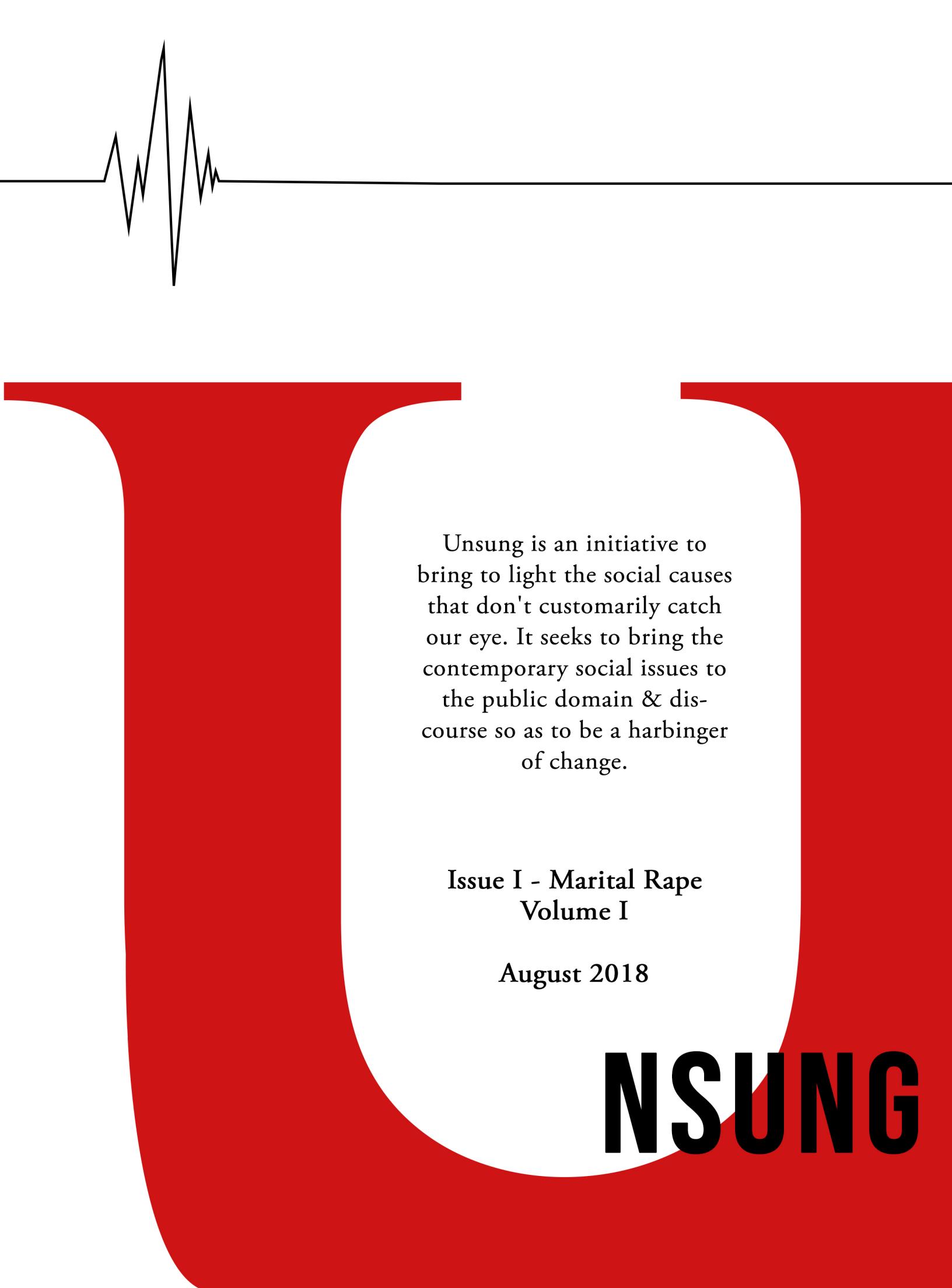


UNSUNG





Unsung is an initiative to bring to light the social causes that don't customarily catch our eye. It seeks to bring the contemporary social issues to the public domain & discourse so as to be a harbinger of change.

**Issue I - Marital Rape
Volume I**

August 2018

NSUNG

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iving in a democracy, developing at rapid pace, shattering everything that sounds orthodox, trying to accommodate within trendy lifestyle, opening minds and achieving freedom in every dimension of life. That's us, free citizens of India.

You and I, can sit right about anywhere we wish, talk about anything we want and get our days going anyway we fancy. Sadly though, sometimes some of us hold back. We hesitate in dealing with the matters that must be dealt with, mining lame reasons to justify evils and injustice, leaving behind the victims of miserable social situations, and quite confidently portraying everything to be going just great. How can we expect to grow into a strong, independent country if the citizens aren't independent themselves? Maybe you and I are, but what about the girl who got married off at twenty-one? Is she really with someone whom she can call her better half or is he someone tearing her into halves? Let us be bold here to introduce you to a **nerve-wracking social scenario, called 'marital rape'**, an act of sexual intercourse with one's spouse without their consent.

There are many cases where women are prey to such marital rapes in our country. Yet, **there's no term recognized as marital rape in India, neither by the law, nor by the society.** The constitution of our nation gives primacy to marital status over consent. Why? Because it's a tradition, as per the Supreme Court of India. A tradition of our patriarchal society where a man owns full rights over his beloved wife who he once vowed to respect and protect, in her sickness and her health.

Women in India have been a constant prey to sexual, physical and mental abuse by their husbands. A report by Rice Institute stated that the **number of women who experienced sexual violence by husbands was 40 times the number of women who experienced sexual violence by non-intimate abusers.** And such reports are based on a rather small number of women confessing and talking out the crimes faced by

Women in India have been a constant prey to sexual, physical and mental abuse by their husbands. A report by Rice Institute stated that the **number of women who experienced sexual violence by husbands was 40 times the number of women who experienced sexual violence by non-intimate abusers.** And such reports are based on a rather small number of women confessing and talking out the crimes faced by them. There are greater number of women who don't report the harassment due to the pressure by their families, fear of husbands or simply because it could defame the family name. Because there's no law against it and because the society approves of it, some men have been raping their wives, by taking their no to be a misspelt yes.

Even if a woman wants to report, where is she supposed to go? The police often doesn't address such complaints as seen in majority of the cases. And the family members advice the women to accept it as it's **her duty to fulfill her husband's every sexual desire.** Neither is the law of any help. The Indian government pushed back at suggestions that marital rape be outlawed, saying that such a change could "destabilize the institution of marriage."

Section 498A of the Indian Penal Code which addresses cruelty by a husband doesn't include sexual violence.

Section 375 of the Indian Penal Code which addresses rape against a woman has an exception which states that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.



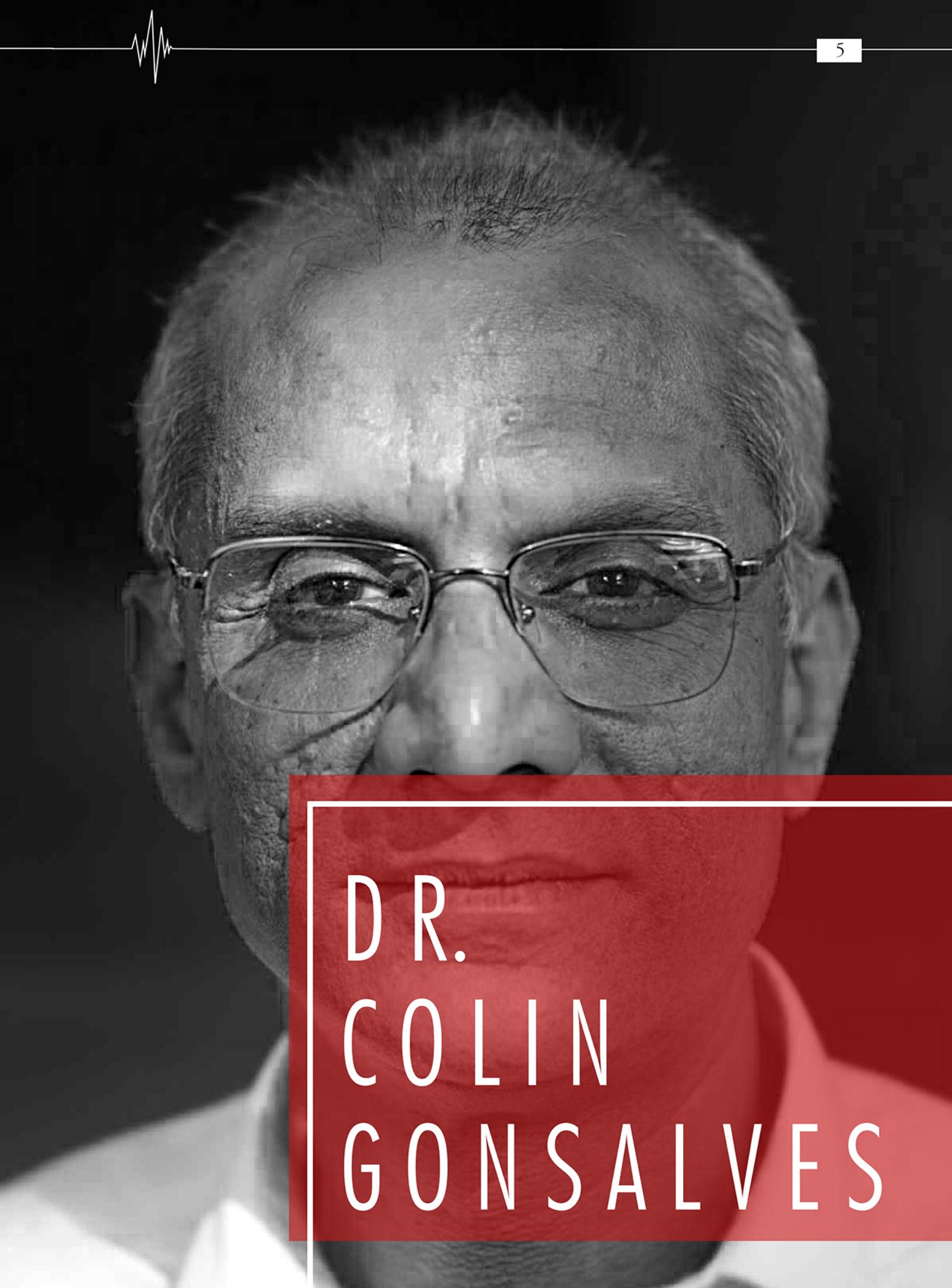
Some say that the Domestic Violence Act 2005 covers the marital rape cases. But instead, it is a civil law that gives relief to abused wives. Under it, a woman can only seek protection or civil relief, not criminal prosecution.

Even after many petitions filed to the High courts, there is little that has been done.

After the dreadful Nirbhaya case, where a woman was gang raped in New Delhi in December 2012, an ordinance was drafted by a committee led by Justice J S Verma. **One of its points was to criminalize marital rape.** But to our grievances, it wasn't accepted and justice was denied once again to thousands of women facing this brutality at their homes every single living day.

This heinous crime will continue to affect our society, until there is enough awareness among the people and until there are strong laws against the offender of marital rape.





DR.
COLIN
GONSALVES

C

olin Gonsalves is a designated **Senior Advocate of the Supreme Court of India and the founder of Human Rights Law Network**. He specializes in human rights protection, labour law and public interest law. He has been awarded with the Right Livelihood Award for the year 2017.

He has been arguing on behalf of many petitioners, submitting that the possibility of married women fabricating complaints of rape against their husbands is not any different from unmarried women doing so. He also suggested that marital rape does not have less serious consequences than non-marital rapes, so as to merit decriminalization.

Gonsalves has sought the striking down of the Exception II clause under Section 375 (offence of rape) of the Indian Penal Code which says that **non-consensual sexual intercourse by a man with his wife, in case the latter is above 18, is not rape**.

Unsung: What are your views on marital rape and should it be criminalized in India?

Colin Gonsalves: Marital rape is now criminalized around the world, in most of the countries. But those countries which are socially and culturally backward, they have still retained the provision that marital rape is not rape. Among those backward countries, socially and culturally backward countries, is naturally, India. Thus, India still says marital rape is not rape.

U: Countries of the Indian subcontinent like Nepal and Afghanistan too have laws against marital rape.

“all statutes should just be in favour of women”

Why is India on a backfoot?

CG: Yes, Nepal supreme court says, that there can be no exemption to any kind of rape. And likewise, many other countries of the world. So therefore, the time has come for India to join the bandwagon of enlightened countries and enlightened thinking, which we always think we Indians have, but we don't. So we have to leave this thinking of ours behind, and move forward.

U: There is a notion put forth by the supreme court that laws against marital rape laws are not being framed since they could be misused like 498A. How

valid is this reason?

CG: Firstly, there is only slight misuse of 498A. But when there's a misuse of an act, the focus should be on doing away with the misuse and not the act itself. For instance, with freedom of speech, comes defamation. People misuse freedom of speech, but there we try and control defamation and not scrap down the law itself. Similarly, all statutes should be just in favor of women. And I say this because in the Indian tradition, the difference between men and women is huge. Economically, socially, mentally, in every aspect women are considered to be at the lower side of the ladder. Women in India will even be considered to lower than a cow, lower than other animals. So in set cir-

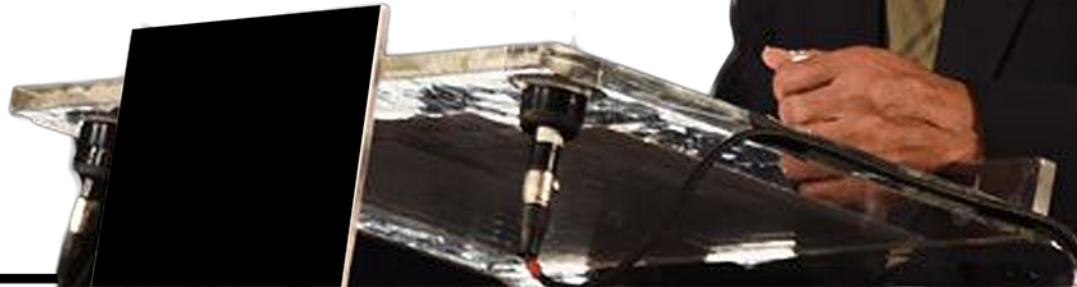
cumstance to say that it is misused and hence do away with the law is not correct.

U: Maneka Gandhi, Union Cabinet Minister for Women & Child Development, once quoted, “ Marital rape cannot be applied to the Indian tradition” and the centre has been on the side that “Marital rape could destabilize the institution of marriage”. What possible justification could there be for the Women Development minister and the legislature itself to quote this?

CG: Maneka Gandhi doesn't know what she's talking about. She doesn't even deserve to be the Women Develop-

**“IF THERE'S A TRADITION,
CRUSH IT TODAY”**

- Colin Gonsalves



ment minister! UN studies in UP, Orissa and Rajasthan show that 50% men are admitting that they are having sex with their wives even when she says no. And to say that it doesn't apply to the Indian tradition is stupidity. I think, to use violence against your wife, is prevalent more in the Indian tradition than other countries.

U: What do you propose the law for marital rape and its punishment should be?

CG: The law is simple, today we have an exception to rape, just remove this exception.

U: If there is to be a law against marital rape, there would be some rights for the accused and the complainant both. Should the accused have a right to interrogate the women or not? Would this lead to traumatizing the woman?

CG: Yes there would be heavy interrogation like any other case in court. But Supreme Court has already laid down guidelines so that the woman is not traumatized. For example, a screen is placed between her and the man in the trial court. The questions are given to the judge where he asks them. So there's no traumatizing or harassing of the woman.

U: Should rape against men be considered while framing the laws for marital rape? Should there be gender neutral rape laws so both spouses could claim it?

CG: I think it should be only one way

that is to say, only a man imposing himself on a women and I say this because the moment you have it the other way, you have a huge chance of counter cases which could scare the woman.

U: When we say we have equality for gender before the law, why shouldn't there be equality in rape laws?

CG: There shouldn't be for sure, because equality in the Indian constitution is not a level playing field. It is purposeful. Socially relevant equality, namely, that the constitution itself permits special benefits in the favor of women. So we understand that women and men don't have an equal level and thus not everything can apply equally. It is only when you give women additional special benefits that they can be set to be equal. So equality includes purposeful discrimination against men, discrimination in favor of women to bring them up to power. Thus implying equity.

It shouldn't be such that if there's a statue for women, there should be a statue for women. No, there should only be a statue for women.

U: One of the major problem to this law would be to bring in a proof of the existence of rape in a marriage. How could this be tackled?

CG: The proof in a marital rape case would be same as the rape case. In most rape cases there's no witness and Supreme Court has said that corroboration is not necessary. So the unwavering, unflinching testimony of the victim would be considered as she's cross-examined for many days and the judgment would be sided based on the whole story.

U: After the law comes, it is expected to takes 5 years for one rape case's proceedings. On this note, a woman would be harassed for several months and months. And justice delayed is justice denied. How do you propose the punishment to be?

CG: Yes there are a lot of cases but then there are a lot of people who can stand with them. So start fighting against it. And when you take 10-15 men behind bars for raping their wives, then they will get the fear of god in them.

U: There's an Indian tradition wherein the first night after marriage has to have sex. And more than half the

women don't know the men they're marrying to, thus the tradition would simply mean rape. Does that mean every Indian man should be behind the bars?

CG: First of all, there should be no such tradition. And if there's one tradition like this, it is unconstitutional. There can be no such acceptable tradition which involves rape. If this happens, we are promoting that on the first night rape is permissible. It's like sati. So when we say tradition, we are talking about legal and constitutional traditions. So there should be no such tradition that you're entitled to rape your wife on the very first night of your sacred marriage. And such traditions should be crushed, today

“Women in India will even be considered to lower than a cow”

itself. “If there's a tradition, crush it today”

If you say tradition, then there's a tradition of child marriage also. But that's illegal and that simply is rape. So the conclusion of the story is if she says no, it means no.

U: In our nation, this physical and sexual violence is accepted in marriage by women, as they aren't aware that this is wrong and they shouldn't suffer from such a crime. What can we, as a society do, to make them aware?

CG: See firstly, every woman understands that when a man insists on having sex with her violently even when she says no, there is something wrong in this. So we should not say that women are not educated, they do not understand, they have low awareness levels. This is a very condescending language.

Women understand fully that violence against them even by their husbands is wrong. But they feel that society supports a man against a woman. The whole legal system, policeman, they all are for men against women. Can a woman come out and speak that her man is wrong and he rapes her? No! She'll be kicked out of the village that day. Let us not go by the victim's agreement to have violence against her. She says this due to the pressure of the society.



So we must change our thoughts and never think she is unaware. And there's no requirement of any such awareness; but instead tell her how she can take her husband to court and punish him. So always say women know, we have to stand with them and help them get their rights straight.

U: Even the children in many parts of the country have this mentality because they are taught of the superiority of men and this patriarchal society. So how can this be mentality changed?

CG: This will change when there's an uprising of women. We have to organize women. Once upon a time there was an uprising against Sati. And that's how the sati act came. Similarly there was an uprising against child marriages, and that's how child marriage act came. Likewise an uprising against marital rape should be there, so there could be a law against it. And that will happen when young middle class people start taking initiatives. Take up causes when a woman is

raped. Be with her, form an organization, raise your voice.

U: Do you think sex education could improve the current situation?

CG: The best education is the use of the law to punish men when they use violence against women. There would be a lesson only when they get a danda(beat-
ing with a stick) on their heads. Because Indian men are very cruel and unless they get the danda of the law, they won't learn. One good example would be set if some of them go to jail, then many would get a lesson. But in answer to the question, yes, there should be sex education right from the beginning that boys are not meant to harass girls, whistle at girls, make fun of girls and respect them when they say NO.

U: A recent law was passed where if a man rapes a girl below 12 years of age, he would be put behind the bars. Do you think the age limit is right or should it be extended to women of all ages?

CG: Any person, against whom there is

violence, needs to get justice. Any kind of violence is simply a crime. So any female, below 12, above 12, married, unmarried, if sexual offence is committed against her, the offender has to go to jail, there should be no doubt of exemption to it.

1

- In India, marital rape exists in data, but not in the law.

2

- According to Section 375 of the IPC: “Sexual intercourse by a man with his own wife, the wife not under 15 years of age, is not rape.”

3

- 1 in every 5 Indian men admit to forcing their wives into sex, according to a 2011 study by the International Center for Research on Women.

FACTS



4

- On an average, at least one in three women is beaten, coerced into sex or otherwise abused by an intimate partner in their lifetime.

5

- A study in two South Asian countries by the UN found that between 74% and 94% of the police force said that a husband is allowed to rape his wife.

6

- After the horrifying Nirbhaya Case, an ordinance was brought out by Justice Verma committee to criminalize Marital Rape in India. But unfortunately, it never got the acceptance to be framed as a law.

FACTS

INTERVIEW WITH SURVIVORS



AALI is a feminist legal advocacy and resource group addressing women's issues through a rights-based perspective.

It envisions an egalitarian social system that recognizes women as complete individuals and equal human beings through advocacy for women's human rights.

AALI group helped us contact the women who have been a prey to marital rape and with the organisation's help, managed to step out of the the cruelty faced in their marriages.

Sushma

According to Sushma - Sushma had no relation with her husband for some days after marriage, because her husband used to violate her for dowry. He used to shout at her saying that her parents had not given enough dowry. When Sushma asked her mother-in-law, why she quarreled with her, the in-laws said that the wife should always be under her husband's obedience and her husband should be her god. She should do whatever he said, and that she does not have the right to speak. Sushma said that her husband is proud that everything in the house is due to him.

Her mother-in-law told Sushma that she should please her husband. After that, her husband began to build up her relationship with her. Before having sex with her, he asked her if she had any relationship before? If she had any boyfriends?

Her husband used to shoot recordings while talking to her and making love to her. Even after refusing, he used to forcefully impose himself on her. Her husband did not record the face as his half-part video, only the other half was visible. When Sushma blackmailed that she would leave the house and go to her mother's, her husband scattered all her stuff and refused to let her go.

After (gauna) coming to her husband's home, she had to make a lot of compromises with and for him. Sushma's in-laws did not allow her to go to her mother's house for 8 long months and forcefully made her stay. Later Sushma told everything to her mother. Her mother made her get a health checkup. Sushma said that her husband used condoms and wanted to defame her by claiming her that she had a relation with somebody else.

सुषमा

सुषमा के अनुसार – सुषमा की शादी के बाद कुछ दिन तक अपने पति के साथ कोई रश्ता नहीं था क्योंकि, उसका पति सरिक दहेज़ की वजह से हसिं करता था, और कहता था, कि उसके माता पति ने दहेज़ में सामान कम दिया है। सुषमा ने जब अपनी सास से पुछा, कि क्यों मुझसे झगड़ा करती है, इस पर ससुरालवालों का कहना था कि पत्नी को दब कर रहना चाहती और पत्नी पति के पैर की जूती होती है, उसे बोलने का अधिकार नहीं होता है। | सुषमा ने कहा उसके पति को घमंड है की घर में सब कुछ उसकी वजह से है। | सास का ने सुषमा से कहा कि तुम अपने पति को अपनी तरफ रद्दियों | उसके बाद उसके पति ने उसके ज़बरदस्ती रश्ता बनाना शुरू किया उसका पति रश्ता बनाने से पहले पूछता था की किसी पहले उसका रश्ता बना तो नहीं है? उसका कोई दोस्त तो नहीं है।

उसका पति उससे बात करते समय व रलिशन बनाते समय रकिर्डिंग करता था। | सुषमा के मना करने के बाद भी जबरदस्ती करता था। | उसके पति ने उसके आधे पार्ट का वीडियो बनाया चेहरा नहीं दिखि रहा था सरिक आधा पार्ट ही दिखि रहा था। | सुषमा जब मायके जाने की बात कर रही थी

तब उसके पति ने उसका सारा सामान बखिर दिया और जाने के लए मना कर दिया। | गौना करवा कर लाने के बाद उसके साथ जबरदस्ती समन्ध बनाता था। | त्योहार पर सुषमा के मायके वालों के बुलाने पर घर नहीं जाता था। | सुषमा 8 महीने तक अपनी ससुराल में रही उसका पति रोज जबरदस्ती करता था। | सुषमा ने सारी बात अपनी मम्मी को बताई मम्मी ने उसका मेडकिल चेकअप कराया। | सुषमा ने कहा उसका पति कंडोम इस्तेमाल करता था और उसको बदनाम करना चाहता था की उसका रलिशन किसी और के साथ है।



सुषमा का केस देख रहे वकील को भी उसके पति ने खरीद लिया था। | सुषमा का दमिग पीछे ही जाता है कि उसके पति ने उसके साथ वशिवासधात किया है वो दोबारा वहां जाना नहीं चाहती मगर सुषमा के मम्मी पापा चाहते हैं की वो वापस जाये वो लोग ये भी कहते हैं की आली से कह दो कि अलग व्यवस्था करे। | मम्मी घर में रखने के लए मना करती है। | उसकी दो बहने और है एक बहन बाहर रहती है एक बहन घर में रहती है एक भाई है पापा रटियर्ड हो चुके हैं। | सुषमा ने कहा आली में अपनी बात बताने के बाद उसको शांति मिल रही है की किलोग उसकी मदद कर रहे हैं। | जो लेडीज़ के

The lawyer who was looking after Sushma's case was also bought by her husband. Sushma's mind goes back to think that her husband has betrayed her. She does not want to go there again, but Sushma's parents want her to go back. People say that she should be handed over to AALI organization where she would be taken full care of, as her mother refuses to keep her in the house. She has two sisters and one sister lives outside. A sister lives in the house. She also has a brother and father has retired.

Sushma said, after telling her story, she is now in peace that people are helping her. Those ladies who are falling prey to such wrong deeds, they should dare to raise their voice and oppose the wrong thing. Sushma said that a wife should get respect from the husbands, equal rights should be received. Voice should be raised against the wrong thing, or the husband will continue to exploit her wife.

Sushma does not want to go back to her husband.

साथ गलत हो रहा है वो लोग हमिमत कर के आवाज उठाये गलत बात का वरीध करे | सुष्मा ने कहा – पत्नी को पत्नी से सम्मान मलिना चाहयि, बराबर का हक्क मलिना चाहयि गलत काम के खलिफ आवाज उठाना चाहयि वरना पतलोग तो शोषण करते ही रहेंगे | सुष्मा वापस नहीं जाना चाहती है |

SITA

According to Sita - After 6 months of her marriage, due to less dowry, a trouble began in her in-laws' house. Her husband used to suspect a lot. Things were all right for one month but after one month her husband forcibly had sex with her and if she would refuse, he used to beat her. And even after beatings, Sita was forced to have physical relations with him. This troubled her a lot.

Before coming to AALI, Sita had not told anyone about her problems. She had lost her parents and her brother is still young, therefore could not tell anyone anything. Her husband used to be very coercive with her because of which she left him and came home. Sita said - If she said no to having sex with her husband, he used to beat her, shout curses at her, tear her clothes, did not provide her with bed for sleeping and put her on the cold bare ground. This torture has been taking place for twenty years now. Sita wants to divorce her husband. According to Sita - when she came up to AALI and told all the details, she was comforted.

सीता

सीता के अनुसार – उसकी शादी के **6** महीने बाद से ही कम दहेज की वजह से ससुराल में परेशानी शुरू हो गई थी। उसका पतशिक्की टाइप का है। एक महीने तक सब ठीक था मगर एक महीने के बाद से उसके पति ने ज़बरदस्ती शारीरिक सम्बन्ध बनाता था और अगर सीता मना करती थी उसके साथ मार पीट करता था और मार पीट करने के बाद सीता से ज़बरदस्ती शारीरिक सम्बन्ध बनाता था। जिसी की वजह से सीता परेशान रहने लगी।

आली में आने से पहले सीता ने किसी को भी अपनी परेशानी नहीं बताई थी। माता पति नहीं है भाई छोटे हैं इसलिए किसी को कुछ भी नहीं बता पाई। सीता के अनुसार – जब आली में आकर सारी बातें बताई तो उसे सुकून मिला। उसका पति उसके साथ बहुत ज़बरदस्ती करता था जिसकी वजह से वो उसे छोड़ कर अपने घर आ गई। सीता ने कहा – अगर वो समंध बनाने के लिए मना करती थी तो उसका पति उसके साथ मारपीट करता था, गालिया देता था, कपड़े फाड़ देता था, सोने के लिए बसितर नहीं देता था, ठंड में ऐसे ही जमीन पर डाल देता था। बीस साल से टारचर हो रही है। सीता अपने पति से तलाक चाहती है।

"It is the crime that has been going on since ages and is still not considered crime as it is happening in between a married couple; So what?"

"The word ***marital*** does not justify rape."

"Rapist should feel the same torture they do on the victim. They should be punished."

VIEWS OF PEOPLE

"A **NO** means **NO**. It doesn't matter if she's your girlfriend, relative, prostitute or even your wife. If she says NO, you stop right there."

"The moment you force them, you should be convicted of marital rape, without any second thoughts."

"We need to take initiative to change our mentality and changing that of at least one person if not many."

"Marital rape is simply grounded down in the name of marriage. It is a disharmony in the nation. It kills the human emotions."





Sheets crumpled with ends ruffled,
Tainted love left even the courts baffled,
Threatened, they declared it uncultured.

As nothing gold stays, this marks the end of Volume I.
We hope you liked our sincere efforts behind this edition.

The next volume comes next friday.
Stay tuned.
Cheers!