

To
Justice HL Dattu,
Chairman,
National Human Rights Commission,
Manav Adhikar Bhavan,
Block C,
GPO Complex,
INA,
New Delhi
110023

Dear Justice Dattu,

We citizens and NGO's wish to draw your urgent attention to the current debate and pending PIL on marital rape as has been recently reported in the newspapers (attachment with this email for your perusal). We seek your engagement with this issue as it involves infringement of the rights of women and minors. We look to the Human Rights Commission to intervene in this matter and give your important inputs to the Delhi High Court to facilitate a fair and correct judgment as well as to protect the rights of women and children in this country.

The Delhi High Court is adjudicating on the matter raised by several petitioners that marital rape should also be considered a criminal act just like rape in any other setting. Marital rape is harmful to the body and psyche of a woman. Their petitions ask that section 375 of the Indian Penal Code should not have an exception to the rule (i.e. when the man committing the rape is the husband). They deem that a woman, just by virtue of being married, should not forfeit sexual control over her own body.

The central government's opinion on this matter was sought by the Delhi High Court and the government's considered view is that marital rape should be excluded from the definition of rape as a criminal act and should not attract severe punishment as in other cases of rape. The government maintains that their recommendations are with a view to keeping families intact and to prevent possible harassment of men by women.

With due respect, one has to only look around to see that the prevailing social structure is such that women are, and have been disadvantaged in terms of access to resources, services and infrastructure. There is a great deal of research and international data backing the prevalence of gender inequality in India and the world. This inequality exists in the marriage as well in subtle and overt ways and we are all familiar with social evils relating to marriage like dowry and domestic violence. Moreover, given a choice, women would be reluctant to marry if they felt that by marriage they would forfeit the right of bodily safety in some circumstances. It remains a moot point whether a society benefits from supporting structures of abusive marriages at great mental, physical and emotional cost to one of the involved parties in the marriage. At the core of all this is an individual's human right to have the 'power of saying NO' to a forced relationship. Girls and women must be empowered to say 'NO', as much as the men who have

this 'authority' and entitlement'. The most important aim of this exercise is to accord equal status in a partnership/marriage. The disadvantaged party has mostly been the 'fairer sex'.

Our constitution also clearly lays down that all are equal before the law. Thus, consent is recommended in cases where girls are above 18 years of age. Any marriage below that age is considered child marriage (UNHCR). Sex with under aged girls should be considered rape. This would enable and strengthen the child marriage act. Traditional and cultural practices have been impediments for effective implementation of rape laws and many discriminatory practices related to women and girls. This includes **Right to education** for girls.

The government's stance would suggest that the benefit of being protected from rape does not apply to married women (if the perpetrator is her husband) and thus goes against articles 14 and 21 of the constitution. In article 15 (3) it is recommended that there can be laws to favour women and children where required, but the government's petition seems inclined to favour men instead in this particular regard.

In your capacity as the apex body protecting the rights of citizens in India, we wish to highlight to you that not including marital rape within the ambit of criminal offences violates several critical human rights which include:

Right to freedom and equality;

As the wife is technically subservient to her husband and is forced to enjoy his sexual attentions whether she wants to or not.

Right against slavery;

As the body of the woman becomes the shared property of both her and her husband to use as he chooses since she cannot lodge a criminal complaint if the husband forces himself on her.

The right to life and liberty;

As the woman who is physically smaller and often much younger than the husband cannot seek protection for herself from judicial and police institutions in case of sexual assault by her legally wedded partner.

This becomes especially pertinent in our country given the high prevalence of child marriage and child brides. Childhood should be a carefree time for all child citizens. It is bad enough that various prevailing social conditions propel young girls towards forced and early marriages. It becomes a cruel scenario when that situation is compounded by lack of safeguards for the young child bride.

Right to equal protection of the law:

As the woman who gets married no longer enjoys the protection of the law when raped by her husband, whereas an unmarried woman has that protection against anyone who may try to violate her.

As male teenagers who perform consensual sex with girls less than eighteen years may be liable to punishment under POCSO but not adult males who have (wrongly) entered into marriage with females below the age of 18.

We would really welcome your thoughts on this subject. As the apex body safeguarding the human rights of citizens, we look to you for safeguarding the inalienable rights of married women and children.

Our past experience has taught us that the NHRC is very empathic and understanding with the public.

We last approached your commission 2 years ago in the Nirbhaya gang rape case (re the rights of citizens to be safeguarded against known juvenile sexual offenders) and found great support for the same.

We look forward to your taking up this important matter.

Thanking you,
Yours sincerely
Dr Anjali Mehta
9810088831

On behalf of:

Ambassador Bhaswati Mukherjee,
Centre for Social Research
Dr Chandra Rajan, Advocate Supreme court
Dr Kiran Aggarwal, ex president IAP
Joint women's programme
Justice Seekers group (multiple NGO's and professionals -attachment)
My choices foundation
Scherry Sigantoria, Technical Expert : Gender, New Delhi: India
SRSP (Sri Ramanand Saraswati Pustkalaya,)Jokahara, Azamgarh
The Alternate space
Women Power Connect