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Even a wife is entitled to a ‘NO’- A Call for Criminalizing Marital Rape

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70 years down the creation of the world's largest written constitution, Marital Rape still remains non-criminalized. Where consent is taken for granted, this society excels at justifying horrendous violations of the wife's sexual and bodily integrity on grounds of stability and sanctity of the marriage. The Exception to Section 375 of the Indian Penal Code is clearly violative of the fundamental right of the wives, denying equality, dignity, and justice. The argument of the impossibility of evidence and potential misuse stands unsubstantiated without any empirical data or reasonable nexus. The narrative of the vengeful wife is encouraged across all cross-sections of the society despite the social, economic, and legal boundaries implying to the contrary. The need for criminalizing Marital Rape is compelling as various reports, judgements, and observations point towards the gravity of the offence, backed up by real-life occurrences. Marital Rape should be criminalized on the lines of punishment for rape under Section 376 IPC, with necessary alterations in the balance of burden and changes in relevant sections of the Indian Evidence Act. Sex without consent irrespective of the relationship must be considered RAPE, hence should be criminalized.

Keywords: *marital rape, exception to section 375, fundamental right, vengeful wife.*

INTRODUCTION

“One night, when I gently refused to have sex with him as I had a headache, he picked up a candle, forcibly inserted it into my vagina. I sobbed endlessly, but he refused to spare me the horror. Night after night, the torture grew. My husband forced me to watch porn and perform all the acts the female porn stars would. I thought it was my duty as a wife to follow his command. I dreaded the days his orders were not followed at work. Those nights were the worst.”

- Anita

“The Crushing of Spirits” is how the British Parliament Member Jack Ashley describes what Anita had to undergo every such night after her marriage. Anita is not alone in this nightmare of brutality but a huge majority of married women in India are subjected to such constant annihilation of their sexual agency and basic dignity as human beings. It exists in all societies, religions, cultures, and communities. While a murderer destroys the physical frame of the victim, a rapist shatters and extirpates the soul of the victim¹ and when the same rapist is your own spouse, perhaps the trauma is devastating, to say the least. The Indian Penal Code does not define the term ‘Marital Rape’ but it can be termed as an Unwanted sexual act or intercourse committed by a person without the consent or against his/ her spouse’s will or when the consent is obtained by way of force, the threat of force, by coercion or in a state when the spouse is incapable of giving consent.

CONSENT? - INVISIBLE THROUGH THE PATRIARCHAL LENS

We live in a world that has achieved an abstract model of gender equality but has largely failed to accomplish a substantive realm of the same. Since time immemorial, gender-specific roles have continued to carve the global society indispensably in varying degrees. Marriage being a fundamental integrant of every society is unquestionably impelled by deep-rooted patriarchy, bias, and undue male supremacy. Substantially, women and men have not been

¹ *Tulshidas Kanolkar v State of Goa*, ALL MR 2000 CRI 574 (India)

considered to be on the same page both within marriage and outside marriage even in contemporary times. The impetus of such notions can be traced back to their origin where a woman is taught to instill acceptance within herself to be subordinate to her husband or her male counterpart and where a man is edified to play the superior role under the umbrella of marriage.

The idea of marriage that has been edged onto the minds of both men and women happens to be extremely paradoxical as well as noxious in nature. On one hand, where marriage is defined as a sacred union of two souls, on the other, it is promulgated as a license or an accredit to disrespect and disregard the partner's consent and above all, a green card to suspend the spouse's basic inherent fundamental right to liberty, dignity, and equality. This entire equation goes hand in hand as men are perceived to have an implied consent of their wives for a sexual relationship throughout their lives and women are reckoned to lose hold of their bodily autonomy and fulfill the sexual demands of their husbands to maintain the stability and sanctity of their marriage irrespective of their own accord and assent. Thus, it is not wrong to state that 'consent' under marriage is an alien concept to this society. But what is essential to understand is that a 'NO' still reflects denial and dissent irrespective of the victim's relationship with the perpetrator. Consent is 'No Consent' if it is not given out "mutually, enthusiastically and freely for each new sexual encounter" even within a marriage.

Lord Mathew Hales in 1736 pronounced with utter pride, "But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". The concept of rape never originated as a crime against one's individual sanctity, dignity, and sexual autonomy, but rather it was a crime against the husband's property, and logically as it follows, how would it have been possible for a husband to steal/snatch/ breach his own property. Perhaps, the concepts of irrevocable consent and legal impossibility were two of the wisest doctrines ever created in furtherance and persistence of a Man's society. Women were and to a large extent are relegated to the private sphere of family and the commonly held belief that spouse abuse was a private matter further dissuaded criminal

justice officials from taking any legal action. The famous unities theory rested on the idea that upon marriage, the identity of the woman merged with that of the husband, and therefore no question of separate individual rights arose. The consent to conjugal relationship given at the time of marriage is considered to be irrevocable, thus implying consent for sexual intercourse for the rest of the women's life.

WHAT DOES OUR LAW SAY?

Exception 2 to Section 375² of the Indian Penal Code, 1860 creates a special classification for the husband and provides him immunity against charges of rape under Section 376³ on the mere pretext of being married to the victim. It states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. Exception 2 of Section 375 of the IPC ('exception clause') does not state any reason for the exclusion of sexual intercourse between a man and his wife from the purview of rape. However, the former Chief Justice of India Honourable Dipak Mishra remarked, "I don't think that marital rape should be regarded as an offence in India, because it will create absolute anarchy in families and our country is sustaining itself because of the family platform which upholds family values". This comes as a non-shocker in a country where the sanctity of marriage overpowers the sexual dignity of a spouse devastatingly in both social and legal spheres.

The nation was on the streets after the unfortunate 2012 Nirbhaya Gang Rape incident which propelled a substantial change in views of the mainstream literature. The famous three-member J S Verma Committee formed to make major women-empowering amendments, recommended the deletion of the Exception, and was of the view that matrimonial relationship cannot be held to be a valid defence for rape. It particularly stated that the "The fact that the accused and victim are married or in another intimate relationship may not be regarded as a

² Indian Penal Code 1860, s 375

³ Indian Penal Code 1860, s 376

mitigating factor justifying lower sentences for rape”.⁴ With no surprises there, the Report gathered dust with major recommendations being ignored by the then UPA government.

The primary contention in favour of the criminalization of marital rape is the unconstitutional nature of the Exception clause when judged on the parameters of Article 14 and Article 21⁵ of the Indian Constitution. Article 14 of the Indian Constitution⁶ ensures that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”, but contrary to the very tenets of this article, the Exception clause creates a looming distinction between married and unmarried victims of Rape. The Supreme Court of India in *Budhan Choudhary v. State of Bihar*⁷ and *State of West Bengal v. Anwar Ali Sarkar*⁸ held that any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that can be passed only if the classification has some rational nexus to the objective that the act seeks to achieve. But the very objective of Section 375 of the IPC, which is to protect women against violation of their sexual and bodily autonomy, is blatantly disregarded and frustrated by the Exception Clause which creates a special defence for the rapist husband. The creation of such an exception cannot be reasonably construed to have any rational nexus with the objective of protection of women against sexual offences.

Article 21 of the Indian Constitution is tossed out of the window when the Exception clause is judged on the parameters of constitutionality. It states that “No person shall be deprived of his life and personal liberty except according to the procedure established by law”. The Supreme Court of India has upheld the importance of consent in the prevalence of one’s personal liberty in *The State of Karnataka v. Krishnappa*⁹. Furthermore, in the case of *Suchita Srivastava v. Chandigarh Administration*¹⁰, the Supreme Court equated the right to make choices related to

⁴ Justice JS Verma & Justice Leila Seth, ‘Report of the Committee on Amendments to Criminal Law’ (PRS India, 23 January 2013)

<[https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20rep
ort.pdf](https://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf)> accessed 21 March 2021

⁵ Constitution of India, art 21

⁶ Constitution of India, art 14

⁷ *Budhan Choudhary v State of Bihar* (1995) AIR 191 (India)

⁸ *State of West Bengal v Anwar Ali Sarkar* (1952) AIR 75 (India)

⁹ *State of Karnataka v Krishnappa* (2000) 4 SCC 75 (India)

¹⁰ *Suchita Srivastava v Chandigarh Administration* (2010) AIR SC 235 (India)

sexual activity with rights to personal liberty, privacy, dignity, and bodily integrity under Article 21 of the Constitution. The very choice of having sexual intercourse is made irrelevant in the face of it being with the husband, hence denying the wife her right to consent to such an activity. It is a clear violation of the wife's personal liberty, dignity, and bodily integrity, thus being violative of Article 21 of the Indian Constitution.

ITS SACROSANCT - TIME TO CHANGE?

Marriage in India is explicitly validated as a 'sacrament' or in other words, a 'sacrosanct' between a husband and a wife which is conjectured to be sanctified and unviolated. One of the crucial questions which arise is- Whether the institution of marriage loses its reverence with an objection to non-consensual sexual intercourse? But does not lose so with a protest against domestic violence or a protest against dowry harassment? This entire realm suggests one possible conclusion that marriage in India is considered synonymous with implied consent for a sexual relationship. If 'consent' holds acute gravity while tying the knots, why doesn't it hold the same profundity when it comes to sexual intercourse after the marriage? Even for the sake of argumentation, if consent is held to be irrevocable, it is not a secret that the majority of marriages in rural areas even today are solemnised without seeking the consent of the girl. The 'go-ahead' is given by the parents of the girl, thus frustrating the entire idea of consent by the wife to sexual intercourse. This brings us to the conclusion that the right to consent is delegated to the parents of the girl and therefore it is their consent indirectly that leads to the conjugal relationship. There are several questions that pop up instantly whenever non-consensual sex within a marriage is justified on grounds of the stability of the marriage. Haven't we thus accorded marriage a ground of defence against rape? Aren't our eyes just wide shut to rapes under the roof of marriage? Haven't we already reached a stage where we must question our society whether the stability of marriage and the soundness of a family be put above individual rights? Or are we a society too insecure to place consent above culture? Or is it just that our whole concept of equality and equal rights wither away when it comes to marriage?

IT'S DIFFICULT TO PROVE, THEY SAY! - IS IT SO?

The biggest challenge to the criminalization of marital rape is the argument that proving marital rape is not affable. The element of actus reus in the offense of rape should be devoid of consent and proving the lack of consent in an intimate act committed within the private walls of a house is recognizably difficult. But can the complexity in gathering evidence be considered a reasonable ground to ignore the crime itself? Furthermore, is direct audio-visual evidence the only means to establish the lack of consent? The primary contention being marriage in society legitimises sexual intercourse between a man and a woman and the huge societal assumption that sex within marriage carries consent will be tough to overpower by way of evidence. But so is to prove the lack of consent in rape cases where the accused is someone that the victim already knows. In 96% of the rape cases registered in India, the accused is a person known to the victim and in such cases too, the court relies heavily on circumstantial evidence to prove the guilt.

The answer to this question lies in the Judgement of the Supreme Court in *Sheikh Zakir vs the State of Bihar*¹¹ wherein the court ruled that the absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. In this situation, the non-production of a medical report would not be of much consequence if the further evidence on record is believable. Forced and violent sexual intercourse often results in genital injuries, most of which are relatively minor but can also lead to lacerations on the upper vaginal lining. The accumulation of fingernail scrapings is credible evidence of a forced or non-consensual encounter apart from injuries inflicted on the inner thighs of the victim. Additional injuries may also result from being struck or pushed or overpowered by way of force. A history of physical violence, results of a rape kit and medical examination of the wife, witness testimony, and possible admission of the husband in electronic communications could be ample evidence to prove his guilt. Furthermore, distress calls made by the victim to her parents or any other family member, by way of electronic messaging, in relation to the incident can also go a long way in determining guilt. Timely medical examination can lead to a plausible differentiation between forced and consensual sex.

¹¹ *Sheikh Zakir v State of Bihar* (1983) AIR 911 (India)

Rape also has psychological repercussions on the mind of the victim and in potential cases of marital rape, where the accused is her husband itself, the impact of the psychological trauma may even be worse. The credibility of the complainant can be strengthened by way of expert testimony regarding 'Rape Trauma Syndrome' (RTS). This syndrome includes an analysis of the behavioural symptoms exhibited by the rape victim, determined by observation and examination of the victim by a professional psychologist. In a rape trial, the state of mind, the physical behaviour, and conduct of the victim showing the presence or absence of consent are relevant facts defined under Section 5 of the Indian Evidence Act¹². Under Section 3 of the Indian Evidence Act, 'fact' also includes mental facts¹³, thus, qualifying RTS as a relevant fact for assessing and corroborating claims. The same was also considered to be crucial evidence that cannot be ignored by the court in *Surendra Nath vs State of Uttar Pradesh*.¹⁴ RTS based on scientific evaluation and derived from established points of fact may not be allowed as stand-alone proof of guilt but definitely plays a crucial role in reaching an inference along with other circumstantial evidence on record.

Even if certain cases of marital rape may suffer from the vice of negligible evidence, cases where there is a history of sexual violence with the wife and there exists ample evidence to prove so, the accused can be held liable for the offense of rape. It brings us to the conclusion that contrary to popular opinion, there exist several biological, technical, and circumstantial parameters on which the credibility of the allegations can be assessed properly.

THE VENGEFUL WIFE - COMES THE VILLAIN?

"Laws are meant to be the citizen's shield and not their weapon."

For some years now, there have been ample claims from both our legal system as well as the society that the laws meant for the protection of women are being misused to the extent that it has given rise to vexed and emotive debates. The ever-growing narrative of the 'vengeful wife', which spread rapidly with the advent of WhatsApp and Facebook, is more often than

¹² Indian Evident Act 1972, s 5

¹³ Indian Evidence Act 1972, s 3

¹⁴ *Surendra Nath v State of Uttar Pradesh* (1992) AIR 127 All (India)

not peddled by the male members of the family creating an illusionistic picture of the 'dominating - 'keen on seeking revenge' wife". No wonder the anti-criminalization contenders never talk about the misuse of the exception that has been prevalent since forever and how it provides protection to a husband raping his wife over and over again.

If we were to understand the idea of misuse, the debate surrounding the Dowry Prohibition Act¹⁵ is well suited. The Dowry Prohibition Act which was legislated to criminalise the act of dowry prevalent in Hindu Marriages has been strongly avowed that its misuse has outweighed its use. In response to it, our apex court had come out with certain changes to the provisions or better said as 'diluted the Anti-Dowry law' by offering a slot of anticipatory bail to the husband and his family. With this, the supreme court in *Rajesh Sharma & Ors. V. State of Uttar Pradesh*¹⁶ had also claimed that the Anti-Dowry Act is the easiest channel through which a husband and his family can be harassed by his disgruntled wife. But what is more shocking is that the verdict was not based on any precise record of data other than just 'anecdotal hearsay'! The Supreme Court generalised the facts as it observed that a large number of cases continue to be filed under Section 498A of the Indian Penal Code alleging harassment of married women, and many such complaints are not bona fide ones.¹⁷ The Law Commission's 243rd report on Section 498A observed that the misuse (the extent of which is not established by empirical data) by itself shall not be a ground to denude the provision of its efficacy, keeping in view the larger societal interest. The argument of misuse rests on the low conviction rates observed in Dowry or cruelty cases but gauging all the non-convicted cases as examples of malicious prosecution is funny, to say the least. If low conviction rates indicate the genuineness of a genre of cases, then 58.1% of cases of murder are false and fake (NCRB 2019: the conviction rate in murder is 41.9%). This rate of conviction is despite the fact that in no murder case there can be a compromise. Even according to the figures given by NCRB, out of

¹⁵ Dowry Prohibition Act 1961

¹⁶ *Rajesh Sharma & Ors v State of Uttar Pradesh* (2017) SCC Online SC 821 (India)

¹⁷ Jyotika Kalra, 'Misuse of dowry laws and the failure of the system' (*The Hindu*, 6 August 2017)

<<https://www.thehindu.com/opinion/open-page/misuse-of-dowry-laws-and-the-failure-of-the-system/article19435399.ece>> accessed 21 March 2021

13297 cases of the Dowry Prohibition Act reported in the year 2019, 462 cases were found to be false, which is roughly equivalent to ONLY 3.47 % of the total registered cases.¹⁸

It is not a hidden fact that the women in our nation are generally forced to settle these disputes within the four walls of the house and are coerced to withdraw the cases. Aided by poor investigations, use of economic & social threat to withdraw cases, and delay in the hearing leading to the inadmissibility of evidence, the conviction rates in these cases unsurprisingly remain low. In such conditions, exceptional cases of malicious prosecution must not make our women land on a domain where they no longer feel protected and secured. The lacuna in the Indian police and judiciary cannot be termed as a reason to justify the non-criminalization of marital rape.

On the other hand, the threat of marital rape is real. According to a survey conducted by the UN Population Fund in 2014, 75% of married women in India were subjected to marital rape.¹⁹ Earlier in the same year, a UN Population Fund and the International Centre for Research on Women survey of 9,200 men across seven Indian states saw **one-third of them** admitting to having forced their wives to have sex, while 60% said they'd used some form of violence to assert dominance over their partners. The numbers are too grave to be discarded by arguments such as disruption of the sacred institution- Marriage. The sweeping characterisation of the wife as the potential malicious prosecutor is absurd given the fact that such an assumption could have been made in the case of every crime wherein the accused is known to the victim, thus demanding the decriminalization of all such criminal activities.

The argument blatantly ignores how disadvantageous and dominated, women are in this country to even wield the marital rape law if it exists, let alone the fact of misusing it. People focus on those exceptional dowry cases wherein the family of the wife misuses the existing laws for malicious purposes but what is often forgotten is that cases of marital violence, sexual

¹⁸ *Ibid*

¹⁹ Sadia Akhtar, 'National Commission for Women Questions Centre's Silence on Criminalising Marital Rape' (*The Wire*, July 2016) <<https://thewire.in/politics/national-commission-for-women-questions-centres-silence-on-criminalising-marital-rape>> accessed 21 March 2021

violence, and sexual cruelty end up being buried within the four walls of the house itself. The privatisation of such crimes leads the masses to believe that its occurrence is negligible.

Social ostracization has been a major reason behind women getting transgressed and still choosing to not walk out of their unhealthy spousal relationship. Thus, a divorced woman becomes open to social interpretations and assumptions and this is one of the many reasons that women sanction themselves to their husbands. Societal pressure and financial constraint are the two pivotal grounds that have kept most women bound to malignant marriages. The legal illiteracy, the social stigma attached with filing a rape case against one's own husband, and the economic dependency dissuade wives to raise voices against the criminal husband. A law criminalizing marital rape will provide for a beacon of power and dependency to these women.

The Supreme Court in *Bharvada Gohin Bhai Hirjibhai vs the State of Gujarat*²⁰ said that,

*"Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief, or suspicion? We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon".*²¹

There is no denial in the fact that a certain number of false implications will arise in the course of time but what is essential is that a robust evidentiary mechanism, a more vigilant police system, and judicial screening followed by punishment for malicious prosecution be done. Justice J B Padriwala of the Gujarat High Court observed that "Let it be stressed that the safeguards in the criminal justice system are in place to spot and scrutinize fabricated or false marital complaints, and any person who institutes untrue and malicious charges, can be made answerable in accordance with the law."²² Not overlooking the genuine cases where the law is

²⁰ *Bharvada Gohin Bhai Hirjibhai v State of Gujarat* (1983) AIR 753 (India)

²¹ *Ibid*

²² *Nimeshbhai Bharatbhai Desai v State of Gujarat* (2018) SCC Online Guj 732 (India)

purposely and consciously misused, we must question ourselves, our legal system, and our society whether there is one single law existing that hasn't yet faced any abuse or untrue implications? Is it fair to wipe out or dilute the statute at the pretext of misuse? Answering this question with plausible certainty is not possible but what is of utter certitude is that decimating or diluting or laying a statute under exception does not guarantee an end to the misuse of laws rather escalates the hazard of abuse and torment for the victims. Perhaps the more effective and well-balanced approach would be to reduce the ambit of misuse by reinforcing the provisions of the Indian Evidence Act and provide for a more robust criminal justice system.

WHAT COULD BE DONE?

While Section 498 A of the IPC which criminalizes cruelty meted out to the wife covers sexual cruelty to some extent in certain situations, it has to be differentiated from a special section dedicated to marital rape alone. Cruelty has a way higher threshold of conviction and is based on severe physical or mental harm meted to the wife, whereas the idea of Marital Rape is based on the idea of revocable consent and sexual autonomy. While repetitive behavior and signs of cruelty may hold corroborative value, they cannot be melted within the concept of Marital Rape. Moreover, even if it were to be covered under 498 A, the maximum punishment for cruelty is three years of imprisonment²³, which is way lesser than the minimum punishment of 7 years for the offense of rape.

The Domestic Violence Act of 2005 provides for the protection of the wife²⁴ or some form of compensation²⁵ from the husband in such cases, which is a form of civil remedy. The offence under DVA is an offense against the individual and not the State, in stark contrast to the crime of Rape defined in Section 375 of the IPC, thus greatly reducing the gravity of the offense. The Supreme Court has held in the case of *The Chairman, Railway Board v Chandrima Das*²⁶ that

²³ Indian Penal Code 1860, s 498A

²⁴ Protection of Women from Domestic Violence Act 2005, art 19

²⁵ Protection of Women from Domestic Violence Act 2005, art 22

²⁶ *The Chairman, Railway Board v Chandrima Das* (2000) 2 SCC 465 (India)

rape is not a mere violation of individual rights but is a violation of one's fundamental right. It is a crime against the State and a civil remedy for such a heinous offense is a mockery of the principles of Justice, Equity, and Good Conscience.

Marital Rape should be criminalised on the lines of recommendations given by the Justice Verma Commission. The mere removal of the Exception Clause in Section 375 is inadequate as an implicit assumption of consent may be taken into account because of the marital bond, hence an express mention is called for stating that marital relationship between the victim and accused cannot be held as a valid defence. The quantum of punishment for the offense of marital rape should ideally be similar to the offence of rape and a sentencing policy on the same lines should be followed. Article 376 B of the IPC provides for a lower sentencing policy in favour of the husbands when rape is committed on the wife during the period of judicial separation. Such an exception to the sentencing policy under Section 376 IPC is unconstitutional on the grounds of Article 14 and conviction for Marital Rape should be dealt with the same quantum of punishment as provided under Section 376 IPC.

The conflict between the presumption of consent and absence of consent can be resolved by the creation of a special system in cases of marital rape. There should be no presumption of consent or lack of consent since that would create an imbalance of burden on either the wife or the husband, which could either lead to very low registration of cases or a very low threshold of conviction. Since the proof of the existence of sexual intercourse won't be of great evidentiary value in these cases given the implicit expectation that married couples shall engage in sexual intercourse, the principle of '*force is not required to prove rape*'²⁷ might have to be reassessed and applied. Most of the reported cases of marital rape also witness signs of forceful domination and related injuries. Psychological evaluation of the victim also goes a long distance in strengthening the case apart from circumstantial evidence on record. Use of force should not be considered as the only evidence required but a contributing factor in proving the guilt. However, the consent given to previous sexual encounters should in no manner be construed as evidence against the victim.

²⁷ *State Of Maharashtra v Prakash* (1992) AIR SC 1275 (India)

In furtherance of the same, Section 54 of the Indian Evidence Act can be amended accordingly.

“In criminal proceedings, the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.”

An Exception clause can be added to the same stating that, in cases under §375 of the IPC, the previous bad conduct will be relevant if the accused is the husband of the woman. Section 114 of the Indian Evidence Act will also require necessary amendments in order to state that the lack of presumption of consent in prosecutions of rape even if the accused is the husband of the woman.

§114B: No presumption of consent in prosecutions of rape: There shall be no presumption of consent in prosecutions of rape, even if the accused is the husband of the woman.

It is also important that the legal prohibition on marital rape is accompanied by changes in the attitudes of prosecutors, police officers, and those in society more generally. Changes in the law, therefore, need to be accompanied by widespread measures raising awareness of women's sexual autonomy in order to prevent lower reporting and conviction rates. Children need to be taught the importance of consent in establishing a sexual relationship and the primacy of one's bodily dignity over anything else.

TIME TO UNLEARN AND RE-LEARN!

We live in a world that is shouldered with the responsibility of constant progressive change and substantive implementation of the same, be it legally or socially. Spousal rape as a sphere has undergone various debates and still has been edged on the trunks of intense controversies. The acknowledgement of consent within a marriage is truly an unaffordable opulence in the Indian patriarchal society. It is not wrong to concede that a 'vagina' in India is perceived as a 'must-win conquest' which parallelly bestows the so-called 'robust masculinity' to men.

“Wives are supposed to confer consent” has to be replaced by “husbands are supposed to seek consent”. It shouldn't be a luxury but a duty. It shouldn't merely be advised but mandated.

Sex is sex only and only if it is inclusive of the consent of both the partners, no matter what the relationship status is! And sex without consent is nothing but RAPE. The time has come for us to accept the basic fact that a 'vagina' is not a trophy-winning battle but just a mundane body part that seeks CONSENT to be pervaded with, brushing aside the relationship status existing between the victim and the perpetrator.

Isn't it shameful that the fear of misuse is deeper a concern than the frustration of a woman's sexual autonomy? Perhaps a heinous crime against the 'dominated' comes secondary in worth to the incidental fear of misuse against the 'dominating'. But the bigger question that we need to ask ourselves is,

Is it the 'fear of misuse' that's haunting or is it the empowerment of the dominated that is scary?