinion that the law needs to evolve in a manner where human problems are dealt with a humane approach.³²

In *Dilip Pandey and Ors. v. State of Chhattisgarh*³³, the Chattisgarh HC cleared a man of the offence of marital rape after stating that "Sexual intercourse or sexual act by a man with his own wife, the wife not being under eighteen years of age, is not rape... even if it was by force or against her wish."

CONCLUSION AND SUGGESTIONS

The belief that spousal rape is not true rape has somehow dismissed married women's misery, and yet has also proven a source of it. The sole basis for the crime's legal and social purity is the belief that marital rape is not true rape. Among the most horrific types of physical abuse that can happen inside a household is spousal rape. Due to the obvious blatant nature of the action and the related difficulties of concealment of relationships, internalisation of masculine dominance, and, much often, various financial dependencies, female sufferers do not come out with their miseries. The state has turned a blind to the plight of exploited women due to conventional thinking, and the law does not recognise marital rape as a crime, much alone offer any penalty in certain circumstances. Nowadays, the Indian Judiciary has started considering marital rape as the ground for divorce; earlier the Judiciary did not want to interfere based on the reason that the legislation is the right authority to bring the change. This has resulted into the sustenance of exception 2 of Sec 375 of IPC and which has further resulted into subduing the sexual liberty and privacy of a married Indian woman.

The basic human rights must come above the understanding of a family. Wife is not a chattel of a man. Equality and protecting integrity of a women is important. It is difficult to prove lack of consent, as in the case of living relationship or other rape cases too. But this difficulty could

³¹ Hannah M Varghese, *Husband's Licentious Disposition Disregarding Autonomy Of Wife Is Marital Rape': Kerala High Court Upholds Marital Rape As Valid Ground To Claim Divorce*, 2021, (Last visited: Nov 02, 2021), <https://www.livelaw.in/top-stories/kerala-high-court-upholds-marital-rape-as-a-ground-for-divorce-under-cruelty-179010>

³²Pranshu Bharti, *Why it is time for India to join 150 countries in criminalising marital rape*, First Post, (Last visited: Nov 03 2021), <https://www.firstpost.com/india/why-it-is-time-for-india-to-join-150-countries-in-criminalising-marital-rape-9876111.html>

³³ Decided on 25 August 2021.

not mean that there should be no law for it. This idea that a man has to prove he had taken consent is not accurate. The laws of criminal jurisprudence still apply. Onus is still on the woman to prove beyond reasonable doubt that she was raped. India shall be made a constitutional society not run by patriarchy. Few are of the opinion that there will be false allegations by the wife against her husband but if the possibility of a false complaint was a ground to deny human rights what would happen to each and every offence under the IPC? There could be false complaint for anything. We do not stop having laws as a result. We ensure that our evidence laws have that regress to weed out those false cases

If you have that basic right to human dignity you have to have the right to say NO to a sexual act, irrespective of who the man is.

There are other remedies available like sec 498 A of IPC, 1860, The protection of women from domestic violence act, 2005 but if we have a separate offence defined under IPC and the same has been committed then the accused shall be punished according to that and not under other lesser punishment offence. The person who has committed the offence of Rape cannot hide behind the curtains of a pious institution like marriage.

In light of this, it is suggested to make marital rape illegal. First, the exception provision should be removed. Secondly, it should be made clear that the accused and the woman's husband-and-wife connection should not be utilised as a justification. Thirdly, the punishment policy must be consistent. Finally, specific revisions to the Evidence Act are needed to guarantee that it considers the complexity of prosecuting cases of spousal rape.³⁴

³⁴Raveena Rao Kallakuru & Pradyumna Soni, *Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact*, 11 NUJS L. Rev. (2018).