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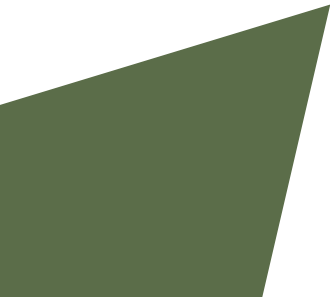
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Marital Rape: A Critical Study Into the Need for Criminalization in India

Ankita Jha, Amisha Raguvanshi

INTRODUCTION

*“It was we, the people; not we, the white male citizens; nor yet
we, the male citizens; but we, the whole people, who formed the Union....
Men, their rights and nothing more; women, their rights and nothing less.”*

- Susan B. Anthony

This empowering quote may seem to speak volumes about the status of women in the world but the surface reality still evokes dampening sentiments in relation to the plight of married females.¹

Marital rape is a rape within a marriage, where consent to sexual intercourse is not given. Though rape by a stranger has been penalised in statute books, but rape by a spouse has its boundaries blurred. Marital rape, usually, is an offshoot of an abusive, dysfunctional or failed marriage and more often than not has a long shelf life.²

Once widely condoned or ignored by law, marital rape is now repudiated by international conventions and increasingly criminalized. Still, in many countries, marital rape either remains legal, or is illegal but widely tolerated, with the laws against it being rarely enforced.

Traditional views of marriage, rape, sexuality, gender roles and self - determination started to be challenged in most Western countries in the 1960s and 1970s, which has led to the subsequent criminalization of marital rape during the following decades. Several countries in Eastern Europe and Scandinavia made spousal rape illegal before 1970, but other countries in Western Europe and the English-speaking Western World outlawed it much later, mostly in the 1980s and 1990s. Most developing countries outlawed it in the 1990s and 2000s. In many countries it remains unclear whether marital rape is covered by ordinary rape laws.³

According to the UN Population Fund, more than two-thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex.

¹ Vibha Yadav, Marital Rape, Uttarakhand Judicial & Legal Review, (Jan. 20, 2020, 2:40 PM), <http://ujala.uk.gov.in/files/ch19.pdf>.

² Id.

³ Id.

In 2011, the International Men and Gender Equality Survey revealed that one in five has forced their wives or partner to have sex.

In the present day, studies indicate that between 10 and 14% of married women are raped by their husbands. The incidents of marital rape soars to 1/3rd to 1/2 among clinical samples of battered women. Sexual assault by one's spouse accounts for approximately 25% of rapes committed. Women who became prime targets for marital rape are those who attempt to flee. Criminal charges of sexual assault may be triggered by other acts, which may include genital contact with the mouth or anus or the insertion of objects into the vagina or the anus, all without the consent of the victim. It is a conscious process of intimidation and assertion of the superiority of men over women.⁴

The idea of the 'sacrosanct' institution of marriage dished out by the mainstream Indian cinema is a myth and is contrary to women's perceptions of reality. Though marital rape is the most common and repugnant form of masochism in Indian society, it is hidden behind the iron curtain of marriage.⁵

A HISTORY OF EVOLUTION OF MARITAL RAPE AS A CRIME

The root of the generic term 'rape' can be traced from the Latin term '*Raptus*,' which literally means "to seize" and in Roman law, it was used to imply violent theft, in relation to both property and person. Since, historically, a woman was also considered a property, rape was synonymous with abduction and a woman's abduction or sexual molestation, was merely the theft of a woman against the consent of her guardian or those who had lawful custody of her person. The injury, ironically, was treated as a wrong against her father or husband, women being wholly owned subsidiaries. Such was the appalling status of women. Not surprisingly, thus, married women were never the subject of rape laws. A legal immunity was bestowed upon husband in respect of his wife, sprouting solely and wholly by virtue of the marital cord.⁶

20th and 21st century: Criminalization of Marital Rape:

As the concept of human rights has developed, the belief of a marital right to sexual intercourse has become less widely held. Feminists worked systematically since the 1960s to overturn the

⁴ Priyanka Rath, Marital Rape and the Indian Legal Scenario, India Law Journal (Dec. 22, 2020, 1:21 PM.), http://www.indialawjournal.com/volume2/issue_2/article_by_priyanka.html.

⁵ Id.

⁶ Supra Note 1.

marital rape exemption and criminalize marital rape.⁷ Increasing criminalization of spousal rape is part of a worldwide reclassification of sexual crimes "from offenses against morality, the family, good customs, honour, or chastity to offenses against liberty, self-determination, or physical integrity."⁸ In December 1993, the United Nations High Commissioner for Human Rights published the *Declaration on the Elimination of Violence against Women*. This establishes marital rape as a human rights violation.

The importance of the right to self - sexual determination of women is increasingly being recognized as crucial to women's rights. In 2012, High Commissioner for Human Rights Navi Pillay stated that:⁹

“Violations of women's human rights are often linked to their sexuality and reproductive role. (...) In many countries, married women may not refuse to have sexual relations with their husbands, and often have no say in whether they use contraception. (...) Ensuring that women have full autonomy over their bodies is the first crucial step towards achieving substantive equality between women and men. Personal issues - such as when, how and with whom they choose to have sex, and when, how and with whom they choose to have children - are at the heart of living a life in dignity.”

Despite these trends and international moves, criminalization has not occurred in all UN member States. In 2006, the UN Secretary-General's in-depth study on all forms of violence against women stated that (page 113):¹⁰

“Marital rape may be prosecuted in at least 104 States. Of these, 32 have made marital rape a specific criminal offence, while the remaining 74 do not exempt marital rape from general rape provisions. Marital rape is not a prosecutable offence in at least 53 States. Four States criminalize marital rape only when the spouses are judicially separated. Four States are considering legislation that would allow marital rape to be prosecuted.”

⁷ Hasday & Jill Elaine, Contest and Consent: A Legal History of Marital Rape, California Law Review 88(5), 1482-1505 (2000) <http://dx.doi.org/10.2307%2F3481263>.

⁸ Frank, David John, Bayliss J. Camp & Steven A. Boutcher, Worldwide Trends in the Criminal Regulation of Sex, 1945 to 2005, American Sociological Review 75(6), 867-893 (2010) <http://dx.doi.org/10.1177%2F0003122410388493>.
<http://asr.sagepub.com.ezproxy.gc.cuny.edu/content/75/6/867.abstract>.

⁹ Navi Pillay, Valuing Women as Autonomous Beings: Women's Sexual and Reproductive Health Rights, Helen Kanzira Lecture, (2012). http://www.chr.up.ac.za/images/files/news/news_2012/Navi%20Pillay%20Lecture%202015%20May%202012.pdf.

¹⁰ Ending Violence Against Women-From Words to Action (United Nations Publications 2006) <http://www.un.org/womenwatch/daw/vaw/publications/English%20Study.pdf>.

In 2011, the UN Women report 'Progress of the World's Women: In Pursuit of Justice' stated that (Page 17):¹¹

"By April 2011, at least 52 States had explicitly outlawed marital rape in their criminal code."

LEGAL STAND OF MARITAL RAPE IN VARIOUS COUNTRIES

United States of America

In United States researchers estimate that 10% to 14% of married women experience rape in marriage. When researchers examined the prevalence of different types of rape, they found that marital rape accounts for approximately 25% of all rapes.¹² Despite the prevalence of marital rape, this problem has received relatively little attention from social scientists, practitioners, the criminal justice system, and larger society as a whole.

In 1993, marital rape became a crime in all fifty States, under at least one section of the sexual offence codes.¹³

In seventeen States and the District of Columbia, there are no exemptions from rape prosecution granted to husbands. However, in thirty-three States, there are still some exemptions given to husbands from rape prosecution. When his wife is most vulnerable (e.g. she is mentally or physically impaired, unconscious, asleep etc.) and is legally unable to consent, a husband is exempt from prosecution in many of these thirty-three States. The existence of some spousal exemptions in the majority of States indicates that rape in marriage is still treated as a lesser crime than other forms of rape.

England:

In England, earlier as a general rule, a man could not have been held to be guilty as a principal of rape upon his wife, for the wife is in general unable to retract the consent to sexual intercourse,

¹¹ UN Women Entity for Gender Equality: Progress of the World's Women-In Pursuit of Justice (2011-12) <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf?la=en&vs=2835>.

¹² National Violence Against Women Survey, NCJ 172837, Washington, DC: US Department of Justice. <https://www.ncjrs.gov/pdffiles/172837.pdf>.

¹³ Kersti Yllo & M. Gabriela Torres, Marital Rape: Consent, Marriage, and Social Change in Global Context (3rd ed. 2016).

which is a part of the contract of marriage.¹⁴ However, the marital rape exemption was abolished in its entirety in 1991.

The House of Lords held in *R. v. R.*¹⁵ that the rule that a husband could not be guilty of raping his wife if he forced her to have sexual intercourse against her will was an anachronistic and offensive common-law fiction, which no longer represented the position of a wife in present-day society, and that it should no longer be applied.

Corresponding amendment to the statutory law was made through *Section 147* of the **Criminal Justice and Public Order Act, 1994**. This judgment was also affirmed by the European Court of Human Rights in the decision of *SW v. UK*.¹⁶

Mexico

In Mexico, the country's Congress ratified a bill that makes domestic violence punishable by law. If convicted, marital rapists could be imprisoned for 16 years.¹⁷

POSITION OF MARITAL RAPE IN INDIA

In India marital rape exists *de facto* but not *de jure*. While in other countries either the legislature has criminalized marital rape or the judiciary has played an active role in recognizing it as an offence, in India however, the judiciary seems to be operating at cross purposes. In *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁸ the Supreme Court said that “*rape is a crime against basic human rights and a violation of the victim's*” most cherished of fundamental rights, namely, the right to life enshrined in Article 21 of the Constitution. Yet it negates this very pronouncement by not recognizing marital rape.¹⁹

Women who experience and wish to challenge sexual violence from their husbands are currently denied State protection as the Indian law in *Section 375* of the **Indian Penal Code, 1860** has a general marital rape exemption. The foundation of this exemption can be traced back to statements made by Sir Matthew Hale, C.J., in 17th century England. Hale wrote:

¹⁴ Halsbury's Laws of England, 4th Ed., Vol. 11 (1), para 495.

¹⁵ *R. v. R.*, 94. Cr App R 216 (1992).

¹⁶ *SW v. UK*, 21. EHRR 363 (1995).

¹⁷ *Supra* Note 7.

¹⁸ *Gautam v. Chakraborty*, 1. SCC 490 (1996).

¹⁹ N. Tandon & N. Oberoi, *Marital Rape - A Question of Redefinition*, Lawyer's Collective, p. 24 (2000).

*“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 herself in kind unto the husband, which she cannot retract.”*²⁰

This established the notion that once married, a woman does not have the right to refuse sex with her husband.

Only two groups of married women are covered by the rape legislation in India — those being under 15 years of age²¹ and those who are separated from their husbands.²² While the rape of a girl below 12 years of age may be punished with rigorous imprisonment for a period of 10 years or more, the rape of a girl under 15 years of age carries a lesser sentence if the rapist is married to the victim. The former is slated to change with the incorporation of death penalty as a punishment as soon as it is published in the Gazette of India.

Some progress towards criminalizing domestic violence against the wife took place in 1983 when *Section 376-A* was added in the Indian Penal Code, 1860, which criminalized the rape of a judicially separated wife. It was an amendment based on the recommendations of the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 and the Law Commission of India.²³ The Committee rejected the contention that marriage is a licence to rape. Thus, a husband can now be indicted and imprisoned up to 2 years, if firstly, there is a sexual intercourse with his wife, secondly, without her consent and thirdly, she is living separately from him, whether under decree or custom or any usage. However, this is only a piecemeal legislation and much more needs to be done by Parliament as regards the issue of marital rape.

When the Law Commission in its 42nd Report advocated the inclusion of sexual intercourse by a man with his minor wife as an offence it was seen as a ray of hope.²⁴ The Joint Committee that reviewed the proposal dismissed the recommendation. The Committee argued that a husband could not be found guilty of raping his wife whatever be her age. When a man marries a woman, sex is also a part of the ‘*package*.’

²⁰ 1 Hale, History of the Pleas of the Crown 629 (1778).

²¹ Indian Penal Code, § 375: Exception (1860).

²² Indian Penal Code, § 376-A (1860).

²³ Law Commission of India, 42nd Report, 1977, Indian Penal Code, para. 16.115, p. 277.

²⁴ Id.

Many women's organizations and the National Commission for Women have been demanding the deletion of the exception clause in Section 375 of the Indian Penal Code which states that "*sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape*".

However, the Task Force on Women and Children set up by the Woman and Child Department of the Government of India took the view that there should be wider debate on this issue. The mandate of the Task Force was to review all existing legislation and schemes pertaining to women. Of the four recommendations made by the Task Force vis-à-vis rape under the Indian Penal Code, the most significant pertains to the definition of rape. It took the position that the definition of rape ought to be broadened to include all forms of sexual abuse. As per the recommendation, the Law Commission's proposed definition of "*sexual assault*" could be adopted in place of the existing definition of rape in Section 375 IPC as "*it is wide, comprehensive and acceptable*". However, like the Law Commission, the Task Force also stopped short of recommending the inclusion of marital rape in the new definition. As of now, the law in India is wholly inadequate in providing supporting mechanisms for women to exercise bodily integrity and sexual autonomy.²⁵

REBUTTAL OF ARGUMENTS AGAINST CRIMINALIZATION OF MARITAL RAPE

It is shocking that there are people who still consider Marital Rape as 'uncommon.' The further argumentation is that as it is nearly impossible, then its criminalization will only over-burden the already overburdened legal system. Also, the 'dissatisfied, angry, vengeful' wives might *charge* their innocent husbands with the offence and that lead to the destruction of 'n' number of marriages with zero chances of reconciliation.

The above stated justifications make little noise, especially, in today's scenario. The reason being, the contemporary definitions of consent require a man to obtain the women's unequivocal voluntary consent to participate in the sexual acts. Further, the concept of "irrevocable consent" arose at a time when divorce was virtually impossible.²⁶

A study conducted by the Joint Women Programme, an NGO, found that one out of seven married women had been raped by their husband at least once. Subsequent research finds that

²⁵ Supra Note 5.

²⁶ Supra Note 1.

more women are raped by their husbands each year than by strangers, acquaintances, or other persons. Over a third of the women in our country's battered women's shelters report being sexually assaulted by their husbands. They frequently do not report these rapes because the law does not support them.

It is said that marital rapes are difficult to prove, it may be showed that criminalization of marital rape, serves to recognize rape in marriage as a criminal offence and would have a deterrent effect on prospective rapist husbands. The mere fact that marital rape would be very difficult to prove is no reason for not recognizing it as a crime.²⁷

Next, the argument of women foisting malicious charges, it may be noted that if proving a claim of rape in marriage is hard, proving a fabricated claim will be even more difficult. Because of the associated stigma of rape trials, it is unlikely that women will elect to undergo such an experience out of sheer spite. Besides, the criminal justice system provides inherent safeguards such as the requirement of proof beyond any reasonable doubt. This is no justification to say that the victims should be denied protection simply because someone might be at risk of a fabricated case.²⁸

Also, it is true that a wife impliedly consented to sexual intercourse with her husband after marriage, but the expression of love through sexual intimacy is not the same as forced sex. On the other hand, it strikes at the very foundation of matrimony irrespective of whether the marriage is a sacrament or a contract.²⁹

Attempt to hold together marriages may be one of the objectives of matrimonial laws. But it cannot override the fundamental objective of law in general and that of criminal law in particular, which is to protect and preserve the bodily integrity of a human being. Thus, withholding justice and denying equal protection for preserving marriages, at best, can be an improper goal of law. The bond of marriage does not sustain merely on sex and the phobia of frivolous litigation should not be a hurdle in offering protection to those caught in abusive traps, especially in cases where the victims are denigrated to the status of chattel.³⁰

It is true that marriage presupposes consent; but it is also true that the said consent must be encapsulated within the fabric of an individual's autonomy over his or her body, irrespective of

²⁷ Supra Note 7.

²⁸ Id.

²⁹ Supra Note 8.

³⁰ Supra Note 1.

the gender. If non - consensual sex is considered a crime out of marriage, the same treatment must be meted out to non - consensual sex within a marriage. Eventually, it all boils down to the autonomy over one's body, which is a basic human right, regardless of marital status.³¹

LACUNAE UNDER THE INDIAN LAW

The whole legal system relating to rape is in a mess, replete with paradoxes. The major legal lacunae that come in the way of empowering women against marital rape are:³²

1. The judicial interpretation has expanded the scope of Article 21 of the Constitution of India by leaps and bounds and “*right to live with human dignity*”³³ is within the ambit of this article. Marital rape clearly violates the *right to live with dignity* of a woman and to that effect, it is submitted, that the exception provided under Section 375 of the Indian Penal Code, 1860 is violative of Article 21 of the Constitution.
2. Article 14 of the Constitution guarantees the *fundamental right* 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*”. Article 14 therefore protects a person from State discrimination. But the exception under Section 375 of the Indian Penal Code, 1860 discriminates with a wife when it comes to protection from rape. Thus, it is submitted, that to this effect, exception provided under Section 375 of the Indian Penal Code, 1860 is not a *reasonable classification*, and thus, violates the protection guaranteed under Article 14 of the Constitution.
3. Though protection of the dignity of women is a *fundamental duty* under the Constitution,³⁴ casting a duty upon every citizen “*to renounce practices derogatory to the dignity of a woman*”; it seems that domestic violence and marital rape do not come under the definition of dignity.
4. The “United Nations Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW), of which India is a signatory, has viewed that this sort of discrimination against women violates the principles of equality of rights and respect for human dignity. Further, the Commission on Human Rights, at its fifty-first session, in its Resolution No. 1995/85 of 8-3-1995 entitled “The elimination of violence against women” recommended that marital rape should be criminalized.

³¹ Id.

³² *Supra* Note 7.

³³ *Mullin v. Administrator, Union Territory of Delhi*, 1. SCC 608 (1981).

³⁴ Const. of India art. 51-A (e).

5. A husband cannot be prosecuted for raping his wife because consent to matrimony presupposes consent to sexual intercourse. This implies that having *sex anytime, anywhere and of any sort* is an *implied term of the contract of marriage*, and the wife could not breach that term of the contract.
6. The law prevents a girl below 18 years from marrying, but on the other hand, it legalizes non - consensual sexual intercourse with a wife who is just 15 years of age.
7. The Indian Penal Code, 1860 states that it is rape if the girl is not the wife of the man involved and is below 16, even if she consents.³⁵ But if she is a wife, not below 15 and does not consent, it is not rape.
8. Another paradox is that according to the Indian Penal Code, 1860, it is rape if there is a non-consensual intercourse with a wife who is aged between 12 and 15 years. However, the punishment may either be a fine or an imprisonment for a maximum term of 2 years or both,³⁶ which is quite less in comparison to the punishment provided for rape outside the marriage.
9. The umbrella protection of section 498-A of the Indian Penal Code, so far catered to counter the menace of cruelty towards women and protected them against “perverse sexual conduct by the husband.” But, having said that is there a parameter or standard of measure or interpretation for the courts, of ‘perversion’ with regard to the intimate spousal relations? Is excessive demand for sex “perverse?” Isn’t consent a sine qua non for indulging in sexual intimacy?³⁷
10. The recent protection codified in the form of “The Domestic Violence Act, 2005” has also been a disappointment. The Act provides corresponding civil remedies to what the provision of cruelty under section 498-A IPC already gave, while keeping the issue of marital rape in abeyance and in continuing disregard. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., mental, physical, or sexual. However, it condones sexual abuse in a domestic relationship of marriage or a live-in, if the same is not life threatening or grievously hurtful.³⁸
11. Though the advocates of women’s rights secured a clause in 1983 under which it is unlawful for a man to have sexual intercourse with his separated wife pending divorce, the courts are reluctant to sentence husbands in spite of the law.
12. Another relevant provision is Section 122 of the Indian Evidence Act, 1872, which prevents communication during marriage from being disclosed in court by the parties. Since, marital rape is not an offence under the Indian penal laws, the evidence is inadmissible, although relevant,

³⁵ Indian Penal Code, § 375(6) (1860).

³⁶ Indian Penal Code, § 376 (1860).

³⁷ Supra Note 1.

³⁸ Id.

unless it is a prosecution for assault, or some related physical or mental abuse under the provision of cruelty. In effect, proving the offence of marital rape beyond reasonable doubt in court, by combining the provisions of the Domestic Violence Act, 2005 and the Indian Penal Code, 1860, will be a nearly an impossible task.³⁹

JUSTICE J.S. VERMA COMMITTEE RECOMMENDATIONS

Section 375 of the Indian Penal Code, 1860, (post 2013-Criminal Law Amendment), in dealing with sexual assault, in a very narrow purview lays down that, an offence of rape within marital bonds is said to be committed only if the wife is less than 12 years of age, but if she is between 12 to 16 years, an offence is committed, however, less serious, attracting milder punishment. Once, the age crosses 16, there is no legal protection accorded to the wife, in direct contravention of human rights regulations.

Isn't it ambiguous and devoid of logic? When the consenting legal age for marriage is 18, can the same law provide for the legal age of protecting from sexual abuse, only to those up to the age of 16? Beyond the age of 16, would the women be considered remediless?

To remove the statutory lacunae and to extend the legal cover, a Bill to amend the existing rape laws was passed by the Lok Sabha in April 2013. This replaced the Ordinance that was promulgated in February 2013.

By virtue of the Criminal Law Amendment, 2013, a number of changes were introduced in the Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. These changes are based on the recommendations of the Justice Verma Committee Report of 2013.

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

1. 'Rape' should be replaced by the term 'sexual assault.'
2. 'Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.

³⁹ Id.

3. In the light of *Sakshi v. Union of India and Others*⁴⁰ sexual assault on any part of the body should be construed as rape.
4. Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
5. A new offence, namely section 376E with the title 'unlawful sexual conduct' should be created.
6. Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.
7. Marital rape: explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.
8. Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

The committee in its report blamed the government, police insensitivity and gender bias for the rising crimes against women in the country. It also created some offences like disrobing a woman, voyeurism, stalking and trafficking.

However, one of the Committee's key recommendations – that marital rape be criminalised, was not accepted by the cabinet.

SUGGESTIONS FOR REFORM

Issues in the marriage arise when it is unquestioningly accepted that a marital relationship is practically sacrosanct. It is much more traumatic being a victim of rape by someone known, a family member, and worse to cohabit with him. How can the law ignore such a huge violation of a fundamental right of freedom of any married woman, the right to her body, to protect her from any abuse?⁴¹

⁴⁰ *Sakshi v. Union of India*, 5. SCC 518 (2004).

⁴¹ *Supra* Note 1.

In a country rife with misconceptions of rape, deeply ingrained cultural and religious stereotypes, and changing social values, globalization has to fast alter the letter of law.

In light of the above discussion following suggestions are made:⁴²

1. Marital rape should be recognized by Parliament as an offence under the Indian Penal Code.
2. The punishment for marital rape should be the same as the one prescribed for rape under Section 376 of the Indian Penal Code.
3. The fact that the parties are married should not make the sentence lighter.
4. It should not be a defence to the charge that the wife did not fight back and resisted forcefully or screamed and shouted.
5. The wife should have an option of getting a decree of divorce if the charge of marital rape is proved against her husband. Though a case of marital rape may fall under “cruelty” or “rape” as a ground of divorce, it is advisable to have the legal position clarified.
6. Demand for divorce may be an option for the wife, but if the wife does not want to resort to divorce and wants to continue with the marriage then the marriage should be allowed to continue.
7. Corresponding changes in the matrimonial laws should be made.

CONCLUSION

It is conceded that changing the law on sexual offences is a formidable and sensitive task, and more so, in a country like India, where there is a contemporaneous presence of a varied and differentiated system of personal and religious laws that might come into conflict with the new amendments in the statutory criminal law. Further, though, there is need for substantial changes in the law on sexual offences such as making them gender-neutral and eliminating the inequalities, a radical overhauling of the structure of sexual offences is not advisable as radical restructuring in the United States, Canada and New South Wales has proved disappointing.⁴³ The immediate need is criminalization of marital rape under the Indian Penal Code. But, mere declaration of a conduct as an offence is not enough. Something more is required to be done for sensitizing the judiciary and the police. There is also a need to educate the masses about this

⁴² *Supra* Note 7.

⁴³ See D. Nicolson & L. Bibbings, *Feminist Perspectives on Criminal Law* 185 (1st ed. Cavendish Publishing Ltd. 2000).

crime, as the real objective of criminalizing marital rape can only be achieved if the society acknowledges and challenges the prevailing myth that rape by one's spouse is inconsequential.

If marriage as an institution is shaken by marital rape, then this institution is not a democratic, equal rights one. It is an institution based on power, control and dominance and the patriarchal concept that the wife is the property of the husband. As for the fears that the law could be misused, there is a potential for every law to be misused, but these laws still exist because the positives outweigh the risks of potential misuse. Marriage presumes consent, yes, but within the framework of an individual's autonomy over his or her body, and this is something applicable to men as well as women. With non - consensual sex considered a crime out of marriage, there is no argument for non - consensual sex to not be a crime within a marriage. At the end of the day, the argument is simply about autonomy over one's body, which is a basic human right. Married or unmarried.