

## Making a Case to Criminalise Marital Rape



(Source - <http://courtingthelaw.com/2016/06/21/commentary/marital-rape-where-does-it-stand-in-the-islamic-legal-system/>)

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## Lead Essay

### **Making a Case to Criminalise Marital Rape**

#### **The concept of public and private spheres**

Almost every society is characterised by a gendered division of labour where the men are viewed as the bread earners and women take care of home and children. Their traditional gender roles, biological construct, and cultural norms limit women to the 'private' sphere, a world of family and domestic life, and men to the 'public' sphere, a world of marketplace (Schneider 1991). The concept of the public and private sphere has driven most of the feminist movement and theories and particularly dominated American thought during the industrial revolution. It was Jurgen Habermas who in his work, 'The Structural Transformation of the Public Sphere' (1962) wrote in depth about the concept of public and private sphere. It is interesting to note that, according to Habermas, the private sphere led to the emergence of the public sphere. However, while the public sphere laid grounds for the values and goals of society the private sphere was seen outside the ambit of the Government. It is this idea that we will be taking forward in this cover story.

During the early 1960s, a popular slogan of second-wave feminism in the United States of America was - the personal is political. This slogan emphasized personal problems of women such as those related to marriage, child rearing were not just personal but also political problems that required a wider political discussion and not just hushed deliberation within the four walls (Hansich 1969). The Marxist, liberal and radical feminists argued for equal opportunity in the work place and with regard to employment. Marxist feminists were vocal about the gendered division of work and the expectation from women to reproduce. The socialist feminist went one step further to say that women would cease to be relegated to the private sphere if they stopped reproducing.

This dichotomy between the public and private sphere has since long been important to understand gender. As women in India increasingly explore the non-traditional public sphere for both work and pleasure it becomes relevant to focus on how women negotiate this divide and the impact it has had on the changing power relations between the two genders. In the following piece I argue that it is essential that law and policy intervene in the private sphere if crimes against women committed outside the home need to be controlled. I propose that focus on bringing gender equality within the private space of home first will positively reflect in the public space of workplace and the society at large.

#### **Need to simultaneously reform both spheres to give women a stronger voice**

The State's response to incidences of violence against women committed outside the home has largely been restricted to affirmative action in the public sphere itself. Let's take the Nirbhaya rape incident. In response to this gruesome rape the government launched Nirbhaya fund to ensure safety for women using public transportation, set up panic buttons in phones, increased the number of CCTV cameras, even provided Nirbhaya buses with vehicle tracking system. These purposive announcements may be important but they do not challenge the notion that men are the stronger gender of the two, born to dominate the other. On the contrary it re-emphasizes that women can be safe only under protection of a superior. The promise of safety for women through their segregation has led to creation of gendered spaces in the public sphere which has failed to alter the male perception that a woman staying outside the home at a late hour is responsible for inviting 'trouble' for herself. The accused rapists and their lawyers maintained that staying out late, wearing "wrong clothes" was responsible for the rape in 2012; the attitude is no different in 2017 as two political leaders believe that staying out late to ring in the New Year, adopting "western ways" is responsible for the recent molestation of women in Bengaluru (PTI 2017).

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We seem to have been caught in a vicious cycle – a violent crime is committed against women; there is large scale public outrage; the State announces glorified policy sops; normalcy is restored until inevitably there is another such crime. What we fail to recognise is in spite of all the government sanction and affirmative action if men are free to disrespect women in the confines of the home or in a familial relationship then this attitude would extend to women they encounter outside the home. Out of the total rape cases reported in 2015 in 95.5 percent of cases the offender was known to the victim (Crime in India 2015). Six out of ten men admitted to perpetrating violence against their wives or partners in India (Nanda Priya 2014). And the decade old Protection of Women from Domestic Violence Act, 2005 enacted with an objective to protect women victims of violence within the family has according to some “failed most spectacularly” (Flavia Agnes 2015). It needs to be understood by law and policy makers that if status of women remains unchanged then infrastructural changes will not yield favourable results. The idea that women have the right to work, study and be outside their home as much as their male counterparts needs to be inculcated and this can be achieved only through socialization at home.

### **Law and policy have failed to breach the private sphere**

The pertinent question has been and still is how to make women an equal partner in society and in nation building, one answer to this is through concerted efforts of policy and law and the unfortunate reality is neither has been wholly loyal to the cause of making women stronger. By steering clear of intervening in the ‘sacred institution of marriage’ the lawmakers have failed to criminalise rape within marriage. Even though the Protection of Children from Sexual Offences Act, 2012 criminalises sexual offences against children i.e. below 18 years of age, married women who are more than 15 years are not protected from marital rape because an exception in Section 375 of the Indian Penal Code, 1960 allows it. The lack of a legal recourse for a woman whose bodily integrity has been violated due to intimate partner violence underlines how vulnerable they still are within the safe confines of their own homes. Till the law allows men to assert their dominance in their personal relationship with women they cannot prevent them from doing the same in public.

The PWDV Act, 2005 was enacted after sustained campaigning spanning over a decade. The notion was that there should not be interference in “family quarrels” (Jaisingh 2009). We are grappling with a similar mind set when it comes to criminalising marital rape. Taking refuge in “mind set of the society to treat marriage as a sacrament” the present government has refrained from recognising marital rape as an offence. It seems that the State is oblivious to what one regressive decision can mean for incidences of crimes against women and power relations between the two genders. Legislating and policy making should not be mere stopgap measures. Every intervention has to be carefully deliberated by this government in its pursuit of gender equality.

Until India embraces the idea that the ‘personal is political’ and policymakers breach the protected private sphere, standalone measures to prevent public crimes against women only tantamount to paying lip service to the cause of controlling crimes against women.

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## Lead Essay

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## Headlines

### **In Defence of Globalization**

(Jim O'Neill, *Live Mint*, January 22, 2017)

Moreover, economic inequality among countries has declined sharply in the past 20 years, owing partly to China's rise, as well as to economic development across Asia, Latin America, and elsewhere. By 2010, the UN had already achieved its Millennium Development Goal of halving poverty by 2015, and recent projections suggest that, by 2050, poverty will be eradicated everywhere except Africa.

This will not happen without globalization. African countries, in particular, will need to trade more with one another, and there is talk of creating an African free-trade area. But this could prove difficult now that anti-trade sentiment is on the rise. Are globalization's critics—those who wrongly consider it a zero-sum game—against eradicating global poverty?

Read More: <http://www.livemint.com/Opinion/pfMVHKEGqIvhs5N4xId2dP/In-defence-of-globalization.html>

Date Accessed: 23.01.2017

## Economy

### **How the Aadhaar-linked payment system will change the game for digital transactions**

(Nitin Sethi & Sai Manish, *Scroll*, January 19, 2017)

With UIDAI suggesting it is on path to get this in place in a couple of months, the Aadhaar Enabled Payment System could give debit cards and e-wallets a run for their money. In contrast to what UIDAI is advocating, all other forms of digital payments require merchants to pay a fee or commission for the use of technology.

Read More: <https://scroll.in/article/827044/how-the-aadhaar-linked-payment-system-will-change-the-game-for-digital-transactions>

Date Accessed: 20.1.2017

### **GDP may further slow down if GST implemented in hurry: Tax officials to FM Arun Jaitley**

(*The Economic Times*, January 22, 2017)

Claiming that demonetisation has affected country's growth, a major central revenue body has asked Finance Minister Arun Jaitley not to implement Goods and Services Tax (GST) in a hurry and threatened to take legal recourse in case their concerns are not addressed. It termed as "illegal" certain decisions taken by Jaitley-headed GST Council and demanded that they be corrected. It also sought that the officer's body be consulted before any final decision is taken.

Read more at:

[http://economictimes.indiatimes.com/articleshow/56715491.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/56715491.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

Date Accessed: 23.01.2017

### **Budget Terms Decoded: What is a tax rebate?**

(*DNA*, January 21, 2017)

Tax rebate is the amount refunded to a taxpayer on their income tax if the rebate amount set is lesser than the tax they are supposed to pay. The rebate is available on the income tax before adding education and secondary and higher education cess. Only an individual assessee is eligible for this rebate and such an individual should be resident of India.

Read More at: <http://www.dnaindia.com/money/report-budget-terms-decoded-what-is-a-tax-rebate-2294770>

Date Accessed: 23.01.2017

### **Ease of business norms revised for states**

(*Ruchika Chatravanshi, The Economic Times*, January 23, 2017)

The Centre has pruned the business reform action plan for states that will require them to sharpen focus on improving licensing and related processes in health, pharma, fertilizer and transport for this year's ease of doing business rankings. The DIPP in consultation with states and World Bank has drawn up the new agenda that concentrates on 294 action points instead of 340 in last year's list. "We have not reduced the number of parameters but tried to avoid repetitions," a senior DIPP official said. "States' inputs have been factored in for the reforms they felt required to be taken up with greater urgency." DIPP has invited comments from states over the list likely to be announced by January-end.

Read more at:

[http://economictimes.indiatimes.com/articleshow/56723094.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/56723094.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

Date Accessed: 23.01.2017

## Governance & Development

### ***POLITICS AND GOVERNANCE***

#### **Photographs, Prime Minister and Paytm**

(*The Wire*, January 22, 2017)

As post-demonetisation politics kicks in, and as a number of states head into assembly elections, symbols, images and pictures are dominating Indian headlines. While in Uttar Pradesh son fought father over which faction would get to use the party's bicycle symbol, in Tamil Nadu protestors and the Supreme Court disagree over whether the bull represents the state's future or the past. Most recently, a calendar containing the pictures of prominent Indian leaders was the source of much controversy. Where there is much less doubt, however, are in the offices of President Pranab Mukherjee and Prime Minister Narendra Modi; both of which present two different approaches to the misuse and misappropriation of photographs.

Read More at: <https://thewire.in/101916/photographs-prime-minister-paytm/>

Date Accessed: 23.01.2017

#### **The many lessons from Swachh Bharat**

(Yamini Aiyar, *Livemint*, January 23, 2017)

It could well be argued that the Swachh Bharat Mission (SBM) is a textbook case of near perfect conditions for policy success. High-level political commitment; time-bound mission-focused targets and a clearly defined commitment to a measurable outcome—ODF. But, there is one critical missing ingredient—the lack of institutional capacity at the grassroots to deliver sanitation services. And this is the key binding constraint to achieving Swachh Bharat.

Read More: <http://www.livemint.com/Opinion/ZNhkGdgK0fvbvRWV02XDWL/The-many-lessons-from-Swachh-Bharat.html>

Date Accessed: 23.01.2017

#### **Jallikattu Ban Is The Last Straw On The Tamilian Back**

(T S Sudhir, *News Laundry*, 19 January, 2017)

Kaanum Pongal, the fourth and last day of the Pongal festival, is when people visit their relatives. Along the Tamil Nadu coastline, people flock to beaches to be amidst people. Chennai, it would seem, never returned from Marina Beach this Pongal. From a few thousands on Tuesday, the Marina wore a swollen look on Wednesday with more than 50,000 people marking their footprints on the sand. Students, teachers, software professionals, homemakers, film stars, just about anyone wearing his Tamilianism on his sleeve. Barring politicians, who were kept away. In fact, actor-turned-politician Khushbu of the Congress went to the Marina to express support in her capacity as a citizen of Tamil Nadu. The apolitical and leaderless nature of the peaceful protest gave it credibility.

Read More: <https://www.newslaundry.com/2017/01/19/jallikattu-ban-is-the-last-straw-on-the-tamilian-back>

Date of Access: 23.01.2017

### ***SECURITY***

#### **Crime Has Gone Up in Bihar, But Not Because of the Liquor Ban**

(P.J.Paul, *The Wire*, January 19, 2017)

The central claim of these articles cited the following graph, generated from figures obtained from the Bihar police. The author compared the total crime figure of 14,279 in April 2016 to 16,153 in October 2016 to arrive at a difference of around 13%, which was recorded as the increase in crime post the alcohol ban.

Read More: <https://thewire.in/100828/crime-has-gone-up-in-bihar-but-not-because-of-the-liquor-ban/>

Date Accessed: 20.1.2017



## Governance & Development

### EDUCATION

#### **Budget 2017 and Education: Why India needs to think global**

(Narayanan Ramaswamy; *Financial Express*, January 16, 2017)

For example, last year saw an allocation of Rs 72,394 crore, compared to Rs 68,963 crore for the year before that (about 5% increase). This comprised of Rs 43,554 crore (3% increase from Rs 42,219.50 crore the year before that) for school education and Rs 28,840 crore (7.3% increase from Rs 26,855 crore allocated the year before that) for higher education. Given the importance of human resources for a largely services-centric economy and with plans to boost the manufacturing sector, this was considered relatively low.

Read More: <http://www.financialexpress.com/budget/budget-2017-and-education-why-india-needs-to-think-global/509334/>

Date Accessed: 20.1.2017

### HEALTH

#### **Medical Journal Slams Indian Health System**

(*Daily News and Analysis*, January 18, 2017)

India vastly underperforms in terms of quality clinical research. Only 1.5 per cent of global clinical trials are done in India; and between 2005-14, fewer than half the medical colleges in the country published a single research article," the editorial states.

Read More: <http://www.dnaindia.com/health/report-medical-journal-slams-indian-health-system-2293576>

Date Accessed: 20.1.2017

### ENVIRONMENT

#### **After US, rising sea level may soon gobble up an entire island in Canada**

(*Down to Earth*, January 23, 2017)

Every year, the Lennox Island is losing about a hectare (2.47 acres), indicating what impact climate change could have around the world in future. According to Adam Fenech, director of the Climate Research Lab at the University of Prince Edward Island, sea levels could rise as much as three metres in the next 50 years. If that happens, half of the island could come under water.

Read More: <http://www.downtoearth.org.in/news/after-us-sea-level-rise-may-soon-gobble-up-an-entire-island-in-canada-56860>

Date Accessed: 23.01.2017

#### **Ceaseless sand mining of the Narmada puts the river at risk**

(Ishan Kukreti, *News Laundry*, 20 January, 2017)

In the late afternoon of January 5, 2017, Rahul Yadav and Pawan Yadav were on their way to the Narmada Bachao Andolan (NBA) office in Barwani, Madhya Pradesh (MP) on their bike. The Barwani district touches the borders of Gujarat and is approximately 180 kilometres from the Sardar Sarovar dam. Both NBA workers were returning after photocopying some documents. They were crossing Vrindavan colony in Barwani city when a truck almost hit them. They lost control of the motorcycle and crashed. Fortunately, no one was hurt. The two activists, used to the presence of the sand mafia in the region, turned around and followed the truck. "We got up immediately and chased the truck," Rahul said. They overtook the truck and stopped it. According to the First Information Report (FIR) Pawan later filed, the truck was carrying black sand. Illegal sand mining is rampant in the Narmada basin, despite court orders prohibiting it. Local activists have been trying to stop sand theft, drawing the ire of the local sand mafia.

Read More: <https://www.newslaundry.com/2017/01/20/ceaseless-sand-mining-of-the-narmada-puts-the-river-at-risk>

Date of Access: 23.01.2017

## Governance & Development

### *DEFENCE*

#### **An uneasy force**

(Prakash Singh, *Indian Express*, January 23, 2017)

Suggestions have often been given to the home ministry to bring about some kind of rotation in the duties of these personnel, so they have time to refresh themselves and recuperate. However, these ideas did not find favour with the mandarins of North Block. No wonder there is considerable attrition within the forces and large numbers go on voluntary retirement after completing the mandatory 20 years of service.

Read More: <http://indianexpress.com/article/opinion/columns/central-armed-police-forces-indo-tibetan-border-police-border-security-force-4487031/>

Date Accessed: 23.01.2017

## India and World

### *INTERNATIONAL AFFAIRS*

#### **The Nowhere People Next Door**

(Happymon Jacob, *The Hindu*, January 23, 2017)

Rohingya Muslims in Myanmar's Rakhine state, neighbouring Bangladesh, are not recognised by the Myanmar government as an official ethnic group and are therefore denied citizenship. Most Rohingyas are not qualified to be citizens of Myanmar as per the 1982 Citizenship Law, which was promulgated by the erstwhile military junta. While it is claimed that there were no Rohingyas in Myanmar before the British brought 'Bengalis' to Burma, there is sufficient evidence to show that the Rohingyas pre-existed the British-engineered migration (during the British occupation of the Arakan State in 1823) from present-day Bangladesh to Burma. Even those who arrived in Burma post-1823 could not go back to Bangladesh now given that they have no citizenship claims there. This effectively makes them a stateless people.

Read More: <http://www.thehindu.com/todays-paper/tp-opinion/The-nowhere-people-next-door/article17079996.ece>

Date Accessed: 23.01.2017

## Opinions/ Books

### 2016: a year of growing dissent

(Sunita Narain, Down to Earth, December 31, 2016)

In this last fortnight of 2016, there are reflections on our yesterday and coming tomorrow. This year, more than ever before, has been tumultuous, both in terms economic politics and nature's art. It tells us that something must give; something must change drastically so that our tomorrow is different, better and more secure. Just think of our yesterday; about Brexit, the election of Donald Trump and the erratic weather that devastated homes and farms of the poor across the world. Tomorrow will be worse. What we could have achieved with less effort yesterday will take even more tomorrow. Today, Delhi is horribly polluted. We know that. But what we don't realize is that politics and nature are changing so fast that actions that would have worked some days ago, now seem futile.

Read More: <http://www.downtoearth.org.in/blog/2016-a-year-of-growing-dissent-56559>

Date of Access: 23.01.2017

### Will The Uniform Civil Code Save The Indian Muslim Woman?

(Devanic Saha, News Laundry, January 20, 2017)

In the past few months in India, the debate around implementing a Uniform Civil Code (UCC) – a Lok Sabha election promise made by the Bharatiya Janata Party – has grown stronger. The All India Muslim Personal Law Board (AIMPLB), an organisation claiming to represent the right of Muslims, has vehemently opposed the move ever since, calling it an attack on Islam. Even though the proposed law covers all communities across India, the Hindu Right's overarching enthusiasm for UCC – articulated by BJP's leaders – has been interpreted as a desire to disparage Muslims and fuel Hindu-Muslim binaries for electoral gains, especially since Uttar Pradesh has elections next month. In their view, Indian Muslim women have been oppressed by "secular parties" and Islamic clerics and can only be saved from the shackles of patriarchy and oppression by this intervention. Such an assumption is deeply problematic. Most prominent feminists and activists have opposed the UCC in its present form, arguing that it is nothing but the BJP's mission to polarise the country and consolidate its Hindu vote bank. Their fears aren't unfounded.

Read More: <https://www.newslandry.com/2017/01/20/will-the-uniform-civil-code-save-the-indian-muslim-woman>

Date of Access: 23.01.2017

### In Diplomacy, Modi Must Realise That He Alone Cannot Move Mountains

(Arun Mohan Sukumar, The Wire, January 21, 2017)

If India's foreign policy is confronted with a volatile moment in its neighbourhood and beyond, Narendra Modi's inaugural speech at the 2017 Raisina Dialogue hardly reflected it. A few hours before him, China's president Xi Jinping had held forth on the virtues of globalisation from the World Economic Forum's perch at Davos. In contrast, Modi chose to highlight India's "transformative" potential, selling as he has done since taking office, New Delhi's arrival on the world stage. Xi's lecture seemed incredulous, but pundits have already begun to sing paeans anointing China as the new steward of the Washington Consensus. The Indian prime minister mercifully delivered a more sober assessment of geopolitics – "globalisation gains are at risk", said Modi, and rightly left it at that – but his rosy vision for India's external relations seemed boilerplate. The Raisina Dialogue was an opportunity for him to acknowledge that the initial years of his personality-driven diplomacy were over, and that it was now time for New Delhi to roll up its sleeves and consolidate its relations with major powers. Rather than gird Indian foreign policy for the unpredictable times that lie ahead, however, Narendra Modi relied once again on his "can do" narrative – whose utility and indeed, necessity, has dimmed since 2014.

Read More: <https://thewire.in/101760/diplomacy-modi-must-realise-alone-cannot-move-mountains-raisina/>.

Date of Access: 23.01.2017

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