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# NICKELED & DIMED



**TRENDING**

**MARTIAL RAPE  
CULTURE OVER CONSENT**



**ICNES**

Centre for New Economics Studies

# MARITAL RAPE - CULTURE OVER CONSENT

BY GARIMA AGARWAL  
ISHITA SETHI



Marital Rape involves forceful and non-consensual sexual activity between spouses where the victim is physically and sexually abused by their spouse. Rape, as defined in the Indian Penal Code under Section 375, is “sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud at a time when she has been intoxicated or duped or is of unsound mental health and in any case, if she is under 16 years of age except for sexual intercourse by a man with his wife, the wife not being under fifteen years of age”.

The Indian law holds an anachronistic view on conjugal relationships. The government feels that criminalizing marital rape would “destabilize the institution of marriage” and allow for the possibility of false allegations used to harass the husband for personal or economic gain.

The judicial system overlooks the need for criminalizing marital rape to save the sanctity of the institution of marriage. In the 1890 case of Queen-Empress v. Haree Mythee, the defendant raped his wife of 11 years old, leading to her death. The Calcutta High court had only announced punishment to the husband because the wife was 11 years old. In Sreekumar And Anr. vs Pearly Karun, 1999, the wife had alleged that she was forced to have sex with her husband against her will. However, the Kerala High court believed that since the wife and husband were not under a decree of separation, there was no crime. The ideological approach taken towards these judgments is problematic as marital rape is seen differently from the criminal act of rape.

Marital Rape is a violation of the rights of women. Exception 2 to section 375 of the IPC is a violation and infringement of a women’s right under Articles 14 and 21 of the Indian Constitution. Article 14 of the Indian Constitution states that “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, Protection prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.” Exception 2 discriminates between married and unmarried women, giving more protection to the latter. The purpose of Section 375 is to protect women against sexual abuse from men. Enacting exception 2 at the same time deviates from the whole purpose of this section.

On one hand, it penalizes strangers for engaging in this activity but at the same time provides leeway to husbands, allowing them to sexually abuse their wives as they know no law would exempt them from attempting this inhuman activity of rape. Furthermore, many of the victims are housewives and financially dependent on their husbands, so as a result, they might not have an alternative livelihood option available to them or their kids. Hence, it could be said that Exception 2 violates the right to equality enshrined in Article 14 insofar as it discriminates against married women by denying them equal protection from rape and sexual harassment.

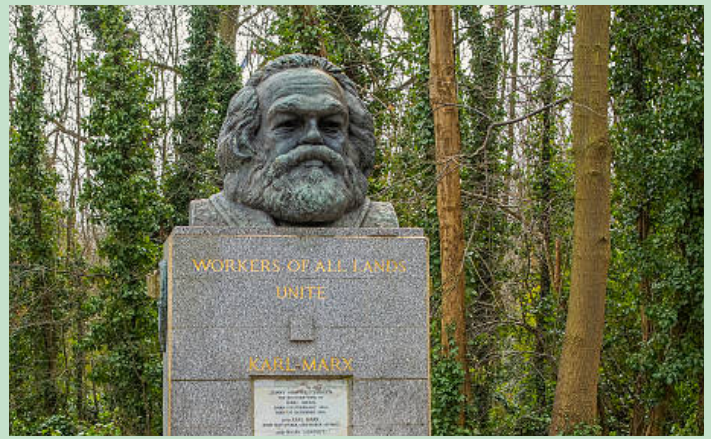
Article 21 states that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Article 21 bestows on all citizens the “right to life, meaning, every individual has the right to live a healthy and dignified life”. However, Exception 2 contradicts the ideals of Art 21 by denying the wives, who have been victims of marital rape, the right to a healthy and dignified life by failing to deter the husband from engaging in forceful sexual activity which traumatizes the wife leading to physical and mental trauma.

## Conclusion

The criminal justice system modifies the definition of rape by not acknowledging and criminalizing the husband’s violent and non-consensual act of intercourse with his wife. The judiciary seems to be completely oblivious to the fact that rape is possible in marriage and marriage cannot be taken as a defense to save the rapist from the crime. This prima facie violates Articles 14 and 21 of the Indian Constitution. This non-criminalized crime is a major concern, and the Judiciary must take concrete steps to protect women from sexual assault and violence.

# WHAT'S WRONG WITH THE COMMUNIST MANIFESTO?

BY NACHIKET MIDHA



*The Communist Manifesto* was first published almost two centuries ago in 1848. Though it has lost its earlier relevance, its echoes are felt even today. In the latter part of the 19th century and for a greater part of the 20th century, this book, and the ideas that Marx and Engels laid in it, dominated the political and societal discourse. From the Bolshevik revolution to anti-colonial communist movements in Asia and Africa, this book became a rallying point. Reverberations of Marx's ideas also came to the fore during the Iranian Revolution of 1979. However, one must note that every text/theory has its problems, and *The Communist Manifesto* is no exception. To that end, this article aims at discerning some problematical aspects of this text.

To begin with, the first point of contention in the text appears at the very end of the first chapter of the manifesto "Bourgeois and Proletarians". In this chapter, Marx and Engels describe the historical background that gave rise to the bourgeoisie. And, they simultaneously explicate a comparable process that will give rise to the proletarians as a united force, eventually overcoming the bourgeoisie. Now, in the text, a conspicuous statement follows this assertion of the shift from 'competition to an association,' i.e., "It's [(the bourgeoisie's)] fall and the victory of the proletariat are equally inevitable." This claim in stressing the "inevitability" of something, Marx and Engels are downplaying or, to use a more hefty term, *neglecting* human agency/choice.

Now, one might argue that this criticism focuses excessively on a mere semantic vagueness that appears in the text. However, it is not merely semantic but a logical contradiction in the authors' claim itself. Another concern is that by downplaying the role of human agency through this weightage on the "inevitability" aspect, Marx and Engels contradict their earlier claim regarding the proletarian consciousness. Their claim that "The proletarian movement is the *self-conscious*...movement of the immense majority" runs contrary to this claim about the inevitability of the parallel rise and fall of the proletariat and the bourgeoisie, respectively.

Towards the end of chapter two, the authors move towards laying a predictive plan of how a communist society might come to being. In producing this system/plan, Marx and Engels initially give primacy to democratic means. They maintain that the proletariat must win "the battle of democracy" as a first step followed by wresting "all capital from the bourgeoisie" to "centralize all instruments of production." The problem becomes apparent when the authors argue that "*In the beginning*, this [centralized production] cannot be effected except by means of despotic inroads". The problem is also with the ambiguous phrase, "In the beginning" which hints at very pernicious politics. Retrospectively it is easier to claim now that this ambiguity, regarding the contours of this "beginning," lasted for more than eight decades in the communist USSR that remained largely despotic before its dismantling.

Marx and Engels now proceed towards sketching a 'Ten Point Programme' for its future implementation in their supposed communist society. In this program, the authors, as a corollary of the above-mentioned 'despotic inroads,' mention ten crucial points regarding the management of a communist society. The first eight points are not very contestable since they fit well in the authors' broader arguments regarding the abolition of private property and the setting up of a strong centralized state. The ninth point is distasteful since it states that "...[the] gradual abolition of the distinction between town and country, by a more equitable distribution of the population over the country." This point is indicative of the undue power and control that Marx and Engels want to give to this supposed communist state by giving it the authority to relocate its citizens. By providing this communist state such vast authority over its citizenry, the authors are deepening those perceivably ominous "despotic inroads".

This essay was a modest attempt at tracing some of those problematical aspects of the manifesto. In doing so, this essay highlighted some vague, ominous, and contentious ideas that were problematic both at the broader societal and individual levels under the supposed communist regime that Marx and Engels theorized.



# WHAT HAPPENS TO EMPLOYEES WHEN A COMPANY GOES BANKRUPT?

BY NANDINI AGARWAL



The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") has brought a dynamic change in how the law treats companies undergoing insolvency and bankruptcy. This Code allows the company to reform and obstruct premature liquidation hence saving jobs and providing the company an opportunity to grow. However, despite the benefits that the Code provides, there are some problematic areas that are yet to be corrected. Even though the Code has undergone several amendments in the last 6 years, it is yet to bring provisions for issues that are faced by the employees during an insolvency process. Human Capital is integral for a firm. Its importance has been recognized by multiple countries such as the US, Japan, and Sweden.

Employees are deemed to be expendable during bankruptcy due to which, while waiting to receive their wages, the employees use up their savings and are left with no financial security. One of the hardest obstacles that a resolution professional may face while planning to restructure a company is the legacy cost—wages, pensions, and benefit schemes which cost enormous amounts of money. Moreover, aside from the financial problems that the employees face during the insolvency process, there is also the emotional turmoil that they go through due to the loss of job security along with financial distress.

The Code does have mechanisms that allow employees to claim their salaries and wages which were unpaid in the course of business up to 12 months before the liquidation process is initiated. Workmen can claim their dues for twenty-four months.

Section 53 of the Code provides a waterfall mechanism. It states the priority based on which the proceeds—obtained from liquidation—are distributed. Each category is to be paid in full before the next category is considered. The subcategories within each category are paid *Pari Passu* (side by side on equal footing). The issue here is that employees and workmen face here is that financial creditors are given preference before the operational creditor. As per the committee in 2015, the resolution plan should provide for workmen and employees. This will enable them to initiate insolvency proceedings so that instead of waiting around for years and delving into their savings, they can settle their dues quickly before they are able to move on to another job.

However, when it comes to liquidation, the operational creditor receives peanuts while the financial creditors recover at least a part of their loans due to the waterfall mechanism. In short, it is skewed towards financial creditors rather than employees.

During the pandemic, the minimum requirement was raised from 1 lakh to 1 crore rupees. It made it difficult for employees to initiate proceedings against the company considering that, unlike financial creditors, the Code does not allow operational creditors to club together and file an application for insolvency of the corporate debtor. This change was necessary during the pandemic as it helped reduce the burden on the tribunals by reducing the number of cases being filed significantly. However, this measure was initially supposed to be temporary, but it seems to shift towards a more permanent policy which raises great concern since the average wage in India is less than 10,000 rupees as per the ILO report 2012.

The IBBI is yet to find a way that would provide a sense of security for the employees of a business that is on the verge of liquidation. For an employee, a buyout is a good strategy to rescue a company and has proven to have positive outcomes for all stakeholders. This method has been rather successful in other countries and therefore there is a possibility that it may be equally successful in India as well.

There exists a disparity between the rights of employees and workmen. Even though the courts have attempted to bridge the gap, it is still difficult for employees to get their dues if a company goes into liquidation. The aspect of job security and turmoil is not taken into consideration. Employees should be given more importance so that they can ensure their financial stability and find another job instead of waiting for the company to wind up or implement a resolution plan. It would reimburse them after a long time has passed but their savings would be drained out.



# REFORMING INDIAN HEALTHCARE AND MOVING TOWARDS UNIVERSAL COVERAGE

BY AMANDEEP SINGH BAMRAH



Amartya Sen and Jean Dreze present a powerful analysis of the underlying problems hindering India's flight to true progress and freedom. Education and healthcare form the foundational blocks upon which the socio-political and economic journeys of a nation are built, and the two distinguished economists urge the government, and more importantly the people of India, to go back to the basics. They prescribe the overarching path of social awareness and collective action to move towards sustainable economic and human development. This powerful diagnosis and prescription, presented in their seminal work "An Uncertain Glory", was published in 2013. This article intends to revisit the findings and recommendations of this powerful work, and also analyze how far they remain relevant eight years later.

## Bringing Healthcare into the Living Room

On the second problem, the country may have just made unintentional yet fortunate progress with its experience of the coronavirus pandemic. Discussions around health, ranging from medication, hygiene, and public health to relatively conspicuous things like ventilators and oxygen cylinders, were violently propelled into living rooms and forums across the country. The most impactful outcomes on healthcare are not to be found in shiny new super-specialty hospitals, but rather in a renewed focus on primary and public health, with an agenda to keep people "healthy and at home".

## Miles to Go with Little to Go Around: Public Expenditure Levels

Following Sen and Dreze's check-up of the Indian healthcare sector, this article will trace the trajectory of select indicators as discussed by the two economists. This analysis begins by revisiting the issue of low public expenditure on health. Healthcare is the best example of a publicly provided private good with tremendous positive externalities for society, and equally disastrous consequences if it is not properly provided to all. In the call for increasing public spending on health, there is no question of the political ideology of the left versus the right.

## Problems with Targeted Insurance

India's poor face the double whammy of lack of access to public health, as well as an unaffordable, and arguably equally inaccessible private health sector. This is where the Indian state has decided to skip the essential step of social infrastructure creation and move towards the ambition of targeted health insurance. However, it is nearly impossible to implement a sustainable "targeted" health insurance scheme due to issues such as adverse selection and moral hazard, the basic economic arguments which are already well entrenched, for instance, in the government school system.

## What Needs to be Done?

India's progress across health indicators points to an optimistic path for the future. At the same time, there is a need for impatience when it comes to increasing the level and pace of this progress. Since healthcare involves multiple stakeholders, there is no definitive one-stop solution. As a result, this article is the first, in a series of solution-oriented pieces looking towards addressing persistent problems and moving towards an efficient healthcare system that takes everyone along.

With that said, all roads and efforts towards better healthcare must ultimately contribute to the idea of "Universal Health Coverage" (UHC). This focus on UHC would surely start at the very basic level, with a truly "primary" role for the Primary Health Centres.

The efforts towards UHC will happen in multiple sub-sectors that need special attention, and the instruments for change would primarily center around three interlinked directions: renewed policy direction, focused investment, and socio-political change.

# VOLCANOES AND CLIMATE CHANGE: THE CASE OF TONGA VOLCANIC ERUPTION

BY SHREYA RAMCHANDRAN



On January 15, 2022, the world awoke to the news of a volcanic eruption in Tonga, a Polynesian country. Homes and lives were destroyed and all communication to and from the island was disrupted. Situated in the seismically active Pacific Ring of Fire, the underwater volcano Hunga-Tonga-Hunga-Ha'apai (HTHH), is about 65 kilometers from the north of Tonga's capital Nuku'alofa. On erupting, HTHH sent out huge plumes of ash, rocks, volcanic gasses, and debris about 30 kilometers into the sky, causing around a 4-foot wave of tsunami to wash on the island. Images of the aftermath show homes and streets destroyed, laden with layers of ash and air filled with smoke. The country in the coming days will most likely face food shortages as crops and fields were destroyed with ash and huge waves of water.

## Worst Driver of Climate Change - Volcanoes or Humans?

Volcanic eruptions of such intensity, not only affect human and animal life but are also said to have consequences on climate change and global warming. Volcanic eruptions of this nature are said to have a cooling effect on the earth's atmosphere. By spewing out ash and sulfur dioxide to high heights, the sulfur dioxide condenses in the stratosphere and forms sulfate aerosols which in turn reflect the radiation of the sun back to space.

Volcanic eruptions also release large amounts of carbon dioxide amounting to 100-300 million tons. Sadly, when compared with the human contribution to climate change, this release of carbon dioxide is considered negligible. It amounts to just 1% of what humans release by burning fossil fuels. From 1890 to 2010, natural causes aided in global warming by a plus or minus 0.1 degrees celsius. On the other hand, The Intergovernmental Panel on Climate Change (IPCC) has found that in 2018, around 89% of the carbon dioxide emission came from burning fossil fuels. Of this, coal is seen as the dirtiest form of fossil fuels, accounting for 0.3 degrees celsius for every 1-degree Celsius rise in global temperatures. Deforestation accounts for another 1.5 billion tons of carbon dioxide in the atmosphere. Forests and oceans can only absorb so much carbon dioxide, leaving around 5 billion metric tons still in the atmosphere. This affects rainforests as the number of forest fires has increased over the years. The Amazon rainforests have experienced the loss of life and plantations due to forest fires caused by deforestation activities and the heating up and drying out of the rainforests caused by rising temperatures. In the first seven months of 2020, more than 13,000sq km of the Brazilian Amazon was burned. Other human activities such as improper waste disposal also add to our causes of climate change. About 10-25 percent of accumulated garbage (mainly plastic) from various countries finds its way to big, but poor islands. As time passes, this pile of garbage slowly accumulates methane, which on reaching a certain temperature, incinerates and causes high amounts of air pollution and increased levels of carbon dioxide in the atmosphere adding to the rising temperatures. This paints a bleak picture of the impact of human activities and puts into perspective the consequences of our actions.

## Conclusion

The impact of the eruption of the THTT volcano is still to be felt as the world grapples for news and communication from the ones facing this terrible disaster. The consequences of this disaster are devastating and heart-breaking and will take some time to heal. However, the fact that the global warming caused by such eruptions is not as significant as the consequences of our human actions provides an eye-opening picture about our impact on the planet we live in. Given the current situation of climate change and global warming, with the atmospheric temperature at a rise of about 1.5 degrees celsius over pre-industrial times, it is up to us to change our ways of life, and ensure that we do not bring devastating consequences upon ourselves. Natural disasters are, sadly, beyond our control. However, our actions aren't. We must strive to reverse tables, and allow natural *disasters* to live to their name, rather than trying to beat them and become infamous for our choices and actions.

# THE HIGHS AND LOWS OF REPORTING WAR

BY KHUSHI DALAL



Growing up sheltered in a “hippie” household in Montana, Kim Barker knew what she wanted more than anything: out. So when the opportunity arose at the Chicago Tribune for a fill-in correspondent to report on Afghanistan and Pakistan in the aftermath of 9/11, Barker jumped at it. Unmarried and childless, she presented as the perfect candidate. Little did she know that in the chaos of two fractured nations brimming with the insurgency is where she would feel the most at home. By the time Barker became the South Asia bureau chief for the Tribune in 2004, she had a confirmed addiction, not to drugs, but the adrenaline rush, the lifestyle, and the dangers of war reporting.

Barker would spend the next five years scurrying back and forth between Afghanistan and Pakistan, searching for her next FIX, doing what she calls the “Taliban Shuffle”. This would later become the title of her 2012 memoir. The book lacks objectivity or an overarching narrative. Rather, it reads like a journal, following the author as she grows into the role of a foreign war correspondent. A talented writer, Barker’s breezy, often sardonic narration with just the right amount of cynicism renders the harrowing realities of war palatable.

New to the region, Barker pens her observations about the people with some amusement and a tinge of disdain. She notes the dedication of Pashtuns to hospitality and more so to revenge. She remarks how irrelevant the Afghan war seemed back in the spring of 2005: “Sure, the Taliban blew up things in the south, but so far, they mostly blew up themselves”. So insignificant that the donkey-borne improvised explosive device (DBIED) used by Afghans and Pakistanis provoked more laughter than fear. So insignificant that the soldiers did not even chamber a round in their rifles.

The book is more entertaining and less probing. For someone who lived in the region for five years, Barker provides only a superficial account of what she observed. Barker consciously limits her writing to her strange observations and amusing anecdotes, refusing to delve any deeper into the political unrest or cultural interactions. Depth of information, like emotion, is something Barker inherently shies away from.

She tries to make sense of the sad, downtrodden state of Afghanistan where government land was sold to warlords, drug lords, and influential officials “for a cut-rate” on which they built gaudy mansions. However, Barker preferred the bluntness of injustices in Afghanistan over Pakistan, which she describes as “a series of contradictions tied up in a double game”. Like many, Barker worried that Pervez Musharraf, the army chief cum prime minister, and the country’s intelligence agency, the ISI, were taking Western funds and hunting Al-Qaeda while granting impunity to their old friends, the Taliban. It was parts like this is where I found myself wishing for more revelations, more context.

The book provides an insular view of Pakistan’s politics shrouded in lucid descriptions. Embedded at the heart of all the action, Barker gives the readers short glimpses into major events which rocked the region, frequently cutting focus to other aspects of her life. She describes her romantic interludes and expatriate debauchery at some length. At times, Barker comes across as callow. However, her frank impressions and experiences make her accounts as a foreign correspondent that much more authentic.

I was more interested in what Barker had to say about Pakistan’s former Prime Minister, Nawaz Sharif. Although the two supposedly spent a significant amount of time together, Barker does not divulge any new information about him or his politics. Instead, she regales her readers with gossip about Sharif’s low self-esteem, his attempts to find Barker a “friend” (for which he volunteers himself), and his unfulfilled desire to gift Barker an iPhone. I must admit, there are better books written on Afghanistan and Pakistan. If you hope to gain a deeper understanding of a vastly misinterpreted region, its culture, or the implications of an inadequate international response, *The Taliban Shuffle* falls flat. However, for those interested in a quick, fun read about the life experiences of a foreign journalist or a primer to the conflict in Afghanistan and Pakistan, Barker does not disappoint.

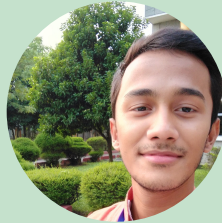




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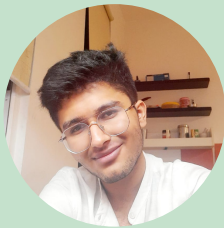
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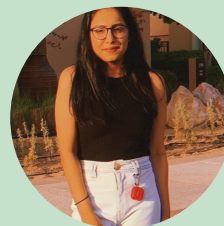
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