

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. 284 OF 2015**

IN THE MATTER OF:

RIT FOUNDATION

..... PETITIONER

VERSUS

THE UNION OF INDIA & Ors

..... RESPONDENT

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N.D. 28/08/17

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HARIDAS FOUNDATION
NEST OF FAMILY HARMONY fel.
Wang Ch. 25/08/17
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Applicant in Person

Through

For
MEN WELFARE TRUST (Regd.)

Amit Lakhani

Auth Signatory
Amit Lakhani

Ritwik Basaria

Men Welfare Trust

C-403, Arvind Apartments,

Plot-9, Sec- 19-B, Dwarka

New- Delhi 110075

Received copy
Ms. Manika Arora
Aem. 8/30578591
Dhirendra Kumar
25/8/17

New Delhi

Date 25/ Aug /2017

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TSB Fund
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IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRAORDINARY ORIGINAL JURISDICTION)

cm 34088/2012
WRIT PETITION (CIVIL) NO. 284 OF 2015

IN THE MATTER OF PUBLIC INTEREST LITIGATION

IN THE MATTER OF :

RIT FOUNDATION

..... PETITIONER

VERSUS

THE UNION OF INDIA

..... RESPONDENT

APPLICATION FOR INTERVENTION ON BEHALF OF THE APPLICANT **MEN WELFARE TRUST** UNDER ORDER 1 RULE 10 READ WITH SECTION 151 OF THE CIVIL PROCEDURE CODE

It is most respectfully submitted as under

1. That the Applicant is a NGO registered as Trust in Delhi, working in the domain of welfare of men. The application to appear party in person through its president, Mr. Amit Lakhani & vice president Mr. Ritwik Bisaria has been annexed - The Applicant has been actively involved in free & selfless help & support Men & their families who are victimised by the misuse of

gender based laws such as false 498-A, rape, sexual harassment, domestic violence and other cases of similar nature. The Applicant is running support group meetings, counseling for Men and boys and public awareness programs on the issues like misuse of IPC 498A, false rape cases, false domestic violence cases which are filed to cash in from a failed relationship, defame and shame the husband and settle personal scores. The Applicant is also actively engaged in various other activities like research, documentation and publication on men's rights issues. Applicant is involved in running an all India helpline for men in distress (SIF-One: 8882498498) which receives close to 5000 calls from distressed men and their family members from across India and from Indians residing overseas.

2. That the Applicant is actively involved in networking with other organizations working in the same field. The Applicant interacts with different agencies to influence policy level changes on issues relating to Men's rights. The Applicant was actively involved in the campaign to correct anomalies in gender biased laws. The Applicant initiated debates and discussions with Men's groups pan India on this issue and represented the objections, concerns and suggestions to the Bill before various parliamentary committees, the Law Minister, and the Home Minister.
3. That the aforesaid case is pending before this Hon'ble Court affects not only the petitioner and the Government but also the large number of men who are vulnerable to getting victimised by the hands of women who file false rape, sexual harassment, IPC 498A and domestic violence and other such cases. The aforesaid case has elements of public interest and hence the present application is being filed with a view to intervene in the case

and assist this Hon'ble court with respect to various legal and Constitutional issues that affects every man in the country.

4. That at the outset the Applicant wishes to make it clear that the Applicant is not denying the suffering and sexual abuse of either of the spouse in a matrimonial relationship. However, the sexual abuse in a domestic relationship should not be termed as Rape. Even the law on domestic violence which was enacted in as recent as 2005, refused to term it as "Rape". This clearly shows the intention of the legislator that it did recognize and provided a remedy in cases of sexual abuse but refused to term it as "Rape".
5. That in case of rape if there is the act of sexual intercourse it is without consent of the women, however a marriage is solemnised fully by choice and enthusiastic agreement of both the man and woman with full knowledge of friends and family and not by fraud or accident or force. Having given the consent to marriage, then by definition wife (and also husband) are making conscious decision to keep sexual relations with her husband (or wife) as marriage without sex is an anathema which has been stated in *Vinita Saxena Vs Pankaj Pandit* by supreme court of India on 21 March, 2006.
6. That in case of divorce or separation the woman effectively withdraws her consent for having sexual relations with her estranged husband. An act of sexual intercourse with application of force in such a situation by the husband may fall within the definition of rape as there is no consent and he will be liable for criminal prosecution and the present rape law already covers such situation and is applicable in divorced, separated, estranged married couples.
7. That the laws have given a special status to a married women where in a married women is liable to get maintenance, alimony, right to residence from her husband by ways of various provisions that only a wife can use,

special provisions only to be used by a wife such as 498-A were enacted for the protection of the wife and not all the categories of women so a rape law which covers rest of the categories may not necessarily cover the wife if it brings about unfairness and does not meet the ends of the justice.

8. That before removing the protection granted to husbands, there is a need to look into the issue as a whole. A person when gets married be it wife or a husband anywhere in the world loses his/ her right to perform the sexual act with anyone other than the spouse in other words a married man or a women cannot have sex outside marriage even if it is with consent and anybody indulging into it amounts to criminal offence U/s 497 of the IPC. So when a person is getting married, he or she is giving consent to the spouse to have sex and any such sexual act cannot be termed as Rape. If there is a physical harm to either of the parties then it may be called sexual assault for which there are laws already in place.

9. There are two corresponding rights involved in the case. On the one hand there is right to say no to a sexual intercourse to the spouse and on the other hand there is a right to have a conjugal relationship between the spouses. The two rights have to go hand in hand so that a happy marital relationship may sustain during the lifetime of the spouses. Accordingly for a happy married life, there has to be an understanding between the husband and a wife and if there is a breach of understanding, legal recourse should be available to the spouses but in no circumstances a husband should be branded a "Rapist".

10. That a mere comparison between the marriages solemnized in Indian society and western societies makes it clear that in Indian society marriage

is considered to be a sacred relationship with aim to procreate and lead a happy married life. The marriages in the western world are considered to be a contract between the husband and wife. Accordingly, the concept of "Marital Rape" cannot apply in Indian context. And if there is an abuse of sexual nature, Indian laws have already provided a remedy to deal with it.

11. The Applicant wishes to argue that the existing laws are very much capable of dealing with the cases of sexual abuse of women and there is no need to either bring a fresh law to deal with it nor there a requirement to withdraw the protection granted to husbands provided under Section 375 of the Indian Penal Code.

(a) That the PWDVA covers physical, emotional, sexual cruelty where in the recourse includes protection orders, interim and final monetary relief and non-compliance of the same by the husband attracts a jail term.

(Explained in para 18 below)

(b) That 498-A of the IPC cover all kinds of cruelty on wife including mental and physical cruelty and has a maximum term of 3 years if convicted. (Explained in para 18 below)

(c) That in case the wife and husband are living in separation due to matrimonial related litigation, during the cooling off period after 1st motion of divorce petition or any similar reason then the section 375 of the IPC can be invoked and upon conviction the term of imprisonment would be no less than 7 years and may go up to life imprisonment.

(d) That in case of an unnatural sexual act (carnal intercourse against the order of nature) with the wife by the husband, section 377 of the IPC widely covers it and the convicted person shall be punished with 1[imprisonment for life], or with imprisonment of either description for a

term which may extend to ten years, and shall also be liable to fine. (Explained in para 18 below)

12. That It is true that many countries in the west have criminalized what they call Marital Rape but this mere fact may not be enough to remove exception in the present act as:

- (a) Most of those countries have rape laws which are gender neutral.
- (b) Most of those countries does not have other recourses as available in India (already explained in point 10 above)
- (c) Most of those countries do not use the word "Rape" for the stigma attached and the taboo that a man would carry even if he is accused once and the allegations not proved further.
- (d) Most of the countries have deterrents such as time frame within which the complaint can be filed where as in India as per the criminal amendments in the rape laws, the women may allege that "she was being continuously raped for years together"
- (e) Most of the other countries talks about "use of force" in the sexual act within spouses which section 375 of the IPC does not clarify.
- (f) Most of the other countries requires to have a medical evidence to support the claims of the rape but post the criminal amendments in India, no medical evidence is required.
- (g) The countries around the world do not term "sex on the promise of marriage" as "Rape"

13. That the amendment in a law which will impact the social fabric and the family system of the country is not a number game and can not be dependent on how many countries have such laws, and in case this is any basis then also there are far more number of countries in the world which

do not have marital rape as compared to the numbers of countries which have such laws (even if it is with deterrents and checks and balances)

14. That the removal of protection given to husbands under Section 375 will result in a law which will be of such nature that the chances of its misuse will be so high and the innocent husbands shall be left with no remedy and would be subjected to cruelty on part of wives.

15. That the Law Commission of India has already dealt with the issue of criminalizing marital rape. The Commission in its 172nd report clearly indicated that criminalizing marital rape would amount to too much interference in the marital relationship. Chapter three of the 172nd report is being produced here

3.1.2.1. *Representatives of Sakshi wanted us to*

recommend the deletion of the Exception, with which we are unable to agree. Their reasoning runs thus: where a husband causes some physical injury to his wife, he is punishable under the appropriate offence and the fact that he is the husband of the victim is not an extenuating circumstance recognized by law; if so, there is no reason why concession should be made in the matter of offence of rape/sexual assault where the wife happens to be above 15/16 years. We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship.

16. That it's a known fact that many laws and provisions in India are misused but that reason may also lay in the fact that the act does not carry any checks and balance and any stringent punishment for the misuser of the

law but the gravity at which the matrimonial laws in India such as 498-A, PWDVA, Rape laws are being misused has become a matter of concern not only for the citizens of the country but also the judiciary has shown concerns by laying down guidelines in *Arnesh kumar Vs state of Bihar* in 2014 and *Rajesh Sharma & Ors Vs State of UP* in 2017. With the history of such grave misuse of matrimonial laws that it curtails the basic fundamental right, the right to life and liberty of not only the accused husband but also effects the entire family where in following a marital discord, with only a testimony the husband and family members are put behind bars (as much as 186000 arrests made in 2015 as per NCRB records) and pressurised for huge sums for an out of court settlements such laws have become a sword rather than a shield and with further amendment by removing the exception in sec 375, this sword is likely to become more disastrous.

17. That looking at the NCRB suicide statistics as many as 62000 married men are committing suicide every year (which is more than double the suicides by women) with domestic issues comprising of martial issues being the single largest reason for male suicides in India, making India as the suicide capital of the world. Many men and their family members have committed suicides because of the stigma and the taboo of the tags attached right at the moment a person is falsely accused of dowry harassment, rape or any such crime so any law which is capable of such high misuse as also explained above in para 16 should not come into existence .

18. That when it comes to legal remedies available to women, the existing laws are very much there (both under civil law and criminal law) to give a speedy and effective remedy to women who are facing abuse by their husbands.

Remedies under Protection of women from domestic Violence Act

Section 3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. *Explanation 1.*—For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

Section 18 The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place,

pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;

Section 31. Penalty for breach of protection order by respondent.—

- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.
- (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.
- (3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Remedies under IPC

498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, "cruelty" means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 377. Unnatural offences.—whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

It is clear from the above section that any act of violence whether physical or mental which is likely to cause grave injury or danger to the life, limb or health of a woman is punishable with an imprisonment up to three years.


PRAYER

In view of the aforesaid, it is most respectfully prayed that this Hon'ble court may be pleased to :-

- a permit the Applicant to intervene in the aforesaid case and address submissions before this Hon'ble Court.

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- b direct the parties to supply copies of the pleadings to the Applicant
- c Pass any other order as may be deemed fit and proper in the facts and circumstances of the case.


Applicant in person

Through


Amit Lakhani

Ritwik Basaria

Men Welfare Trust
C-403, Arvind Apartments,
Plot-9, Sec- 19-B, Dwarka
New- Delhi 110075

For
MEN WELFARE TRUST (Regd.)

Auth Signatory

New Delhi

Date 25-8-2017

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