

# **Constitution endorses sexual privacy: A vision to bubble up Spiritual equity**

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## **Abstract**

This paper is a venture to highlight and outline the discrimination and infirmities of marital rape in the Indian Justice System. In view of the same, it seeks to explore the jurisprudence of the criminal law emerging from the constitutionalism. The main objective of the paper is to create the parallelism between the criminal jurisprudence and constitutionality. The central postulate of this paper is to tackle the matter of privacy in regard to the marital rape. It explores that privacy of sexual intercourse is also inherent in the concept of consent. This paper argues against the exemption of marital rape as an offence in India which has been a debatable topic along with the vagueness of legal sanctions which creates the discrimination in the laws. It focuses on the aspirations of minority's yearnings without making them disrespectful creates privacy a fundamental right in matters of sexual offences like marital rape. Perhaps, the success of majority's opinion will create a pool for alienable rights. Lastly, the sensible issue of marital rape is to be dealt with utmost care and rationalized reasoning. There need to eradicate the exception of Section-375 of Indian Penal Code. Unless the people are not educated and aware of legal issues, these legal provisions are also of no use.

**Key words-** Marital, offence, privacy, consent, marriage, justice, differentiation, constitution, sexual intercourse, dignity.

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## **Introduction- A need of separate study**

*Scratches all over her fresh and sore,  
Manly, he felt through affirmed his lupine roar.  
Clasped her harm and dragged her near.  
Clutch of his caws, she could hardly bear.  
The lade made several attempts to escape and rage,  
Unfortunately, all in vain, he was too savage.  
Insulted, she stood naked, searching something she could drape;  
She was another victim of Marital Rape.*

In order to understand the concept of marital rape it is mandatory to know the legal sanctions which govern sexual activities. There must be rational mind while reading the materials because rape is a behavior that destroys the inner conduct of human. The word used here is “human” not either men or women. When a picture of marriage struck the mind it automatically prints the ceremonies, religious functions, togetherness, love, sacrifice, happiness and procreation of child. But it is not always so. Sometimes in many of cases the husband and wife deals with plenty of fights and adjustments. High degree of torture, which we better know as “cruelty” could lead to destruction of matrimonial object. The partners are culturally resigned to endure and tolerate much inconveniency in their homes. These inconveniencies then lead to devastated effects of their marriage life.

The biggest example which is in highlight is the so called “marital rape”. It harms the legitimate ends and objective of the matrimony life, personal safety, mental happiness and peaceful living. Justice Dipak Mishra concluded in his judgment that “She was an object for their enjoyment... for their bestial delight in which they played with her dignity and identity.”<sup>2</sup> We have heard of a saying that politeness causes nothing but gains everything, very true in today’s scenario where women irrespective of minor or adult are tied in the hands of male chauvinistic society. In the recent judgment of *Independent Thought v Union of India and Another*<sup>3</sup> petitioner filed a writ petition under Article 32 of the Constitution in public interest questioning about the constitutionality of Exception 2 to Section 375 IPC. Today,

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<sup>2</sup> Mukesh & Anr. v State for NCT of Delhi & Ors., (2013) 2 S.C.C. 587.

<sup>3</sup> Independent Thought v Union of India and Another, (2017) 10 S.C.C. 800.

consent has gained no weight age even if the wife is under 15 years of age, husband can have unwanted sexual intercourse. Unmarried women do have the same emotions as that of married one. Why the difference of age has come in the eyes of law? There are sociological differences on marriage but that cannot be basis to regard it as an offence or not. Decriminalization is not at all affected by any kind of religious sentiments, ethics or any matrimonial culture. This classification between married and unmarried women is totally immaterial because here is the question of human rights which is being violated by law. There is a big drawback and inconsistency between our criminal law system and its jurisprudence when compared with the fundamental rights. The doctrine of fairness and reasonableness enshrined in Article 14 of the Indian Constitution is affected.

Why the question of consent is arising when the age is determined in the Section 375 of IPC? It gave the enlarged immunity to those males by giving them power to rape their own wife at any time and place. Either the statutory provisions should talk of consent or the age limit. It is very immoral to talk about both of them together. What has to be put aside is the age bar by the legislation in this provision. Isn't it also being a violation of right to life, in context of "right to be free from physical assault on your body"? If constitution aims at socialism then why are we even demanding of being social when the Fundamental Rights of our women are directly being violated through the provision of Section 375 of IPC, 1860. The abolishment of the exemption of the marital rape was done in 1991.

In *R. v. R.*<sup>4</sup> the rule that there is no misconduct of husband when he rapes his own wife against her will was an antiquated and insulting common-law fiction, and it can't be applied anymore as it no longer represents the position of a wife in the present society. On such similar grounds Supreme Court dismissed a plea on the grounds that the dictionary meaning of the word "sexual intercourse" is heterosexual intercourse involving penetration of the vagina by the penis. It would not constitute rape if the hymen is ruptured by inserting finger in *Sakshi v Union Of India and Others*<sup>5</sup>. The fundamental rights of women are being violated and Minister for Immigration and *Ethnic Affairs v Teoh*<sup>6</sup> and *Nilabati Behera v State of Orissa*<sup>7</sup> relied on the enforcement of the fundamental rights for such violations by remedy under Article 32 of the constitution. Thus, the power of the Supreme Court under Article 32 has to meet the challenge of increasing number of rape and child abuse cases in India. It was

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<sup>4</sup> *R. v. R.*, (1991) UKHL 12.

<sup>5</sup> *Sakshi v Union Of India and Others*, (2004) 5 S.C.C 518.

<sup>6</sup> *Ethnic Affairs v Teoh*, 128 Aus LR 353.

<sup>7</sup> *Nilabati Behera v State of Orissa*, (1993) 2 S.C.C. (cri) 527.

established by the decision of court that a man may properly be convicted of raping his wife when the incident occurred before the decision of *R v R*.<sup>8</sup> Rape is considered as more heinous crime because the soul of woman is destroyed<sup>9</sup>. This exception 2 is violative of Art.14, 15 and 21 of the Constitution and contrary to constitutional morality, human right concept as also pro-girl child statutory provisions contained in various other legislations.

This interpretation should be interpreted harmoniously and purposive with pro-girl child legislations such as Protection of Women from Domestic Violence Act, 2005; Prohibition of Child Marriage Act, 2006; Protection of Children from Sexual Offences Act, 2012 and Juvenile Justice (Care and Protection of Children) Act, 2015. The exception should be read along with spirituality of these legislations. Even women of easy virtue are entitled to privacy and no one can invade her privacy as and when he likes and she is equally entitled to the protection of law.<sup>10</sup> Even a Woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under article 21 of the Constitution.<sup>11</sup>

Reasons behind non- criminalizing Marital Rape in India-

- a) It destroys the basic institution of marriage.
- b) Sexual intercourse is the right of partners of marriage.
- c) It is a private concept; therefore, law cannot interfere.
- d) Country has many problems like lack of education, unemployment, poverty etc. Law Commission of India denied criminalizing marital rape because of presence of these problems.
- e) The gender laws are being misused at very high level. Women will try their best to punish their husband on little fights and angriness.
- f) It reduces the chances of reconciliation between the partners.
- g) The innocent men will suffer harm and torture unnecessarily.
- h) It exploits the essence of the marriage.

### **Scope of exception to section 375, IPC**

It is a very sensible area which has been kept totally out of the scope of the criminal law of India. When wife is below 15 years of age law recognizes it as marital rape and does not recognize it as offence if she is above. It is believed that offence of Rape in IPC is based on

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<sup>8</sup> *R v L (Graham)*, [2003] EWCA Crim 1512

<sup>9</sup> *R v R*, 2005 Cri.L.J. 139 (SC)

<sup>10</sup> *State of Maharashtra and Another v Madhukar Narayan Mardikar*; (1991) 1 S.C.C. (cri) 1.

<sup>11</sup> (2009) 9 SCC 1; See also *Roe v Wade*, 410 US 113.

the objective of Common Law. “This exemption of marital rape in common law supports the English Jurist Lord Mathew Hale 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 has given up herself in this kind which she cannot retract”<sup>12</sup>. As a result, the Law makers have given absolute right to commit violence over their wives by questioning their dignity and liberty of their lives.

It is not the women being raped by their husbands but their soul being hampered each day just because they are tied by so called matrimonial contract. The requirement to eliminate this exception of Section-375 has continually being made but no step has been taken till now. Also in the normal course of human conduct unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in the relation to the incident to narrate it.<sup>13</sup> It is the need of an hour to protect our souls of dignity and purity which are being contaminated. Forget about the physical health, the mental and emotional health of women is being afflicted each day by the torment and agony of their husbands. The personal privacy as well integrity is violated by these rapists and undoubtedly causes estranged physical and psychological harm in the sexual intercourse. Rapist degrades the very soul of the helpless female<sup>14</sup>. Rape can't be treated as a sexual crime but it should be viewed as a crime involving aggression which leads to domination of the prosecutrix violating her right to privacy.<sup>15</sup>

The other context which is debatable is the elimination of discrimination by our own statutes. These things remain in dark until pointed out. Spirituality contrasts with the marriage issues also. Meanwhile, a little light should be focused on the other side of issue. The personal privacy denotes the private acts, behavior, mindset, and choices to make. This integrity has to maintain by men and women both. The imbalance had only led the creation of discriminatory legal rules and regulations in the society. In criminal jurisprudence there has to be a reasonable doubt and not an excuse for finding in favor of acquittal. Also unmerited acquittal encourages wolves in society being on the prowl for easy prey, more so when the victims of crime are helpless females.<sup>16</sup> There is other side too, courts should bear in mind

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<sup>12</sup> R. DAYAL'S, COMMENTARY ON SEXUAL OFFENCES WITH SPECIAL REFERENCES TO LAW OF RAPE 1095 (3d. 2013).

<sup>13</sup> State of Punjab v Gurmit Singh and Others; (1996) 2 S.C.C. 384.

<sup>14</sup> (2009) 16 S.C.C. 69.

<sup>15</sup> Mohd. Iqbal v State of Jharkhand; (2013) 14 S.C.C. 481.

<sup>16</sup> State of Rajasthan v N.K; (2000) 5 S.C.C. 30.

that false charges of rape are not uncommon and there exists some rare instances where parent has persuaded daughter to make false charge.<sup>17</sup>

### **Foreign legislations**

There are 100 countries which have made marital rape as an offence.<sup>18</sup>

**Malaysia-** Marital rape has not been recognized in Malaysia. The sexual intercourse which amounts to rape by husband with her wife is valid. The Section 375 of the Malaysian Penal Code deals with rape.

**Ethiopia-** There are about 60% of women in this country who are exposed to such crime by their husbands. Ethiopian criminal law system does not make it an offence punishable by law. But the victims as well as the nation are fighting against its decriminalization.

**United States-** it has been examined that in United States around 14% of these women suffer the offence like marital rape.

**England-** In 1991 the marital rape was criminalized. Earlier men had got the rights to have sexual intercourse with her wife even without her consent.<sup>19</sup> The judgment of *R. v R.*<sup>20</sup> was also affirmed by the judgment of *SW. v UK.*<sup>21</sup>

**Mexico-** There exists the punishment of imprisonment for 16 years to the husband who rapes his own wife. The country has ratified a bill. This bill proposes punishment for husband who rapes his wife which is punishable under the domestic violence.

**Australia-** In case of *R v L*<sup>22</sup> The court of justice said that husband could be found guilty of raping his own wife. It also asserted that it is no longer a common law here if by marriage a wife gave irrevocable consent to sexual intercourse by her husband.

**European court of human rights-** In case of *SW v UK*, the court upheld the conviction of husband raping his own wife and stated that: “The abandonment of the unacceptable idea of a husband being immune against prosecution for rape of his own wife was in conformity not only with a civilized concept of marriage but also, and above all, with the fundamental

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<sup>17</sup> Radhu v State of Madhya Pradesh; (2007) 12 S.C.C. 57.

<sup>18</sup> K Sharma, *Behind the Locked Doors: The Evil of Marital Rape*, (Mar. 7, 2018, 2:30 PM), <http://www.mightylaws.in/1246/locked-doors-evil-marital-rape>.

<sup>19</sup> 11(1) HALSBURY LAWS OF ENGLAND, (4th ed. 2010).

<sup>20</sup> *R. v R.*, (1992) 1 A.C. 599.

<sup>21</sup> *SW. v UK*, (1996) 21 E.H.R.R. 363.

<sup>22</sup> *R v L*, (1991) 174 C.L.R. 379.

objectives of the convention, the very essence of which is respect for human dignity and freedom.<sup>23</sup>

**Nepal-** The court of justice stated that offence is offence and it is same for all and there is no rationality in differentiation between non-marital rape and marital rape.<sup>24</sup> Various directions were issued to Ministry of Law, Justice, and Parliamentary Affairs to make the punishment of the marital rape same as that of non-marital rape.

**Canada-** In case of *R. v J.A.*<sup>25</sup> the court held that the agenda of consent is totally irrational and it does not depend on any kind of the relationship between accused and the victim. Therefore, conviction can be held accordingly.

### **Marital rape should be criminalized**

The rational idea behind the proposed paper is not only to criminalize the marital rape but also to bring a system in the society to reduce such number of cases. We have men who are being constantly tortured by their wives. This has to be achieved as soon as possible. We cannot conceal the chauvinistic mindset of the society just by letting India down in terms of these sensitive issues. Privacy has to utilize in such a manner to tear out the patriarchal society. There is a much deeper layer that has to be mined to reach logical conclusions. By eliminating the exception of Section 375, it is also the duty of the law commission to make the laws which protect the rights of man too.

Herein, we can't deny that men are also not safe. In India, the marital rape is *de jure*. We also cannot ignore that divorce are happening every month. The court cannot preach the people to not to practice such heinous activities in your marital life. We can't satisfy all at one time. Whatever the case may be rape is rape whether of a minor or major woman either by husband or other. Intercourse by a man with his wife during separation is punishable amounting to rape or not amounting to rape was made punishable.

A direct question arises what such injustice to married woman by her husband is not made punishable? The harsh intimidation and use of manpower to create violent act in this process reflect the immoral character of the wrongdoer. The legislature should not deny these contentions of helpless women just on ground that the traditional practices of marriage do not violate any rights of partners. Even in Dowry Prohibition Act the cruelty is made punishable

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<sup>23</sup> *SW v UK*, (1995) 21 EHRR 363.

<sup>24</sup> *Jit Kumari v Government of Nepal*, Writ No. 064-0035 of 2063.

<sup>25</sup> *R. v J.A.*, (2011) 2 SCR 40.

but not death. Even Section- 354, an assault or using criminal force to any women intending to outrage her modesty is made punishable. Section 366-A is also punishable. Even Section- 24 of Special Marriage Act, 1954, the child marriages are void but on the other side IPC makes Rape by husbands on their minor wife valid. Such grave injustice to our women would not become justice only by death penalty or life imprisonment even public hanging was also prevalent so as to have deterrent effect on the society. Do we have any definitions of Enormous crimes? Like multiple murder is made erroneous crime by our law makers on the basis of magnitude of offence. If magnitude can decide what is erroneous and what is not, then the law makers should concentrate on those women who are raped by their husband's multiple times.

### **Constitutional Safeguard to individuals- Right to Privacy**

The matrimonial laws are not protecting the human essence but only the “women” from such enormous crimes. The rights of human are derived from the worth and dignity inherent in the human person. If we go in long run as an idea of concern the length of privacy is trying to specify bold ideologies in marital laws also. A totally different law placed forward by the nine judge bench of the Supreme Court laid down beautiful principles of the “privacy”. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights.<sup>26</sup> The judgment of *K.S Puttaswami v Union of India*<sup>27</sup> declared personal privacy as a fundamental right of citizens. It may not personally change and alter the life of every individual but might help those needy men and women to seek justice. Also in the case of *Dr. Vincent Panikulangara vs Union of India*<sup>28</sup> the court had denied to criminalize marital rape and made it live outside the preview of the Indian Penal Code. Moreover, the competency of legislation to exception 375 can't be dealt as it does not violate Article 14, 15 and 21 of the Indian Constitution. On the other side SC has its own ways to change the game.

The irony behind it is the inconsistency between the public opinion and the law makers. When laws are made on the serious sensible issues here is where diplomacy comes into existence. It is neither a rule of law nor the rule of prudence that privacy is a right of the women. The strategic interest of minorities is wrapped into black paper. Consider the rights of men; do we have any law protecting their rights? No doubt numerous laws are in existence for women and child rights but minority groups are made so non-conservative. Answer to the

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<sup>26</sup> Valsamma Paul v. Cochin University, (1996) 3 S.C.C. 545.

<sup>27</sup> K.S Puttaswami v. Union of India, (2015) 8 S.C.C. 735.

<sup>28</sup> Dr. Vincent Panikulangara vs. Union of India, 2015 S.C.C. Ker 36910.

question of what privacy is an endless debate because it can't be packed into four surfaces of tiffin. To live with dignity is the birthright of every individual and so as Article 21 of Indian Constitution says about. An element of privacy may not be privacy for second individual. It is the state of being free and undisturbed by other people. Indeed, there are more definitions but reality is that it is undefined. All the positive response proved privacy as a fundamental right but on the other hand limits of privacy were not determined. All the religious laws discriminate against men and women, and constitution promotes gender equality. We can't forget that Inner wealth and guts are contributed by acceptance and tolerance both. The main issue is the expansion of so many alternative laws applied on all women like Domestic Violence Act, Special Marriage Act, The Juvenile Justice Act etc because the duty to balance the conflicting interests of men and women are dumbstruck.

### **Privacy and Consent Are Inextricably Intermingled**

If safety concerns privacy, then choices of both the gender should be protected. In the latest Supreme Court ruling that to protect the life and dignity Under Article 21 of the constitution, the privacy safeguards are essential elements. It is the solitude and the intrinsic power to make choices against the demands of society as well individual too. Right to abstain from sex is also a penumbral right as that of reproductive right. Along with reproductive rights, women's right to reject is her right to be left alone which is another principle of privacy. But again this legality of provision of "Right to Privacy" is doubtful because if we talk about right to privacy with special regard to rejection right only in context of women the basic essence of privacy doctrine will be seriously affected and the basic structure doctrine of our constitution as well as the principle of reasonableness and fairness will not be achieved. Therefore, in order to achieve the maximum of this privacy right we must put our approach towards equally dividing the right to both the genders. Along with it if we do not divide the said right equally among the men and women the concept of equity generational management and equity, justice & good conscience will be seriously violated. It is not only the privacy of free individuals which is to be protected but the nationhood.

The conceptualization of consent is in itself a scattered jurisprudence which we can call it as the jurisprudence of consent or consent jurisprudence because the very basic bedrock of the term privacy or "Sexual Privacy" (to be more specific) has been laid on the same i.e. consent. As consent in its literary meaning can be defined as "permission for something to happen or agreement to do something". Analyzing on the above meaning the term permission plays a

very decisive role as permission. Permission is to be blacklisted from all gender specific terms because it can be from either side. Law as a tool can't conjuncture whether permission is to be given from the side of a male or a female, because if law plays a decisive role then outcome is the creation of an invisible justice system of morality which is not elucidated under any law of the land. We need to interpret the jurisprudence of equity generational management and principle of equal protection together because this component of privacy is applicable to both strata of society. The motive is not to create autonomy in decisions but to explicate the choices and consent with matter of privacy. Jurisprudence of criminality seeks to integrate into majoritarianism rather than protecting the demands of spirituality.

Self discrimination will lead society to decide the sexual consent of privacy in the presence of mind. It is not the class-caste discrimination but a self discriminatory thoughtful assessment either to give consent to have sexual intercourse or not. If all the states establish the principle of intra-generational equity, it will generate a new species of seed to fair justice mechanism. There should be a sense of fusion as well as division in order to control over the extremist approach on discrimination. Non-regulation of this system of opposite diversion of constitutionality and criminality will be hooked to human discrimination.

The concept of crime changes with the change in political and social set up of the economy. 'Consent' means agreement; community of feeling and opinion; unanimity; to agree not to resist or prevent; to agree to; to permit; to be willing to undertake; agree to do.<sup>29</sup> Consent involves no denial too and not only equated to only inability to resist out of helplessness. Even any act done under helplessness cannot be an act on consent.<sup>30</sup>

Courts should interpret with the circumstances and facts of the case along with evidences because consent here becomes totally irrelevant when there is question of fact on offences on minor in our criminal law. It was held in case of *Rabi Narayan Das v State*<sup>31</sup> that- if rape is committed by man with a woman who is not a wife under circumstances falling under any of the 5 clauses of Section 375 is punishable and accordingly if the wife is under 15 years of age, the sexual intercourse amounts to rape. Rape is very serious issue. A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her Chastity had ever occurred.<sup>32</sup> Courts have to interpret with high degree of sensitivity and appreciate the evidence in whole of the

<sup>29</sup> R. D, COMMENTARY ON SEXUAL OFFENCES WITH SPECIAL REFERENCES TO LAW OF RAPE, (715 3d ed. 2013).

<sup>30</sup> *Krushna Prasad Rajguru Mahapatra v State of Orissa*, (1985) 2 Ori LR 275.

<sup>31</sup> *Rabi Narayan Das v State*, 1992 Cri LJ 269 (Ori).

<sup>32</sup> *Mukesh v State (NCT of Delhi)*, (2017) 6 S.C.C. 1.

background of case and not in isolation.<sup>33</sup> It shows a narrow verdict on the conservative issues of gender and gives rise to non-social welfare system. Along with the comparisons of *A.k Gopalan v State of Maharaasthra*<sup>34</sup> and *Maneka Gandhi v Union of India*<sup>35</sup> it can be said that there was mandate requirement to grant the dignity of free individual. Privacy could not be intruded in context of any domination, power, sexuality, gender, class, caste, race, and religion etc. We can conclude that there exist so much irrationality in the law system itself regarding the concept of “consent” then forget about the societal cultural habits which makes consent irrelevant.

### **Religion, Custom and Education Cannot Exonerate rape and consent**

Consent as defense of allegation of rape is immaterial. Every rape is rape. Even the consent given by torture is interpreted as readiness to give consent just because crime is happening in the four walls of room. Even the moral power to act in a manner if she wanted is also a matter of concern. Indians have abdominal practice of socializing as per inequality. Merely consent on basis of will and submission is not consent in today’s world. Submission of her body under influence of fear and terror is no consent.<sup>36</sup> Consent is not only the use of physical power and mental power but the moral aspirations and her conscience ability to give her consent is a material fact. How can consent be determined when the patriarchal society believes men to be physically stronger than women?

The factor of physical power here comes to an end. Victims in India do not usually raise alarms and report about sexual assault. The sexual interaction between married adults without consent should be an offence by virtue of IPC, 1860. Sexuality is a choice of human to have sex or not, it can’t be determined either by any sociological factor or by any law. The whole issue is that such ill activities in society extinguish the self rule of decision making of individual. Here in India, husband is overruling the dignity, health and safety of his own wife. Furthermore, he is never made guilty of raping his own wife even if he has sex with her with consent or without consent. Especially when it comes to offences like sex the third party can claim action against the victim. Even husband brings claim if her wife is raped “without her consent or with her consent”. Even if a female is used to sexual intercourse it does give right

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<sup>33</sup> State of Andhra Pradesh v Gangula Satya Murthy, 1997 Cri LJ 774 (SC); See also State of Punjab v Gurmit Singh, (1996) 2 S.C.C. 384.

<sup>34</sup> A.k Gopalan v State of Maharaasthra, A.I.R. 1950 SC 27.

<sup>35</sup> Maneka Gandhi v Union of India, A.I.R. 1987 SC 597.

<sup>36</sup> Nilambar Gouda v State of Orissa, 1982 Cr.Lj NOC 172; See also Bijoy v State of Orissa, 1982 Cr.Lj 2162 (Ori); Rao Harnarain v State of Punjab, A.I.R. 1958 Punj 123.

to rape her even if there was consent by her for that particular occasion because injury is physical as well as psychological and emotional.<sup>37</sup> So when husband himself becomes the accused, no right is given to wife to protect herself. This is where our law goes wrong. Here the question is what legitimate role does our criminal law is paying in the matter of sex offences? Marriages have granted immune power to husbands that even law had failed to protect the rights of women. But the careful analysis shows that modern myth of male domination as a result scope of equity, justice and good conscience itself go to the grave.

To cool off this issue there is a challenge to first eliminate the rationalist discrimination from thoughts and minds and then proceed further to the procedure of law. Diversification of faiths on different grounds will probably make everything vague even if the observations are correct. Not only women but young boys are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence.<sup>38</sup>

Does a wife is obliged to say yes to sex? Even husband has the right to say no to sexual intercourse. Think, what if men disagree to sexual intercourse with wife? Do these personal laws and criminality of laws grant the same procedure established by law to punish the wrongdoer?" It is not that so. The ignorance will have its advantage in its own sense. The more we ignore the less the matter will shine. It is the time to give the victory to the human essence and respect not the so called "Gender rights. It is the privacy as well as confidentiality that are to be protected. No human can be disfavored on basis of customs, rules and regulations of society.

### **Suggestions and Conclusions**

The following suggestions can be drawn-

- 1) The Parliament should consider marital rape as an offence under Indian Penal Code, 1860.
- 2) It is the duty of the people to be aware of the consequences of such criminal acts. Along with it the first aspect is that both the partners are equally valuable and should respect the inner feelings. Simultaneously, the concept of consent goes down to the earth.

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<sup>37</sup> State of U.P. v Pappu; (2005) 3 S.C.C. 594.

<sup>38</sup> Law Commission of India -Report No. 172 (March, 2000) Review of Rape Laws.

- 3) Both parties should have the ground for divorce under the family laws of the country.
- 4) The matrimonial laws should protect the rights of men and give them the remedies of the same happen to them in course of their marriage. So that equilibrium can be maintained.
- 5) There is a need of an hour to change the matrimonial laws as well as the mental ability of our own mind to think and evaluate any problem in society rationally not one sided.
- 6) Though it requires sensibility in changing and reforming the laws relating to rape, it shall be the initial duty of people to educate themselves as well as others regarding the issue.
- 7) The sexual offences should be made gender neutral and the sentence for marital rape should be recognized same as that of other rape.
- 8) Age should not be a matter of concern while dealing with such sensitive issue.
- 9) The fear of litigation from the minds of people can only be removed when they are themselves educated and self worth to stand for their violated rights and harm
- 10) Lastly the Justice system can only provide sanction and legal force to get relief, it is the primary duty and responsibility to educate and aware people as much as possible through means of social networking, legal aids, awareness programmes in rural as well as urban areas.

Keeping in view the rational object of criminalizing marital rape, it is not always the impugned provision which is responsible for increasing number of crimes but the sociological mindset which consequently real to differential mental capacity of reasoning and thinking. Encouraging the victims of marital rape to come forward in order to report to the police station so that a positive environment is created for them is required. Nobody is allowed to treat any person as property; the history of gender equality has to come up with new ideas. State along with us altogether violates the liberty of many victims.

Law ought to specify that a marital rape or any other kind of relationship prevailing in the society is not defense against the crimes. Also all what is required is to make the laws neutral on gender and sensitization of the authorities reporting such crimes. The only solution to the abovementioned problem is conducting training and development programmes should be provided to each strata of society to ensure that marriage can't extinguish the sexual autonomy of wife as well husband.