IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 284 OF 2015

IN THE MATTER OF PUBLIC INTEREST LITIGATION

RIT FOUNDATION & ORS ……..… PETITIONER

VERSUS

THE UNION OF INDIA & ORS ……...… RESPONDENT

MEN WELFARE TRUST ……..… INTERVENER/RESPONDENT

INDEX

Date: New Delhi

Place: 12/Jan/2022

(Amit Lakhani)

(Ritwik Bisaria)

IN THE HIGH COURT OF DELHI AT NEW DELHI

(EXTRAORDINARY ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 284 OF 2015

IN THE MATTER OF PUBLIC INTEREST LITIGATION

RIT FOUNDATION & ORS ..... PETITIONER

VERSUS

THE UNION OF INDIA & ORS ..... RESPONDENT

MEN WELFARE TRUST ..... INTERVENER/ RESPONDENT

WRITTEN ARGUMENTS ON BEHALF OF THE INTERVENER/ RESPONDENT

The submissions below to be made by Mr. Amit Lakhani and Mr. Ritwik Bisaria on behalf of Men Welfare Trust, the intervener / respondent is organized as follows:

1. SUMMARY:

1. That the present petition filed in this Hon'ble court comes with a presumption that the exception present in the section 375 of the Indian Penal Code is a license to rape wives and that millions of wives are being subjected to rape by their husbands in India on a daily basis and that the Indian laws and the law makers have granted a blanket permission to husbands to rape their wives. Unfortunately, this is the wrong perception which has been created. The instant petitions are grossly misleading and the Applicant wishes to submit:

firstly, that having an exception is not same as having the license to have sex without consent

secondly, that the Law Makers of India have provided adequate protection for married women against Sexual Violence by their Husbands

thirdly, that the exception in IPC 375 is not unconstitutional and is in no violation to International Declarations

2. The petitioners while comparing the Rape Laws of other countries vs India, through specific judgments, have conveniently ignored the fact that the Rape Laws of other countries are Gender Neutral and carries deterrents and checks and balances that protect the social fabric and the fundamental rights of all the citizens, irrespective of their gender.

3. That that complete pleadings of the Petitioners have been focused around classification of women in IPC 375 based on Marital Status. The Constitution of India does not mention anywhere, that there cannot be any classification on the basis of Marital Status. The Constitution of India has kept only Religion, Race, Caste, Sex, Place of Birth as the basis of not allowing classification and did not add any other factor while listing basis of classification.

4. That petitioners have also argued that presence of an exception in IPC 375, in itself is unconstitutional. IPC, in itself has various exceptions based on various classifications including Marital Status. Indian Penal code, thus, has given a special status to Marital Relationship, not just in IPC 375 but in various other sections too as mentioned in Section 3, Point 2 of these Submissions. If such exceptions are termed to be unconstitutional, it may make all such exceptions questionable.

5. That before making or amending any law, there has to be serious introspection into social impact of the same. The removal of the argued exception would lead not just to misuse but gross misuse of the law and as validated by various Judgments of the Hon'ble Supreme Court of India in case of misuse of IPC 498A, would lead to another kind of Legal Terrorism. Taking the cue from the Law covering Matrimonial cruelty, IPC 498A, where in the Hon'ble Supreme Court had to step in to curb the effects of misuse through various guidelines to protect the fundamental rights of innocents. With removal of the argued exception, question arises, aren't we entering into the same path of making a Law which is open to misuse and as happened in IPC 498A, Hon'ble Supreme Court may have to step in, few years down the line, to issue guidelines to save the fundamental rights of Innocent Husbands. Gross misuse of such laws has become a social malice now and it is well acknowledged not only by the Hon'ble Supreme Court, but also by the legislation by adding a misuse clause in the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 itself.

6. That, the men in India do not ask for any special law by virtue of their gender but their fundamental rights must be protected and considered while any law is being enacted or amended, especially the matrimony related laws which not just effect the Husband or his family but the entire social fabric of the country.

7. That about 92000 men (out of which 64000 are married men) resort to committing suicide in India for various reasons but the single largest reason being domestic issues (24%) that includes marital disputes which not just clearly indicates the helplessness of men in distress but also the need to have a government body to examine and address the issues related to men which are driving men to commit suicide in large numbers (2.2 times the suicide of woman). Removal of the Exception in IPC 375 within the Marriage relationship would further increase the risk of converting any petty marital issue into an IPC 375 case thus increasing pressure and helplessness of Husbands which may further lead to increase in the rate of suicide of Married men.

8. That, while considering this removal of the exception, it is required to examine the test of definition of consent. The definition of consent in IPC 375 is read with IPC 90. The definition needs to be closely looked at with married, unmarried and separated/divorced women. The Definition of consent as per IPC 90 which covers

the scenarios of IPC 375 for an unmarried women, may not hold good in case of a married women.

2. International Judgments cited by the Petitioners:

That various judgments of other countries have been quoted by the petitioners and the Petitioners have relied upon these judgments to support their petition. The applicant respectfully submits that these judgments are quoted in a manner to create a wrong understanding before this Hon'ble court and that these judgments cannot be relied upon while considering the amendments as prayed by the petitioners.

Ref: Judgment 1: (Supreme Court of Nepal)

Forum for Women, Law and Development (FWLD) Vs His Majesty Government of Nepal (HMG/N) and others [Writ No. 55 of the year 2058 BS (2001-2002)

That referring to the said judgment the Hon'ble Supreme Court of Nepal ordered:

> *"Now, therefore, as marital rape found to have been immune by No. 1 of the Chapter on Rape, it can not be regarded, as contended by the writ petitioner, that the impugned definition of rape is inconsistent to the Constitution. Thus, the writ petition is hereby quashed. It is also hereby decided that as a punishable offence, there is a difference in the consequences of the rape committed by a third person and by a husband and No. 8 of the Chapter on Rape has kept in mind only the consequences of rape committed by a third person, there is a situation of gap of legal provisions following the rape of one's own wife - such as providing immediate relief by allowing to live separate from or to divorce the relationship with the rapist husband; prescribing the degree of offence in rape committed in the circumstance of child marriage; therefore, a directive order has been issued in the name of one of the respondents, the Ministry of Law, Justice and Parliamentary Affairs, to introduce a Bill for bringing necessary amendments with regard to the said gaps and for making complete legal provisions for justifiable and appropriate solution in an integrated manner with regard to marital rape taking into account the special situation of marital relationship and position of the husband. Do pass the information of this order to the respondents through the Attorney General and handover the case-file as per Rules"*

The petitioner have purposely suppressed the relevant fact which are:

a) The submissions made by the Petitioner (*Page no. U, Page No. 21 in the Petition of Khusboo Saifi Vs Union of India and Anr*) sighting it as the order of the Supreme Court of Nepal

Page U of the Petition of Khushboo Saifi vs Union of India and Anr reads following:

> "The Court stated that the exception ran afoul to the constitutional right of equal protection, holding that "The classification of the law that an act committed against an unmarried girl to become an offence and the same act committed against a married women not to become an offence is not a reasonable classification"."

Page No. 21 of the Petition of Khushboo Saifi vs Union of India and Anr reads following:

> "A neighbour of India, Nepal struck down their marital rape exception in a 2002 decision by the Supreme Court of Nepal. The court stated that the exception ran in contravention to the constitutional rights of equal protection, holding that "the classification of the law that an act committed against an unmarried girl to become an offence and the same act committed against a married women not to become an offence is not a reasonable classification." The Court further stated that exception was against the Right of Privacy under that Constitution, and because Nepal was a party to the various International conventions on the rights of women, it was bound to uphold those rights. "If an act is an offence by it's very nature, it is unreasonable to say that it is not the offence merely because of difference in person committing the act.""

It is pertinent to mention that the above statements of the Petitioners are actually the arguments made by the litigants in the Nepal judgment and are not the observations made by the Hon'ble Supreme Court of Nepal. The court in the final order actually quashed the Writ Petition, which prayed for the Law to be adjudged as Unconstitutional.

b) The Supreme Court of Nepal quashed the writ petition observing that the immunity cannot be regarded as inconsistent to the Constitution and instead, directed the Ministry of Law, Justice and Parliamentary Affairs, to introduce a Bill with respect to filling the gaps in the present laws in Nepal, instead on making any amendments in the law itself.

c) That the Honourable Court has made a clear distinction between Rape by a third person and a sexual offense by the husband saying '*there is a difference in the consequences of the rape committed by a third person and by a husband*'.

Ref: Judgment 2: (United Kingdom)

European Court of Human Rights in C.R. Versus the United Kingdom. Application Number: 00020190/92, November 22.1995

That the said judgment is arising out of a case where in the wife had left the husband informing him that she intended to petition for divorce. Even the husband had telephonically informed his wife about his intention to seek divorce. Hence, this judgment is not a fit example for this instant case for the following reasons:

a) That the parties in this case were already living separately. Both husband and wife had already communicated to each other clearly about their intention to seek divorce. It is pertinent to mention here that in a similar situation in India, even within the existing legal framework, a wife can file a rape complaint against her husband u/s 376B of the Indian Penal Code. So, if at all the given judgment has to be taken as any reference, then the present frame work of laws in India completely covers the situation as in the given judgment.

Ref: Judgment 3: (Supreme Court Of Canada)

JR Vs J.A, 2011 SCC 28, 27th May 2011

The said judgment is arising out of a case which is not even between a wife and a husband but a man and a women in a long term relationship where in the couple were into sexual experimentation with complete consent and within which a particular act for a few minutes is questioned as non-consented.

That this reference judgment is not relevant and cannot be a basis of the prayer in the present petition, for the following reasons:

a) That the present case is not even a case of married couple but it is a case of man and women in a long term relationship. In a similar situation in India, where in a couple is in a live in relationship, the women can file a rape case and seek relief u/s 375 of the Indian Penal Code.

b) That in the present case wherein the women herself admits of consenting to the act of getting chocked as a part of their sexual experimentation, like many other such similar experimentations that they used to indulge in their sexual life.

c) It is further submitted that in this judgment, the issue framed for the appeal reads:

"the only question before this court is whether consent for the purposes of sexual assault requires the complainant to be conscious throughout the sexual activity." Thus the question raised in this case is that the three

minutes where the female live in partner was unconscious, whether or not there was a consent for the act performed in that three minutes because she claims that her consent was there before and after. Thus, this judgment has no relevance to the present petition.

Ref: Judgment 4: (House Of Lords)

Citation 1991 LawSuit (UKHL) 69 dated: 23rd Oct0ber 1991

That the judgment titled '*Final Decision of the House of Lords Citation 1991 Lawsuit (UKHL) 69 dated 23rd October 1991*' is the same case as referred in judgment No 2, wherein Judgment No 2 (*European Court of Human Rights in C.R. Versus the United Kingdom, Application Number : 00020190/92, November 22.1995*) is the appeal against Judgment no 4. Hence, this Judgment cannot viewed as a separate reference.

Ref: Judgment 5: (New York)

People Versus Liberta before the Court of Appeals of New York. 64 NY 2d 152 (1984)

That this judgment arising out of a case where the married couple is legally separated and the wife had filed a case of marital rape.

1) That under similar circumstances, wives in India, can file rape cases u/s IPC 376B against their husbands during the time of separation (whether the separation is a legal separation or even otherwise).

It is important to note here that, under the India Penal Code:

Sexual intercourse by husband upon his wife during separation

376B reads as under:

"*Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine".*

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Ref: Judgment 6: (High Court of Australia)

Judgment of the High Court of Australia dated: 20th May 2012. PGA vs The Queen [2012] HCA 21

That this judgment primarily highlights a case where in the alleged crime happened in 1963 and the case came to the court in 2010 which was after a gap of about 47 years. This judgment discusses and decides more on the retrospective applicability of the Law.

3. Insight to International Laws:

NEPAL:

In Nepal, the Amendments were done by the Parliament, in the prevailing "the muluki ain (general code)", keeping in view the special situation of marital relationship, as observed by the Hon'ble Supreme Court or Nepal:

a. As per the 2006 amendment, the Rape Law (Annexure 1) was amended to include following in Part IV, Chapter 14, Number 3,
   "*Notwithstanding anything contained in this Number, the husband who commits a rape with his wife shall be liable to imprisonment for a term ranging from Three months to Six months.*"
   It is respectfully submitted that Supreme court of Nepal has observed the clear difference between a Rape committed by a third person viz a viz a Sexual offence by a Husband.
b. Additionally, the Parliament also brought in some progressive checks in Number 11 of Chapter 14 in Part IV, such as, if a suit on the matter of rape is not filed within Thirty Five days from the date of the cause of action, the suit shall not be entertained. This check is applicable to Rape Complaints irrespective of the relationship between victim and perpetrator.

Additionally, the Applicant also wishes to submit to this Hon'ble court, few more facts regarding the legal frame work in Nepal:

c. The "Domestic Violence (Offence and Punishment) Act, 2066 (2009) [As well as the Amendment of 2010], is completely Gender Neutral (Annexure 2) and in Section 2 reads:

   > "(g) "Victim (Aggrieved person)" means any person who is, or has been, in a domestic relationship with the defendant and who alleges to have been subjected to an act of domestic violence by the perpetrator.

(h) "Perpetrator" means the person having family relations with the Victim and for whom the victim alleges to have been subjected to an act of domestic violence and this word also includes any person involved in the domestic violence or in the accomplice of the crime."

UNITED KINGDOM:

The Applicant wishes to submit to this Hon'ble court some facts regarding the current legal frame work in United Kingdom:

a) As per the Sexual Offense Act 2003, Chapter 42, Part 1, Sexual offenses (Annexure 3) are categorized into rape, assault by penetration and sexual assault. It is pertinent to mention here that the Sexual Offences Act 2003 of United Kingdom, has made assault by penetration and sexual assault as gender neutral.

b) That the Domestic Violence Act namely '*Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015*' under Section 24 (Annexure 4), defines domestic abuse (SS 1 & 2) as a Gender Neutral Act and defines sexual exploitation (SS 5), same as defined in Part 1 of the Sexual Offense Act 2003, which means the same is also gender neutral.

UNITED STATES OF AMERICA:

The Applicant wishes to submit that the Spousal Violence laws of USA, being portrayed as a benchmark of not differentiating between a Spousal and Non-Spousal violence, is not correct. On careful analysis of USA laws, it can be seen in several state laws that spousal sexual violence is treated quite differently than that of non-spousal sexual offences. Infact, some of the states have only criminalized spousal sexual violence in situations of separation or non-cohabitation, which is exactly similar to the situations of Indian Penal Code Section 376B. The laws of different states of USA have clearly described on how the sexual offences in marital relationships should be treated. Some Illustrations are:

a) The law of State of Maryland, "*Rape and Spousal offence – Spousal defense*" (Annexure 5), states:

> "*(b) Separation or use of force.- A person may be prosecuted under § 3-303(a), § 3-304(a)(1), or § 3-307(a)(1) of this subtitle for a crime against the person's legal spouse if:*

(1) ***at the time of the alleged crime the person and the person's legal spouse have lived apart, without cohabitation and without interruption****:*

(i) ***under a written separation agreement executed by the person and the spouse; or***

(ii) ***for at least 3 months immediately before the alleged rape or sexual offense; or***

(2) the person in committing the crime ***uses force or threat of force*** *and the act is without the consent of the spouse.*

(c) Limited divorce.- A person may be prosecuted under § 3-303, § 3-304, § 3-307, or § 3-308 of this subtitle for a crime against the person's legal spouse if at the time of the alleged crime the person and the spouse live apart, without cohabitation and without interruption, under a decree of limited divorce."

b) The Law of State of Connecticut, "*Sec. 53a-70b*" (Annexure 6) states:

"*(a) for the purposes of this section:*

(1) "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body; and

(2) ***"Use of force"*** *means: (A)* ***Use of a dangerous instrument****; or (B)* ***use of actual physical force or violence or superior physical strength*** *against the victim.*

(b) No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.

(c) Any person who violates any provision of this section shall be guilty of a class B felony."

c) The Law of State of Idaho, "*Title 18, Chapter 16, Section 18-6107*" (Annexure 7) states:

"***RAPE OF SPOUSE****. No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances*

cited in subsections (4), (5), (6) and (10) of section 18-6101, Idaho Code. History:

[18-6107, added 1977, ch. 208, sec. 4, p. 574; am. 1989, ch. 351, sec. 1, p. 879; am. 2010, ch. 352, sec. 2, p. 921; am. 2016, ch. 296, sec. 2, p. 829.]"

Whereas, "*Title 18 Chapter 16 Rape, 18-6101*" defines:

"RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

(1) .....

(2) .....

(3) .....

(4) Where the victim resists but the ***resistance is overcome by force or violence****.*

(5) Where the victim is ***prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anesthetic substance****.*

(6) Where the victim is prevented from resistance due to an objectively ***reasonable belief that resistance would be futile or that resistance would result in force or violence*** *beyond that necessary to accomplish the prohibited contact.*

(7) .....

(8) .....

(9) .....

(10) Where the victim submits under the belief, instilled by the actor, that ***if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact****, whether true or false, tending to subject any person to hatred, contempt or ridicule.*

.....

Males and females are both capable of committing the crime of rape as defined in this section.

History:

[18-6101, added 1972, ch. 336, sec. 1, p. 961; am. 1977, ch. 208, sec. 1, p. 573; am. 1994, ch. 83, sec. 1, p. 197; am. 1994, ch. 135, sec. 1, p. 307; am. 2000, ch. 218, sec. 1, p. 606; am. 2003, ch. 280, sec. 1, p.

756; am. 2010, ch. 235, sec. 7, p. 547; am. 2010, ch. 352, sec. 1, p. 920; am. 2011, ch. 27, sec. 1, p. 67; am. 2016, ch. 296, sec. 1, p. 828.]"

d) The Law of State of Nevada, in "*NRS 200.366*" covers the "*Sexual assault: Definition; penalties; exclusions*" while in "*NRC 200.373*" (Annexure 8) states:

"*Sexual assault of spouse by spouse. It is no defense to a charge of sexual assault that the perpetrator was, at the time of the assault, married to the victim,* ***if the assault was committed by force or by the threat of force****.*"

e) The Law of State of Oklahoma, in "*Oklahoma Statues Title 21 Section 21-1111A*" covers the Sexual Assault done to a victim, who is **not the spouse** while, "*Section 21-1111B*" (Annexure 9) states:

"*Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator* ***if force or violence is used or threatened, accompanied by apparent power of execution*** *to the victim or to another person.*"

f) The Law of State of Rhode Island, in "*Rhode Statues Title 11, Chapter 11-37, Section 11-37-2*" (Annexure 10) states:

"*A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:*

(1) The accused, ***not being the spouse****, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.*

(2) The accused ***uses force or coercion****.*

(3) The accused, through concealment or by the element of surprise, is able to overcome the victim.

(4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

History of Section.

(P.L. 1979, ch. 302, § 2; P.L. 1980, ch. 273, § 1; P.L. 1981, ch. 119, § 1; P.L. 1984, ch. 59, § 1; P.L. 1984, ch. 355, § 1; P.L. 1986, ch. 191, § 1; P.L. 1987, ch. 238, § 1.)"

g) The Law of State of South Carolina, in "*South Carolina Code of Law, Title 16, Chapter 3, Section 16-3-615*" (Annexure 11) states:

"*Spousal sexual battery.*

(A) Sexual battery, as defined in Section 16-3-651(h), ***when accomplished through use of aggravated force****, defined as the use or the* ***threat of use of a weapon*** *or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse* ***if they are living together****, constitutes the felony of spousal sexual battery and, upon conviction, a person must be imprisoned not more than ten years.*

(B) The offending spouse's conduct ***must be reported to appropriate law enforcement authorities within thirty days*** *in order for that spouse to be prosecuted for this offense.*

(C) ……..

(D) …….."

h) The Law of State of Virginia, in "*Code of Virginia, Title 18.2, Chapter 4, Section 18.2-61*" (Annexure 12) states:

"*Rape.*

A. .....

B. .....

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a ***violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy****, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will* ***promote maintenance of the family unit*** *and will be in the best interest of the complaining witness.*

C. Upon a finding of guilt under this section, ***when a spouse is the complaining witness*** *in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth,* ***may defer further proceedings and place the defendant on probation pending completion of counseling or therapy****, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness."*

The applicant respectfully submits that the above listed states of USA, differentiate the Sexual Assault by a spouse viz-a-viz done by a third person. It is pertinent to mention that in spousal sexual violence, the use of force or threat of force are important elements to constitute the said offence. It is also notable that all these states have Gender Neutral laws pertaining to sexual violence and have also inculcated various checks and balances with respect to Spousal Sexual Violence. E.g.

- State of South Carolina requires the complaint to be made within 30 days for initiating the proceedings.

- State of Maryland, even in case of separated Husband Wife, allow proceedings to be initiated only if there is minimum 3 months of separation before the alleged sexual assault.
- State of Oklahoma, devised separate Sections of Law for Sexual Assault by third person vis-a-vis a Spousal Sexual Violence offence.
- State of Virginia, also provides possibility of suspending the Violation of the section upon defendant's completion of counseling or therapy. Thus, providing an option of forgiveness, to the complainant (similar to the Penal Provision of Philippines).

PHILIPPINES:

The applicant would wish to bring to the kind notice of this Hon'ble Court that "The Anti Rape Law of 1997" of the Republic of Philippines is a Gender Neutral Law and gives Equal protection to men, as victims. As per the Chapter Three, Article 266-A, Subsection 2 (Annexure 13), "*By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person*". Thus the law of Republic of Philippines provides Equality before law to all genders, in contrast to Section 375 of IPC.

It would also be pertinent to add here that the Article 266-C (Annexure 13) also gives special provision of effecting a pardon in case of a valid marriage. Article 266-C, infact also allows pardon to be effected in case of a subsequent valid marriage of the accused and the complainant. Though, the Section 375 of IPC does not have the concept of 'pardon', especially in the Crimes against State. The petitioners seem to have picked only what's in favor of their prayer while ignoring the portions which did not suit their prayer.

4. Exception not being License to Rape:

1. That, the Applicant submits that Indian Penal Code, Under chapter II, Section 6, states, 'Definitions in the Code to be understood subject to exceptions' as:

"*Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.*

Illustrations

(a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age can not commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age."

The above illustration denotes that the Constitution of India does allow 'age' as a basis of classification for giving an exception in the Law.

With the above explanation (as given in 'a' in Illustrations), the Code is absolutely clear that having an Exception does not imply that 'child less than 7 years of age has a license to kill'. The offence cannot be committed by the one exempted or that it is allowed to commit the offence by the one exempted. This clearly nullifies the claim of the Petitioners that having an Exception in IPC 375 means "a Husband has License to Rape the Wife" or that the exception implies to 'Legal Rape of Wife'.

If exception to a husband in IPC 375 is deemed as "license to rape", then similarly an interpretation may be made that immunity granted to wife from prosecution under IPC 497 (Adultery) could be deemed as "license to Indian wives to commit adultery". Similarly, exception under Indian Evidence Act Section 112 on presumption of child born during marriage could again be interpreted as "license for wives to have child out of marriage".

2. It is further submitted that the Indian Penal Code, uses the term, 'Exception' multiple times in the complete bare-act, few of which are listed below:

a) Section 136 of IPC provides exception to Wife ONLY in the offence of '*Harbouring deserter*':

> "*Whoever, except as hereinafter expected, knowing or having reason to believe that an officer, soldier, 1[sailor or airman], in the Army, 2[Navy or air force] of the 3[Government of India], has deserted, harbours such officer, soldier, 1[sailor airman], shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
>
> ***Exception***
>
> *This provision does not extend to the case in which the harbour is given by a wife to her husband.*"

This denotes that the Constitution of India does allow 'marital status' as a factor for giving an exception in the Law.

It is respectfully submitted that under this section, a Marital relationship has been given different status and immunity is given to a Wife only and not to a Mother or Sister any other blood relation. The Applicant also wishes to submit that the same exception is NOT applicable in case a Husband Harbors a deserter Wife.

b) Section 216A of IPC provides exception to Spouse in the offence of '*Penalty for harbouring robbers or dacoits*'.

"*Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.*

Explanation

For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without 2[India]

Exception *— This provision does not extend to the case in which the harbour is by the husband or wife of the offender.*"

This again denotes that the Constitution of India does not disallow 'marital status' as a factor for giving an exception in the Law. It is respectfully submitted that in this Section of IPC also, only Marital Relationship has been imparted an Exception and no other relationship (including Blood relation) has been given such an immunity.

c) Section 494 of IPC provides exception to a person whose marriage has been declared void by a competent court in offence of '*Marrying again during lifetime of husband or wife*'.

"*Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Exception*.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent*

marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

This again denotes that the Constitution of India does not disallow 'marital status' as a factor for giving an exception in the Law. It is respectfully submitted that in this Section of IPC also, only Marital Relationship has been allowed as a reason for the exception and only non-married have been given exclusion.

Hence, the Applicant wishes to summarize above observations that the Constitution of India and the Indian Penal Code, have not provided any exception in the Law on the basis of Religion, Caste, Creed, Place of Birth whereas, it has provided various exceptions on the basis of either 'age' or 'profession' or 'marital status' etc.

5. Constitutionality:

I. With respect to Classification of women based on Marital Status:

That, the Petitioners have submitted that IPC 375 classifies women into 3 categories i.e. Unmarried, Married and Separated and based on that have argued that such a classification is unconstitutional.

The Applicant disagrees to the above statement in totality and respectfully submits that both the contentions of the Petitioner i.e. Classification of Women and Classification being Unconstitutional is unfounded.

Firstly, on the 'classification of women': IPC 375 does a classification of men as Husband and Non-Husband wherein, only a Husband has been exempted under IPC 375 whereas wife is always at the liberty to file IPC 375 on any other man.

Secondly, Classification, either of Male or Female, based on Marital Status: in itself is not Unconstitutional as Article 14 or Article 15 of the Constitution of India prohibits classification on the basis of religion, race, caste, sex, place of birth only and does not prohibit classification on basis of Marital Status. Also, the Laws have recognized such classification and has provided separate status to Wife and Husband as compared to unmarried women and men as mentioned in the Section 4(2) above.

II. With respect to Fundamental Rights:

a) Article 13:

That, the Article 13 of Part III, subsection 2 states,

"*The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void*".

The exception is not unconstitutional and not infringing rights of any citizen. The applicant has further substantiated the constitutionality of this exception in submissions made below on various Articles of the Constitution of India. Petitioners have also argued that the Parliament has failed to act against this Exception, which, as per the Petitioner, is unconstitutional.

The Applicant respectfully submits that Legislature has time and again discussed the argued exception in detail, as follows:

The Law Commission of India in its 172nd Report, named, "Review of Rape Laws March, 2000" also debated the exclusion of the exception u/s IPC 375 in detail and recommended following:

"*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***." (Annexure 14).

The Department-Related Parliamentary Standing Committee on Home Affairs, in their 167th Report, "The Criminal Law (Amendment) Bill, 2012", presented to Rajya Sabha on 1st March 2013 and Laid on Table of Lok Sabha on 4th March 2013, observed,

"*Chapter V: FINAL DELIBERATIONS AND CLAUSE-BY-CLAUSE CONSIDERATION AND RECOMMENDATIONS*

5.9 Section 375 of IPC

5.9.1 While discussing about Section 375, some Members felt that the word 'rape' should also be kept within the scope of sexual assault. The Home Secretary clarified that there is a change of terminology and the offence of 'rape' has been made wider. Some Members also suggested that somewhere there should be some room for wife to take up the issue of marital rape. It was also felt that no woman takes marriage so simple that she will just go and complain blindly. Consent

in marriage cannot be consent forever. ***However, several Members felt that the marital rape has the potential of destroying the institution of marriage. The Committee felt that if a woman is aggrieved by the acts of her husband, there are other means of approaching the court. In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women. It was, therefore, felt that if the marital rape is brought under the law, the entire family system will be under great stress and the Committee may perhaps be doing more injustice.***" (Annexure 15)

b) Article 14:

That, the Article 14 of Part III, states,

"*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*"

The applicant respectfully submits that Article 14 talks about equality before law or equal protection of the law whereas the current Section 375 of Indian Penal Code in totality completely disregards male citizen of India of any protection from Sexual Assault/Rape. Infact, the IPC Section 375 is completely disregarding Male citizens as a victim of a sexual assault, which makes it completely unconstitutional as it curtails the fundamental right of a man who is a victim of the crime of Sexual Assault/Rape.

As per the Petitioners, Section 375 of Indian Penal Code has classified women into 3 different categories i.e. Married, Unmarried, Married but separated. And petitioners have argued that all but one category is not having the protection under Section 375 of IPC.

The Applicant wishes to submit here that identical treatment in unequal circumstance would amount to inequality and may not be in interest of Justice. Married women in India enjoy a different and special status as compared to unmarried women when it comes to laws of the land. Infact, there are separate matrimonial laws covering marriage or marriage like relationship, focusing on protection of rights of married women, including sexual rights, are already in place. Even the Maintenance laws and Succession laws of India give special rights and privileges to a married woman. Though, it is ironical that the Petitioner while referring to such relevant Articles of the Constitution, are questioning the differentia between women, based on their marital status, which is not in violation to the Constitution of India, whereas they have

conveniently ignored the differentia between citizens, based on their gender, which is in violation to the Constitution of India.

c) Article 15:

The Applicant further submits the gross misuse and misinterpretation of Article 15 (and it subsections). Article 15, reads as under;

"*15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—*

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making ***any special provision*** *for women and children.*

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making ***any special provision, by law****, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.*"

The applicant respectfully submits that the argued Exception in IPC 375 is not in violation of Article 15 as the Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Marital status does not qualify in any of the listed grounds and hence the exception is not at all in violation of Article 15 of the Constitution of India.

The Petitioner have cited '*NALSA vs Union of India (2014) 5 SC 438*' in reference to their argument with respect to Article 15 of Constitution of India.

Applicant wishes to submit that the said judgment has no relevance with instant case as it is on the inclusion of 'third gender' and nothing about Marital Status.

Additionally, the Applicant hereby submits a very important facts on how Article 15 and its subsections have been misinterpreted:

The petitioner has purposely misrepresented the said Exception in Section 375 of IPC as a differentiation and discrimination against one section of women as compared to other women. The Petitioner is showing MARITAL STATUS as the point of differentiation to invoke the provision of Article 13, 14, 15, 19(1)(a) and 21, whereas the Constitution of India, in Article 15 specifies, "*State shall not discriminate against any citizen on grounds of* ***religion, race, caste, sex, place of birth*** *or* ***any of them***". Difference between Married, un-married and Separated women does not fall under any of the grounds i.e. Religion, Race, Caste, Sex or Place of Birth. Infact, substantiate it further, Applicant wishes to also submit that even 'Age' is not a differentiation ground in Article 15 and that's why India has special provisions and exception which are based on Age. i.e. India has Special classification of citizens as Senior Citizen and Juvenile.

d) Article 19(1)(a):

That Article 19(1)(a) read,

"*19. Protection of certain rights regarding freedom of speech, etc.—*

(1) All citizens shall have the right—

(a) to freedom of speech and expression;"

The petitioner on one hand is saying that when a wife says "NO" for sex, she still is subjected to 'Marital Rape' whereas while taking Section 19(1)(a) as a ground, Petitioner is saying that that wife is not able to say 'No' and also her right to say 'Yes' is taken away. The Section or it's exception does not take away or inhibit the right of a married woman to either say 'Yes' or a 'No'.

In fact, a wife has the option of filing IPC 498A, PWDVA 2005, in case of a Sexual Violence, but there is no similar provision for men to seek protection under Criminal Law either from general domestic violence in marriage, or from specific forced sex by wife without his consent. So, its not that the wife is not given the right to say 'No' against forced sex/sexual assault in marriage, it is in fact the Indian husband who has no such right at all.

e) Article 21:

The Article 21 reads,

"*21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.*"

The argument made by the petitioners on reproductive rights is of no relevance with the instant petition. Infact, when it comes to right to protect life and personal liberty, in cases of sexual violence, recourse are already available for the victim under various existing Legal framework, as detailed in this submission.

f) Article 51A(e):

The Article 51A reads,

"*51A. Fundamental duties.—It shall be the duty of every citizen of India—*

(a) .....;

(b) .....;

(c) .....;

(d) .....;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;"

The Applicant respectfully submits that Article 51A, talks about the Fundamental duties of the Citizen of India and is of no relevance to instant case.

6. AVAILABLE FRAMEWORK OF THE STATUARY PROVISIONS

1. That the present petition filed establish the gross mis-information on the part of the Petitioners. It is pertinent to mention here that the current framework of the Laws and Acts under various sections in India are already covering sexual offences within spouses which the petitioner is attempting to present as a crime which has no legal recourse. To substantiate the same, the Applicant begs to share the specific Laws and acts which provide ample protection to ONLY a woman in marriage from all sorts of sexual abuses:

    a. **PWDVA 2005**: Protection of Women under Domestic Violence Act of India, recognizes Sexual Violence as an integral part of the Act and defines Sexual Violence as ;

"*any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman*".

It would be pertinent to mention here that the PWDVA 2005 mandates a specific format of collection of details from the female victim under Domestic Incident Report. The bare perusal of Form-1 [Domestic Incident Report under Section 9(b) and 37(2)(c)], under Part 4, covers Incidents of Domestic Violence and has specific Questions asked to the Female victim of Domestic Violence. The Questions are:

i. Forced Sexual Intercourse
ii. Forced to watch Pornography or other obscene material

This act has criminal provisions in Section 18 and Section 31 of the PWDVA 2005.

It is pertinent to mention here that the Section 18 of the said Act is for passing a Protection Order in favor of a female victim, in violation of which, Section 31 comes to effect. Section 31 of the Act provides a jail term of One Year, or with fine or both.

It is also important to mention here that as per the Section 32 of the said Act, Sub-Section 2, court may conclude that the breach of Protection order u/s 31 has been committed, on SOLE TESTIMONY of the aggrieved person.

Thus, it can be easily inferred that the current PWDVA 2005 has completely covered the instance of Sexual Abuse of ONLY women in Marriage, with Penal provision of a Jail Term. It would be pertinent to mention here that the same Act, provides a clear EXCEPTION to the wife to be an accused by a victim Husband.

Petitioners have also referred to various legal remedies provided by the Law to a victim under IPC 375 and have argued that the wife, is subjected to the crime, is not provided with similar remedies. It is pertinent to mention that **PWDVA 2005 provides** the similar remedies to a wife namely, **free legal aid, medical support, financial support etc**.

b. **IPC 498A**: 498A of Indian Penal Code is generally believed to be an 'Anti Dowry' Law but the Section protects the married women from all sorts of cruelties by the Husband and his relatives. Cruelties also include the ones which are sexual in nature. IPC 498A states as under:

'*any wilful 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*'.

That it is of utmost importance to stress upon the usage of 'ANY WILFUL CONDUCT', (sexual misconduct included) 'CAUSE GRAVE INJURY' and 'MENTAL or PHYSICAL' in the Code. Hence, any and every kind of Cruelty on wife, including Sexual, is very much covered under IPC 498A.

It is pertinent to mention here that the same section of IPC, provides a clear EXCEPTION to wife to be an accused by a victim Husband. (i.e.: the husband cannot accuse the wife if he is subjected to similar form of cruelty)

c. **IPC 376B**: Upon insertion in the IPC from 'The Criminal Law (Amendment) Act, 2013', Section 376B covers the Sexual Intercourse between Husband and Wife as under:

> "*Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.*"

The Applicant respectfully submits to draw the attention of this Hon'ble Court to the specific terms "with his OWN WIFE", "under a decree of separation OR OTHERWISE", "without her CONSENT". With the bare reading of the act it is understandable that the current Law itself covers the offence of non-consensual intercourse between wife and Husband wherein they are in separation.

d. **IPC 377**: states:

> "*Unnatural offences.— Whoever voluntarily has carnal inter-course 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.*"

The Applicant respectfully submits to this Hon'ble Court the fact that IPC 377 carries a punishment term upto 10 years or even Life imprisonment. The section also does not provide any exception to the Husband.

7. Consent w.r.t. Unmarried vs Married Couple

Section 375 of IPC lists out six circumstances wherein the sexual intercourse committed amounts to rape:

"First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under eighteen years of age.

Seventhly —When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. "

'Consent' as defined in Explanation 2, is, an equivocal voluntary agreement by woman by words, gestures or any form of verbal or non-verbal communication for willingness to participate in the specific sexual act.

That the Applicant respectfully submits that the above definition mandates the consent to be conveyed by verbal or nonverbal communication 'each' time there is a sexual act and that where there is an absence of a verbal and a nonverbal communication of consent, it shall be understood as non-consent.

Should the same definition be implied in the marriage relationship that each time there is a sexual act between a wife and a husband where in the wife has a consent, she will have to clearly by verbal or nonverbal communication, communicate her consent the 'each' time.

It is pertinent to mention that in a normal situation between husband and wife there may not be such communication by verbal means or gestures "Each Time" they voluntarily intend to get into a sexual act and this normal situation of consent would actually fall in the definition of crime of a Marital Rape if the same meaning of consent (as in Section 375 of the IPC for unmarried persons) is applicable for married couples.

The second circumstance of "Without her consent" is of paramount importance here. For the definition of consent, this section is read with Section 90 of IPC, which states that:

> "*Consent known to be given under fear or misconception.- A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person - if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child - unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*"

We need to subject to test the 'definition of consent', as per IPC 90, as given above with similar situations for marital situation:

a. Scenario 1: A consensual sexual act on 'false promise' of marriage, as a 'misconception of fact', is being presumed to be Rape in an un-married relationship similarly if in a married relationship, a wife consents to a sexual act on a 'false promise' of getting a gift from the husband. Should the Husband be charged of Marital rape on False Promise, as 'misconception of fact' and be sent to jail term of minimum 7 years going upto Life Term?

   Explanation 2 in IPC 375 states, "Consent means ……: *Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity*".

b. Scenario 2: Wife doesn't disagree to the act while not being in mood for sex without any clear and unambiguous agreement or disagreement, expressed outwardly through mutually understandable words or actions. Should this be termed as Marital Rape and the Husband be sent to a jail term of minimum 7 years going upto Life Imprisonment?

   IPC 375 states, "*Fifthly. - With her consent when, at the time of the giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or wholesome substance, she is unable to understand the nature and consequence of that tot which she gives consent.*"

c. Scenario 3: Husband and wife, after getting intoxicated at a party, both indulge in sexual act with equal participation and wife later claims that consent was given under intoxication. Should this be termed as Marital Rape and the Husband be sent to a jail term of minimum 7 years going upto Life Imprisonment?

There could be many such complex scenarios that would complicate the interpretation of consent or absence of consent. Even the seventh circumstance in the definition of consent "*Not able to communicate consent*" would be a vague scenario in a marital situation.

The Definition of consent (Section 90 of IPC) clearly differentiates the similar circumstances of marital or non-marital situations and cannot be applied blindly without taking the marital status in consideration.

As per the observations by the learned judge in "*Mahmood Farooqui vs State (Govt Of NCT Of Delhi)*" (Annexure 16) on 25 September, 2017, IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A.944/2016, which has been upheld by the Hon'ble Supreme Court of India:

> "*78. Instances of woman behavior are not unknown that a feeble no may mean a yes. If the parties are strangers, the same theory may not be applied. If the parties are in some kind of prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic no would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher*

whether little or no resistance and a feeble no, was actually a denial of consent.

83. The questions which arise are whether or not there was consent; whether the appellant mistakenly accepted the moves of the prosecutrix as consent; whether the feelings of the prosecutrix could be effectively communicated to the appellant and whether mistaking all this for consent by the appellant is genuine or only a ruse for his defence. At what point of time and for which particular move, the appellant did not have the consent of the prosecutrix is not known. What is the truth of the matter is known to only two persons namely the appellant and the prosecutrix who have advanced their own theories/versions.

84. In order to answer the aforesaid questions, it would be necessary to see what the word "consent", especially in relation to sexual activity, connotes. In normal parlance, consent would mean voluntary agreement of a complainant to engage in sexual activity without being abused or exploited by coercion or threats. An obvious ingredients of consent is that, as consent could be given, it could be revoked at any time; rather any moment. Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape. There is a recent trend of suggesting various models of sexual consent. The traditional and the most accepted model would be an "affirmative model" meaning thereby that "yes" is "yes" and "no" is "no". There would be some difficulty in an universal acceptance of the aforesaid model of consent, as in certain cases, there can be an affirmative consent, or a positive denial, but it may remain underlying/dormant which could lead to confusion in the mind of the other.

85. In an act of passion, actuated by libido, there could be myriad circumstances which can surround a consent and it may not necessarily always mean yes in case of yes or no in case of no. Everyone is aware that individuals vary in relation to expositing their feelings. But what has to be understood is that the basis of any sexual relationship is equality and consent. The normal rule is that the consent has to be given and it cannot be assumed. However, recent studies reveal that in reality, most of the sexual interactions are based on non-verbal communication to initiate and reciprocate consent. Consent cannot also be analyzed without taking into account the gender binary. There are differences between how men and women initiate and reciprocate sexual consent. The normal construct is that man is the initiator of sexual interaction. He

performs the active part whereas a woman is, by and large, non-verbal. Thus gender relations also influence sexual consent because man and woman are socialized into gender roles which influence their perception of sexual relationship and expectation of their specific gender roles with respect to the relationship. However, in today's modern world with equality being the buzzword, such may not be the situation.

86. Today, it is expected that ***consent be viewed as a clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions****. Inheres in it is the capacity to withdraw the consent by either party at any point of time. Normally, body language or a non-verbal communication or any previous activity or passivity and in some cases* ***incapacitation because of alcohol consumption, may not be taken as consent****. However, in the present case, as has been stated, the appellant has not been communicated or at least it is not known whether he has been communicated that there was no consent of the prosecutrix.*"

The relationship of husband and wife are of very high intimacy, not found in other form of non-platonic relationships. Under non-marital relationships, a clear and unambiguous consent is mandatory for it not to constitute rape, will the same test be valid in marital relationship? The body language, non-verbal communication, incapacitation because of alcohol consumption are not treated as consent under normal circumstances, in the similar situations in marital relationships, whether rightly or wrongly interpreted, it will be grave miscarriage of justice to label the Husband as a Rapist.

8. Misuse and its Social Impact:

Matrimonial disputes resulting in frivolous litigation, out of vengeance or to settle personal scores, have been widely acknowledged by Indian Judiciary.

In the case of '*Arnesh Kumar vs State of Bihar*' (Annexure 17), the Hon'ble Supreme Court of India observed:

"***There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country.*** *Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives.* ***The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions***

> ***that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.*** *In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net.* ***Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads.*** *As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."*

Misuse, as a ground, has been questioned by the Petitioners but its' the gross misuse of Matrimonial Laws which is the concern and has been acknowledged by Hon'ble Supreme Court in various Judgments. The petitioners argued that any law can be misused, which essentially is trivializing the graveness and serious impact on the Indian society by the 'gross misuse' of Matrimonial Laws.

Hon'ble Supreme Court in the case of '*Sushil Kumar Sharma vs Union of India*' (Annexure 18) in Case No. Writ Petition (Civil) 141 of 2005 observed:

> "*The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with obligue motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment.* ***It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with.*** *Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But* ***by misuse of the provision a new legal terrorism can***

be unleashed. The provision is intended to be used a shield and not assassins' weapon."

The Applicant respectfully submits that there have been a plethora of Judgments highlighting the 'grave misuse' and the impact that this misuse has, not just on the families but the society at large. India is already witnessing the gross misuse of IPC 498A. The misuse has been so grave that Judiciary had to step in with various guidelines to protect the Principle of Natural Justice. Justice Malimath Committee Report, various circulars of Ministry of Home Affairs have also attempted to ensure that the misuse of IPC 498A is curtailed but the misuse continues even today with the society suffering huge loss in terms of innocents giving up on their lives, their career, their social status, their family status and carrying the stigma of being called a Criminal, throughout their lives.

As a result of the misuse, there are various Social Impacts which are noticeable in the society now. Like:

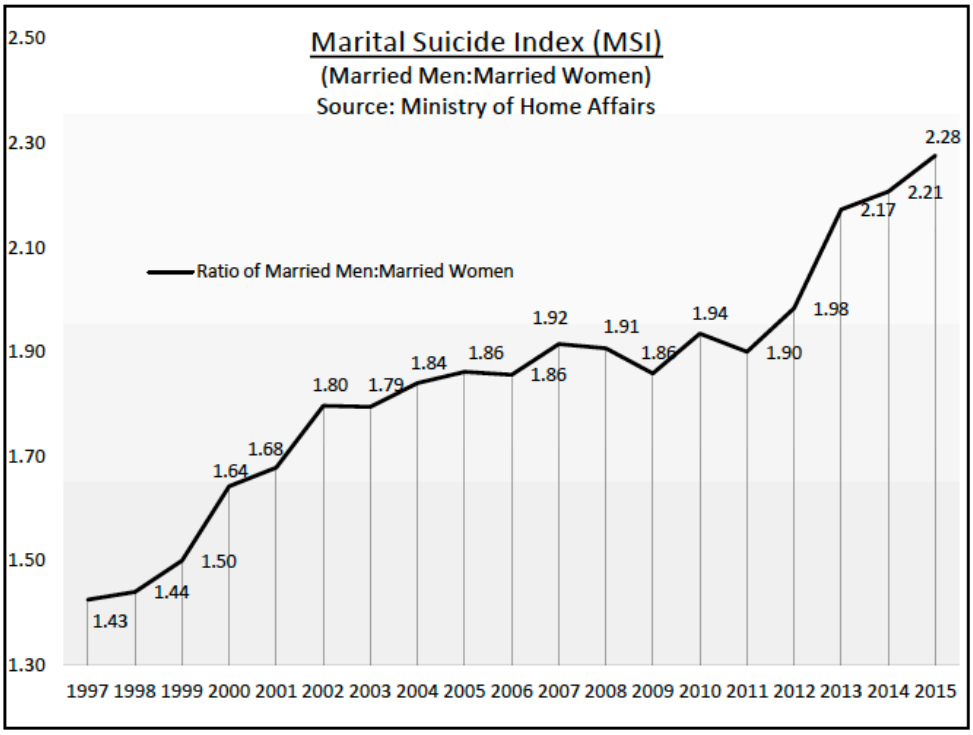
- Suicides due to Family Issues
- Arrests of innocents and Stigma of arrests
- Over burdening of Courts with Frivolous Litigation
- Complete set-back to the Career, job, livelihood of innocents
- Social outcast of innocents who are accused of Criminal Cases
- Serious decline on a youth's participation in growth of the nation
- Serious Health issues created by defending multiple false litigation like Low Self Esteem, Severe Depression, Suicidal tendency etc.
- Divorce Rates are going higher by the year
- Breaking families and curtailing of rights of the child to be with both parents
- With custody laws favoring the wife, India is gradually moving towards becoming a fatherless society

That in the cases where the accused is honorably acquitted after a substantially long and painful legal battle which tarnishes his dignity and incurs huge losses in terms of reputation, financial loss etc, there is no mechanism to give back all that is lost. This is a huge social impact of a false rape case on an innocent accused and when it is a case involving a family relationship like marriage, the stigma, trauma and impact is much more.

Of the total suicides in 2015 in India, Male Suicide was alarming to the tune of 68.5% at 91,528 male suicides.
'*Family Problem*' as the cause of suicide stood as the highest reason for suicides in India, contributing to 27.6% of total suicides.

The above data, referring to the Report named, "*Accidental Deaths and Suicides in India 2015*", published by National Crime Records Bureau (Annexure 19) only covers few heads under 'causes of suicide'. Male suicides, because of the threat or process of frivolous litigation, would form part of 'Family Problem'.

In 2015, Husband Suicide figure stood at staggering 64,534, which was 2.27 times of 28,344 wife suicide. Ratio of Husband to Wife suicide has been increasing over past 2 decades as per the data from National Crime Records Bureau. It increasing ratio of Marital Suicide Rate (Married Men : Married Women) if a very disturbing trend.



It is also important to note that whereas 'Married Male : Married Female' suicide ratio stood at staggering '2.27 : 1', while the 'Male : Female' suicide ratio of remaining suicides was '1.96 : 1'. This would effectively mean, Men are more prone to suicide while in marriage whereas Women are more prone to suicide while outside marriage.

As precisely observed by the Hon'ble Supreme Court in '*Arnesh Kumar vs State of Bihar*', "Arrest brings humiliation, curtails freedom and cast scars forever". As per the Report from National Crime Records Bureau, namely, '*Crime in India 2016*', following are the statistics w.r.t. IPC 376 and IPC 498A:

IPC 498A in 2016:

- 1,98,851 people were arrested under IPC 498A of which about 20% were women
- With 1,10,378 cases registered in IPC 498A, arrests per case stood at 1.8 person arrested per IPC 498A case

- Of persons arrested, only 6.79% i.e. 13,511 were convicted. Which indicates that over 93.21% persons arrested were not convicted but still arrested
- Conviction rate of IPC 498A stood at minimal 12.2% which was the LOWEST of all the IPC crimes. Average conviction rate of IPC crimes was 46.8%
- IPC 498A numbered to almost 5.12% of total pending IPC cases by the end of Year

IPC 376 in 2016:

- 48,797 people were arrested under IPC 376
- With 38,947 cases registered in IPC 376, arrests per case stood at 1.25 person arrested per IPC 376 case
- Of persons arrested, only 12.88% i.e. 6,289 were convicted. Which indicates that over 87.12% persons arrested were not convicted but still arrested
- Conviction rate of IPC 376 stood at 25.5% much lower than average conviction rate of IPC crimes, which was 46.8%
- IPC 376 numbered to almost 1.37% of total pending IPC cases by the end of Year

While listing the above relevant data from National Crime Records Bureau, for IPC 498A and IPC 376, the Applicant wishes to bring to the fore few important facts from the latest Statistics of Crime and Arrests in India.
Matrimonial Criminal Law, has the lowest conviction rate i.e. 12.2% while contributing to over 5% of the total IPC crimes, where the conviction rate is 46.8%. This clearly indicates that while the absolute number of people who are accused of IPC 498A is substantial, conviction is minimal thus this law is grossly effecting the lives of more innocents. Similarly in IPC 376, with a conviction rate of 25.5%, over 74% of accused carry the Social Stigma of being called a 'Rapist' for their whole life in a case which dint result in conviction. Also, of the people arrested in IPC 498A and IPC 376 respectively, over 93% and 87% of arrested were not found worthy of conviction. Such an arrest leaves a permanent dent on the life of the person.

A fundamental set of concern has arisen in jurisprudence related to crimes against women in matrimony, specifically IPC 498A. Due to lakhs of cases filed every year, and the courts realizing that many of these IPC 498A cases are not really offences under IPC 498A, a regime has evolved where the matrimonial parties approach respective High Courts to quash the criminal proceedings under CrPC 482, with an accompanying Agreement regarding mutual consent divorce or settlement of

the dispute. This has made a confusion among public, as to what exactly is a criminal offence under law, if it can be suitably quashed when the demands of wife are met? But given the fact that few IPC 498A offences are quashed under CrPC 482, isn't it a foregone conclusion that any provision of 'marital rape' will also be going the way of IPC 498A quash under CrPC 482? What then will be sanctity given to criminal law of rape, if the offences are being quashed because it pertains to a matrimonial case?

9. Should India blindly follow the West:

That, in western countries there is a clear pattern of very high divorce and low marriage rates as compared to India. These countries also have very high proportion of births outside wedlock. Western countries are currently struggling to keep the family system alive.

It would be pertinent to refer to following data of the European Union Members of 2013:

> Some 2.1 million marriages and 943 thousand divorces took place in the EU-28 in 2013, according to the most recent data available for all EU Member States. These figures may be expressed as 4.1 marriages for every 1000 persons (in other words the crude marriage rate) and 1.9 divorces for every 1000 persons (in other words the crude divorce rate).
>
> Since 1965, the crude marriage rate in the EU-28 has declined by close to 50 % in relative terms (from 7,8 per 1000 persons in 1965 to 4.1 in 2013). At the same time, the crude divorce rate increased from 0.8 per 1000 persons in 1965 to 1.9 in 2013. Part of this increase may be due to the fact that in several EU Member States divorce was legalised during the period (for example, in Italy, Spain, Ireland and Malta).

Detailing further on the marriage and divorce crude rate of 100 countries across the globe:

S. No	Country	Crude marriage rate	Crude divorce rate	Divorce:marriage ratio	Data Source Year
1	Portugal	3.1	2.2	71	(2013)[2]
2	Luxembourg	3.6	2.4	67	(2015)[2]
3	Belgium	3.6	2.2	61	(2015)[2]
4	Spain	3.6	2.1	58	(2015)[2]
5	Denmark	5.1	2.9	57	(2015)[2]
6	Cuba	5.2	2.9	56	(2010)[4][5]
7	Finland	4.5	2.5	56	(2015)[2]
8	France	3.5	1.9	55	(2015)[2]
9	Czech Republic	4.6	2.5	54	(2015)[2]
10	Netherlands	3.8	2	53	(2015)[2]

11	Russia	9.2	4.8	52	(2011)[4][5]
12	Estonia	5.2	2.6	50	(2015)[2]
13	Canada	4.4	2.1	48	(2008)[4][5]
14	Gibraltar	6.7	3.2	48	(2010)[4][5]
15	Liechtenstein	5	2.4	48	(2010)[12]
16	Costa Rica	5.3	2.5	47	(2010)[4][5]
17	Sweden	5.3	2.5	47	(2015)[2]
18	**United States**	**6.9**	**3.2**	**46**	**(2014)[22]**
19	Belarus	9.2	4.1	45	(2011)[4][5]
20	Hungary	4.7	2.1	45	(2015)[2]
21	**European Union**	**4.5**	**2**	**44**	**(2010)[12]**
22	Italy	3.2	1.4	44	(2015)[2]
23	Australia	4.8	2	42	(2015)[6]
24	Kuwait	5.2	2.2	42	(2010)[4][5]
25	Lithuania	7.6	3.2	42	(2015)[2]
26	Moldova	7.3	3.1	42	(2011)[4][5]
27	New Zealand	4.8	2	42	(2008)[4][5]
28	Norway	4.5	1.9	42	(2015)[2]
29	Switzerland	5	2.1	42	(2015)[2]
30	Ukraine	6.7	2.8	42	(2010)[4][5]
31	United Kingdom	4.5	1.9	42	(2015)[2]
32	Dominican Republic	4.4	1.8	41	(2010)[4][5]
33	Germany	4.9	2	41	(2015)[13]
34	San Marino	6.1	2.5	41	(2011)[4][5]
35	Slovenia	3.1	1.2	39	(2015)[2]
36	Bulgaria	3.9	1.5	38	(2015)[2]
37	Latvia	6.9	2.6	38	(2015)[2]
38	Hong Kong	7.8	2.76	36	(2014)[14]
39	Japan	5.5	2	36	(2010)[4][5]
40	Poland	5	1.8	36	(2015)[2]
41	South Korea	6.4	2.3	36	(2013)[19]
42	Austria	5.1	1.8	35	(2016)[7][8]
43	Iceland	4.6	1.6	35	(2011)[2]
44	Trinidad and Tobago	6.3	2.2	35	(2005)[11][21]
45	Slovakia	5.3	1.8	34	(2015)[2]
46	Qatar	3.3	1.1	33	(2011)[4][5]
47	Mongolia	3.4	1.1	32	(2010)[4][5]
48	Suriname	4.2	1.3	31	(2007)[4][5]
49	China	9.3	2.8	30	(2015)[10]
50	Croatia	4.7	1.4	30	(2015)[2]
51	Cyprus	7.2	2.1	29	(2015)[2]
52	Israel	6.5	1.8	28	(2009)[17]
53	Singapore	6.8	1.9	28	(2015)[18]
54	Greece	4.9	1.3	27	(2014)[2]
55	Kazakhstan	8.6	2.3	27	(2008)[4][5]
56	Panama	3.7	1	27	(2010)[4][5]
57	Venezuela	3.3	0.9	27	(2006)[4]
58	Bermuda	10.6	2.7	25	(2009)[4][5]
59	Jordan	10.2	2.6	25	(2010)[4][5]
60	Romania	6.3	1.6	25	(2015)[2]
61	Saint Lucia	2.8	0.7	25	(2004)[11]
62	Serbia	5.2	1.3	25	(2015)[2]
63	Thailand	5.5	1.4	25	(2005)[11]
64	El Salvador	3.5	0.8	23	(2006)[11]

65	Grenada	5	1.1	22	(2001)[11]
66	Iran	9.2	2	22	(2014)[4][5]
67	Turkey	7.7	1.7	22	(2015)[2]
68	Brazil	6.6	1.4	21	(2009)[9]
69	Saudi Arabia	5.2	1.1	21	(2005)[11]
70	Ecuador	5.6	1.1	20	(2006)[11]
71	Georgia	6.9	1.3	19	(2011)[4][5]
72	Nicaragua	4.5	0.8	18	(2005)[11]
73	Armenia	6	1	17	(2011)[4][5]
74	Egypt	11	1.9	17	(2010)[4][5]
75	Lebanon	9.5	1.6	17	(2007)[4][5]
76	Mauritius	8.2	1.4	17	(2010)[4][5]
77	South Africa	3.5	0.6	17	(2009)[9]
78	Kyrgyzstan	9.7	1.6	16	(2010)[4][5]
79	Albania	8.7	1.3	15	(2015)[2]
80	Algeria	10.1	1.5	15	(2013)[3]
81	Mexico	5.2	0.8	15	(2009)[4][5]
82	Montenegro	6.2	0.9	15	(2015)[2]
83	Republic of Macedonia	6.8	1	15	(2015)[2]
84	Saint Vincent and the Grenadines	5.8	0.8	14	(2007)[4][5]
85	Tonga	7.1	1	14	(2003)[11]
86	Bosnia and Herzegovina	4.8	0.6	13	(2012)[2]
87	Ireland	4.5	0.6	13	(2013)[15][16]
88	Malta	7	0.9	13	(2015)[2]
89	Azerbaijan	9.7	1.2	12	(2011)[4][5]
90	Seychelles	17.4	1.9	11	(2011)[4][5]
91	Colombia	2.3	0.2	9	(2007)[11]
92	Jamaica	7.5	0.7	9	(2011)[4][5]
93	Syria	10.6	1	9	(2006)[11]
94	Uzbekistan	7.8	0.6	8	(2006)[23][24]
95	Tajikistan	13.5	0.8	6	(2009)[4][5]
96	Bahamas	6.1	0.3	5	(2007)[4][5]
97	Guatemala	3.8	0.2	5	(2008)[4][5]
98	Libya	6	0.3	5	(2002)[11]
99	Vietnam	5.7	0.2	4	(2007)[4][5]
100	Chile	3.3	0.1	3	(2009)[4][5]

Source: https://en.wikipedia.org/wiki/Divorce_demography

Applicant also wishes to submit a major social difference between the countries which petitioners have referred to, as against Indian society with a pertinent question if we, as India, wish to follow the same path. The following data pertains to the live births outside marriage in European Union and United States of America:

European Union:

a) The proportion of live births outside marriage in the EU-28 in 2014 was 42 %. This share has continued to increase, signaling new patterns of family formation alongside the more traditional pattern where children were born within marriage. Extramarital births occur in non-marital relationships, among cohabiting couples and to lone parents.

b) In 2015 extramarital births outnumbered births inside marriages in several EU Member States: France (59.1 %), Bulgaria (58.6 %), Estonia and Slovenia (57.9 %), Sweden (54.7 %), Denmark (53.8 %) and Portugal (50.7 %), as well as in Norway (55.9 %) among the EFTA countries. Mediterranean countries like Greece, Cyprus, Croatia and Malta, along with Poland and Lithuania, were generally at the other end of the scale as more than 70 % of births in each of these Member States occurred within marriage; in Turkey this share was as high as 97.2 %.

c) The share of children that were born outside of marriage increased in the EU-28 from 27.3 % in 2000 to 42.0 % in 2014. Looking at the latest available data, extramarital births increased in almost every EU Member State in 2015 compared with 2014, with the exceptions of Bulgaria, Estonia, Latvia, Lithuania, Luxembourg, Romania and Slovenia.

	1960	1970	1980	1990	2000	2010	2011	2012	2013	2014	2015
EU-28	:	:	:	:	27.3	39.1	39.3	40.3	:	42.0	:
Belgium	2.1	2.8	4.1	11.6	26.9	45.7	47.0	47.7	:	49.4	:
Bulgaria	8.0	8.5	10.9	12.4	38.4	54.1	56.1	57.4	59.1	58.8	58.6
Czech Republic	4.9	5.4	5.6	8.6	21.8	40.3	41.8	43.4	45.0	46.7	47.8
Denmark	7.8	11.0	33.2	45.4	44.6	47.3	49.0	50.6	51.5	52.5	53.8
Germany	7.6	7.2	11.9	15.3	23.4	33.3	33.9	34.5	34.8	35.0	35.0
Estonia	:	:	:	27.2	54.5	59.1	59.7	58.4	58.9	59.4	57.9
Ireland	1.6	2.7	5.9	14.6	31.5	33.8	33.9	35.1	:	36.3	36.5
Greece	1.2	1.1	1.5	2.2	4.0	7.3	7.4	7.6	7.0	8.2	8.8
Spain	2.3	1.4	3.9	9.6	17.7	35.5	37.4	39.0	40.9	42.5	44.6
France (*)	6.1	6.9	11.4	30.1	43.6	55.0	55.8	56.7	57.2	58.5	59.1
Croatia	7.4	5.4	5.1	7.0	9.0	13.0	14.0	15.4	16.1	17.4	18.1
Italy	2.4	2.2	4.3	5.5	9.7	21.8	23.7	25.9	29.9	28.8	30.0
Cyprus	:	0.2	0.6	0.7	2.3	15.2	16.9	18.6	19.6	15.4	16.6
Latvia	11.9	11.4	12.5	16.9	40.4	44.4	44.6	45.0	44.6	44.0	41.5
Lithuania	:	3.7	6.3	7.0	22.5	25.7	27.7	28.8	29.5	29.0	27.7
Luxembourg	3.2	4.9	6.0	12.8	21.9	34.0	34.1	37.1	37.8	38.1	38.8
Hungary	5.5	5.4	7.1	13.1	28.0	40.8	42.3	44.5	45.6	47.3	47.9
Malta	0.7	1.5	1.1	1.8	10.5	25.3	23.0	25.7	25.9	25.9	26.9
Netherlands	1.4	2.1	4.1	11.4	24.9	44.3	45.3	46.6	47.4	48.7	49.8
Austria	13.0	12.8	17.8	23.6	31.3	40.1	40.4	41.5	41.4	41.7	42.1
Poland	:	5.0	4.6	5.2	12.1	20.6	21.2	22.3	23.4	24.2	24.6
Portugal	9.5	7.3	9.2	14.7	22.2	41.3	42.8	45.6	47.6	49.3	50.7
Romania	:	:	:	:	25.5	27.7	30.0	31.0	31.4	31.2	31.0
Slovenia	9.1	8.5	13.1	24.5	37.1	55.7	56.8	57.6	58.0	58.3	57.9
Slovakia	4.7	6.2	6.7	7.6	18.3	33.0	34.0	35.4	37.0	38.9	39.2
Finland	4.0	5.8	13.1	25.2	39.2	41.1	40.9	41.5	42.1	42.8	44.3
Sweden	11.3	18.6	39.7	47.0	55.3	54.2	54.3	54.5	54.4	54.6	54.7
United Kingdom	5.2	8.0	11.5	27.9	39.5	46.9	47.3	47.6	47.5	47.6	47.9
Iceland	25.3	29.9	39.7	55.2	65.2	64.3	65.0	66.9	:	:	:
Liechtenstein	3.7	4.5	6.3	8.9	15.7	21.3	23.5	19.9	19.9	21.8	15.1
Norway	3.7	6.9	14.5	38.6	46.6	54.8	55.0	54.9	55.2	55.5	55.9
Switzerland	3.8	3.8	4.7	8.1	10.7	18.6	19.3	20.2	21.1	21.7	22.9
FYR of Macedonia	5.1	6.2	6.1	7.1	9.8	12.2	11.5	11.6	11.3	:	11.0
Serbia	:	:	:	:	20.7	24.0	23.9	24.7	25.1	25.1	25.5
Turkey	:	:	:	:	:	2.6	2.7	2.6	2.7	2.8	2.8
Bosnia and Herzegovina	:	:	:	:	:	10.8	:	10.7	:	:	:
Kosovo (*)	:	:	:	:	:	40.3	40.7	40.1	:	:	42.6

(*) 1960 to 1990: excluding French overseas departments.
(*) Under United Nations Security Council Resolution 1244/99.
Source: Eurostat (online data code: demo_find)

Source: http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Live_births_outside_marriage,_selected_years,_1960-2015_(share_of_total_live_births,_%25).png

United States of America:

a) Data from the Centers for Disease Control and Prevention (CDC) indicate over 42 million babies have been born in the United States to unmarried mothers throughout the past 30 years.

b) CDC notes that, between the years 1987-2016, 42,015,749 babies were born to unmarried mothers, representing 34.78 percent of the total 120,777,366 babies born in that three-decade period in the U.S.

c) According to the data, in 2016, 1,569,796 babies were born to unmarried mothers, or 39.8 percent of total births. The data show a dip from 2015, when 40.3 percent of total births were to unmarried women.

Source: http://www.breitbart.com/big-government/2018/02/21/42-million-babies-born-unmarried-mothers-u-s-last-three-decades/

Countries with highest divorce rates are the Western European, Scandinavian and North American countries. It is important to observe that Western Society is a wrong reference for social and family reforms or amendments as explained further. Family system is under a serious threat in Western Societies where the marriages are decreasing and divorces are increasing. Their social engineering is a failure when it comes to making family and relationships work and by referring to them, India would be in a greater danger of following the same path. We cannot blindly follow their laws but in fact, a careful critical examination should be carried out before making any amendments that can have serious ramifications on Indian men and society at large.

The question that we need to ponder is that should India follow the same path by taking western society and laws as a reference blindly, which have high divorce rate, fewer marriages and outside wedlock child births, while discussing amendments in law?

10. Researches & Declarations quoted by the Petitioners:

1. That, the Petitioner in the instant case has quoted certain International Declarations depicting that the exception in the section 375 of the Indian Penal Code is in violation of these Human Rights Declarations. The Applicant wishes to reproduce the specific Articles of the same Declarations:

   "UDHR – Universal Declaration of Human Rights
   Article 1:
   ***All human beings** are born free and **equal in dignity and rights**. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."*

   It is most respectfully submitted that this Declaration is aptly named, Universal Declaration of **Human Rights**. That, in this Article, the Declaration provides All Human Beings (i.e. including Men) with EQUAL dignity and rights.

   "UDHR – Universal Declaration of Human Rights
   Article 3:
   ***Everyone** has the right to life, liberty and security of **person**."*

   It is further submitted that even in Article 3 of UDHR, the Declaration uses the term, 'person' and not a specific Gender, which clearly states the

thought process behind making of this Declaration which states the right of life, liberty and security to all Humans, irrespective of their gender.

> *"UDHR – Universal Declaration of Human Rights*
> *Article 5:*
> ***No one** shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

The applicant wishes to bring to the notice of this Hon'ble Court that the presence of various provisions for the wife in the Legal framework insures the implementation of Article 5 of UDHR, as explained above below under "GROUNDS" But ironically, Husband, is left out of the protection of same laws when he is a victim of torture, cruelty, inhuman or degraded treatment in a marriage.

> *"UDHR – Universal Declaration of Human Rights*
> ***Article 6:***
> ***Everyone has the right to recognition everywhere as a person before the law**."*

That the Article 6 of UDHR is crystal clear on recognition as a person before the law whereas, IPC 375 does not recognize Men, as a victim, before the law. This itself puts IPC 375 in complete violation of Article 6 of UDHR. It would be pertinent to state that IPC 375 is amongst many other such laws which do not recognize Male victim at all, before the law.

> *"UDHR – Universal Declaration of Human Rights*
> *Article 7:*
> ***All are equal before the law and are entitled without any discrimination to equal protection of the law.** All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."*

That, IPC 375 does not treat men equally before the law and also takes away the right of Equal Protection of this law, based on their Gender. Thus, IPC 375, is in direct violation of Article 7 itself.

> *"UDHR – Universal Declaration of Human Rights*
> *Article 9:*
> *No one shall be subjected to **arbitrary arrest**, detention, or exile."*

That, there have been various observations by the Hon'ble Apex Court and Hon'ble High Courts of India, raising serious concerns on the Arbitrary arrests done under various Gender based Laws in India followed by Arrest Guidelines and Landmark judgment to curb the menace of Arbitrary Arrest. That CrPC 41A amendments since October 2010, also covered the same

issue of Arbitrary Arrest, from the perspective of Legislature. Despite of all these measures, the arrests happening in Matrimonial disputes itself is close to 2 lakhs every year (as per NCRB), which includes Men, Women, Elderly and Children. Removal of the said exception would make all these steps and efforts of both Judiciary and Legislature completely nullified, thus increasing the Arbitrary Arrest, detention, especially when, Spousal sexual violence, already has alternate remedies available, for wife, in the Legal Framework, as mentioned above in this submission.

> *"UDHR – Universal Declaration of Human Rights*
> *Article 16:*
> 1. ***Men and women** of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are **entitled to equal rights as to marriage, during marriage and at its dissolution**.*
> 3. ***The family is the natural and fundamental group unit of society and is entitled to protection by society and the State**."*

Marriage as an institution has got special mentions, provisions, protection by various International Declarations, including UDHR, Article 16. The Declaration, infact, puts it as the duty of the State and Society to Protect Family as a natural and fundamental group unit of society. The Article also mandates equal RIGHTS to both Men and Women to marry, during marriage and at it's dissolution.

> *"UDHR – Universal Declaration of Human Rights*
> *Article 30:*
> ***Nothing in this declaration may be interpreted as implying for any State**, group or person any right to engage in any activity or **to perform any act aimed at the destruction of any of the rights and freedoms set forth herein**."*

Article 30 of Universal Declaration of Human Rights, talks about the ethos of the Declaration, where it curtails interpretation of the Declaration in a customized manner, aiming at the destruction of any of the rights and freedom.

The Present petition is devoid of merits on this point alone as the petition itself is in contravention with UDHR and talks about rights of only Married Women and NOT HUMAN BEINGS.

The idea of creating a Universal Declaration of Human Rights came after World War II and need was felt that such kind of human atrocities should

not be committed again and there should be a framework of protection humans against such atrocities.

The present exception in question in IPC 375 is not in contravention of UDHR as the provisions for relief is already available to women in marital relationship against offences that are termed as "marital rape".

2. That the Petitioners have mentioned various other International Conventions apart from UDHR.

Petitioners are Indicating towards India being in violation to these International Declarations by continuing with the Exception in IPC 375.

The petitioners have referred to various conventions in their Petitions or Submissions, namely:

a. *Convention on Elimination of all forms of Discrimination Against Women (CEDAW)*
b. *Declaration on Elimination on Violence against Women, 1993*
c. *International Covenant on Civil and Political rights (ICCPR)*
d. *Convention Against Torture (CAT)*
e. *European Convention on Human Rights (ECHR)*
f. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

It is respectfully submitted that among the above reports, most of the reports, including ICCPR, CAT, ECHR and ICESCR advocate the neutrality of Gender either in forms of Rights or Laws.

The Applicant, with due respect to the said conventions, wishes to submit the following observation made by the 9-Judge Constitutional Bench of Hon'ble Supreme Court in the matter of Shayara Bano vs. Union of India, dated 22nd August 2017, with respect to the relevance International Conventions:

> "*186. We have considered the submissions advanced on behalf of the petitioners, pointedly with reference to international conventions and declarations. We have not the least doubt, that the Indian State is committed to gender equality. This is the clear mandate of Article 14 of the Constitution. India is also committed to eradicate discrimination on the ground of sex. Articles 15 and 16 of the Constitution, prohibit any kind of discrimination on the basis of sex. There is therefore* ***no reason or necessity*** *while examining the issue of 'talaq-e-biddat',* ***to fall back upon international***

conventions and declarations. *The Indian Constitution itself provides for the same.*"

It is pertinent to mention here that the Constitution bench of the Hon'ble Supreme Court of India has put the Constitution of India at the Supreme pedestal for following Equality, with no reason or necessity to fall back upon International conventions and declarations.

3. The studies on Marital rape of women rely upon the report from '*National Family Health Survey – 4*' (referred as NFHS-4) and '*National Family Health Survey – 3*' (referred as NFHS-3). The Applicant respectfully submits some relevant details with respect to NFHS-4 and NFHS-3, which clearly indicate that since the whole survey was aiming towards 'Violence against Women' only, the questionnaire was specifically designed so as to get a specific result. The applicant is reproducing the relevant Questions, which were asked in the survey from Men and Women differently. Bare perusal of these questions highlight that the survey was incomplete to the effect of bringing a complete picture, as Men were not asked the same set of questions. Also the survey was not complete to get the true picture of Spousal Violence in India.

NFHS surveys used two different sets of questionnaire for men and women. Women's questionnaire, first asks the following question –

In NFHS-3

"*Women Questionnaire:*

Q 723: <u>Husbands and wives do not always agree on everything</u>. Please tell me if you think a wife is justified in refusing to have sex with her husband when:

- *She knows her husband has a sexually transmitted disease.*
- *She knows her husband has sex with other women.*
- *She is tired or not in the mood."*

The same question was asked to the husbands in this way –

"Men Questionnaire:

Q 704: Please tell me if you think a wife is justified in refusing to have sex with her husband when:

- *She knows her husband has a sexually transmitted disease.*
- *She knows her husband has sex with other women.*
- *She is tired or not in the mood."*

In NFHS-4

"*Women Questionnaire:*

Q 622: <u>Husbands and wives do not always agree on everything</u>. Please tell me if you think a wife is justified in refusing to have sex with her husband when:

- *She knows her husband has a sexually transmitted disease.*
- *She knows her husband has sex with other women.*
- *She is tired or not in the mood."*

The same question was asked to the husbands in this way –

"Men Questionnaire:

Q 708: Please tell me if you think a wife is justified in refusing to have sex with her husband when:

- *She knows her husband has a sexually transmitted disease.*
- *She knows her husband has sex with other women.*
- *She is tired or not in the mood."*

The Applicant wishes to draw the attention of this Hon'ble Court that both the questions, by default, put men as perpetrator and women as victim and in absence of same questions for men, the data of spousal violence on men is completely ignored. Infact, bare perusal of the option of these questions put 'not in mood' as the factor for denial of sex. Such a data collection and it's analysis cannot be taken as a credible ground to amend a penal provision.

The Women questionnaire also asks following:

In NFHS-3:

Question No. 1005A, of Woman Questionnaire reads,

"*(Does/did) your (last) husband ever do any of the following things to you:*

a. Slap you?

b. Twist your arm or pull your hair?

c. Push you, shake you, or throw something at you?

d. Punch you with his fist or with something that could hurt you?

e. Kick you, drag you or beat you up?

f. Try to choke you or burn you on purpose?

g. Threaten or attack you with a knife, gun, or any other weapon?

h. Physically force you to have sexual intercourse with him even when you did not want to?

i. Force you to perform any sexual acts you did not want to?"

In NFHS-4:

Question No. 1107, of Woman Questionnaire reads,

"(Does/did) your (last) husband ever do any of the following things to you:

a. Push you, shake you, or throw something at you?

b. Twist your arm or pull your hair?

c. Slap you?

d. Punch you with his fist or with something that could hurt you?

e. Kick you, drag you or beat you up?

f. Try to choke you or burn you on purpose?

g. Threaten or attack you with a knife, gun, or any other weapon?

h. Physically force you to have sexual intercourse with him even when you did not want to?

i. Physically force you to perform any other sexual acts you did not want to?

j. Force you with threats or in any other way to perform sexual acts you did not want to?"

This question is missing from the Questionnaire of Men, which itself shows how incomplete the survey was. This question being missed in Men Questionnaire completely ignores the fact that Men can also be at the receiving end of Violence in any of the above forms. In the above question, only option 'h', 'i', 'j' touch upon the existence of Spousal Sexual Violence that too only for wife as a victim. Thus the credibility of NFHS-3 and NFHS-4 is definitely questionable and it can neither be considered nor be relied upon in an amendment prayed in the present petition.

11. CONCLUSION:

Exception 2 of IPC 375 being called as 'License to Rape' is a wrong notion as an exception in itself doesn't mean a license being given to commit the crime. A wife already has the protection from Sexual Violence in a Marriage under the available framework. PWDVA 2005, IPC 498A, IPC 376B and IPC 377 provide adequate protection to a wife against Sexual Violence committed by the Husband. Though, no such protection is given to the Husband as the Laws are Gender Specific, unlike in most parts of the world.

Exception 2 distinguishes a perpetrator in IPC 375, based on the Marital Status. Such a classification is not under violation of Constitution of India. Constitution of India, under Article 14 and Article 15 does not allow any classification of citizens on the basis of Race, Religion, Caste, Sex, Place of Birth but doesn't disallow other

classifications including Classification on the basis of Marital Status, Age, Profession, etc. on the basis of which, there are already other IPC Sections which provide exceptions.

The Family System of India is one of it's strongest social pillars, that even other countries look upto India, as an example. It is important to observe that Western Society is a wrong reference for social and family reforms or amendments as the Divorce rate of few of those countries are as high as 70%. Family system is under serious threat in Western Societies where the marriages are decreasing and divorces are increasing. The way Family is handled in statue in Western Europe or Scandinavian or North American countries shows a direct impact on the Divorce rate of those countries, which is showing an increasing trend and hence, without a critical and careful examination, any amendment, following them, can have serious ramifications.

Data from National Family Health Survey (3 and 4) cannot be relied upon since the Data, as clear from the Questionnaire, was targeted for a specific result. The surveys completely failed to give the correct and true picture of the society as it fails to collect the relevant data from all genders.

Various International conventions advocate the necessity of protecting all genders equally. This indicates the need of Gender Neutral Laws, which most of the other countries have followed. India is still lagging on the same. Few of the other conventions relied upon were conventions with a specific target and hence their neutrality is questionable. There is no reason or necessity to fall back upon international conventions and declarations.

The relationship of husband and wife are of very high intimacy, not found in other form of non-platonic relationships. Under non-marital relationships, a clear and unambiguous consent is mandatory for it not to constitute rape. The body language, non-verbal communication, incapacitation because of alcohol consumption are not treated as consent under non-marital relationships. In the similar situations in marital relationships, it will be grave miscarriage of justice to label the Husband as a Rapist as using the same barometer to define consent will not be appropriate.

Social stigma of being called a Rapist (and also the same stigma attached to the Children born out of the wedlock) and getting arrested in a false Rape case has huge impact on the life, liberty and dignity of a person. With the misuse of IPC 498A already being termed as Legal Terrorism and the rising misuse of IPC 376, its social impact cannot be ignored. It is important to learn from history of IPC 498A,

we need to be careful before we start walking on the same path of handling huge amount of frivolous litigation thus burdening the Courts and the Society. Infact, with the IPC 375 covering various scenarios of Rape, over and above the forced sex (which is well covered under existing Statutes), will give rise to unimaginable registration of Rape cases against Husband as absence of cohabitation, which is one of the grounds for defense, in case of unmarried accused-prosecutrix scenario, will not be available for a married couple.

Thus, removal of the Exception 2 of IPC 375, would create more injustice in many ways, as substantiated in the above Submissions.

Applicant in person

Through

Amit Lakhani

Ritwik Bisaria

Men Welfare Trust

Dated: 12th March 2018

Chapter-14

On Rape

Number 1.[479] If a person enters into sexual intercourse with a woman without her consent or enters into sexual intercourse with a girl below the age of Sixteen years with or without her consent shall be deemed to be an offence of rape.

Explanation: For the purposes of this Number:

(a) A consent taken by using fear, coercion, undue influence, misrepresentation or use of force or kidnapping or hostage taking (abducting) shall not be considered to be consent.

(b) A consent taken when she is not in a conscious condition shall not be considered to be consent.

(c) Minor penetration of the penis into the vagina shall be considered to be a sexual intercourse for the purposes of this Number.

Number 2. A person who commits rape with a woman within kinship (prohibited degree of consanguinity) shall be liable to the punishment as referred to in the Chapter on Incest, in addition to the punishment as referred to in this Chapter. In cases where imprisonment for life has been imposed to an offender, an additional punishment for rape shall not be added.

Number 3.[480] A person who commits rape shall be liable to the imprisonment as mentioned hereunder:

Imprisonment for a term ranging from Ten years to Fifteen years if the minor girl is below the age of Ten years……..…1

Imprisonment for a term ranging from Eight years to Twelve years if the minor girl is above Ten or more years of age but below Fourteen years of age.....2

[479] Amended by Some Nepal Acts to Maintain Gender Equality Amendment Act, 2063.
[480] Amended by Some Nepal Acts to Maintain Gender Equality Amendment Act, 2063.

Imprisonment for a term ranging from Six years to Ten years if the minor girl is of Fourteen years of age or above below Sixteen years of age……3

Imprisonment for a term ranging from Five years to Eight years if the woman is of Sixteen years of age or above but below Twenty years of age.....4

Imprisonment for a term ranging from Five years to Seven years if the woman is of Twenty years of age or above . …….5

Notwithstanding anything contained in this Number, the husband who commits a rape with his wife shall be liable to imprisonment for a term ranging from Three months to Six months.

Number 3A.[481] One who commits a gang rape or commits rape with a pregnant woman or a disabled woman shall be liable to imprisonment for a term of Five years, in addition to the imprisonment mentioned in this Chapter.

Number 3B.[482] Notwithstanding anything contained in Number 3 and Number 3A, if someone commits a rape upon knowing the fact that he is living with HIV positive, such an offender shall be liable to imprisonment for a term of One year, in addition to the imprisonment referred to in Number 3 and Number 3A. of this Chapter.

Number 4. Every person who knowingly accompanies a gang and grabs a woman for rape or helps in committing the rape shall be liable to imprisonment for a term not exceeding Three years. In the case of a girl under Sixteen years of age, such a person shall be liable to the double of such punishment.

Number 5. One who has made attempt to commit rape but has not succeeded in committing it shall be liable to the punishment which is half the punishment that is imposed on the offender who commits rape.

[481] Inserted by the Eleventh Amendment.
[482] Inserted by Some Nepal Acts to Maintain Gender Equality Amendment Act, 2063

Number 6. If a person instigates another person to commit a rape, the instigator shall be liable to the punishment which is half the punishment that is imposed on the offender if the person has committed rape, and which half the punishment that is imposed on a person who has made attempt to rape if the person has made attempt but not been able to complete the commission of rape.

Number 7. .....[483]

Number 8. In cases where a person with intention to attempt rape assaults, rounds up (*chhekthun),* ties up (*bandchhand*) or uses force (*jorjulum*) by any other means to a victim and it is not possible to save the chastity (*dharma*) for the victim upon rescuing herself from the offender by shouting, requesting for the help or by any other means immediately, or where the victim is in a situation that if she does not do anything with her idea (*akkal*) or power (*barkat*) she may not be able to save her chastity due to serious fear or threat so created over there before the commission of rape or even after the commission of rape where she could do nothing due to lack of her power or force immediately, if such a victim, out of anger of such act, strikes a weapon, stick (*latho*) or stone at the place of commission of rape immediately or within one hour upon pursing the offender from such place and the offender dies over there, such an act shall not be deemed to be an offence. In case the victim kills the offender after one hour, she shall be liable to a fine of up to Five Thousand Rupees or imprisonment for a term not exceeding Ten years.

Number 9. A person who commits or causes to be committed rape with a woman for the purpose of grabbing her property through inheritance shall not be eligible for inheritance to be received from the victim of such rape.

Number 9A. [484] A person who commits or causes to be committed sodomy (any kinds of unnatural sexual intercourse) with a minor, it shall be considered to be

[483] Repealed by the Eleventh Amendment.

an offence of rape and the offender shall be liable to an additional punishment of imprisonment for a term not exceeding One year as referred to in Number 3 of this Chapter, and the court shall make an order to provide appropriate compensation to such a minor from the offender, upon considering the age and grievance suffered by the minor.

Number 10.[485] If a person is held to have committed rape with a woman, the court shall make an order to provide appropriate compensation to the victim from the offender upon considering the physical or mental loss she has suffered. In the course of determining such compensation, the gravity of offence and pain suffered by the dependent minors, if any, shall also be taken into account if such victim is already dead.

Number 10A.[486] In the course of an investigation or inquiry of a case mentioned in this Chapter, a woman police employee shall record the statement of the victim woman and if a woman police employee is not available, any other police employee may record her statement in front of a woman social worker.

Number 10B.[487] In the course of hearing of a case filed pursuant to this Chapter, only the lawyer, accused, victim woman and her guardian and police or court employee so permitted by the case hearing authority may appear before the bench.

Number 10C.[488] If the court, in making judgment, convicts the accused of rape on a case filed pursuant to this Chapter, the court shall mention in its decision about the compensation to be awarded to the victim from the offender and shall also cause the same to be provided to the concerned woman. For the purpose of realizing of the compensation, the court shall attach the property, including the share on joint property, of the accused immediately after the filing of a case pursuant to this Chapter.

---

[484] Inserted by the Eleventh Amendment.
[485] Amended by Some Nepal Acts to Maintain Gender Equality Amendment Act, 2063.
[486] Inserted by the Eleventh Amendment.
[487] Inserted by the Eleventh Amendment.
[488] Inserted by Some Nepal Acts to Maintain Gender Equality Amendment Act, 2063

Number 11. If a suit on the matter of rape is not filed within Thirty Five days from the date of the cause of action, the suit shall not be entertained.

Domestic Violence (Offence and Punishment) Act, 2066 (2009)

Date of Authentication and Publication

2066.1.14 (April 27, 2009)

Act No. 1 of the year 2066 (2009)

An Act relating to control the Domestic Violence

Preamble: Whereas, it is expedient to make provision to respect the right of every person to live in a secure and dignified life, to prevent and control violence occurring within the family and for matters connected therewith and incidental thereto making such violence punishable, and for providing protection to the victims of violence;

Now, therefore, be it enacted by the Constituent Assembly pursuant to Sub-article (1) of Article 81 of the Interim Constitution of Nepal, 2063 (2007).

1. **Short Title and Commencement**: (1) This Act may be called the "Domestic Violence (Crime and Punishment) Act, 2066 (2009)".

   (2) This Act shall come into force immediately.

2. **Definitions**: Unless the subject or context otherwise requires, in this Act,-

   (a) "Domestic Violence" means any form of physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship and this word also includes any acts of reprimand or emotional harm.

   (b) "Domestic relationship" means a relationship between two or more persons who are living together in a shared household and are related by decent (consanguinity), marriage, adoption or are family

members living together as a joint family; or a dependant domestic help living in the same family.

(c) "Physical harm" means an act of committing or causing bodily harm or injury holding as a captive, inflicting physical pain or any other act connected therewith and incidental thereto except the act of breaking the limbs of body *(Angabhanga)*.

(d) "Mental harm" means any act of threatening the Victim of physical torture, showing terror, reprimanding him/her, accusing him/her of false blame, forcefully evicting him/her from the house or otherwise causing injury or harm to the Victim emotionally and this expression also includes any discrimination carried out on the basis of thought, religion or culture and customs and traditions.

(e) "Sexual harm" means sexual misbehaviour, humiliation, discouragement or harm in self respect of any person; or any other act that hampers safe sexual health.

(f) "Economic harm" means deprivation from using jointly or privately owned properly or deprivation of or access to employment opportunities, economic resources or means.

(g) "Victim (Aggrieved person)" means any person who is, or has been, in a domestic relationship with the defendant and who alleges to have been subjected to an act of domestic violence by the perpetrator.

(h) "Perpetrator" means the person having family relations with the Victim and for whom the victim alleges to have been subjected to an act of domestic violence and this word also includes any person involved in the domestic violence or in the accomplice of the crime.

(i) "Police Office" means a Police Office closest to the residence of the Victim, the perpetrator or that office which is closest to the scene of crime and this word also includes the Children or Women Cell or Police Post or Police Sub-post under the District Police Office.

(j) "Court" means a court appointed by the Government of Nepal by a Notification in the Nepal Gazette.

(k) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules made under this Act.

3. **Domestic Violence not to be committed**: (1) No one shall commit; or aid or abet; or incite for the commission of for the act of domestic violence.

(2) A person who commits an act pursuant to Sub-section (1) shall be deemed to have committed an offence under this Act.

4. **Filing of complaint**: (1) A person who has knowledge of an act of domestic violence has been committed, or is being committed, or likely to be committed, may lodge a written or oral complaint setting out the details thereof, with the Police Office, National Women Commission or Local body.

(2) In case a complaint is received pursuant to Sub-section (1), in a written form, it shall be registered immediately and if it is received in an oral form it shall be registered upon setting out details in a written form and putting the signature of the complaint.

(3) In a case the complaint is filed before the National Women Commission, necessary action shall be taken in accordance with Prevailing National Women Commission law.

(4) In a case the complaint is filed before the Police Office, the Police Office shall produce the perpetrator within 24 hours of the

complaint, excluding the time of travel and make arrest if he/she refuses to appear for the statement.

(5) In a case the complaint filed in the Local Body, the Local Body shall produce the perpetrator within 24 hours of the complaint, excluding the time of travel and requesting to arrest to the Police Office if he/she refuses to appear for the statement.

(6) If the Victim has been physically wounded or mentally tortured as a result of the act of domestic violence, he/she shall be immediately sent to the nearest hospital or health post for necessary check-up and an injury report shall be drawn up. If the medical report is caused to be prepared by the Local Body, a copy of it shall be sent to the Police Station.

(7) If it is found necessary, to provide protection to Victim and his/her dependants from the preliminary investigation on the complaint pursuant to Sub-section (1) of section 4, it shall be provided with immediately with the assistance of the Police Office.

(8) The police officer or local body upon recording the statements pursuant to Sub-sections (4) or (5) of Section 8 finds reason to believe that an act of domestic violence has been committed and the Victim so desires, may, within Thirty days from the date of registration of the complaint, conduct reconciliation between the parties.

(9) The assistance a psychologist, sociologist, social activist and a family member trusted by the Victim and any other witness as per necessity and availability may be taken while conducting reconciliation pursuant to Sub-section (8). In the course of such reconciliation psychological of and social effects on the Victim, as well as his/her right to privacy shall be taken into consideration.

(10) The Police Officer or Local Body Officer shall ensure the presence of the perpetrator on the due date during the investigating, prosecuting and decision making process of the complaint.

(11) If the perpetrator fails to appear pursuant to Sub-sections (4) and (5); or he/she cannot be made present; or the parties fail to settle their dispute through reconciliation, the Police Officer and Local body, with the consent of the complainant shall, within fifteen days after the expiry of Thirty days as per Sub-section (8) shall forward to the court, the complaint mentioning all details, along with evidence and other legal documents incidental thereto.

(12) It shall be the duty of the Police Office to provide assistance pursuant to Sub-sections (5) and (7).

5. **Action to be taken by the Court**: (1) Upon receiving a complaint pursuant to Sub-section (11) of Section 4, the Court shall proceed the case as per this Act, on the basis of such complaint.

(2) Notwithstanding anything contained in Section 4, the Victim may directly file his/her complaint to the Court.

6. **Interim protection order may be granted**: (1) If the Court has reason to believe, on the basis of preliminary investigation of the complaint that the Victim needs to be given immediate protection, it may, till the time the final decision on the complaint is made, pass the following orders against the perpetrator:

(a) To allow the Victim to continue to live in the shared house, to provide him/her with food, clothes, to not cause physical injury to him/her and to behave with him/ her in a civilized and dignified manner.

(b) To manage for necessary treatment or to give money for the treatment of the Victim if he/ she has suffered physical or mental injury.

(c) To make necessary arrangements for the separate stay of the perpetrator in a case that it's not conducive for them to live together, and make necessary arrangements for the maintenance of the Victim.

(d) To not insult, threaten or behave in an uncivilized manner; or not to cause to do these acts.

(e) To not harass the Victim by entering his/ her place of separate residence; or in public roads; or entering his/ her place of employment; or through the communication media or in any other manner.

(f) To carry out or cause to carry out necessary and relevant actions for the protection and welfare of the Victim.

(2) If it is found necessary to provide protection pursuant to Sub-section (1) from the preliminary investigation of the complaint, the Court shall issue an appropriate order for the protection of the minor children or any other dependent of the Victim.

7. **Proceedings to be held in camera**: (1) If it is so request by the Victim, the court shall conduct in camera proceedings and hearings of the complaint relating to this Act.

(2) During in camera proceedings and hearings pursuant to sub-section (1), the claimant, defendant, their legal practitioners and those who are so permitted by the Court, shall be allowed to enter into the court room.

8. **Summary procedure to be Adopted**: The procedure mentioned in the Summary Procedure Act, 2028 (1971) shall be followed in the process and disposal of a case filed pursuant to this Act.

9. **Perpetrator to bear expenses of treatment**: (1) The total costs of treatment of the victim of the domestic violence, who has sustained physical or mental injuries so as to require medical help in the hospital, shall be borne by the perpetrator.

(2) Notwithstanding anything contained in Sub-section (1), if the Court has reason to believe that the perpetrator is unable to pay such amount due to economic reasons, the court may order to the Service Center to provide treatment expenses to the Victim.

10. **Compensation to be Provided**: The Court may, depending on the nature of the act of domestic violence and degree, the pain suffered by the Victim, and also taking into account the economic and social status of the perpetrator and Victim, order the perpetrator to pay appropriate compensation to the Victim.

11. **Service Centre**: (1) The Government of Nepal, as per necessity, may establish Service Centers for the purpose of immediate protection of the Victim, and for the separate accommodation of the Victim during the course of treatment.

(2) For the purpose of Sub-section (1), an organization may establish and operate Service Centers upon receiving approval as prescribed.

(3) Service Centers operating pursuant to Sub-section (2) may be given financial and other aid from the Fund established under Section 12.

(4) The Service Centre shall provide, as per necessity, legal aid, psycho-consultation service, psychological Service and economic aid to the Victim.

(5) The provisions of management, operation and monitoring of Service Centre shall be as prescribed.

12. **Service Fund**: (1) The Government of Nepal shall establish a Service Fund for the operation of Service Centers established pursuant to Sub-section (1) of Section 11.

(2) The fund shall consist of the following amounts established pursuant to Sub-section (1):

(a) The amount received from the Government of Nepal,

(b) The amount received from any national or foreign organization, institution or individual,

(c) The amount received from any other source.

(3) The management and operation of the Service Fund shall be as prescribed.

13. **Penalty**: (1) A person who commits an act of domestic violence shall be punished with a fine of Three Thousand Rupees upto Twenty Five Thousand Rupees or Six months of imprisonment or both.

(2) A person who attempts to commit domestic violence or abets the crime or incites others to commit the crime shall be liable to half the punishment of the perpetrator.

(3) A person who has been punished once for the offence of domestic violence shall be liable to double the punishment upon every repetition of the offence.

(4) If a person holing a public post who commits the offence of domestic violence, he/she shall be liable to an additional ten percent punishment.

(5) A person who disobeys the Court orders made pursuant to Section 6 shall be punished with a fine of Two Thousand Rupees upto Fifteen Thousand Rupees or Four months of imprisonment or both.

14. **Limitation**: The complaint, for an offence committed pursuant to this Act, shall be filed within Ninety days of the commission of the crime.

15. **No hindrance to file case pursuant to prevailing law**: Nothing in this Act shall prevent the investigation, trial and proceed in an offence which is punishable under this Act and prevailing law.

16. **To be as mentioned in the prevailing law**: This Act shall apply on matters mentioned herein and in other matters the prevailing laws shall apply.

17. **Power to frame Rules:** The Government of Nepal may frame necessary Rules to implement the objectives of this Act.

Sexual Offences Act 2003

2003 CHAPTER 42

An Act to make new provision about sexual offences, their prevention and the protection of children from harm from other sexual acts, and for connected purposes. [20th November 2003]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

SEXUAL OFFENCES

Rape

1 Rape

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,

(b) B does not consent to the penetration, and

(c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault

2 Assault by penetration

(1) A person (A) commits an offence if—

(a) he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,

(b) the penetration is sexual,

(c) B does not consent to the penetration, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

3 Sexual assault

(1) A person (A) commits an offence if—

(a) he intentionally touches another person (B),

(b) the touching is sexual,

(c) B does not consent to the touching, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Causing sexual activity without consent

4 Causing a person to engage in sexual activity without consent

(1) A person (A) commits an offence if—

(a) he intentionally causes another person (B) to engage in an activity,

(b) the activity is sexual,

(c) B does not consent to engaging in the activity, and

(d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section, if the activity caused involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for life.

(5) Unless subsection (4) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Rape and other offences against children under 13

5 Rape of a child under 13

(1) A person commits an offence if—

(a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and

(b) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

6 Assault of a child under 13 by penetration

(1) A person commits an offence if—

(a) he intentionally penetrates the vagina or anus of another person with a part of his body or anything else,

(b) the penetration is sexual, and

(c) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

7 Sexual assault of a child under 13

(1) A person commits an offence if—

(a) he intentionally touches another person,

(b) the touching is sexual, and

(c) the other person is under 13.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015

2015 anaw 3

General

24 Interpretation

(1) In this Act—

"abuse" ("*cam-drin*") means physical, sexual, psychological, emotional or financial abuse;

"domestic abuse" ("*cam-drin domestig*") means abuse where the victim of it is or has been associated with the abuser;

"financial year" ("*blwyddyn ariannol*") means a period of 12 months ending on 31 March;

"gender-based violence" ("*trais ar sail rhywedd*") means—

(a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation;

(b) female genital mutilation;

(c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding);

"local authority" ("*awdurdod lleol*") means the council of a county or county borough in Wales;

"Local Health Board" ("*Bwrdd Iechyd Lleol*") means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42);

"purpose of this Act" ("*diben y Ddeddf hon*") means the purpose in section 1;

"relevant authority" ("*awdurdod perthnasol*") has the meaning given by section 14;

"sexual violence" ("*trais rhywiol*") means sexual exploitation, sexual harassment, or threats of violence of a sexual nature;

"statutory guidance" ("*canllawiau statudol*") means guidance under section 15.

(2) A person is associated with another person for the purpose of the definition of "domestic abuse" in subsection (1) if—

(a) they are or have been married to each other;

(b) they are or have been civil partners of each other;

(c) they live or have lived together in an enduring family relationship (whether they are of different sexes or the same sex);

(d) they live or have lived in the same household; and for this purpose a person is a member of another person's household if—

(i) the person normally lives with the other person as a member of his or her family, or

(ii) the person might reasonably be expected to live with that other person;

(e) they are relatives;

(f) they have agreed to marry one another (whether or not that agreement has been terminated);

(g) they have entered into a civil partnership agreement between them (whether or not that agreement has been terminated);

(h) they have or have had an intimate personal relationship with each other;

(i) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.

(3) If a child has been adopted or falls within subsection (4), two persons are also associated with each other for the purposes of the definition of "domestic abuse" in subsection (1) if—

(a) one is a natural parent of the child or a parent of such a natural parent, and

(b) the other is—

(i) the child, or

(ii) a person who has become a parent of the child by virtue of an adoption order, who has applied for an adoption order or with whom the child has at any time been placed for adoption.

(4) A child falls within this subsection if—

(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002 (c.38), is authorised to place the child for adoption under section 19 of that Act (placing children with parental consent) or the child has become the subject of an order under section 21 of that Act (placement orders), or

(b) the child is freed for adoption by virtue of an order made—

(i) in England and Wales, under section 18 of the Adoption Act 1976 (c.36), or

(ii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203), or

(c) the child is the subject of a Scottish permanence order which includes granting authority to adopt.

(5) In this section—

"adoption order" ("*gorchymyn mabwysiadu*") means an adoption order within the meaning of section 72(1) of the Adoption Act 1976 or section 46(1) of the Adoption and Children Act 2002;

"child" ("*plentyn*") means a person under the age of 18 years;

"civil partnership agreement" ("*cytundeb partneriaeth sifil*") has the meaning given by section 73 of the Civil Partnership Act 2004 (c.33);

"female genital mutilation" ("*anffurfio organau cenhedlu benywod*") means an act that is an offence under sections 1, 2 or 3 of the Female Genital Mutilation Act 2003 (c.31);

"financial abuse" ("*cam-drin ariannol*") means—

(a) having money or other property stolen,

(b) being defrauded,

(c) being put under pressure in relation to money or other property, and

(d) having money or other property misused;

"harassment" ("*aflonyddu*") means a course of conduct by a person which he or she knows or ought to know amounts to harassment of the other; and for the purpose of this definition—

(a) a person ought to know that his or her conduct amounts to or involves harassment if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of another person, and

(b) "conduct" includes speech;

"sexual exploitation" ("*camfanteisio rhywiol*") means something that is done to or in respect of a person which—

(a) involves the commission of an offence under Part 1 of the Sexual Offences Act 2003 (c.42), as it has an effect in England and Wales, or

(b) would involve the commission of such an offence if it were done in England and Wales;

"parental responsibility" ("*cyfrifoldeb rhiant*") has the meaning given by section 3 of the Children Act 1989 (c.41);

"relative" ("*perthynas*"), in relation to a person, means that person's parent, grandparent, child, grandchild, brother, half-brother, sister, half-sister, uncle, aunt, nephew, niece (including any person who is or has been in that relationship by virtue of a marriage or civil partnership or an enduring family relationship).

25 Commencement

(1) The following provisions come into force on the day this Act receives Royal Assent—

section 1;

section 24;

this section;

section 26.

(2) Section 10 and sections 14 to 21 come into force two months after the day on which this Act receives Royal Assent.

(3) The remaining provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

Article - Criminal Law

[Previous] [Next]

§3–318.

(a) Except as provided in subsections (b) and (c) of this section, a person may not be prosecuted under § 3-303, § 3-304, § 3-307, or § 3-308 of this subtitle for a crime against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

(b) A person may be prosecuted under § 3-303(a), § 3-304(a)(1), or § 3-307(a)(1) of this subtitle for a crime against the person's legal spouse if:

(1) at the time of the alleged crime the person and the person's legal spouse have lived apart, without cohabitation and without interruption:

(i) under a written separation agreement executed by the person and the spouse; or

(ii) for at least 3 months immediately before the alleged rape or sexual offense; or ;

(2) the person in committing the crime uses force or threat of force and the act is without the consent of the spouse.

(c) A person may be prosecuted under § 3-303, § 3-304, § 3-307, or § 3-308 of this subtitle for a crime against the person's legal spouse if at the time of the alleged crime the person and the spouse live apart, without cohabitation and without interruption, under a decree of limited divorce.

[Previous] [Next]

140, 145; judgment reversed, see 215 C. 538 et seq. Cited. 35 CA 173, 181. Cited. 36 CA 715; judgment reversed, see 215 C. 538 et seq. Cited. 37 CA 715.
Cited. 43 CS 211, 212.
Subsec. (a):
Cited. 206 C. 40, 42, 43. Cited. 210 C. 110, 112, 115, 123, 128. Cited. Id., 315, 317. Cited. 216 C. 282, 295. Cited. 235 C. 502, 517.
Cited. 19 CA 111, 142, 143; judgment reversed, see 215 C. 538 et seq. Cited. 25 CA 725, 726.

(Return to TOC) (Return to Chapters) (Return to Titles)

Sec. 53a-70b. Sexual assault in spousal or cohabiting relationship: Class B felony. (a) For the purposes of this section:
(1) "Sexual intercourse" means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body; and
(2) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.
(b) No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.
(c) Any person who violates any provision of this section shall be guilty of a class B felony.

(Return to TOC) (Return to Chapters) (Return to Titles)

Sec. 53a-71. Sexual assault in the second degree: Class C felony: Nine months not suspendable. (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person to whom such person is not married who is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is mentally defective to the extent that such other person is unable to consent to sexual intercourse, or (3) such other person is physically helpless, or (4) such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare, or (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person, or (6) the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or (7) the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or (8) the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor.
(b) Sexual assault in the second degree is a class C felony for which nine months of the sentence imposed may not be suspended or reduced by the court.
(1969, P.A. 828, s. 72; P.A. 75-619, s. 4; P.A. 82-328, s. 3; P.A. 83-326, s. 1; P.A. 85-341, S. 2; P.A. 93-340, S. 2; P.A. 94-221, s. 18; P.A. 00-161, S. 2.)
History: P.A. 75-619 restated Subsec. (a) to conform with changes made in definitions of Sec. 53a-65, and referred to sexual "assault" rather than to sexual "misconduct" and made the offense a Class C felony rather

Idaho Statutes

Annexure 7

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 61
RAPE

18-6101. RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

(1) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.

(2) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim.

(3) Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.

(4) Where the victim resists but the resistance is overcome by force or violence.

(5) Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

(6) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.

(7) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(8) Where the victim submits under the belief that the person committing the act is the victim's spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(9) Where the victim submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(10) Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.

Males and females are both capable of committing the crime of rape as defined in this section.

History:

[18-6101, added 1972, ch. 336, sec. 1, p. 961; am. 1977, ch. 208, sec. 1, p. 573; am. 1994, ch. 83, sec. 1, p. 197; am. 1994, ch. 135, sec. 1, p. 307; am. 2000, ch. 218, sec. 1, p. 606; am. 2003, ch. 280, sec. 1, p. 756; am. 2010, ch. 235, sec. 7, p. 547; am. 2010, ch. 352, sec. 1, p. 920; am. 2011, ch. 27, sec. 1, p. 67; am. 2016, ch. 296, sec. 1, p. 828.]

How current is this law?

Search the Idaho Statutes and Constitution

Idaho Statutes

TITLE 18
CRIMES AND PUNISHMENTS
CHAPTER 61
RAPE

18-6107. RAPE OF SPOUSE. No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in subsections (4), (5), (6) and (10) of section 18-6101, Idaho Code.

History:

[18-6107, added 1977, ch. 208, sec. 4, p. 574; am. 1989, ch. 351, sec. 1, p. 879; am. 2010, ch. 152, sec. 2, p. 921; am. 2016, ch. 296, sec. 2, p. 829.]

How current is this law?

Search the Idaho Statutes and Constitution

7. Upon conviction for a violation of this section, the court shall order the defendant to pay restitution for any expenses incurred in locating or recovering the child.

8. The prosecuting attorney may recommend to the judge that the defendant be sentenced as for a misdemeanor and the judge may impose such a sentence if the judge finds that:

(a) The defendant has no prior conviction for this offense and the child has suffered no substantial harm as a result of the offense; or

(b) The interests of justice require that the defendant be punished as for a misdemeanor.

9. A person who aids or abets any other person to violate this section shall be punished as provided in subsection 1.

10. In addition to the exemption set forth in subsection 11, subsections 4 and 5 do not apply to a person who demonstrates a compelling excuse, to the satisfaction of the court, for relocating with a child in violation of NRS 125C.006 or 125C.0065.

11. This section does not apply to a person who detains, conceals, removes or relocates with a child to protect the child from the imminent danger of abuse or neglect or to protect himself or herself from imminent physical harm, and reported the detention, concealment, removal or relocation to a law enforcement agency or an agency which provides child welfare services within 24 hours after detaining, concealing, removing or relocating with the child, or as soon as the circumstances allowed. As used in this subsection:

(a) "Abuse or neglect" has the meaning ascribed to it in paragraph (a) of subsection 4 of NRS 200.508.

(b) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(Added to NRS by 1975, 1397; A 1981, 564; 1989, 1678; 1991, 1422; 1993, 1425; 1995, 997, 1185, 1338; 2001 Special Session, 17; 2003, 1005; 2015, 2590)

SEXUAL ASSAULT AND SEDUCTION

NRS 200.364 Definitions. As used in NRS 200.364 to 200.3788, inclusive, unless the context otherwise requires:

1. "Forensic laboratory" has the meaning ascribed to it in NRS 176.09117.
2. "Forensic medical examination" has the meaning ascribed to it in NRS 217.300.
3. "Genetic marker analysis" has the meaning ascribed to it in NRS 176.09118.
4. "Offense involving a pupil or child" means any of the following offenses:

(a) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.

(b) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.

(c) Sexual conduct between certain employees or contractors of or volunteers for an entity which provides services to children and a person under the care, custody, control or supervision of the entity pursuant to NRS 201.555.

5. "Perpetrator" means a person who commits a sexual offense, an offense involving a pupil or child or sex trafficking.
6. "Sex trafficking" means a violation of subsection 2 of NRS 201.300.
7. "Sexual assault forensic evidence kit" means the forensic evidence obtained from a forensic medical examination.
8. "Sexual offense" means any of the following offenses:

(a) Sexual assault pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.

9. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes.

10. "Statutory sexual seduction" means ordinary sexual intercourse, anal intercourse or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and who is at least 4 years younger than the perpetrator.

11. "Victim" means a person who is a victim of a sexual offense, an offense involving a pupil or child or sex trafficking.

12. "Victim of sexual assault" has the meaning ascribed to it in NRS 217.280.

(Added to NRS by 1977, 1626; A 1979, 572; 1991, 801; 1995, 700; 2009, 231, 1296; 2013, 2426; 2015, 2234; 2017, 2316, 2887, 2888)

NRS 200.366 Sexual assault: Definition; penalties; exclusions.

1. A person is guilty of sexual assault if he or she:

(a) Subjects another person to sexual penetration, or forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct; or

(b) Commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on himself or herself or another, or on a beast.

2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,

➥ is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. The provisions of this section do not apply to a person who is less than 18 years of age and who commits any of the acts described in paragraph (b) of subsection 1 if the person is not more than 2 years older than the person upon whom the act was committed unless:

(a) The person committing the act uses force or threatens the use of force; or

(b) The person committing the act knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.

6. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;

(c) Sado-masochistic abuse pursuant to NRS 201.262; or

(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

(Added to NRS by 1977, 1626; A 1991, 612; 1995, 1186; 1997, 1179, 1719; 1999, 431; 2003, 2825; 2005, 2874; 2007, 3255; 2015, 2235)

NRS 200.368 Statutory sexual seduction: Penalties. A person who commits statutory sexual seduction shall be punished:

1. If the person is 21 years of age or older at the time of the commission of the offense, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

2. Except as otherwise provided in subsection 3, if the person is under the age of 21 years, for a gross misdemeanor.

3. If the person is under the age of 21 years and has previously been convicted of a sexual offense, as defined in NRS 179D.097, for a category D felony as provided in NRS 193.130.

(Added to NRS by 1977, 1627; A 1979, 1426; 1995, 1187; 2001, 703; 2015, 2236)

NRS 200.373 Sexual assault of spouse by spouse. It is no defense to a charge of sexual assault that the perpetrator was, at the time of the assault, married to the victim, if the assault was committed by force or by the threat of force.

(Added to NRS by 1967, 470; A 1975, 1141; 1977, 1628; 1987, 1165)

NRS 200.377 Victims of certain sexual offenses: Legislative findings and declarations. The Legislature finds and declares that:

1. This State has a compelling interest in assuring that the victim of a sexual offense, an offense involving a pupil or child or sex trafficking:

§21-1104. Additional fee by city - Abolishment.

This act shall in no way impair the right of any incorporated city or town to impose an additional license fee for maintaining any such pool or billiard hall, or pool or billiard table; or to prevent any incorporated city or town from abolishing same under existing laws.

Laws 1915, c. 21, § 4.

§21-1105. Disposition of fees and fines.

All fees collected and all fines collected for the violation of any provision of this act shall be paid into the county treasury to the credit of the court fund.

Laws 1915, c. 21, § 5; Laws 1968, c. 414, § 4, eff. Jan. 13, 1969.

§21-1111. Rape defined.

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim;

8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system;

9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant; or

10. Where the victim is at least sixteen (16) years of age but less than eighteen (18) years of age and the perpetrator of the crime is a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,
b. a legal guardian,
c. custodian,
d. a foster parent,
e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,
f. any other adult residing in the home of the child,
g. an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes, or
h. an owner, operator or employee of a child care facility, as defined by Section 402 of Title 10 of the Oklahoma Statutes.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

R.L. 1910, § 2414. Amended by Laws 1981, c. 325, § 1; Laws 1983, c. 41, § 1, eff. Nov. 1, 1983; Laws 1984, c. 134, § 1, eff. Nov. 1, 1984; Laws 1990, c. 224, § 2, eff. Sept. 1, 1990; Laws 1993, c. 62, § 1, eff. Sept. 1, 1993; Laws 1995, c. 22, § 1, eff. Nov. 1, 1995; Laws 1999, c. 309, § 2, eff. Nov. 1, 1999; Laws 2001, c. 184, § 1, eff. Nov. 1, 2001; Laws 2002, c. 22, § 9, emerg. eff. March 8, 2002; Laws 2006, c. 62, § 5, emerg. eff. April 17, 2006; Laws 2015, c. 67, § 1, eff. Nov. 1, 2015; Laws 2017, c. 128, § 2, eff. July 1, 2017; Laws 2018, c. 167, § 3, eff. Nov. 1, 2018.

NOTE: Laws 2001, c. 51, § 4 repealed by Laws 2002, c. 22, § 34, emerg. eff. March 8, 2002.

§21-1111.1. Rape by instrumentation.

TITLE 11
Criminal Offenses

CHAPTER 11-37
Sexual Assault

SECTION 11-37-2

§ 11-37-2. First degree sexual assault.

A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:

(1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.

(2) The accused uses force or coercion.

(3) The accused, through concealment or by the element of surprise, is able to overcome the victim.

(4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

History of Section.
(P.L. 1979, ch. 302, § 2; P.L. 1980, ch. 273, § 1; P.L. 1981, ch. 119, § 1; P.L. 1984, ch. 59, § 1; P.L. 1984, ch. 355, § 1; P.L. 1986, ch. 191, § 1; P.L. 1987, ch. 238, § 1.)

(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

HISTORY: 2010 Act No. 273, Section 6.B, eff June 2, 2010; 2011 Act No. 39, Sections 1, 2, eff June 7, 2011; 2015 Act No. 58 (S.3), Pt II, Section 3, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 3, rewrote (A)(2).

SECTION 16-3-610. Certain offenses committed with a carried or concealed deadly weapon.

If a person is convicted of an offense pursuant to Section 16-3-29, 16-3-600, or manslaughter, and the offense is committed with a deadly weapon of the character as specified in Section 16-23-460 carried or concealed upon the person of the defendant, the judge shall, in addition to the punishment provided by law for such offense, sentence the person to imprisonment for the misdemeanor offense for not less than three months nor more than twelve months, or a fine of not less than two hundred dollars, or both.

HISTORY: 1962 Code Section 16-93; 1952 Code Section 16-93; 1942 Code Section 1258; 1932 Code Section 1258; Cr. C. '22 Section 153; Cr. C. '12 Section 160; Cr. C. '02 Section 132; 1897 (22) 427; 2010 Act No. 273, Section 6.C, eff June 2, 2010.

Editor's Note

2010 Act No. 273, Section 7.C, provides:

"Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29."

SECTION 16-3-615. Spousal sexual battery.

(A) Sexual battery, as defined in Section 16-3-651(h), when accomplished through use of aggravated force, defined as the use or the threat of use of a weapon or the use or threat of use of physical force or physical violence of a high and aggravated nature, by one spouse against the other spouse if they are living together, constitutes the felony of spousal sexual battery and, upon conviction, a person must be imprisoned not more than ten years.

(B) The offending spouse's conduct must be reported to appropriate law enforcement authorities within thirty days in order for that spouse to be prosecuted for this offense.

(C) The provisions of Section 16-3-659.1 apply to any trial brought under this section.

(D) This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

HISTORY: 1991 Act No. 139, Section 1; 1994 Act No. 295, Sections 1, 3; 1997 Act No. 95, Section 2.

SECTION 16-3-625. Resisting arrest with deadly weapon; sentencing; "deadly weapon" defined; application of section.

A person who resists the lawful efforts of a law enforcement officer to arrest him or another person with the use or threat of use of a deadly weapon against the officer, and the person is in possession or claims to be in possession of a deadly weapon, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than ten nor less than two years. No sentence imposed hereunder for a first offense shall be suspended to less than six months nor shall the persons so sentenced be eligible for parole until after service of six months. No person sentenced under this section for a second or subsequent offense shall have the sentence suspended to less than two years nor shall the person be eligible for parole until after service of two years.

As used in this section "deadly weapon" means any instrument which can be used to inflict deadly force.

This section does not affect or replace the common law crime of assault and battery with intent to kill nor does it apply if the sentencing judge, in his discretion, elects to sentence an eligible defendant under the provisions of the "Youthful Offenders Act".

HISTORY: 1980 Act No. 511, Section 1; 1995 Act No. 83, Section 11.

SECTION 16-3-651. Criminal sexual conduct; definitions.

For the purposes of Sections 16-3-651 to 16-3-659.1:

(a) "Actor" means a person accused of criminal sexual conduct.

(b) "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.

(c) "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

(d) "Intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.

(e) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.

(f) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.

(g) "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

HISTORY: 1977 Act No. 157 Section 1.

SECTION 16-3-652. Criminal sexual conduct in the first degree.

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.

Code of Virginia
Title 18.2. Crimes and Offenses Generally
Chapter 4. Crimes Against the Person
Article 7. Criminal Sexual Assault

§ 18.2-61. Rape

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in

the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1982, c. 506; 1986, c. 516; 1994, cc. 339, 772, 794;1997, c. 330;1999, c. 367;2002, cc. 810, 818;2005, c. 631; 2006, cc. 853, 914;2012, cc. 575, 605;2013, cc. 761, 774.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Republic of the Philippines
Congress of the Philippines
Metro Manila

Tenth Congress

Third Regular Session

Begun and held in Metro Manila, on Monday the twenty-eighth day of July, nineteen hundred and ninety-seven.

[REPUBLIC ACT 8353]

AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES

SECTION 1. *Short Title.* – This Act shall be known as "*The Anti-Rape Law of 1997.*"

SEC. 2. *Rape as a Crime Against Persons.* – The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

"Chapter Three

"Rape

"Article 266-A. *Rape; When And How Committed.* – Rape Is Committed –

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

"b) When the offended party is deprived of reason or otherwise unconscious;

"c) By means of fraudulent machination or grave abuse of authority; and

"d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

"2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

"Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

"2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

"3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

"4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

"5) When the victim is a child below seven (7) years old;

"6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually-transmissible disease and the virus or disease is transmitted to the victim;

"7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

"8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

"Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

"*Reclusion temporal* shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

"Article 266-C. *Effect of Pardon*. – The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

"In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: *Provided,* That the crime shall not be extinguished or the penalty shall not be abated if the marriage is *void ab initio*.

"Article 266-D. *Presumptions*. – Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A."

SEC. 3. *Separability Clause*. – If any part, section, or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

SEC. 4. *Repealing Clause*. – Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SEC. 5. *Effectivity*. – This Act shall take effect fifteen (15) days after completion of its publication in two (2) newspapers of general circulation.

Approved,

(SGD.) JOSE DE VENECIA, JR.
Speaker of the House
of Representatives

(SGD.) ERNESTO M. MACEDA
President of the Senate

This Act, which is a consolidation of Senate Bill No. 950 and House Bill No. 6265, was finally passed by the Senate and the House of Representatives on June 5, 1997 and September 3, 1997, respectively.

(SGD.) ROBERTO P. NAZARENO
Secretary General
House of Representatives

(SGD.) LORENZO E. LEYNES, JR.
Secretary of the Senate

Approved: September 30, 1997

(SGD.) FIDEL V. RAMOS
President of the Philippines

Fourthly- Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believes herself to be lawfully married.

Fifthly- With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly- With or without the other person's consent, when such other person is under sixteen years of age.

Explanation: Penetration to any extent is penetration for the purposes of this section.

Exception: Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

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.

3.2. Modification of S.376.- So far as the proposed section 376 is concerned, we are not suggesting any substantial changes except two and adapting the language of the section to accord with the change in section 375. In the light of instances coming before the courts and the instances mentioned in the Note prepared by Sakshi, we have proposed addition of a proviso to sub-section (1) (while treating the existing proviso as the second proviso) providing that where the sexual assault is committed by the father, grandfather or brother, the punishment should be severe. On the basis of suggestions made by Sakshi, we have also added the words "or any other person being in a position of trust or authority towards the other person" after the words "father, grandfather or brother". The second change suggested by us is in the matter of the age of wife referred to in proposed sub-section (1) as also of the person assaulted in clause (f) of sub-section (2). The age "fifteen" is raised to "sixteen".

increase it to five years and ten years. Some Members suggested that it should be perpetrator or aggrieved or perpetrator or complainant instead of perpetrator or any other person. However, the Committee felt that the victim has to be a woman and the perpetrator can be anybody. By simply saying perpetrator or complainant, no justice would be done to women.

5.5.2 Some Members felt that in certain occasions there may be crowd which cheers and applaud the disrobing of a woman publicly, and in such cases, entire crowd should be held responsible. The Committee, however, felt that only those who cooperate can be held. But holding the entire crowd watching is stretching too far.

5.6 Section 354C of IPC

5.6.1 While discussing about Section 354C, which provides for voyeurism, some Members felt that the punishment of one year for the first offence is not sufficient; it should be increased. The Committee, however, felt that it is already one year to three years and three to seven years for second offence. The punishment cannot be increased more than one year at one go for the first offence. Some Members again raised the issue of making accused or perpetrator gender specific. The Committee, however, decided to go with the present proposition as provided in the Bill and Ordinance.

5.7 Section 354D of IPC

5.7.1 While discussing about Section 354D, some Members expressed doubts regarding the words 'watches' or 'spies' on a person and their implication. It was felt that though the word 'spies' on a person can be understood but the word 'watches' may have wider ramification. The Home Secretary stated that 'watches' or 'spies' is directly on the person who is being stalked; it is not the internet or any other electronic communication. He also stated that casual watching by accident would not attract this Section. Watching has to be designed and it must result in a fear of violence or serious alarm or distress in mind of such person or interferes with the mental peace of the person. **The Committee, however, felt that Home Secretary should discuss with Law Ministry and take a view in the matter.**

5.8 Sections 370 and 370A of IPC

5.8.1 While discussing about trafficking in Section 370 and Section 370A, some Members expressed the doubt about the use of the words 'forced labour' or 'services' in the present law. It was felt that since the law specifically belonged to criminal assault, all provisions relating to labour, forced labour, etc., should appropriately be dealt in different laws. **The Home Secretary agreed with the view of the Committee and stated that the words 'forced labour' or 'services' can be removed and that can be separately dealt under the relevant Act. However, the Committee felt that while removing these provisions, the Government should not give an impression that these provisions and the related crimes are not being taken care of. They are also equally important and they should be appropriately dealt in the concerned law.**

5.9 Section 375 of IPC

5.9.1 While discussing about Section 375, some Members felt that the word 'rape' should also be kept within the scope of sexual assault. The Home Secretary clarified that there is a change of terminology and the offence of 'rape' has been made wider. Some Members also suggested that somewhere there should be some room for wife to take up the issue of marital rape. It was also felt that no woman takes marriage so simple that she will just go and complain blindly. Consent in marriage cannot be consent forever. However, several Members felt that the marital rape has the

potential of destroying the institution of marriage. The Committee felt that if a woman is aggrieved by the acts of her husband, there are other means of approaching the court. In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women. It was, therefore, felt that if the marital rape is brought under the law, the entire family system will be under great stress and the Committee may perhaps be doing more injustice. Some Members also suggested that the age mentioned in the exception to the Section may be raised to 18 years from 16 years. The exception provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 16 years of age, is not sexual assault. The Home Secretary, responding to this suggestion, stated that by doing so by one stroke, the marriages in thousands in different States would be outlawed. One Member again suggested that for the words 'with or without the other person's consent, the words 'with or without the complainant's consent' may be used. The Committee, however, felt that by using complainant, a proper message will not go and existing formulation may continue.

5.10 Section 376 of IPC

5.10.1 While discussing Section 376, the Committee felt that in sub-Section (1) of Section 376, the liability of the accused to pay compensation to the victim, which shall be adequate to meet at least medical expenses incurred by the victim should also be included. The Committee, accordingly, decided to add this in sub-Section (1) of Section 376. Some Members also mentioned that the State needs to take care of the medical expenditure, treatment, etc. of the victim. Responding to this, the Home Secretary mentioned that there is a scheme for providing this. The Committee, however, felt that first the accused should be asked to pay victim's medical expenses by way of fine. In case, the accused is not in a position to pay if he is a labourer, or if he is a poor person, then the State may step in to take care of the medical expenses and the treatment of the woman, who is a victim. The Home Secretary was, accordingly, directed to do needful in the matter.

5.10.2 In Sub-Section 2 of Section 376, the Chairman brought to the notice of the Home Secretary that in item (j) of sub-Section 2 of Section 376, the word 'political' has been deleted in the Ordinance where it is there in the Bill. The Committee decided to include the word 'political'. One Member felt that there should be a clause providing for punishment when a person has a medical condition that can be transmitted through sexual intercourse and that person knowingly commits such intercourse without use of protection and that act should also be brought under aggravated crime. The Home Secretary, however, stated that this does not come under the category of 'sexual assault'; it has to be differentiated. He stated that Section 270 of the IPC provides for punishment for this though it is slightly less. The Committee felt that the punishment should be increased and sought to know whether that can be amended suitably. **The Home Secretary agreed to the suggestion of the Committee. The Committee, accordingly, recommends that punishment under Section 270 may be increased suitably.**

5.11 Section 376A of IPC

5.11.1 While discussing Section 376 A, some Members felt that the Government will have to take a decision regarding death penalty. It was stated that several countries have abolished the death penalty whereas India is continuing with it. However, the majority of the Members felt that the issue of abolishing death penalty is totally a different matter and needs to be discussed and decided separately. Since, as on date, death penalty exists in the law, the Committee cannot recommend for abolishing death penalty. The Committee also takes note of the fact that the death penalty being proposed in Section 376A is only in the extreme case where the victim has died or goes in a vegetative state and in Section 376E in the case of a repeat offender. The Committee was of the view that extreme penalty of death will be given only in case of death or the victim being in

Annexure 16

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 01.09.2017
Delivered on: 25.09.2017

\+ **CRL.A.944/2016**

MAHMOOD FAROOQUI ..... Appellant

versus

STATE (GOVT OF NCT OF DELHI) ..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Kapil Sibal, Sr. Adv. and Mr. Prashanto Chandra Sen, Sr. Adv. with Ms. Nitya Ramakrishnan, Mr. Ashwath Sitaraman, Ms. Suhasini Sen & Mr. Nizam Pasha & Mr. Shivanshu Singh.

For the Respondent: Ms. Richa Kapoor, ASC
Insp. Ram Niwas W/SI Seema, P.S. New Friends Colony

For the Complainant: Ms. Vrinda Grover & Ms. Ratna Appnender.

CORAM:-
HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. Mahmood Farooqui, the appellant, has been convicted under Section 376(1) of the IPC vide judgment dated 30.07.2016 passed by the Additional Sessions Judge – Special Fast Track Court, Saket Courts, New Delhi in Sessions Case No.118/15 (New SC No.1590/2016), arising out of FIR No.273/2015 dated 19.06.2015 (P.S. New Friends Colony) registered under Section 376 of the IPC.

He has been sentenced by order dated 04.08.2016 to undergo RI for 7 years, and to pay a fine of Rs.50,000/-.

2. The prosecutrix, in her FIR has stated that she is a student of Columbia University, New York and is a fulbright fellow affiliated with Delhi University, History Department and had been pursuing her PhD work in the field of Hindi literature and Nath Sampraday. She had come to Delhi in June, 2014 and was in search of some contact at Gorakhpur for the purposes of getting information regarding Nath Sampraday. It was in this connection that she was introduced to the appellant through a friend, Danish Hussaini, who has been examined as PW10 in the trial. On the day of the occurrence i.e. on 28.03.2015, she had called the appellant requesting him to arrange for tickets of his performance which was to be staged a day after. The appellant invited her over to his house for dinner. Later, at 4 o'clock in the afternoon, the appellant informed her that he would be going to a wedding. The prosecutrix thought that perhaps the appellant and his wife would be going to the wedding. She thereafter arrived around 9 p.m. at the house of the appellant and saw two students leaving the house. After exchanging brief courtesies with them, the prosecutrix went upstairs

and the door was opened by Ashish Singh, a friend of the appellant who has been examined as PW12. The prosecutrix found the appellant to be in an intoxicated and lachrymose state. The prosecutrix was asked to go to the office room of the appellant. After waiting there for about 20 minutes, the prosecutrix came out of the office room for a smoke on the porch when she was asked by the appellant to sit down near him. The prosecutrix hugged the appellant, enquired from him as to whether there was a need for a group hug and also asked him about the reason for his sadness. At that point of time, the appellant is said to have told Ashish (PW12) to leave the room and also informed that one Darrain (DW3) would be coming. After Ashish left the company of the prosecutrix and the appellant, the appellant called Darrain and also put him on speaker phone. The prosecutrix heard Darrain saying that he would not come. The prosecutrix then called Darrain when the appellant had left the room. Darrain was informed by the prosecutrix that the appellant was drunk and that Darrain needed to come to his house. Darrain expressed his inability and promised to talk to her the next day. Thereafter, the appellant came back and he and the prosecutrix had a talk for a while. It has been alleged by the

prosecutrix that thereafter the appellant kissed her, to which she responded by saying that she did not think that it was what he needed. The appellant kept on kissing the prosecutrix and telling her about her being a great woman. He also disclosed his intention of *sucking* her to which she promptly denied. The appellant and the prosecutrix were seated on the couch. The prosecutrix has then alleged that the appellant tried to pull down her underwear and she kept on pulling it up. The prosecutrix was thereafter immobilized by the appellant who forced oral sex upon her.

3. The prosecutrix has stated that in the first instance, she was scared because of the strength of the appellant but because she did not want to get hurt, she pretended an orgasm. The appellant tried to repeat what he had done but in the meantime the door bell rang and the two friends of the appellant returned. Thereafter, the prosecutrix wanted to leave and so she booked a MERU cab and simultaneously texted her friend Danish Hussaini (PW10). She also told Ashish (PW12) that she wanted to go but was asked by Ashish to stay back for a while as in case the wife of the appellant, Anusha (not examined) did not return, she will have to feed the appellant. The prosecutrix, in

the event of the driver of the MERU cab not locating the house of the appellant, wanted to get a rickshaw but she was dissuaded and was told that it was dangerous for her in the night to take a rickshaw ride. The wife of the appellant in the meantime returned and the appellant asked her to go. Taxi was fetched by Ashish. When the prosecutrix got into the car, she immediately called Danish Hussaini (PW10) and told him about what had happened between her and the appellant. She has stated in her complaint that she wanted to take legal action against the appellant for his act and that she did not want to go through the medical examination.

4. On the aforesaid complaint, FIR No.273/15 dated 19.06.2015 was registered for investigation under Section 376 of the IPC.

5. The police after investigation submitted charge sheet whereupon cognizance was taken and the case was committed to the court of sessions for trial.

6. Charge was framed against the appellant for the offence under Section 376 of the IPC to which the appellant pleaded not guilty and claimed to be tried.

7. The trial court after examining 20 witnesses on behalf of the prosecution and 6 witnesses on behalf of the defence, convicted the appellant under Section 376(1) of the IPC vide judgment dated 30.07.2016 and by order dated 04.08.2016 sentenced him to undergo RI for 7 years and to pay a fine of Rs.50,000/-.

8. During the trial, the prosecutrix, who was examined as PW5, supported the prosecution version and stated that in order to complete her dissertation work on Nath Sampraday, she was in search of a contact person and was introduced to the appellant through a common friend, Danish (PW10). The prosecutrix met the appellant regarding her research and he also agreed to meet her at Archive Library, Teen Murti where she had been conducting her research. Later, in the year 2014, she met the appellant in the canteen outside the library and she was put in touch with other scholars. The appellant and the prosecutrix communicated with each other and exchanged SMS messages. She has deposed that she met the appellant for the second time in Nagaland Café with her friend, a student of PhD from Columbia University who was working on Indian drama. Thereafter,

the prosecutrix was in constant communication with the appellant through SMS messages.

9. For the third time, the prosecutrix has deposed, she met the appellant in January 2015 when he had invited her to attend a dinner party at his house at Sukhdev Vihar, New Delhi. On one occasion, the prosecutrix was also invited by the appellant to come to Gorakhpur along with him and his wife to which she had initially agreed but later, after finding that it would be inconvenient for her because of her commitment with her academic advisor at Jaipur, she declined the offer. The prosecutrix thereafter went to Jaipur to meet her academic advisor. After her return from Jaipur in early February 2015, she was called by the appellant who inquired her whereabouts. On her informing the appellant that she was in Hauz Khas Village, the appellant told her that he would be coming to Hauz Khas Village along with his friend Darrain Shahidi (Dw3). After about half an hour, the appellant and his friend Darrain Shahidi came. The prosecutrix found him drunk. They all went to a café in Hauz Khas Village where they had liquor and food. From there, they all went to one Radhika (not examined), a friend of the appellant at Hauz Khas.

There again, the appellant consumed liquor. From Radhika's house, all the aforesaid persons went to Nagaland Kitchen in the car of the appellant. During the journey, the appellant kissed her and the prosecutrix returned his kiss. Immediately after reaching Nagaland Kitchen, the appellant left on somebody's telephone call. The prosecutrix was thereafter only in the company of Darrain and Radhika, both of whom told her about the excessive drinking habit of the appellant.

10. The prosecutrix thereafter did not have any contact with the appellant till she was again invited for dinner by the appellant at his house. On that occasion also, the appellant, his wife and the prosecutrix consumed liquor and during the period of brief absence of his wife who was moving from one room to another, the appellant and the prosecutrix exchanged kisses. She was also asked by the appellant to stay over and sleep on a couch which she refused. She has deposed before the trial court that since she did not want the relationship to go any further, she left the house of the appellant by calling an Uber Taxi.

11. On one occasion, on a dry day, on the asking of the appellant, the prosecutrix had arranged for a bottle of liquor for him. The

prosecutrix has taken reference of another rendezvous with the appellant when she had invited him on her birthday party at Hauz Khas Village for which she had extended the invitation to Darrain and the wife of the appellant also. However, because of over intoxication of the appellant, as was informed to her by Darrain, nobody came to the party.

12. Then came the day when the alleged occurrence took place. The prosecutrix has averred that on 28.03.2015 she had gone to the house of Sonal Shah, one of her friends, at Jungpura Extension at about 10 a.m. when the aforesaid friend expressed her desire to learn Urdu. It was then that the prosecutrix had telephonically requested the appellant for arranging two tickets for his performance so that her friend could learn Urdu. The appellant promptly promised for the tickets and also invited her for dinner. At about 4:00 p.m, the prosecutrix was informed that the plan of the appellant had changed and he further enquired from her whether she would care for attending a wedding to which she agreed. She was also asked by the appellant to bring Rs.1,000/- as gift. The prosecutrix presumed that she would go to the wedding venue with the appellant and his wife. The

prosecutrix, according to her deposition, prepared herself for the wedding by properly attiring herself. For some reason or the other, instead of 8 p.m., she reached the house of the appellant at 9:00 p.m. in a MERU cab.

13. Thereafter, the prosecutrix has narrated the same story which she has stated in the FIR. She had a brief exchange of courtesy with two students who were leaving the house of the appellant, one of whom was Ankit who was introduced to her by the appellant. The main door of the house, as has been stated by the prosecutrix in the FIR, was opened by Ashish (PW-12). The appellant introduced Ashish (PW-12) to her, who led her to the living room. The appellant, as stated earlier, was intoxicated and was crying. Ashish (PW-12) was comforting him. The appellant thereafter asked her to wait in his office room which was on the other side of the kitchen. After remaining in the office room for 20 minutes, she came out on the porch for a smoke when she was ushered in by the appellant. The prosecutrix has clearly stated that the appellant at that time was crying so bitterly that nasal mucus dripped down to his moustache. The prosecutrix thereafter made a drink for herself and on the asking of the

appellant, offered him also a glass of lightly prepared Vodka. This was the time when Ashish (PW-12) left the house. The appellant told her that he was upset about the conduct of his wife and his mother. The appellant also called up Darrain (PW-13) and put him on speaker phone. Darrain, by that time, had refused to come. For a while, when the appellant had left the room, the prosecutrix called up Darrain and asked him to come over to which he refused and promised to talk to her on the next day.

14. During the trial, the prosecutrix has stated that Darrain also asked her to stay back and take care of the appellant as he had to give a performance on the next day. She was advised by Darrain to give water to the appellant and to put him to sleep. The appellant thereafter came back to the room crying. The prosecutrix tied to comfort him and in the process joked with him. She has stated that she felt 'very maternal' towards the appellant. Kisses were exchanged and the appellant asked her for a sexual favour which she denied. Thereafter, as narrated in the FIR, she was put down and was subjected to forced oral sex.

15. What is new and different in the deposition of the prosecutrix as compared to the averments made in the FIR is that she claims to have remembered the case of *Nirbhaya,* whose offender had declared that if she (*Nirbhaya*) had not protested, she would have lived her life. The prosecutrix claims that she kept quiet and faked an orgasm in order to avoid any physical harm to her. It was at that time that the door bell rang; when she got up and found that Ashish and another person, namely the brother of the appellant (Mashood @ Roomi) had come back. The aforesaid two persons again started comforting the appellant. The prosecutrix went back to the living room and called a MERU cab. She told Ashish that she was wanting to leave but Ashish insisted her to stay on for five more minutes, as in case, the wife of the appellant did not return, somebody would be needed to feed the appellant. The prosecutrix suggested to Ashish to order a pizza for the appellant. The prosecutrix waited for the MERU cab. The cab driver could not find out the house of the appellant and finally refused to come. The prosecutrix wanted to leave by rickshaw but it was told by Ashish that it was dangerous in the night. Ashish thereafter offered to fetch a cab for her. It was at this point of time that the prosecutrix

started texting Danish Hussaini (PW10) through WhatsApp from her mobile. The wife of the appellant, in the meantime had arrived. The appellant came back to the living room and asked the prosecutrix to leave the house. The prosecutrix wanted to talk to someone who knew her and the appellant, both. So she texted Danish Hussaini through WhatsApp and told him that the appellant was in a mess, that she was invited by him for a wedding but the appellant was drunk and his wife had left the house and had come back only at that time when the prosecutrix wanted to get out of the house but she was having a problem in getting a cab. She texted and asked Danish Hussaini to talk to her. Danish is said to have replied to her by suggesting that she should leave the house and get an auto and once she is into the car, Danish would talk to her. Ashish by that time had called a cab. After getting into the cab, the prosecutrix called Danish and told him that accused has committed forced oral sex on her and she is very upset. Then Danish asked her as to whether she had protested, she replied in the affirmative. She talked to Danish for about half an hour. Since she was not in a good shape of mind and did not want to be left alone, she went to Hauz Khas Village where she reached at 11.30 p.m. and

sat there till around 1.30 a.m, when she finally left that place for her house at Jung Pura Extension.

16. On 30.03.2015, the prosecutrix is said to have sent an e-mail (Ex.PW 3/C-9) to the appellant. For the sake of completeness, the e-mail referred to above is being extracted below:

> *"I tried calling you, but was unable to get through, I want to talk with you about what happened the other night. I like you a lot. You know that I consider you a good friend and I respect you, but what happened the other night wasn't right. I know you were in a very difficult space and you are having some issues right now, but Saturday you really went too far. You kept asking me if you could suck me and I knew you were drunk and sad and things were going awful. I knew that this wasn't going to help things and I told you many times I didn't want to. But you did become forceful. I went along, because I did not want things to escalate, but it was not what I wanted. I was just afraid that something bad would happen if I didn't. This is new for me. I completely own my sexually and I consider you a good friend. I like you. I am attracted to you, but it really made me feel bad when this happened. I haven't known what to say to you since then, I wasn't sure if I would say anything. In the end I consented, but it was because of pressure and your own force physically on me. I did not want things to go bad. I have only decided to tell you how I feel for your own well being. I am afraid that if you don't realize that this is unacceptable, you may try this on another woman when you are drunk and she will not be so understanding.*
>
> *I do love you and wish you well. I want the best for you, whatever that is, but I also need you to know doing what you did the other night is unacceptable. I hope this*

doesn't affect our friendship, but am willing to deal with the repercussions if it does."

17. The prosecutrix has deposed that on the receipt of the e-mail referred to above, the appellant expressed his sincerest apologies ["*My deepest apologies*"]. The prosecutrix has deposed that she wanted to ignore this fact but she could not. On 01.04.2015, she wrote to her Academic Advisor, Allison Busch, at Columbia University through e-mail (Ex.PW5/D) that she was sexually assaulted and wanted to come home. There was no response of the Academic Advisor till 08.04.2015. During this period she was in contact with her mother and sisters who wanted her to come home but she waited for the response of her Academic Advisor. On 08.04.2015, she received an e-mail (Ex.PW3/C-15) from the Academic Advisor. By this time the prosecutrix had made up her mind to go back home. On 12.04.2015, the prosecutrix again sent an e-mail (Ex.PW3/C-10) to the appellant telling him as to how he had afflicted her life and the life of her family members.

"Xxxx for doing this. xxxx for taking away my confidence, xxxx for making me leave India the country I love. Xxxx for taking advantage of my kindness. xxxx. You were supposed to be my friend. Instead you manipulated me. You hurt me. I said no. I said no many

times. You didn't listen. You pinned my arms. You pulled my underwear down.

In the past two weeks I have blamed myself. I have spent the last two weeks crying, processing. I have thought about death. My mother tried to fly here to get me. My sister has put my nieces on the phone to talk with me so I don't hurt myself, so I remember them and not this, not you.

I have been trying to figure out what I could have done differently, but I couldn't do anything differently. You invited me to a wedding. I was supposed to be going to a wedding with you and anusha or darain or who the xxxx ever. I was supposed to be going to a wedding.

I have spent the past two weeks protecting you, like I did that night. The only thing I know is I didn't do anything wrong but that doesn't matter. I am xxxx scared now. I am xxxx screwed up now. I used to own my sexuality. You took that from me, you forced me to do something I did not want to do. I stopped struggling because I was scared. I wanted to get out. I did get out.

So remember this, what you did that night wasn't one night, what you did that night continues to affect me and my suffering, my pain. It's on your hands, when I carry this forward in life. It is your sin that I carry forward. It is you sin that I have to overcome.

You disgust me……"

18. On the same day i.e. on 12.04.2015 she received an e-mail (Ex.PW3/C-11) from the wife of the appellant namely Anusha which is as hereunder:

"Hi ……Prosecutrix,
I chanced upon your email you sent Mahmood today. I am forced into the situation of checking his mail because he

isn't available at the moment and we still need to figure out our show schedules.
I am deeply disturbed by your email. What you have described is an ordeal. I cannot imagine how you have dealt with it so far. Needless to say that I stand with you. If you require any help of any nature including legal, I will assist. This is completely unacceptable behaviour, especially for me since it happened under my roof.
You'd obviously wonder why I have not confronted Mahmood with this but instead I am writing to you directly. The reason for that is that Mahmood is in a rehab. I don't know how and when it would be appropriate to speak with him. The issue is also complicated by the fact that he is a Bi-polar depressive.
I really don't know how to express how responsible I feel. I have already spoken with his psychiatrist, and we both feel that this matter should be reported to the authorities if you so wish.
Please find me and his family with you in the process of healing, as I hope the process will be of healing.

Deeply troubled.

Anusha."

19. The wife of the appellant had apologized for what had happened to the prosecutrix. The prosecutrix also replied to the e-mail (Ex.PW3/C-12), telling the wife of the appellant not to blame the bipolar disorder of her husband for the sexual assault on her and that rape and sexual assault is executed with power.

"Anusha, I am sorry you found out in this way. I know that this is very painful for you too. You are not

responsible for anything that happened to me. You must not take responsibility for his actions. They are not your actions. They are his. Mahmood is the only one responsible. As you can see I am angry and hurt and processing this is very difficult right now. I cannot do it on my own at the moment and I do not have the resources in India to figure out how to begin the healing process, so I am leaving tonight to go back to New York. I need to be around my family and my colleagues. I need to get help and support for this.

Just please do me a favour and do not blame this on his bi-polar condition, at least in my presence. I know about the condition, but sexual assault has nothing to do with bi-polar and everything to do with power. The assertion of power over another human being."

20. The prosecutrix thereafter left India on 14.04.2015. On 15.04.2015 she again received an e-mail from the wife of the appellant which is as hereunder:

"Hi ....Prosecutrix

I am glad to know that you will be among your friends and family for the moment. I hope that you will be able to overcome this horrible incident. As I said before, his brothers and I will completely support you in whatever you wish to do about it.
I understand how angry you must be and therefore misread my categorical position on such matters. The reason I mentioned Bi-polar is because that is the reason why I don't have access to Mahmood and therefore I am unable to confront him at present.

Best
Anusha"

21. The prosecutrix thereafter went to New York and saw a counsellor at Columbia University because she was very traumatized. By late April, she had decided to file a report about it in the Department of Gender Based Misconduct at Columbia University. It was at that point of time that she decided to return to India to file a complaint against the appellant and also to continue with her research. She wrote to the Head of Fulbright Fellowship intimating him about the sexual assault on her and her desire to go back to India to pursue the case against the appellant but she was advised to stay in America because her research visa was to expire on 11.05.2015. The research visa could not be extended and the prosecutrix had to come to India on a 30 days' tourist visa only for the purposes of filing a complaint against the appellant.

22. The prosecutrix came to India on 06.06.2015. Because of her being unaware of the procedure in India and for fear, she visited the police station of New Friends Colony only on 19.06.2015 and gave her complaint (Ex.PW5/A) to a lady police officer. Since the prosecutrix was not in a proper shape of mind, she could not actually state in the complaint as to what had happened to her and therefore she

added that the appellant had forced oral sex on her, in her complaint and appended her initials. She was given a copy of the FIR (Ex.PW1/A) and was taken to AIIMS for her medical examination. However she refused to undergo any gynecological examination. Her statement was recorded under Section 164 Cr.P.C. (Ex.PW5/B) at Saket Courts. She claims to have handed over her laptop, I phone and the dress worn at the time of incident and the photos which she had clicked along with the cat of the appellant on the day of the incident, to the police on 07.07.2015. She also gave the details of e-mail exchanged between her, appellant and his wife. She had taken out the printouts of the screen shots on her mobile phone and had handed over to the police. She also handed over a transcript of the conversation between her and one Ms. Mathangi Krishnamurthy during the period 31.03.2015 to 01.04.2015 (Ex.PW3/C-17 to Ex.PW3/C-20).

23. During cross-examination the prosecutrix has stated that her mobile (MO2) was only the mobile she had used in March 2015. She has stated that seeing the appellant in an intoxicated condition, she was not alarmed as she had seen him in such condition even prior to the date of the occurrence and was also not aware as to whether his

wife Anusha was at home. During cross-examination she admitted of several communications via e-mails and WhatsApp between her and Danish Hussaini after 28.03.2015 but she was not sure if there was any telephonic conversation with him after 28.03.2015. Before going to US in April 2015, the prosecutrix claims to have visited Rajasthan. She has tried to explain that she was making an attempt to forget what was meted out to her by the appellant and wanted to concentrate on her work. She knew that the appellant was alcoholic but had never found him misbehaving under the influence of liquor before the incident. She denied that her version is an exaggerated account of what happened on the day of the occurrence and that she had tried to put up a different case altogether than what was suggested by her in the FIR. She has categorically denied that on 30.03.2015, the appellant had called her and had told her that he did not appreciate her moves to insinuate a closeness with him and that he did not share the same feeling and wished the association to end. She expressed her complete ignorance about the fact as to whether US Embassy rendered counsellor services to American citizens who are subjected to crime and assault in India including emergency services. When the

prosecutrix spoke to the American Embassy, she was specifically told that no help would be available to her as it is a private matter. She claims her ignorance about the advisories rendered by the American Embassy.

24. Since the major thrust of the argument in defence of the appellant is on the fact that at no point of time the appellant was alone with the prosecutrix in his house and specially at the time when the occurrence is said to have taken place which is after 10.09 p.m. and that if at all such an occurrence had taken place, it was consensual, it would be necessary to examine the deposition of Murtaza Danish Hussaini (PW10), Ashish Singh (PW12) and Anuj Pawra (PW20).

25. Murtaza Danish Hussaini (PW10) has deposed that he knew the appellant for the last 10 years as he was his collaborator in the traditional art form of story telling, '*Dastangoi*' since 2005. He had met the prosecutrix in June 2014, who was undertaking research at Gorakhpur on Nath Samraday. Since the prosecutrix wanted to know somebody who was proficient in History and had idea about Gorakhpur, he introduced her to the appellant in June 2014.

26. On 28.03.2015, he was at Dehradun. At about 10:30 p.m, he started receiving WhatsApp messages on his mobile phone from the prosecutrix which clearly indicated that she was sexually assaulted by the appellant. He asked her to leave the house of the appellant immediately. A little later, the prosecutrix is said to have called him while sitting in the cab that she had experienced something which she had never encountered before i.e. the appellant had forced himself upon her. On further query, the prosecutrix told him that the appellant forced oral sex on her. On PW10 asking her as to why she did not leave the house immediately, she responded by saying that the friends of the appellant came at that time and that she was trying to arrange a cab but one of the friends of the appellant told her that it was not safe and that the cab would be arranged by one of them.

27. On hearing about the aforesaid incident, PW10 claims to have gone under shock. While the prosecutrix talked to him, she also cried. PW10 met the police for the first time when he was called in the police station. During the cross-examination, he admitted of knowing the parents, brothers and the in-laws of the appellant. He had talked to the prosecutrix on phone after 28.03.2015 but could not tell the dates

on which such conversation took place. He came to know about the complaint only after the same was lodged with the New Friends Colony police station.

28. With respect to the WhatsApp messages exchanged between him and the prosecutrix, he has stated before the court that neither did he hand over those to the police nor the police asked for it and that he had deleted such messages in April 2015. The prosecutrix had asked him about a criminal lawyer but because of his not knowing anyone in that field, he could not help. He was also forwarded/sent the e. mails exchanged between the prosecutrix and the appellant and his wife sometime after 28.03.2015 but he never responded to those e. mails. PW10 admits of calling the prosecutrix on her mobile on 12.04.2015 after the occurrence on 28.03.2015. During the cross-examination, the aforesaid witness has denied of having received any call from the prosecutrix on 11.06.2015 but admitted that he talked to her on 14.06.2015 and 20.06.2015.

29. Prior to PW10 having talked to the prosecutrix, the wife of the appellant had called him for intervening on behalf of the appellant and for speaking to the prosecutrix. When PW10 talked to the prosecutrix

about settling the issue, she became very angry and told him that after the trauma she had undergone, she would not withdraw her complaint and disconnected the telephone. The aforesaid fact was communicated to the appellant and his wife. PW10 has admitted of receiving number of telephone calls from many friends regarding the issue of settling the dispute. When confronted with the WhatsApp message (Mark PX) exchanged between him and the prosecutrix on 28.03.2015, he stated that such messages did not mention of sexual assault.

30. Ashish Singh (PW12) who is a journalist working with Aaj Tak channel, stated before the trial court that he is a childhood friend of the appellant and hails from Gorakhpur. On 28.03.2015, at about 8:30/ 9:00 p.m. he had gone to the house of the appellant when Ankit and Poonam (students) were having discussion with the appellant. The aforesaid two students left after 5-10 minutes. While he and the appellant were talking, the prosecutrix arrived, who was introduced to him by the appellant. The prosecutrix was asked by the appellant go to the study room since the appellant wanted to talk to PW12. After some time, the prosecutrix joined him and the appellant. PW12

thereafter went downstairs to bring something and came back along with the brother of the appellant after 20-25 minutes. He found the appellant and the prosecutrix sitting in the living room and the appellant was writing something. PW12 sat there for some time and also talked to the prosecutrix and the appellant. The prosecutrix thereafter, wanted to go and PW12 called a taxi on which the prosecutrix left.

31. During cross-examination, PW12 has categorically stated that he left the house of the appellant at about 9:30 p.m. and returned about 10-15 minutes or 20-25 minutes but definitely before 10:00 p.m. He had telephoned his common friend Radhika at about 10:15 p.m. PW12 knew that Darrain was expected there between 9:00 p.m. to 9:30 p.m. He claims to have sent a text message to his wife after arriving at the house of the appellant. [It may be noted here that while PW12 was being cross-examined, he had taken out his mobile phone from his pocket and showed the SMS sent to his wife at 10:02 p.m. on 28.03.2015. This evidence was produced before the court for the first time during trial. An objection was raised by the prosecution that such SMS was not admissible in evidence as it did not comply with the

mandatory requirements of law as laid down in ***Anvar P.V. vs. P.K. Basheer and Others*** ***(2014) 10 SCC 473***, in the light of the Indian Evidence Act and Income Tax Act, 2000.] He had talked to prosecutrix about Gorakhpur after his return. The prosecutrix had taken his telephone number. The aforesaid witness has affirmed the fact that Anusha, wife of the appellant, had gone to her parents' house and was expected to bring food. He has also confirmed the fact that the prosecutrix was talking from her phone to somebody. The wife of the appellant (Anusha) returned before the prosecutrix had left the house of the appellant. While going, the prosecutrix had hugged the appellant and had waived a good bye. Ashish Singh had gone downstairs to see her off. The prosecutrix is said to have called him after reaching her destination at 23:25:46 hours from mobile telephone No.7042132004. He thereafter left the house of the appellant at about 11:30/12:00 in the night.

32. The aforesaid witness was re-examined on 22.02.2016. During the re-examination, he stated that when he returned to the house of the appellant on 28.03.2015, the prosecutrix was sitting quietly in the room and he also denied other suggestions to him regarding his

tampering or doctoring the SMS message to his wife at 10:02 p.m. in order to help the appellant. However, he has admitted that he did not inform the IO about the SMS message to his wife. On being crossed by the defence counsel, PW12 gave the mobile number of his wife and also stated that the wife of the appellant had come within few seconds of his sending the message to his wife.

33. Anuj Pawra (PW20), owner of Moonshine Café and Bar at Hauz Khas has deposed that the prosecutrix used to stay at Hauz Khas Village and was a regular customer of his café and bar. He had met her in September/October 2014. On 28,.03.2015, the restaurant of PW20 had completed one year and to celebrate that event, he had called his customers. He had spoken to the prosecutrix also for 3-4 times from his telephone number. In his cross-examination with respect to call details, he has stated that he wanted to invite the prosecutrix in the event on that day but she refused by saying that she had to go for a dinner at her friend's house. With respect to a call on 28.03.2015 at 22:11:22 hours from the mobile number of the prosecutrix, he has stated that he could not converse with the prosecutrix as the line got disconnected. However, he has stated that

the prosecutrix came to his restaurant at 11:30 p.m. on 28.03.2015. When PW20 asked the prosecutrix about the call which he had received from her, she expressed her ignorance.

34. On behalf of the appellant, it has been argued that from the deposition of the witnesses, certain undisputed facts emerge. The prosecutrix arrived at the house of the appellant between 8:54 p.m. and 10:56 p.m. on 28.03.2015. Ashish Singh (PW12) was present in the house when the prosecutrix had entered the same. Ashish Singh went out of the house around 9:30 p.m. and returned after 20-25 minutes along with the brother of the appellant. The prosecutrix remained in the house for another 45 minutes or so in the house of the appellant. Ashish Singh escorted the prosecutrix downstairs and saw her off. The prosecutrix called Ashish Singh after reaching Hauz Khas at 11:25 p.m.

35. From the CDRs, it has been sought to be established that from 8:48 p.m. to 9:30 p.m., Ashish (PW12) was in the house of the appellant; between 9:34 p.m. and 9:48 p.m. he had moved out to a different cell tower but was back to the cell tower of the appellant at 10:02 p.m. Thereafter, he remained in the house of the appellant till

about 12:00 p.m. The wife of the appellant had arrived before the prosecutrix left the house of the appellant. It was therefore suggested that the sexual assault on the prosecutrix by the appellant after 10:09 p.m. was not possible. The admitted case of the prosecution is that after ending the call on mobile phone with Danish Shaheedi (DW3) at 10:09 p.m. and before she used her mobile for starting the MERU app, the prosecutrix had conversation with the appellant for some time. Then the assault is said to have taken place. The assault, admittedly, had been perpetrated immediately prior to the arrival of Ashish and Roomi in the house of the appellant.

36. From the deposition of Ashish Singh (PW12), it has been argued, it becomes very clear that he texted his wife telling her that he has reached the house of the appellant at 10:02 p.m. Thus, Ashish Singh had left the house of the appellant at 9:30 p.m. and had come back at 10:02 p.m. and thereafter remained in the house of the appellant till mid night. This timing is confirmed by the testimony of the prosecutrix wherein she says that PW12 opened the door for her at 9 p.m. She was asked to wait in another room and she joined the appellant and PW12 about 20 minutes later in the living room.

Thereafter, according to the prosecutrix, Ashish Singh went out of the house and returned later with the brother of the appellant. Ashish Singh thereafter saw her off. The prosecutrix had taken his telephone number and had called PW12 after reaching her destination, which fact is born out from the CDR of the prosecutrix. Thus, the story of the prosecution that the assault took place after 10:09 p.m. in the absence of Ashish Singh is rendered completely false.

37. Mr. Kapil Sibal, learned senior advocate appearing for the appellant has submitted that the veracity of this sequence of events could be tested from other evidence on record.

38. Vikram Kumar, who has been examined as DW5 is a business Analyst, IT Corporate, MERU Cab Company Pvt. Ltd, Hyderabad. He has stated before the trial court that the servers of the MERU cab are located at Bombay. But the technical team which has access on the server is at Hyderabad. He had accessed the booking data and trip data of a customer having mobile No.70421320004 which stood in the name of the prosecutrix. On 28.03.2015, three booking were made from the aforesaid mobile phone through the mobile app at 20:07, 22:12 and 22:35. The aforesaid witness has proved the Excel sheet

print (Ex.DW5/B) and the certificate under Section 65 of the Evidence Act (Ex.DW5/C) as well as (Ex.DW5/B) which contains the name and mobile number of the driver, subscriber's first name and the mobile number. He has stated that there were three different timings of pressing of the booking button by the customer. The receipt of the request for booking on the server and the difference of the time between the pressing of the button for request and its receipt at the server can vary from 10-16 seconds, depending on the speed of the network. He also testified to the fact that the normal time taken by a customer or the time of opening the phone till the booking of the cab varies from 30-60 seconds, depending upon the make of the telephone and the network which is being used as well as the personal speed of the customer on the apparatus.

39. Rajesh Pal (DW2), an Assistant Manager, MERU Cab Company Pvt. Ltd. brought the record of MERU cab booking from the mobile number of prosecutrix (Ex.DW2/A). He has also confirmed that three bookings were made on 28.03.2017 through mobile app. The time of the first booking was 20:07 hours, the second booking was at 22:12 hours. The driver's name was Vinod Kumar Sharma.

He further testified that the second booking was cancelled by the customer. The time of the third booking was 22:35 hours when the name of the driver was Manish Kumar. This time also, the booking was cancelled by the customer.

40. Thus, what can be inferred from the aforesaid deposition is, as has been argued, that the MERU server registered booking of the prosecutrix at 10:12:07 p.m. This means that the prosecutrix would have begun operating her app sometime before. The timing therefore of the prosecutrix starting her phone can be fixed at 10:10 p.m. or 10:11 p.m. The call was made, admittedly, after the occurrence which is alleged to have taken place after 10:09 p.m. Thus, it has been suggested, that the time window for the whole sequence of events is completely untrustworthy as only a minute or two would have been left for the act complained of to be performed.

41. This could be tested from another documentary evidence. There was supposedly a blank call to Anuj Pawra (PW20) at 10:11:21 p.m. for 20 seconds. This call was apparently made when the prosecutrix was in the house of the appellant and perhaps during the time that occurrence had taken place. The call to the MERU app was

after the occurrence. Thus the attempt at calling the taxi was only before 10:11 p.m.

42. The second argument on behalf of the appellant is in the nature of an alternative argument that, if at all, such an occurrence had taken place, it was with the consent of the prosecutrix. It has been suggested that the e-mail of the prosecutrix on 30.03.2015 clearly depicts that there was some kind of an affectionate/intimate relationship between the appellant and the prosecutrix. A day after the alleged occurrence, the prosecutrix was communicating with the appellant that she liked him and that she considered him to be a good friend and respected him but, what happened on the night of 28.03.2015 was not right. The prosecutrix had herself offered an explanation for the same and had stated that she knew that the appellant was in a difficult space and was having some issues. However, simultaneously, she stated that on 28.03.2015, the appellant *went really too far*. She had also stated that the appellant was drunk and was continuously asking for sexual favours but she had declined and had expressed that she did not want to go for it. However, the appellant became forceful and the prosecutrix alleges to have *gone along* because she did not want the

matter to escalate. She thereafter said that *it was not what she wanted* and it was only because of the fear of something bad happening to her if she went along. In the same breath, the prosecutrix has stated that the experience was new for her but she still remained attracted to the appellant. She felt bad with what had happened and she did not know how to say this to the appellant. She was not even sure that she would confront the appellant with this happening. Thereafter, the prosecutrix has clearly stated that "in the end she consented, but it was because of pressure and the physical force of the appellant on her". Since she did not want the things to go bad, she decided to tell the appellant that she felt strongly for the well being of the appellant. However, to what she was subjected to, was unacceptable and in case the appellant tried this with another woman while under intoxication, she would not be as understanding. Later, the prosecutrix had also written to the appellant that she hoped that this incident would not affect their friendship but she was willing to deal with the repercussions if at all it took place.

43. Mr. Sibal, learned senior advocate argued that even if the act was not with her consent, she actually communicated something which was taken as a consent by the appellant.

44. Explanation (2) to Section 375 of the IPC defines consent in the context of the offence of rape. It sates as follows:

> ***"Explanation 2:-*** *Consent means an unequivocal voluntary agreement when a woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:*
>
> *Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.*
>
> ***Exception 1.-*** *A medical procedure or intervention shall not constitute rape.*
>
> ***Exception 2-*** *Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."*

45. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act; provided that a woman who does not physically resist to the act of penetration shall not by the reason *only* of that fact be regarded as consent to sexual activity. Thus, consent as defined under Section 375 of the IPC includes non-verbal and verbal communication. It has been argued that what has been communicated to the appellant at the relevant time is important. It was suggested that

it was communicated to the appellant that there was consent because of the following circumstances:

(a) The prosecutrix had been in the company of the appellant and continued to be so even when she knew about his drinking habits and also when he was heavily drunk and befuddled on that day. The prosecutrix had exchanged kisses and hugs with the appellant in the past. The prosecutrix had accepted a kiss from the appellant even while the appellant was in the company of his wife and the wife had, for a brief period, gone out of the room, on an earlier occasion.

(b) The prosecutrix had been cracking jokes and indulged in playful banter immediately prior to the occurrence.

(c) During the act, the prosecutrix feigned orgasm.

(d) Prior to the act, the appellant had asked her for sexual favours to which she did not stoutly resent or deny.

(e) The prosecutrix continued to remain in the company of the appellant.

(f) That the prosecutrix was under fear, was absolutely unknown to the appellant, (refer to Section 90 of the IPC which provides that a consent is not such a consent if it is given by a person under fear and injury or under a misconception of fact and if the person doing the act knows, or has reason to believe that the consent was given in consequence of such fear or such misconception.)

(g) The conduct of the prosecutrix, post occurrence, namely her remaining in the house when Ashish Singh (PW12) and Roomi, brother of the appellant, came back to the house of the appellant.

(h) The prosecutrix did not communicate about this occurrence to either PW12 or the brother of the appellant or Anusha, the wife of the appellant who later arrived in the house and lastly the e-mail dated 30.03.2015.

46. With reference to the e-mail dated 30.03.2015, it has been argued that the e-mail was affectionately remonstrative that the appellant went a bit too far on the other night and that the prosecutrix

went along and feigned orgasm. The history of intimacy and the unabashed liking/attraction of the prosecutrix towards the appellant may have given an impression to the appellant of consent. The orgasm which was feigned by the prosecutrix, avowedly for the purposes of preventing further damage to her, may have been taken by the appellant as willingness on the part of the prosecutrix because it understood/misunderstood as a non-verbal communication of consent. Absence of any real resistance of any kind re-affirms the willingness. An expression of disinclination alone, that also a feeble one, may not be sufficient to constitute rape.

47. In the present case, the unwillingness of the prosecutrix was only in her own mind and heart but she communicated something different to the appellant. If that were not so, the prosecutrix would not have told the appellant that he had gone too far on that night. At what point of time, during the act, did she not give the consent for the same, thus, remains unknown and it can safely be said that the appellant had no idea at all that the prosecutrix was unwilling. It is not unknown that during sexual acts, one of the partners may be a little less willing or, it can be said unwilling but when there is an assumed

consent, it matters not if one of the partners to the act is a bit hesitant. Such feeble hesitation can never be understood as a positive negation of any advances by the other partner.

48. The conduct of the prosecutrix, it has been argued, suggests volumes about the falsity of the prosecution version. The communication of the prosecutrix via e-mail dated 30.04.2015 is one such incidence of the prosecution version to be absolutely incorrect. A person who has been violated against her wishes would not be so understanding as to confront the appellant with such simple reproach. No communication on the next day between the prosecutrix and the appellant further buttresses the aforesaid argument. A day after the occurrence, the prosecutrix cannot be said to be under any fear of reprisal or reaction and her not approaching the issue with the appellant is rather surprising.

49. Mr. Sibal has argued that within few hours of the e-mail exchange of 30.03.2015 referred to above, the appellant had called the prosecutrix on her phone which lasted for 76 seconds. This fact has not been stated by the prosecutrix and when she was confronted, she has denied the same. The CDR records reveal the same and it was not

in the mouth of the prosecutrix to have completely denied this fact or to keep it hidden from the prosecution or to feign ignorance about the same. She cannot be expected to have forgotten about the aforesaid call as it was made after the e-mail message to the appellant by her. It is thereafter, as has been submitted, that there was another exchange of e-mail on 12.04.2015, wherein the prosecutrix was abusive and spoke about her having been raped despite her resistance. It has also been suggested that after the aforesaid call of the appellant to the prosecutrix, that for the first time, she set up a case of sexual assault which becomes evident from the communication on 31.03.2015 to Mathangi, a friend of the prosecutrix and thereafter to her supervisor on 01.04.2015. The intensity/seriousness of the allegation kept on increasing successively.

50. In his statement recorded under Section 313 of the Cr.P.C., the appellant has admitted that the prosecutrix had sent him an e-mail (Ex.PW3/C-9) to which he had replied as "my sincerest apologies". He has stated that it was written only after reading the first two lines of the e-mail as the appellant was busy that morning and was constantly in communication with other artists and writers regarding

his performance of '*Dastangoi*'. The first impression of the appellant after going through 2-3 lines of the e-mail dated 30.03.2015 was that the prosecutrix was upset because full attention was not given to her on the last night. Only after the entire e-mail was read by him later that he realized the necessity of calling the prosecutrix and telling her that there never was any intimacy between him and her and that it shall never be and he did not want to continue any alliance with her.

51. The denial of the prosecutrix about this telephone call of the appellant is very consequential and appears to be deliberate. The reaction of the prosecutrix became different only after this call by the appellant to her.

52. Apart from the above, Mr. Sibal, learned senior advocate for the appellant also drew the attention of this Court to the response of the wife of the appellant which made it very obvious that the appellant was a bipolar patient and was under a rehabilitation regimen.

53. So far as the conduct of the prosecutrix is concerned, it has been argued, that she has deliberately avoided to come with clean hands before the police and before the Trial Court. It was suggested that she deleted the WhatsApp messages to destroy inconvenient evidence and

has made best efforts to conceal the deletion of the first communication after the alleged incident. The telephone was handed over to the police on 07.07.2015 only. She also concealed a pretty long conversation between the appellant and herself on 30.03.2015 soon after the exchange of the email. With respect to the call to Anuj Pawra (PW.20) and about her fixing a MERU cab also, certain vital information have been withheld by her. Coupled with all this, the delay in lodging the FIR has also not been properly explained.

54. The prosecutrix, it has been argued, cannot be believed as she is the sole witness/victim of the occurrence but her evidence is not of a stellar quality. In ***Rai Sandeep @ Deepu vs. State:*** ***(2012) 8 SCC 21***, the Supreme Court has defined as to who is a "sterling witness". A "sterling witness" is one who is of a very high quality and caliber, whose version is unassailable and the court considering the version of such a witness should be in a position to accept it on, its face value without any hesitation. The Supreme Court in Rai Sandeep (supra) has gone on to state that to test the quality of such a witness, the status of the witness would be immaterial and the relevant consideration would only be the truthfulness of the statement made by such a witness. If the

statement is consistent right from the starting point till the end and is found to be natural and consistent with the case of the prosecution, his deposition is safe to be relied upon. There should not be any prevarication in the version of such a witness to be called a "sterling witness". The version of such witness should have a correlation with each and every supporting material of the case and should match with the version of every other witness. It was summed up by the Supreme Court by stating that if the version of a witness, on the core spectrum of the crime, remains intact and the other materials match such version in essential particulars, then only, it would enable a Court to rely upon the core version. The test to be applied for considering such witness to be truthful is similar to the test applied in case of circumstantial evidence where there are no missing links in the chain of the circumstances to hold an accused guilty of the offence alleged against him.

55. Thus, it was argued that there are serious doubts as to the possibility of the commission of the act complained of, in the light of the independent record namely the CDRs of Ashish Singh (PW.12) and MERU booking records. The testimony of the prosecutrix is at

complete variance with other prosecution witnesses. Even she (prosecutrix) has been inconsistent on very many material particulars. A reference has been made to the case of ***Tameezuddin @ Tammu vs State Of (Nct) Of Delhi*** : ***(2009) 15 SCC 566,*** where the Supreme Court has held as here under:

> *"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."*

56. As opposed to the aforesaid submissions, Ms.Vrinda Grover, learned counsel appearing for the complainant/prosecutrix has argued that the averments made by her in the FIR, the statement given by her under section 164 of the Cr.P.C. and her deposition before the Trial Court are absolutely consistent with respect to the guilt of the appellant. The appellant had committed forced oral sex upon the prosecutrix within the meaning of section 375(d) of the IPC. On 30.03.2015, the appellant, in his email reply to the prosecutrix,

admitted of the same and apologized to her for having committed the act without her consent and against her will.

57. It was further submitted on behalf of the prosecutrix that she was unable to cope with the emotional and mental trauma and therefore she returned to USA. Only when she became confident of the support from her family and her friends in the USA that she gathered courage to return to India to lodge the FIR on 19.06.2015 at New Friends Colony police station.

58. The evidence of the prosecutrix, it has been urged, is of sterling quality and is consistent with other evidence collected during the course of trial and matches with the independent records comprising emails, sms, WhatsApp communication and Call Data Records (CDRs). It has been vehemently argued that the prosecutrix categorically said 'no' to the advances of the appellant when he began to kiss her and also pushed him away. The statement of the prosecutrix clearly reveals that while the appellant attempted to disrobe her, she kept on pulling her underwear up. It was only because of the physical strength of the appellant that he pinned the prosecutrix down and forced oral sex on her.

59. Learned counsel for the prosecutrix has drawn special attention to the statement of the prosecutrix where she has said that she became scared and a thought passed in her mind that she would also meet the same fate as *Nirbhaya* and therefore, she faked an orgasm because she wanted to end the traumatic encounter. In the first communication to the appellant after the incident, the prosecutrix made him known that the act was against her will and without her consent and therefore was a grave violation of her sexuality, which was totally unacceptable to her. In fact, in her deposition, the prosecutrix has vividly stated about the act of the appellant upon her.

60. In so far as the other material particulars of the case matching with the version of the prosecutrix is concerned, it has been submitted that on 28.03.2015, the appellant had spoken to the prosecutrix over phone and had invited her to his house for dinner in the evening. Later, the programme was changed and the appellant informed the prosecutrix that they would be going to a wedding and also asked her to bring Rs.1,000/- as gift for the wedding. In the night of 28.03.2015, while for a brief period, when the appellant was alone in the company of the prosecutrix, he subjected her to rape. Immediately after the

rape, the prosecutrix communicated with the Danish Hussaini (PW10), a common friend of the appellant and her and informed him that something untowards had happened which had made her upset and that she urgently needed to speak to him. After leaving the house of the appellant, the prosecutrix gave PW.10, on telephone, the detailed version of how the appellant had violated her bodily integrity. This conversation lasted for over half an hour. All these sequence of events have been cogently narrated by the prosecutrix in her deposition before the Trial Court.

61. The fact that the appellant wrote back to the prosecutrix expressing his apology is an indication of an acceptance of the guilt of the appellant and it has to be read as an admission and subsequent conduct of the appellant, under section 8 of the Evidence Act.

62. In the WhatsApp conversation between the prosecutrix and her friend Mathangi Krishnamurthy (Ex.PW.3-C/16) and her email to her academic advisor Allison Busch (Ex.PW.3-C/14 & 15), the prosecutrix has laid bare her heart and mind regarding the trauma faced by her. Thereafter, the email of the prosecutrix to the appellant further establishes that the occurrence had taken place as alleged and

she made it clearly known to the appellant that she is going to prosecute him. The wife of the appellant replied to her email which also indicates that she accepted the accusation and believed her statement. The email exchanged between the wife of the appellant and the return of the email have been exhibited as Ex.PW.3-C/11 and Ex.PW.3-C/13. In April, 2015, the prosecutrix reported about the rape to Columbia University, Department of Gender based misconduct and also informed one Adam Grotski (Head of Fulbright Administration) that she has been sexually assaulted and had returned to US to cope with the post-incident trauma. Since the visa was not extended, the prosecutrix obtained a tourist visa, only for the purposes of lodging the complaint against the appellant.

63. It has been argued that if upon consideration of the prosecution case in its entirety, the testimony of prosecutrix inspires confidence, there should be no necessity of corroboration of her evidence and such hunt for corroboration has to be avoided. The sole testimony of the prosecutrix in cases of rape is sufficient for conviction. It has been argued that the Supreme Court in ***State of Punjab vs. Gurmeet Singh***:

(1996) 2 SCC 384 has made the following observations with respect to the evidence of a victim of sexual assault.

> *"The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault*

is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In State of Maharashtra Vs. Chandraprakash Kewalchand Jain Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words:

> *"A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the*

> *testimony of the prosecurtix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."*

64. Reference has also been made to the judgments delivered in ***Aslam vs. State of Uttar Pradesh:*** ***(2014) 13 SCC 350***; ***Ravinder vs. State of Madhya Pradesh***: ***(2015) 4 SCC 491***; and ***Om Prakash vs. State of Uttar Pradesh***: ***(2006) 9 SCC 787*** to canvas the proposition that victim of sexual assault cannot be treated as an accomplice and therefore the evidence of the victim does not require any corroboration and that it must be relied upon by the Court if such statement is cogent and trustworthy.

65. It has next been argued that even if there are some minor discrepancies in the version of the prosecutrix and that also on non-material aspects, that does not entitle the prosecution case to be

thrown out. The pre and post incident conduct of the prosecutrix, it has been argued, cannot be faulted with to prop up a false and improbable theory. The absence of corresponding CDRs when the prosecutrix spoke about having talked to the appellant at 4:30 p.m. in the evening of 28.03.2015 or when the prosecutrix stated that she was asked by the appellant to go to a wedding and the prosecutrix was not found to be attired in a wedding dress are ancillary matters and cannot be given any undue importance or relevance.

66. The testimony of the prosecutrix has been fully corroborated by the evidence of Danish Hussaini (PW10) The WhatsApp chat conversation completely matches with the prosecution version that the prosecutrix was trying to book a taxi after the incident and she also contemplated of taking an auto and was suggested that she should not hire an auto in the night as it is dangerous. It has been submitted on behalf of the prosecutrix that in the WhatsApp chat, the prosecutrix deliberately did not write that she had been raped because it was not the incident which could have been summarized in a WhatsApp conversation. This cannot be read as an evidence against the appellant as not displaying the conduct of a victim of sexual assault.

67. The prosecutrix was in a hostile environment and therefore she had to be careful in forwarding messages. The other inmates of the house were all closely associated to the appellant and the prosecutrix could not have taken any risk. However, the urgency which she depicted in the WhatsApp conversation speaks for itself.

68. The subsequent conduct of the prosecutrix, it has been argued, is very normal, natural and reasonable as she had been raped by a friend and not a stranger. That the prosecutrix went to Hauz Khas village because she did not want to be alone. She had also been advised by Danish Husaini (PW10) not to remain alone and to take care of herself. There is no evidence, it has been argued, that at Hauz Khas, she indulged in any conviviality. If the prosecutrix chose a busy place to be in, to overcome her trauma, the same should not be read as an unnatural conduct of a victim of rape.

69. The Supreme Court in ***Mukesh vs. State of Chhattisgarh***: ***(2014) 10 SCC 327,*** which was a case of rape, has held that the state of mind of the prosecutrix cannot be precisely analyzed on the basis of speculation because each person reacts differently to a particular stressful situation.

70. The delay in the lodging of the FIR has been satisfactorily explained and once the explanation is found to be satisfactory, no adverse inference can be drawn against the prosecutrix.

71. The Supreme Court in ***State of Uttar Pradesh vs. Manoj Kumar Pandey***: ***(2009) 1 SCC 72***; ***Satpal Singh vs. State of Haryana:*** ***(2010) 8 SCC 714***; and ***Santhosh Moolya and Ors. Vs. State of Karnataka: (2010) 5 SCC 445*** has held that the normal rule regarding the duty of the prosecution to explain the delay in lodging the FIR and the lack of prejudice and/or prejudice caused because of such delayed lodging of the FIR does not per se apply to cases of rape. It was held by the Supreme Court that such was the consistent view for a very long time.

72. More or less similar arguments have been advanced on behalf of state by Ms.Richa Kapoor, learned Additional Standing Counsel.

73. From a conspectus of the entire of facts and circumstances and the arguments advanced on behalf of the parties, what is clearly indicated is that the prosecutrix had become very familiar with the appellant in recent past and had opportunity to interact with him on several occasions. The alcoholism of the appellant was not a secret for the prosecutrix.

74. The relationship extended beyond a normal friendship or a relationship between a guide and a researcher. According to her own version, physical contact with the appellant in the nature of a kiss or a hug was being accepted by the prosecutrix without any protest. In fact, on one occasion, while the prosecutrix was in the company of the appellant and his wife and the wife of the appellant had been moving from one room to another, the prosecutrix and the appellant both had taken a bold step of kissing each other. True it is that such past conduct will definitely not amount to consent for what happened in the night of 28.03.2015, if at all it had happened, as for every sexual act, everytime, consent is a must. The consent does not merely mean hesitation or reluctance or a 'No' to any sexual advances but has to be an affirmative one in clear terms.

75. Section 375 of the IPC reads as hereunder:

> *"**375 Rape**—A man is said to commit "rape" if he-—*
>
> *a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
> *b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation I.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

76. The explanation (2) and the proviso make it very clear that consent has to be categorical, unequivocal, voluntary and could be given by words, gestures or any form of verbal or non-verbal communication signifying willingness to participate in a specific sexual act. By way of precaution, a proviso has been added to the aforesaid explanation namely that a woman who does not physically resist an act of rape shall not by that reason *only* be regarded as having consented to such sexual activity.

77. The WhatsApp communication between the prosecutrix and the appellant on 30.03.2015 signifies that what happened in the night of 28.03.2015 was not acceptable to her because it was something which

she never wanted. The communication further reads that the appellant, on that night went too far. This obviously means that there were some earlier encounters which may not have been of such intensity or passion but physical contact in some measure was accepted. Under such circumstances, this Court is required to see as to what was communicated to the appellant. It is a matter of common knowledge that different persons have different inclinations for sexual activity and immediately preceding the act, there are different ways of people of responding to the advances, entreaties or request.

78. Instances of woman behavior are not unknown that a feeble 'no' may mean a 'yes'. If the parties are strangers, the same theory may not be applied. If the parties are in some kind of prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic 'no' would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically

proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble 'no', was actually a denial of consent.

79. Section 90 of the IPC reads as hereunder:

> *"**90. Consent known to be given under fear or misconception**.—A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."*

80. What the aforesaid section of the IPC mandates is that the accused must know that the consent which was given was under a fear of injury or misconception of fact.

81. The fact situation with which this Court is faced is like this: The prosecutrix has come to the house of the appellant on his invitation. Both the prosecutrix and the appellant have consumed liquor in varying measures. The appellant has been displaying drunken-cum-lachrymose behavior from before the arrival of the prosecutrix. The prosecutrix, out of concern for the appellant, mixes a light drink of vodka for the appellant. In the immediate past, two of the associates of the appellant had left the house of the appellant for a brief period, only to return later. Another person namely Darain Shahidi (DW.3) was expected to arrive but he disclosed his unwillingness/incapability of coming to the house of the appellant, which was heard by the prosecutrix as well. The prosecutrix continues to chat with the appellant and at times has been asking personal questions regarding the cause of trouble of the appellant to which the appellant responded that it was his wife and mother. There are some exchanges between the parties regarding their being good persons in their individuals rights. The prosecutrix starts feeling *motherly* towards the appellant. Then the appellant communicates his desire to *suck* her. The prosecutrix says 'No' and gives a push but ultimately goes along. In

her mind, the prosecutrix remembers a clip from the case of Nirbhaya, a hapless girl who was brutally raped and killed, when the maelfactor had declared that if she (Nirbhaya) did not resist, she might have lived.

82. There is no communication regarding this fear in the mind of the prosecutrix to the appellant. The prosecutrix makes a mental move of feigning orgasm so as to end the ordeal. What the appellant has been communicated is, even though wrongly and mistakenly, that the prosecutrix is *okay* with it and has participated in the act. The appellant had no opportunity to know that there was an element of fear in the mind of the prosecutrix forcing her to go along. After completing the act, the appellant asks the prosecutrix that he wishes to do it again. In the mean time, the privacy is disturbed with the ringing of the door bell and the arrival of the two associates of the appellant. In such a scenario, when there are two competing claims juxtaposed each other, the call is difficult.

83. The questions which arise are whether or not there was consent; whether the appellant mistakenly accepted the moves of the prosecutrix as consent; whether the feelings of the prosecutrix could be effectively communicated to the appellant and whether mistaking

all this for consent by the appellant is genuine or only a ruse for his defence. At what point of time and for which particular move, the appellant did not have the consent of the prosecutrix is not known. What is the truth of the matter is known to only two persons namely the appellant and the prosecutrix who have advanced their own theories/versions.

84. In order to answer the aforesaid questions, it would be necessary to see what the word "consent", especially in relation to sexual activity, connotes. In normal parlance, consent would mean voluntary agreement of a complainant to engage in sexual activity without being abused or exploited by coercion or threats. An obvious ingredients of consent is that, as consent could be given, it could be revoked at any time; rather any moment. Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape. There is a recent trend of suggesting various models of sexual consent. The traditional and the most accepted model would be an "affirmative model" meaning thereby that "yes" is "yes" and "no" is "no". There would be some difficulty in an universal acceptance of the aforesaid model of consent, as in

certain cases, there can be an affirmative consent, or a positive denial, but it may remain underlying/dormant which could lead to confusion in the mind of the other.

85. In an act of passion, actuated by libido, there could be myriad circumstances which can surround a consent and it may not necessarily always mean yes in case of yes or no in case of no. Everyone is aware that individuals vary in relation to expositing their feelings. But what has to be understood is that the basis of any sexual relationship is equality and consent. The normal rule is that the consent has to be given and it cannot be assumed. However, recent studies reveal that in reality, most of the sexual interactions are based on non-verbal communication to initiate and reciprocate consent. Consent cannot also be analyzed without taking into account the gender binary. There are differences between how men and women initiate and reciprocate sexual consent. The normal construct is that man is the initiator of sexual interaction. He performs the active part whereas a woman is, by and large, non-verbal. Thus gender relations also influence sexual consent because man and woman are socialized into gender roles which influence their perception of sexual

relationship and expectation of their specific gender roles with respect to the relationship. However, in today's modern world with equality being the buzzword, such may not be the situation.

86. Today, it is expected that consent be viewed as a clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions. Inheres in it is the capacity to withdraw the consent by either party at any point of time. Normally, body language or a non-verbal communication or any previous activity or passivity and in some cases incapacitation because of alcohol consumption, may not be taken as consent. However, in the present case, as has been stated, the appellant has not been communicated or at least it is not known whether he has been communicated that there was no consent of the prosecutrix.

87. Another important aspect which is required to be gone into, especially for the purposes of this case, is whether it would be necessary for a just decision in this case, to look into the evidence/circumstances of the display of Rape Trauma Syndrome (hereinafter called RTS) by the prosecutrix.

88. The RTS is the psychological trauma experienced by a rape victim which includes disruption of normal, physical, emotional, cognitive and interpersonal behavior. The theory of RTS was first propounded by a psychiatrist Ann Wolbert Burgess and sociologist Lynda Lytle Holmstrom in 1974. It was described as a cluster of psychological and physical science, symptoms and reactions which are common to most rape victims immediately following and for months or years after the incident of rape. Three stages have been identified in RTS: (a) the acute stage, (b) the outer adjustment stage and (c) the renormalization stage. The acute stage occurs immediately after the occurrence and it may include disorganized behavioral pattern like diminished alertness, hysteria, confusion, bewilderment and may be, extreme sensitivity to the reaction of other people. The second stage comes when the victim has assumed his/her normal lifestyle but is still suffering from profound internal turmoil. This stage could last for several months and could extend to several years also after rape. This stage is identified with refusal to discuss rape or analyzing why it happened, a general sense of helplessness, panic attacks and disassociation meaning, a kind of feeling that one is not attached to

one's body. The rape victims in this stage can see the world as a more threatening place to live in. In the renormalization stage, adjustment begins and the incident no longer remains the central focus in the life of the victim. The negative feelings of guilt and shame are resolved and the survivor does not blame herself for the attack.

89. The reaction of the individual to similar fact situations can vary and, therefore, it cannot be said that a particular conduct of a person, which is not in conformity with the general conduct of another who, would be faced with similar circumstance, that such conduct belies the allegations. It would thus be unfair to the complainant/victim to judge the veracity of her accusation on the basis of RTS displayed by her. If a rape victim resorts to an individual/specific coping mechanism, that ought not to delegitimize her reaction to rape.

90. For the aforesaid reason, this Court does not propose to analyze the post rape conduct of the prosecutrix as suggested on behalf of the appellant. Having said so, it can safely be held that the circumstances which have been suggested by the defence namely: (i) the prosecutrix not running away from the place of occurrence; (ii) her remaining present in the house of the appellant for about good 45 minutes post

rape; (iii) not divulging about the act to either PW.12 or brother of the appellant who came along with PW.12 or to the wife of the appellant; (iv) no communication with the appellant till 30.03.2015; (v) first communication to the appellant being in the nature of a minor abjuration; (vi) the prosecutrix booking a MERU cab and cancelling the same; (vii) going to the restaurant at Hauz Khas; (viii) calling PW.12 after reaching Hauz Khas hotel; (ix) taking inordinately long time to register the FIR etc, could be and perhaps are manifestations of post-rape trauma and disorientation of the prosecutrix.

91. There could be explanation for each of such conduct of the prosecutrix. The explanation regarding the delay in lodging the FIR may be bleak but not totally unacceptable. A lady who is a foreign national and has been violated by a close acquaintance, would require support of the family and others for fighting litigation in India. The explanation that only after the prosecutrix could garner the support of her family and the people of the department, back in the US, gave her support for her to muster courage to come back to India to lodge the FIR, is not wholly unacceptable. There cannot be any gainsaying that if at all the prosecutrix was raped without her consent and will, she

would suffer trauma and in that event, her not immediately disclosing such facts to close acquaintances of the appellant and perhaps the wife of the appellant is also understandable. That the prosecutrix was advised by PW.10 not to remain alone, made her go to a restaurant at Hauz Khas as her roommate was not available in her flat that night, is also quite explicable. The prosecutrix booking a MERU cab and then cancelling it, can also not be read as if nothing had happened to her. Perhaps, for being violated/hurt by a close acquaintance and that also in his house, prosecutrix may have become disoriented. With the arrival of PW.12 and the brother of the appellant, the prosecutrix might have felt safe to stay in the house for some more time but not safe enough to tell them about the occurrence. She had been introduced to the aforesaid two persons only in the evening of 28.03.2015 and the prosecutrix cannot be expected to know how they would react to such fact situation.

92. This Court does not also deem it necessary to go into the details of the timings suggested by the parties regarding various happenings as those are only in the nature of guesstimates, though sought to be corroborated by admissible secondary evidence. Issues regarding

timing of the arrival of the prosecutrix in the house of the appellant; PW-12 leaving house for a brief period and then coming back; booking of MERU cab by the prosecutrix; timing of texting and calling PW-10 etc pale into insignificance when it is doubtful as to whether the appellant had the requisite mental intent of violating the prosecutrix and whether he had genuinely mistaken some verbal/non verbal communication as consent and whether the element of fear in the mind of the prosecutrix was made known or communicated to the appellant.

93. While saying so, this Court has taken into account that human memory cannot always be taken to be sacrosanct. Theories propounded about the concept of a *memory* indicate that memory does not work like a video recorder. If a person sees an event, he sees/receives only fragments of such information from the circumstance which is sighted. Those fragments are then mixed with other information from other sources viz any prior information, which is stored in memory, and some kind of an expectation as to what would happen, as also, inferences which could be derived from the set of circumstances or conclusions arrived at after the event has

occurred. All these conglomerate into an information which is then stored in a person's memory with respect to that event. It has been scientifically proved that sometimes, such memory could be accurate but it may not be necessary that under all circumstances it would be the same what was perceived by that person. There is no guarantee of any exactitude about the memory of an incident. Studies in the field has also revealed that when certain fact gets into the memory of a person, it does not remain unchangeable. It is highly fluid, which could change with the passage of time. Whenever a person would think about an event about which he has some memory or would revisit mentally the aforesaid circumstance, the stored memory in the mind changes in some measure. Such changes could take many forms. Many a times, the memory changes with the belief of the person having it in his mind and his inferences about the cause of the occurrence. So far as timings of particular happenings are concerned, it may not catch the attention of a witness and the memory which is stored in his mind is only a rough estimate of the time i.e. whether the occurrence had taken place in the morning, in the early afternoon, evening or night. There is also a possibility of remembering the

happening of a particular event if it is associated with another happening. As for example, a person having lunch in a restaurant sees somebody hitting at the waiter leading to his death. The witness may or may not remember the face of the person or the victim but would remember that the occurrence had taken place sometimes in the afternoon when he had visited the restaurant for lunch. However, it may not be possible for him to remember exactly that the timing of the occurrence was 1.30 pm or 1.45 pm. There can only be a rough assessment about the spacing of events which are associated with a particular happening.

94. The study of memory also tells us that the memory works under a variety of ways. If a circumstance is identified with a particular timing say lunch time or dinner time, the memory regarding an occurrence taking place at the lunch time, after the lunch time or before the dinner time can be accurate. However, the hunt for accuracy to the seconds and minutes is nothing but chasing illusion.

95. The Supreme Court in ***Pragan Singh vs. State of Punjab & Ors***.: ***(2014) 14 SCC 619*** had the occasion to examine as to how memory works and whether there should be complete reliance on such

human memory even after a lapse of time. In the aforesaid case, a plea was raised by the accused persons that the manner in which the narration was made gave an impression that guess work or conjectures were being resorted to. It was suggested that the witnesses could not have remembered the faces of the accused after 7½ years of the occurrence as memory fades by that time. Though, in that case, the Supreme Court was of the view that the memory of an eye witness who had seen the accused persons killing the deceased would not be easily erased or forgotten more so when the deceased was a friend and the witness himself had narrowly escaped from being killed. Under such circumstances, the Supreme Court was of the view that the memory regarding the face of the accused would be etched in the mind of the witness for a long time. However, while deciding the aforesaid case, the Supreme Court dealt with the manner in which the memory of a person works. In **Pragan Singh** (Supra), the Supreme Court has held as hereunder:-

> ***18.*** *Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of "memory". Scientific understanding of how memory works is described by*

Geoffrey R. Loftus while commenting upon the judgment dated 16-1-2002 rendered in Javier Suarez Medina v.Janie Cockrell [Case No. 01-10763, decided on 16-1-2002 (5th Cir 2002)] by the United States Court of Appeals. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows:

18.1. *First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information—both information from external sources, and information generated internally in the form of inferences—that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete". Rather, a memory is a highly fluid entity that changes, sometimes*

dramatically, with the passage of time. Every time a witness thinks about some event—revisits his or her memory of it—the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2. *Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended.*

18.3. *The first set of circumstances involves the state of the environment at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.*

18.4. *The second set of circumstances involves the state of the observer at the time the event is experienced. Examples of sub-optimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.*

18.5. *The third set of circumstances involves what occurs during the retention interval that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval,*

which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.

18.6. *The fourth set of circumstances involves errors introduced at the time of retrieval i.e. at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself."*

96. The prosecutrix (PW5) can of course be called a sterling witness as, by and large, the sequence of events narrated/deposed by her, matches with the evidence of the PW.10 and PW.12. But whether the allegation of the prosecutrix that the appellant, without her consent and will, sexually abused her by use of force, is to be believed, is the question which this Court is beset with.

97. Ms.Vrinda Grover, learned advocate for the prosecutrix has submitted that the argument of the act being consensual was never raised by the appellant before the Trial Court and therefore, the

appellant would be precluded from advancing such argument at the stage of the appeal. In support of the aforesaid proposition, attention has been drawn to the case of **Pragan Singh** (Supra), which was a case of murder and the appellants had taken the plea that they had refused to participate in the TIP because one of the prosecution witnesses was shown the faces of the appellants in police station after their arrest. No reason had been assigned by them about their refusal to participate in the TIP before the Trial Court, either at the time of refusal or while the statement of the accused was being recorded under section 313 Cr.P.C., or before the High Court. The Supreme Court therefore did not permit the aforesaid ground to be taken.

98. The facts of the present case are absolutely different from the case cited by Ms.Grover.

99. It is well-settled proposition that from the attending circumstances and the evidence already collected, if it appears that some circumstance could be gleaned from such already collected evidence, which enures to the benefit of the accused, the same cannot be brushed aside on the slender ground that such plea was not taken before the Trial Court.

100. Similarly, the other case law cited by the prosecution viz. ***Afsal Ullah vs. State of Uttar Pradesh: AIR 1964 SC 264*** also does not apply to the facts of this case. In the aforesaid case, the Supreme Court was looking at the validity of bye-laws framed by the respondent/Municipal Board of Tanda. One of the arguments before the Supreme Court was that the relevant bye-laws had been passed malafidely, out of spite and enmity for the appellant. The contention was that the shop of the appellant was the only shop in the locality and the concerned bye-law had been passed maliciously in order to hit the appellant. Since that ground was not taken before the court below, the Supreme Court did not permit such a plea to be taken in the First Appeal. Thus, what was held, in the aforesaid case was that plea of malafides cannot be permitted to be raised afresh at the stage of appeal. No parallel can be drawn with the facts of the present case.

101. There is yet another aspect of the matter which has caught the attention of this Court. The wife of the appellant had a chance to read the communication between the prosecutrix and the appellant and after coming to know about the alleged incident, she had corresponded with the prosecutrix wherein she had informed her that the appellant had

been under a rehabilitation regimen for his bipolar mental condition. The prosecutrix had, but rubbished such an explanation by stating that the occurrence had to do more with the physical power of the appellant than the mental condition. However, it would be necessary to know as to what a bipolar disorder in a human being entails. Bipolar disorder is one of the most severe of the mental illness. It is a brain disorder which impairs a person's mood, energy and basic ability to function. Symptoms of the mania include increased energy or restlessness; extreme irritability; inability to concentrate; poor judgment and at times aggressive behavior. In some cases, impatience and volatility have also been noticed. There are symptoms of depression in a person suffering from bipolar disorder. Though no specific plea has been taken about the bipolar disorder of the appellant but from the evidence available on record, there appears to be some hint that the appellant suffered from the same. The appellant has been stated to be, on the day of the incident, crying and crying so loud and bitterly that nasal mucus was dripping down till his moustache. This is how the prosecutrix has described the state of the appellant sometimes prior to the alleged incident. On the asking of the prosecutrix about the

reason for his sadness, the appellant is said to have told her that it concerns his wife and mother. Though the mental makeup/condition of the appellant may not be a ground to justify any act which is prohibited under law, but the same can be taken into consideration while deciding as to whether the appellant had the correct cognitive perception to understand the exact import of any communication by the other person. Since no evidence has been led on this aspect, any foray into this field would only be fraught with speculative imagination, which this Court does not intend to undertake.

102. But, it remains in doubt as to whether such an incident, as has been narrated by the prosecutrix, took place and if at all it had taken place, it was without the consent/will of the prosecutrix and if it was without the consent of the prosecutrix, whether the appellant could discern/understand the same.

103. Under such circumstances, benefit of doubt is necessarily to be given to the appellant.

104. For the reasons afore-recorded, the judgment and order of conviction and sentence of the appellant is set aside and the appellant

is acquitted of all the charges. The appellant is ordered to be released forthwith, if not wanted in any other case.

105. The appeal stands allowed.

106. The Trial Court record be returned.

107. A copy of the judgment be transmitted to the Superintendent of the concerned jail for compliance and record.

Crl.M.B.528/2017 (Suspension of sentence)

1. In view of the appeal having been allowed, the application has become infructuous.

2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

SEPTEMBER 25, 2017
ns/ab

Annexure 17

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1277 OF 2014
(@SPECIAL LEAVE PETITION (CRL.) No.9127 of 2013)

ARNESH KUMAR ..... APPELLANT

VERSUS

STATE OF BIHAR & ANR. .... RESPONDENTS

J U D G M E N T

Chandramauli Kr. Prasad

The petitioner apprehends his arrest in a case under Section 498-A of the Indian Penal Code, 1860 (hereinafter called as IPC) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498-A IPC is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under

Section 4 of the Dowry Prohibition Act is two years and with fine.

Petitioner happens to be the husband of respondent no.2 Sweta Kiran. The marriage between them was solemnized on 1st July, 2007. His attempt to secure anticipatory bail has failed and hence he has knocked the door of this Court by way of this Special Leave Petition.

Leave granted.

In sum and substance, allegation levelled by the wife against the appellant is that demand of Rupees eight lacs, a maruti car, an air-conditioner, television set etc. was made by her mother-in-law and father-in-law and when this fact was brought to the appellant's notice, he supported his mother and threatened to marry another woman. It has been alleged that she was

driven out of the matrimonial home due to non-fulfilment of the demand of dowry.

Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases,

bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are

pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is

despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be

prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Cr.PC which is relevant for the purpose reads as follows:

"**41. When police may arrest without warrant.**-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

(a) x x x x x x

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary –

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

X x x x x x

From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the

evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other

conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57, Cr.PC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in

exercise of power under Section 167 Cr.PC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons

and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr.PC has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and

only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

Another provision i.e. Section 41A Cr.PC aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalised. Section 41A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008(Act 5 of 2009), which is relevant in the context reads as follows:

"41A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1), Cr.PC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant

are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the

parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of

the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial

Magistrate concerned shall be liable for departmental action by the appropriate High Court.

We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

In the result, we allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid.

……J

(CHANDRAMAULI KR. PRASAD)

……J

(PINAKI CHANDRA GHOSE)

NEW DELHI,
July 2, 2014.

Annexure 18

CASE NO.:
Writ Petition (civil) 141 of 2005

PETITIONER:
Sushil Kumar Sharma

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 19/07/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
JUDGMENT

Arijit Pasayat, J.

By this petition purported to have been filed under Article 32 of the Constitution of India, 1950 (in short 'the Constitution') prayer is to declare Section 498A of Indian Penal Code, 1860 (in short 'the IPC') to be unconstitutional and ultra vires in the alternative to formulate guidelines so that innocent persons are victimized by unscrupulous persons making false accusations.

Further prayer is made that whenever, any court comes to the conclusion that the allegations made regarding commission of offence under Section 498 IPC are unfounded, stringent action should be taken against person making the allegations. This according to the petitioner, would discourage persons from coming to courts with unclean hands and ulterior motives. Several instances have been highlighted to show as to how commission of offence punishable under Section 498A IPC has been made with oblige motive and with a view to harass the husband, in-laws and relatives.

According to the petitioner there is no prosecution in these cases but persecution. Reliance was also placed on a decision rendered by a learned Single Judge of the Delhi High Court wherein concern was shown about the increase in number of false and frivolous allegations made. It was pointed out that accusers are more at fault than the accused. Persons try to take undue advantage of the sympathies exhibited by the courts in matters relating to alleged dowry torture.

Section 498A appears in Chapter XXA of IPC.

Substantive Sections 498A IPC and presumptive Section 113-B of the Indian Evidence Act. 1872 (in short 'Evidence Act') have been inserted in the respective statutes by Criminal Law (Second Amendment) Act, 1983.

Section 498A IPC and Section 113-B of the Evidence Act include in their amplitude past events of cruelty. Period of operation of Section 113-B of the Evidence Act is seven years, presumption arises when a woman committed suicide within a period of seven years from the date of marriage.

Section 498 reads as follows:

"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 wilful 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 113-B reads as follows:-

"113-B: Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation-For the purpose of this section 'dowry death' shall have the same meaning as in Section have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the explanation for the purpose of Section 498A. It is to be noted that Sections 304-B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of 'cruelty'. In Section 304-B there is no such explanation about the meaning of 'cruelty'. But having regard to common background to these offences it has to be taken that the meaning of 'cruelty' or 'harassment' is the same as prescribed in the Explanation to Section 498A under which 'cruelty' by itself amounts to an offence.

The object for which Section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examines the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in laws and relatives. The avowed object is to combat the menance of dowry death and cruelty.

One other provision which is relevant to be noted is Section 306 IPC. The basic difference between the two Section i.e. Section 306 and Section 498A is that of intention. Under the latter. cruelty committed by the husband or his relations drag the women concerned to commit suicide, while under the former provision suicide is abetted and intended.

It is well settled that mere possibility of abuse of a provisions of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administrative and application of a particular law would be done "not with an evil eye and unequal hand" (see A Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income-Tax officer and Anr., AIR (1956) SC 246.

In Budhan Choudhry and Ors. v. State of Bihar, AIR (1955) SC 191 a contention was raised that a provision of law may not be discriminatory but

it may land itself to abuse bringing about discrimination between the persons similarly situated. This court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

From the decided cases in India as well as in United States of America, the principle appears to be well settled that if a statutory provision is otherwise intra-vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action; order or decision and grant appropriate relief of the person aggrieved.

In Mafatlal Industries Ltd. and Ors. v. Union of India and Ors., [1997] 5 SCC 536, a Bench of 9 Judges observed that mere possibility of abuse of a provision by those in charge of administering it cannot be a ground for holding a provision procedurally or substantively unreasonable. In Collector of Customs v. Nathella Sampathu Chetty, [1962] 3 SCR 786 this Court observed:

"The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity." It was said in State of Rajasthan v. Union of India, [1977] 3 SCC 592 "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief." (Also see: Commissioner, H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Meth, [1954] 1005.

As observed in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat, [2004] 6 SCC 672, Unique Butle Tube Industries (P) Ltd. v. U.P. Financial Corporation and Ors., [2003] 2 SCC 455 and Padma Sundara Rago (dead) and Ors. v. State, [2002] 3 SCC 533. while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of Law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

The judgment of the Delhi High Court on which reliance was made was rendered in the case of Savitri Devi v. Ramesh Chand and Ors. In that case while holding that the allegations regarding commission of offence punishable under Section 498A IPC were not made out. Certain observations in general terms were made about the need for legislative changes. The complaint had moved this Court against the judgment on merits in SLP (Crl).....of 2003 entitled Savitri Devi v. Ramesh Chand and Ors. By order dated 28.11.2003 this Court observed as follows:

"Heard learned counsel for the petitioner.

Delay condoned.

> We do not see any merit in the challenge made to the order of the High Court in Criminal Revision No. 462 of 2002 on the facts of the case. the special leave petition is, therefore, dismissed.
>
> At the same time, we express our disapproval of some of the generalized views expressed in paragraphs 23 to 32 of the judgment of the High Court by the learned Single Judge. The learned Judge ought to have seen that such observations, though may be appropriate for seminars or workshops, should have been avoided being incorporated as part of a court judgment. Some of the views also touch upon Legislative measures and wisdom of legislative policy in substance, which according to the learned Judge need to be taken into account. There was no scope for considering all such

matters in the case which was before the learned Judge. It is therefore, appropriate that such generalized observations or views should meticulously avoided by Courts in the judgments."

Above being the position we find no substance in the plea that Section 498A has no legal or constitutional foundation.

The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with obligue motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

Prayer has been made to direct investigation by the Central Bureau of Investigation (in short the 'CBI') in certain matters where the petitioner is arrayed as an accused. We do not find any substance in this plea. If the petitioner wants to prove his innocence, he can do so in the trial, if held.

The Writ Petition is accordingly disposed of.

Annexure 19

Table 2.4
Causes – wise Distribution of Suicides during 2015
(All India)

Sl. No.	Cause	2014	2015				% Var.	Percentage Share of Suicides during 2015
		(Total)	Male	Female	Trans-gender	(Total)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Bankruptcy or Indebtedness	2308	4081	276	0	4357	88.8	3.3
2	**Marriage Related Issues (Total)**	**6773**	**2497**	**3915**	**0**	**6412**	-5.3	**4.8**
	2.1 Non Settlement of Marriage	1096	654	524	0	1178	7.5	0.9
	2.2 Dowry Related Issues	2261	73	1801	0	1874	-17.1	1.4
	2.3 Extra Marital Affairs	476	398	387	0	785	64.9	0.6
	2.4 Divorce	333	192	199	0	391	17.4	0.3
	2.5 Others	2607	1180	1004	0	2184	-16.2	1.6
3	Failure in Examination	2403	1511	1135	0	2646	10.1	2.0
4	Impotency/Infertility	332	243	205	0	448	34.9	0.3
5	Family Problems	28602	24043	12885	0	36928	29.1	27.6
6	**Illness (Total)**	**23746**	**14232**	**6944**	**2**	**21178**	-10.8	**15.8**
	6.1 AIDS/STD	233	156	34	0	190	-18.5	0.1
	6.2 Cancer	582	586	241	0	827	42.1	0.6
	6.3 Paralysis	408	442	176	0	618	51.5	0.5
	6.4 Insanity/ Mental Illness	7104	5614	2795	0	8409	18.4	6.3
	6.5 Other Prolonged Illness	15419	7434	3698	2	11134	-27.8	8.3
7	Death of Dear Person	981	596	355	0	951	-3.1	0.7
8	Drug Abuse/Alcoholic Addiction	3647	3513	157	0	3670	0.6	2.7
9	Fall in Social Reputation	490	804	289	0	1093	123.1	0.8
10	Ideological Causes/Hero Worshipping	56	40	17	0	57	1.8	0.0
11	Love Affairs	4168	2541	1935	0	4476	7.4	3.3
12	Poverty	1699	1454	245	0	1699	0.0	1.3
13	Unemployment	2207	2450	273	0	2723	23.4	2.0
14	Property Dispute	1067	1895	596	0	2491	133.5	1.9
15	Suspected/ Illicit Relation (Other than Sl. No. 2.3)	458	278	195	1	474	3.5	0.4
16	Illegitimate Pregnancy (Other than Sl. No. 2.3)	56	0	49	0	49	-12.5	0.0
17	Physical Abuse (Rape, etc.)	74	15	65	0	80	8.1	0.1
18	Professional/Career Problem	903	1317	272	1	1590	76.1	1.2
19	Causes Not Known	16264	11140	5073	1	16214	-0.3	12.1
20	Other Causes	35432	18878	7207	2	26087	-26.4	19.5
21	**Total**	**131666**	**91528**	**42088**	**7**	**133623**	**1.5**	**100.0**

% Var. – refers to Percentage Change during 2015 over 2014
'Family Problems' – refers to other than 'Marriage Related Issues'. In previous edition, it was published as 'Other Family Problem'

Table 2.8
Social, Economic and Educational Status - wise Distribution of Suicides during 2015
(All India)

I. Social Status

Sl. No.	Social Status	2014	2015				% Var.	Percentage Share during 2015
		(Total)	Male	Female	Trans-gender	(Total)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Un-Married	27825	18470	9705	4	28179	1.3	21.1
2	Married	86808	64534	28344	0	92878	7.0	69.5
3	Widowed/ Widower	2714	1291	1158	0	2449	-9.8	1.8
4	Divorcee	968	519	388	0	907	-6.3	0.7
5	Separated	916	784	306	0	1090	19.0	0.8
6	Others	7504	2007	867	1	2875	-61.7	2.2
7	Status not known	4931	3923	1320	2	5245	6.4	3.9
8	**Total**	**131666**	**91528**	**42088**	**7**	**133623**	**1.5**	**100.0**

II. Economic Status

Sl. No.	Economic Status	2014	2015				% Var.	Percentage Share during 2015
		(Total)	Male	Female	Trans-gender	(Total)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	less than ₹1 lakh	91820	62694	30886	6	93586	1.9	70.0
2	₹1 lakh & above – less than ₹5 lakhs	35405	24085	9327	1	33413	-5.6	25.0
3	₹5 lakhs & above – less than ₹10 lakhs	3656	3453	1290	0	4743	29.7	3.5
4	₹10 lakhs and above	785	1296	585	0	1881	139.6	1.4
5	**Total**	**131666**	**91528**	**42088**	**7**	**133623**	**1.5**	**100.0**

III. Educational Status

Sl. No.	Social Status	2014	2015				% Var.	Percentage Share during 2015
		(Total)	Male	Female	Trans-gender	(Total)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	No Education	18778	11812	6681	4	18497	-1.5	13.8
2	Primary (up to class–5th)	25020	17793	8496	1	26290	5.1	19.7
3	Middle (up to class–8th)	26566	19409	8866	0	28275	6.4	21.2
4	Matriculate/ Secondary (up to class–10th)	27002	20260	8736	0	28996	7.4	21.7
5	Hr. Secondary/ Intermediate/ Pre-University (up to class–12th)	14428	11152	4690	0	15842	9.8	11.9
6	Diploma/ Certificate/ ITI	1509	1202	355	0	1557	3.2	1.2
7	Graduate and above	3737	2676	1131	0	3807	1.9	2.8
8	Professionals (MBA etc.)	383	353	122	0	475	24.0	0.4
9	Status Not Known	14243	6871	3011	2	9884	-30.6	7.4
10	**Total**	**131666**	**91528**	**42088**	**7**	**133623**	**1.5**	**100.0**

% Var. – refers to Percentage Change during 2015 over 2014