IN THE HON'BLE DELHI HIGH COURT, AT NEW DELHI

EXTRA ORDINARY WRITJURISDICTION

W.P. (C) No.284/2015

IN THE METTER OF:

RIT FOUNDATION ...PETITIONER

VERSUS

THE UNION OF INDIA ...RESPONDENTS

BRIEF SUBMISSIONS ON BEHALF OF RESPONDENT/ UNION OF INDIA

1. That marital rape is not defined in any statue/ laws. While rape is defined under Section 375 of IPC, defining marital rape would call for a broad based consensus of the society. What may appear to be marital rape to an individual wife, it may not appear so to others. As to what constitutes marital rape and what would constitute marital non rape needs to be defined precisely before a view on its criminalization is taken.

2. That it has to been ensured adequately that marital rape does not become a phenomenon which may destabilize the institution of marriage apart from being an easy tool for harassing the husbands. The Supreme Court and various High Courts have already observed the rising misuse of section 498A of IPC.

Bar & Bench (www.barandbench.com)

3. That merely deleting Exception 2 will in no way serve any useful purpose as a man is said to commit 'rape' as defined under Section 375 of IPC cannot be the same in the case of marital rape. If all sexual acts by a man with his own wife will qualify to be marital rape, then the judgment as to whether it is a marital rape or not will singularly rest with the wife. The question is what evidences the Courts will rely upon in such circumstances as there can be no lasting evidence in case of sexual acts between a man and his own wife.

4. That as regards Section 376B of IPC and 198B of CrPC it is stated that these Sections flow from the exception to Section 375 as presently sexual acts by a man with his own wife is not seen as an offence.

5. That the Law Commission in its 172nd Report titled Review of Rape Laws and the Department Related Parliamentary Standing Committee on Home Affairs in its 167th Report have examined the matter and did not recommend the criminalization of marital rape. Even though the Justice J S Verma Committee in its Report titled "Amendments to Criminal Law" recommended that the exception to marital rape be removed, it also pointed out that it is also important that the legal prohibition on marital rape is accompanied by changes in the attitude of the

Bar & Bench (www.barandbench.com)

prosecutors, police officers and those in society generally. Thus merely deleting the exception 2 of Section 375 may not stop marital rape. Moral and social awareness plays a vital role in stopping such an act.

6. That the fact that other countries, mostly western, have criminalized marital rape does not necessarily mean India should also follow them blindly. This country has its own unique problems due to various factors like literacy, lack of financial empowerment of the majority of females, mindset of the society, vast diversity, poverty, etc. and these should be considered carefully before criminalizing marital rape.

7. That criminal law is in the Concurrent List and implemented by the States. There is a vast diversity in the cultures of these states. It is necessary to implead the State Governments in the matter to know the opinion of these states to avoid any complications at a later stage.

MONIKA ARORA
CENTRAL GOVERNMENT STANDING COUNSEL,
446, LAWYERS CHAMBER OLD BLOCK,
DELHI HIGH COURT,
NEW DELHI-110003
9810246300

New Delhi
Dated :

Bar & Bench (www.barandbench.com)