



RESEARCH ARTICLE

EXTENDING THE PROTECTION FROM DOMESTIC VIOLENCE TO MARITAL RAPES

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ARTICLE INFO

Received 15th, February, 2016
Received in revised form 28th, March, 2016
Accepted 16th, April, 2016
Published online 28th, May, 2016

Keywords:

Domestic violence, marital rape, exemption,
India, women, criminalise

ABSTRACT

Domestic violence is one of the very common forms of violence in a family and in an intimate partner relationship. Despite the different laws in specific jurisdiction, the rate of domestic violence is fairly prevalent in almost all classes of the society. To reflect on the question 'what more can be done to address domestic violence', this article deals with the specific issue of marital rape to be defined as domestic violence in law. The article advocates that marital rape is the violation of human rights of women and to ensure true equality in the modern society marital rape should be criminalised. The article, in the first section, focuses on the growing issue of domestic violence as a hindrance to full enjoyment of human right and how it has been on going in the patriarchal society of India. The second section underlines the origin of marital rape exemption and discusses theories for and against the need to criminalise marital rape. The third section specifically examines the incidents of marital rape in India, and why a complex social structure of Indian society needs criminalisation of marital rape to fulfil the International Law and Constitutional obligations. The last section, summaries the arguments to do away with the exemption of marital rape, to ensure domestic violence is address in an improved way.

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INTRODUCTION

Domestic violence, one of the very common forms of violence against a woman that may cause an "imminent harm to safety, health or well-being"¹ of a woman, has been acknowledged worldwide² as not only the violation of women's human rights³ but also as an obstruction to the full enjoyment of those human rights. Despite the increased participation of women in educational, administrative or political spheres, domestic violence has seen a significant rise against family members and significantly against the wives or intimate partners.⁴ One of the reasons to this - is the gender inequality or the fact of physical power and social control resting more in the hands of men.⁵ In many countries it starts with concerns of feticide, infanticides at an early age and takes the form of practices like child marriage, dowry demand and then sexual, physical or emotional violence.⁶

Domestic violence, as an issue in India, is not different in its forms from the way it takes place around the world, but what is "unusual" about the situation in India is the "resistance to its elimination by the society at large and society's lack of recognition of it as a serious issue".⁷ In the patriarchal society of India, prevalence of such violence against women is considered normal as men who are the dominating one in the

household are often "stereotyped as 'alcoholic', 'mentally ill', or very angry in nature who would normally not commit any violence".⁸ These norms that promote values of patriarchy only favour gender inequality resulting into increase of violence against women.⁹ Since independence the Indian state has made several laws providing for protection of women and to ensure that status of women and gender violence is regularly addressed.¹⁰ Though the legislations like Indian Penal Code, 1860¹¹ (addressing domestic violence through the provision of cruelty and dowry death)¹² and Dowry Prohibition Act, 1961 existed to address domestic violence, a specific legislation on the subject was passed only in 2005 as 'Protection of Women from Domestic Violence Act, 2005'.¹³ This Act was enacted to provide for "more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith".¹⁴

The domestic violence laws in India have been criticised on grounds of "poor conviction" rate, lack of implementation,¹⁵ growing false claims,¹⁶ not addressing issues of violence against men¹⁷ and marital rape.¹⁸ Marital Rape, in particular, has been a contentious issue for being defined as domestic violence by the Indian state. The debate gained momentum after when the report of Justice Verma Committee on Amendments to Criminal

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Law¹⁹ in 2013 had recommended criminalising marital rape, but this recommendation was not accepted by the Parliament. The criminalisation of marital rape has still not been considered by the state despite the recommendation of the United Nations²⁰ Committee on the Elimination of Discrimination against Women to criminalise the same.²²

To reflect on what more can be done to address domestic violence, the article will be focussing on the need to criminalise marital rape and to extend the protection under domestic violence laws to marital rape cases. The article will specifically focus on the Indian jurisdiction as there is an increased demand in the state to criminalise marital rape. For the purpose of this article, domestic violence will be defined as has been provided for in section 3 of the Act,²³ because the article will address the insufficiency of this definition and for criminalising marital rape, this definition shall need amendment. However, examples from other jurisdiction will also be considered.

The article will discuss on why there is the need to criminalise marital rape to address the growing problem of domestic violence. In the first section the article elaborates on the effects of marital rape on a woman and after analysing the theories on marital rape (both in favour of criminalisation and against) it advocates that marital rape is a violation of basic human rights. The second section looks at aspects related to marital rape in the Indian context and underlines how despite several efforts, the state has failed to address the matter and why the Indian society urgently needs a law against marital rape. The last section concludes on the note that how recognising marital rape as a crime will assist in addressing domestic violence more effectively.

THE EXEMPTION OF MARITAL RAPE

Rape is commonly defined as “forced and unwanted sexual intercourse”²⁴ and coercion is considered as a fundamental factor in defining it as a crime of inequality.²⁵ However, with respect to marital rape, the idea which “many find difficult to comprehend”²⁶, people do not consider forced sex in marriage as a crime.²⁷ Many common law countries still do not recognise the idea that a husband can rape his wife because of the presumed consent of wife to sexual relationship in a marital relationship.²⁸ Many legislations provide for this “inability” through the definition of rape itself.²⁹

The ‘marital rape exemption’ was first laid down by Lord Matthew Hale in the seventeenth century when he declared that “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”.³⁰ This declaration has also been the authority for recognition of ‘marital rape exemption’ in the United States³¹ and “for more than 330 years”, it has been one of the justifications for the exemption.³² The statement has also led to the evolution of many traditional theories on spousal immunity.³³

Theories on Marital Rape: Is Marital Rape a Problem?

The traditional theories used for legal justification of marital rape are the contract theory, the consent theory, the theory of marital unity and woman as property.³⁴ The contract theory

underlines that wife’s consent to sexual intercourse is an inherent part of the contract of marriage³⁵ and is “assumed in favour of the husband”.³⁶ However, this theory can be criticised on the ground that in substance, by a contract of marriage the husband is getting a license or an authority over the wife’s sexual autonomy.³⁷ According to the consent theory or theory of implied consent, a woman, after marriage, consents to sex with her husband “at any time and under any circumstances”.³⁸ This theory gives a husband an absolute and arbitrary right over the wife and fails to consider the circumstances where wife may have to refuse to intercourse.³⁹ For instance, in a case, a wife who had just gone through a surgery was forced to have sex and later had to return to hospital on account of haemorrhage.⁴⁰ Thus, an implied consent is a violation of human rights of a woman. Blackstone explains the unity theory as “[b]y marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into [her] husband”.⁴¹ By this notion the woman is considered as a property of her husband after marriage.⁴² This theory has received wide criticism especially when women rights are being focused on at a global level. English and US courts have also largely rejected this theory observing that in a modern society a woman cannot be looked as a mere marital property or “demeaned by denial of a separate legal identity”.⁴³ The others arguments in favour of the exemption are – that criminalisation will increase the rate of false accusation; degree of seriousness is less in marital rape as compared to other rape; the problem of proving marital rape or lack of consent “where a wife’s word is placed against her husband’s”.⁴⁴ However, these modern arguments, which have been frequently argued to lack merit, have been formed “to foster the patriarchal notions about women in marriage”.⁴⁵

These theories have developed over Hale’s abovementioned declaration; however Hale’s logic has been criticised and challenged on several occasions. Hale’s statement on marital exemption “was without other explicit supporting authority”⁴⁶ and was criticised by the English Justice Field⁴⁷ in the case of *Regina v. Clarence*.⁴⁸ “The lack of authority” has also attracted criticism by other courts which have observed that exemption is not an “implicit in the common law”⁴⁹ rather husband has the duty to protect his wife.⁵⁰ “Modern critics” to the notion of Hale also point out that though a woman consents to sex after marriage, “she is most certainly not consenting to rape”.⁵¹

In opposition to Hale’s notion, several theories have been propagated to explain the criminalisation of marital rape. Some of these theories are the feminist theory, social constructionism, and sex-role socialization.⁵² Feminists claim that marital rape is a result of subordination of women in a marital relation resulting into gender inequality, they propagate that - to have true equality women should have right to set equal terms in intercourse in a marriage.⁵³ Social Constructionists believe marital rape represents that men want to continue holding to the “traditionally held power”⁵⁴ of being strong over women which ultimately aids to gender inequality. The theory of sex-role socialization explains that marital rapes are an exaggeration of sex-role socialization because of the gender specific behaviours of men being dominant and women being passive and submissive because of their “wifely duties”.⁵⁵ On contrary to

strong condemnation of marital rape by these theorists, Simonson and Subich, “in a sample”, found that people *perceive*⁵⁶ marital rape as less detrimental than “stranger, acquaintance and date rape”.⁵⁷ But it is important to consider here that rape in marriage, in the long term, may regulate the victim’s and rapist’s reaction instilling fear in the victim and aggression or obsession in the rapist which may prove detrimental psychologically in the long run.⁵⁸

Need to Criminalise Marital Rape

The international instruments like the Vienna Declaration⁵⁹ and CEDAW⁶⁰ provide for eradication of conflicts which may arise between women rights and “traditional or customary practices” and to eliminate all practices that is based on “the idea of inferiority or superiority of either of the sexes”.⁶¹ In consistency with these international principles, almost 76 states have made laws against marital rape, some of these countries include Canada, France, Argentina, Bhutan, Brazil and Iceland.⁶² With the wide and strong recognition of women’s rights at the international level, Hale’s declaration cannot be applied to the modern society. The feminist and social constructionism approaches are important to recognise the equal balance of power between men and women in the social structure. The “differential treatment” to rape and marital rape means that married women do not need equal protection from state as men and as other unmarried women whereas the married women need the “exact physical security in their private sphere” as others.⁶³

The problem with domestic violence is that there is “little direct evidence” available to assess the frequency and “extent of this problem”.⁶⁴ However, the data available shows that these incidents have “traumatic” effects on victims of marriage.⁶⁵ As described by Irene, Gelles and Groth argue that the “frequency” of rape in a marriage in actuality is far more than in case of other kinds of rape⁶⁶ though a lot of these cases are not reported because either women are too scared to report or consider it normal for such incidents to occur because of the aggressive behaviour to the husband.⁶⁷ Similar to the data on domestic violence, the material on marital rape is based on reports of the victims. The majority of the literature and statistics on marital rape is derived from the accounts of wives and their victimization in a relationship. Few studies on the matter have focussed on men or have interviewed them to compare to the accounts of the victims.⁶⁹ The problem of focusing majorly on the accounts given by the victims entails the issue of false cases or untrue claims of having faced domestic violence.⁷⁰ It has been noticed in a large number of incidents in India⁷¹ and across the world,⁷² that either the legal provisions are misused for “personal vendetta” for complaints have “exaggerated versions of the incident”.⁷³ It may therefore appear necessary to not rely solely on the versions of victims for assessing the percentage of incidents of marital rape.

The idea of this article should not be considered as to put blame on men in general, but is to hold responsible only those men who are the actual perpetrators of marital rape. The World Health Organization⁷⁴ report of 2007 on ‘Primary Prevention of Intimate-Partner Violence and Sexual Violence’, advocates that to deal with matters of sexual violence and to address the matters of power imbalance, “men must be involved in

solution”.⁷⁵ The report recommends that men should not always be approached “as abusers or potential abusers” since many men do not relate to being abusers and “do not perceive such messages as relevant to them”.⁷⁶ Therefore, during undertaking a study or carrying out an estimate of rate of marital rape, or any other sexual offence, due consideration should be given to the accounts and say of men. This will help gather the literature in a more balanced manner. In such matters it is also important to consider that, men, when approached in the way of playing a “positive role in the health and well-being of their partners, families, and communities”⁷⁷ may not become defensive or close up⁷⁸ about the matter rather would assist in bringing the much needed change.

Having discussed the harms of marital rape that affect women rights and gender equality, and to address why it is needed to do away with the exemption, it is important to add that another flaw to the exemption of marital rape is that it treats “married couples differently from cohabitants, or married women differently from unmarried women, or husbands differently from rapists unacquainted with their victims, or women differently from men”.⁷⁹ Exemption of marital rape denies the woman the right, to legal recourse which a single woman has.⁸⁰ For instance, a person who has been convicted for rape will have a sentence, say of 7 years as per the Indian Penal Code, 1860,⁸¹ will be absolutely free from such sentence if he is the husband of the victim and his acts will be legitimate. Historically and also even today, consent of a woman to sexual intercourse plays a secondary role to her “marital status”.⁸² The husband under law has the duty to support his wife; however, the exemption to marital rape gives him the right to take sex in return.⁸³ Marital rape not only inflicts physical violence over a woman, but also causes emotional abuse leading to the wife feeling distant from the husband. Moreover, evidence suggest that rape in a marriage can be more traumatic than rape by a stranger because of the possibility of repeated acts of rape and the trauma may persist longer because of the subsistence of marriage.⁸⁴ The need to criminalise marital rape is not just to ensure true equality but to make sure marriage does not become a nurturing “safe haven” for such acts and a “political world in which the husband is the sovereign and the wife subject”.⁸⁵

THE MARITAL RAPE EXCEPTION IN INDIA

This section focuses on the marital rape incidents in India; and the criminal laws that provide for marital rape as an exemption to the rape; and why the Indian state and society needs a law against marital rape.

Marital Rape Incidents in the Patriarchal Society of India

One of the characteristics that differentiate India for the purpose of addressing an offence is that due consideration needs to be given to its complex social structure. India is a “multireligious, multicasite and multiclass” country where each religion follows its own person laws with most religions not recognising marital rape.⁸⁶ Gender inequalities are affected by high difference in literacy rate between men and women; historical oppression; and cultural traditions like child marriage, arranged marriage, widow ill-treatments, *sati* and dowry death, that are also reasons for family violence.⁸⁷ Though globalization may have affected the family structure, the patriarchal norms and women oppression still persist.⁸⁸

In the traditional societies, the prevalent “cultural tradition” of arranged marriages expects a girl to comply with the parent’s choice of a spouse for her and to take up the family responsibilities where girls ultimately have to submit to their wishes; and many of these women may be introduced to “sex within marriage may be through rape”.⁸⁹ Also, in traditional societies and especially in non-urban areas girls are very likely to be pushed into child marriages.⁹⁰ The matter could get worse in case of a marital rape of a prostitute. India has had a long history of women being pushed into prostitution by their families to meet the family’s financial needs.⁹¹ “In a setting where gender based violence is common”,⁹² rape of prostitute is considered to involve less harm⁹³, where marital rape has no criminal liability and sex work is looked down upon as immoral, the perpetrators of violence against sex workers are not likely to be stringently dealt with, leaving the sex workers feeling that they have “little” legal recourse.⁹⁴

“According to the United Nation Population Fund more than two-thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex.”⁹⁵ Also, the International Men and Gender Equality Survey which carried out a study in 2011 to which India was one of the participating countries, reported that one in every five men has forced his wife or partner to have sex.⁹⁶ Purna Sen, in her research finds that in almost half of the cases of marital rapes, the wives have conveyed their “unwillingness to have sex or of pain during sex, but in 80 per cent of these cases the rapes continued”.⁹⁷ The problem is that most of these cases do not get reported. The “International Centre for Women and Research concluded that those married under the age of 18 were twice as likely to be abused by their husbands compared with women married later; they were also three times more likely to report marital rape”.⁹⁸ Further, one of the major factors of lesser number of marital rapes being reported despite many incidents taking place is the poor illiteracy rate and economic dependence of women on their husbands.⁹⁹ The fear of losing on financial and family support may hold them back. Also, lack of alternative to marriage, such as provisions for shelter or meeting basic needs may be a discouraging factor for them to take any action.

Legal Obligations and (absence of) Laws relating to Marital Rape in India

Marital Rape is not criminalised in India, “except during the period of judicial separation between the partners”¹⁰⁰ or where the wife is under 15 years of age, however if the girl between the age of 12 to 15 is raped in marriage the sentence is lower¹⁰¹ as compared to the usual sentence in rape cases.¹⁰² It is referred to as “spousal exemption”.¹⁰³ The irony to be observed here is that the legal age of marriage for a girl in India is 18 years; however criminalisation of marital rape is recognised only for the age of 15 or less, and with higher punishment only for marital rape of wife aged 12 years or more.¹⁰⁴ It appears here, that a country that does not recognise a woman to be legally able to marry before 18 allows her being raped if she marries before that age. Thus, the contract of marriage provides for an implied consent by wife to intercourse.¹⁰⁵ Section 498A of the IPC, section 13 of the Hindu Marriage Act, 1955, section 27 of the Special Marriage Act, 1954 and section 10 of the Indian Divorce Act, 1869 provide for relief against cruelty in the form of punishment to the husband or family members or as a

ground for divorce.¹⁰⁶ But for marital rape to qualify as cruelty it will have to be accompanied by an act or threat of physical abuse or any demand of “perverse, excessive and unreasonable demand of sexual intercourse”.¹⁰⁷ This protection only extends to marital relations and not to “relationships in the nature of marriage” as provided for in the Act. To prove marital rape in a case of cruelty and physical abuse under these legislations, the Indian Evidence Act, 1872, along with the Act will be very difficult in a court of law¹⁰⁸ narrowing down the possibility of relief against marital rape.¹⁰⁹

The United Nations CEDAW Committee has recommended India to criminalise marital rape. India ratified CEDAW in 1993,¹¹⁰ which stresses on “elimination of all forms of violence against women” as it violates the “physical integrity” of women.¹¹¹ As per Article 51(c)¹¹² of the Constitution India has an obligation to abide by the international convention which has been observed to be binding on the state¹¹³ in the matters of sexual offences. Further, the Constitution of India provides for “right to health” and “right to live with dignity” as a right to life,¹¹⁴ and marital rape violates these rights as it is abusive and degrading in nature against a woman.¹¹⁵ Non criminalisation is also violative of the constitutional mandate of right to quality¹¹⁶ by differentiating between abusers and victims on the basis of their marital status.¹¹⁷ With these due considerations the ‘Justice Verma Committee’, that was set up after the infamous Delhi gang rape case to amend criminal laws to provide speedy justice and stringent punishment in sexual offences had recommended for removal of “exception of marital rape”. The Criminal Law (Amendment) Act, 2013, passed on the basis of recommendations of Justice Verma committee however did not criminalise marital rape.¹¹⁸ As per the latest reports, the upper house (*Rajya Sabha*) of the Parliament is again considering the criminalisation of marital rape after receiving the “comprehensive reports” of the Law Commission and the Parliamentary Standing Committee on the subject.¹¹⁹ Any amendment will be *considered*¹²⁰ by the Parliament after these reports; and passing of the bill with the required majority in Parliament may take a long time.

Whether Protection against Marital Rape can be extended to men in India?

Having discussed the need to extend the domestic violence laws to marital rape, the question that needs consideration here is - should men be granted the same protection as women, under the Act or do men need protection against marital rape. The Indian Penal Code, 1860 which defines ‘rape’¹²¹ does not provide for the possibility of a female raping a male. Section 375 reads- “A man is said to commit rape if he- ...”, recognising that only a man can rape a woman. The code provides for the possibility of a man raping a man in the form of unnatural offences¹²² and a female¹²³ raping a female in case of a gang rape;¹²⁴ and even in such cases she is considered to be an accomplice and not the rapists. The Code, does not recognise the possibility of a female raping a male in any provision and thus only clearly defines a “male-on-female” rape.¹²⁵

The second barrier to recognising marital rape against men in India is that the Act takes a gender specific approach¹²⁶ to recognise the victims of domestic violence. The Act in itself is referred to as ‘Protection of Women from Domestic Violence

Act¹²⁷ and further defines an aggrieved person as “any woman who is, or has been ... subjected to any act of domestic violence by the respondent”¹²⁸. There have been several calls to the government to make the Act “gender neutral rather than women centric”.¹²⁹ The statistics from National Crime Record Bureau show that men are also largely vulnerable to domestic violence in India, majorly in the form of physical, emotional and mental abuse.¹³⁰ The Law Commission of India, in its 243rd report, while elaborating on the issue of dowry death under IPC, has recognised the need to revisit the law to ensure gender neutrality.¹³¹ The Madras High Court in a recent case has observed that the Act suffers from an *inherent flaw*¹³² leading it to be misused.¹³³ Justice S. Vaidhyathan, addressing the need to identify male victims said – “it is no doubt true that the perpetrators of domestic violence need to be appropriately punished and dealt with but at the same time protection cannot be withheld to real victims for reasons whatsoever least of all their gender”.¹³⁴

In a survey carried out by ‘India today’ it is found that almost equal percentage of men face marital rape in a relationship as compared to women.¹³⁵ So the issue of marital rape should be considered in respect of extending protection to male victims also. However, in the Indian legal scenario which does not recognise the act of rape against a man; which takes a gendered approach to the issue of domestic violence; and which does not criminalise marital rape at all, criminalisation of marital rape of men will be quite difficult and may take a long time, especially if men do not report of having faced such acts of violence. India, thus need a law against marital rape but along with a gender neutral law on domestic violence, giving equal protection to men against such cases.

Need of Protection against Marital Rape in the Indian social structure

Decision of the parliament to not to remove the exception to marital rape in the Criminal Law (Amendment) Act, 2013 has received severe criticism across the country.¹³⁶ The government often takes “refuge behind the 172nd report of the Law Commission, released in 2000, which did not recommend the criminalisation of marital rape”.¹³⁷ Other argument given to defend the non criminalisation is that “the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors, including level of education, illiteracy, poverty, myriad social customs and values, religious beliefs, mind-set of the society to treat marriage as a sacrament”.¹³⁸ This is because of the conservative nature of the India society which is governed by religious laws and it is difficult for it to condemn something that is not rejected by the religion. However, it needs to be considered here that absence of the respective law will keep the “opportunities for young women suffering such abuse to speak about their experience” very low and the “governments and their agencies participate in maintaining this silence, through inaction on sexual abuse and marital rape of women in principle, and of young girls in practice”.¹³⁹ Secondly, now the meaning of marriage in Indian context ensures that the traditional and religious understanding of marriage is “moulded” with laws on “bigamy, judicial separation, divorce, legal age of marriage, maintenance etc”¹⁴⁰ which is very different from what appears through Hale’s statement. Thirdly,

with these privileges available to women, a man and a wife should not be treated as a single entity as per the religious values, it is now an archaic concept¹⁴¹; and the vulnerable women of traditional Indian society needs protection against men who impose themselves on their wives inflicting physical and psychological violence in a relationship of trust.¹⁴² Lastly, similar laws have helped women to move for enforcement of their rights,¹⁴³ the possibility of large number of false cases¹⁴⁴ should place “responsibility [on] the legislature and the judiciary to make considerations for the difficulty in collecting useful evidence”¹⁴⁵ and should not be a ground for them to not recognise human rights of women.

Arguably, despite after recognising marital rape as a crime, there is a possibility that judges, being conservative,¹⁴⁶ might address it as being less serious of a crime than “other forms of rape” taking a more “lenient” approach.¹⁴⁷ Nussbaum argues that the “patriarchal assumptions of judges have interfered [in] recognition of human rights for women”.¹⁴⁸ However, this defect can be cured by education and progressive approach to women rights¹⁴⁹ which may involve “training for judges, lawyers and law enforcement officers” in matters of rape and sexual offences as provided for in CEDAW.¹⁵⁰

CONCLUSION

In the past few years there have been a lot of protests to abolish the exemption/exception of marital rape. The exemption granted on the basis of Hale’s principle does not apply to the modern world of today and has been time and again criticised by courts. The modern defenders of the exemption have come up with theories to retain it, however, “these justifications are based on weak and sexist arguments that also have been rejected by the courts”.¹⁵¹

Failure to recognise marital rape as a crime is an example of imbalance in power structure and how women are affected by the unfair norms of patriarchal system. Lord Keith, has rightly declared that, “marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband”.¹⁵² In a society, regularly striving for equal social and financial status of women and gender equality, the exemption of marital rape should be done away with. It is only when the states allow both women and men to equally have the right and autonomy to consent and to have authority over their body despite their marital status, can “true equality” be achieved.¹⁵³ The conservative society of India is definitely seeing a wave of change with respect to position of women in various spheres. The debate for marital rape has definitely spread a call and awareness for recognizing women’s right for a long time, and the law should also adapt to the changing society and its needs. The criminalisation of marital rape will help not only women but also men by enabling men to bring cases of marital case against their wives. In India, though the debate for marital rape has been active, the state also needs to recognise and address domestic violence against men. Prof. Sandra Fredman of the University of Oxford observes that “training and awareness programmes should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife”.¹⁵⁴ Also, marriage should not become a platform for women to give

up their human rights and giving men more power against them. Addressing the issue of marital rape will widen the domain of domestic violence recognising more cases of physical and psychological abuse. To address the issue of domestic violence, internationally or within specific jurisdictions, marital rape needs to be criminalised and protection under laws dealing with domestic violence should be extended to such cases.

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