



Marital Rape – A Darker Side of Married Women’s Life

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Abstract

Women are held with high respect in old Indian society, the Vedas praised women as the mother, the creator, the one who brings life, and venerated her as a 'Devi' or Goddess. Women played an important role but their subjection to abuse by way of Domestic Violence, Marital Rape, Dowry Death, Torture were seen as humiliating not only to the lady, but to the entire society. Generally, women are viewed and portrayed as sex objects and sufferers of harshness both physically & mentally in their entire life and out of this marital rape or forceful sex ranks on top as one of most horrifying and evil acts which make a woman, a lifeless soul causing devastating effect on victim’s physical, sexual and psychological health. Even after living in 21st century women are still being considered as a weaker section subject to domination by masculine section. In current scenario as well, legislature decided to keep silence on the view of eliminating the evil of marital rape in India owing to which the hand of judiciary is also tied up to take an effective step ahead in this respect due to which women are deprived of effective laws to protect their dignity and end up being a victim of sexual abuse by their own husband. Through this research paper, the author attempts to highlight the need for special and stringent provisions to criminalize and eradicate the vulnerability faced by women who have been the victim of marital rape. The paper presents a wide overview with respect to definition of marital rape, current status of marital rape cases and how is it being different from rape, effect of women’s physical and mental health, comparative analysis and remedies available.

Keywords: Rape, Marital, Sexual, Abuse, Victim, Consent, Physical Intercourse

Introduction

Even though India has step into 75th year of Independence but still the women of our nation is subject to grave violence, discrimination, ill-treatment & being oppressive which act as a hurdle in the growth of society. Rape is one of the most heinous crime committed against women, defined under Section-375 of Indian Penal Code, 1860, a

man is said to commit rape if he penetrates his penis, to any extent, any object or a part of the body, not being the penis into the private part of a woman or manipulates any part of the body of a woman under any circumstances-

1. against her will
2. without her consent
3. with her consent when her consent is obtained by placing him or her in fear of death or injury or when his or her consent is obtained when she is intoxicated or in poor health or
4. when she believes that she is legally married to that person but is not her husband either
5. when she is under 18 years of age or unable to communicate with the permit.¹

This is termed as Rape. However, when a person commits Rape they will be punished with stringent punishment which may result into Life Imprisonment and Fine but when it comes to Marital Rape it is nowhere defined under IPC or any other law, due to which woman's are struggling in society.

However, Marital Rape is defined when a woman is being forced by her husband to involve in sexual intercourse after marriage though against her will. In other words, a forcible sex by one partner over another. It is being observed that Marital Rape not only harm women's physical harm but also affect mental health of women leading towards trauma, fear, mental agony, depression etc. In most of the countries Marital Rape is considered to be a crime and is a punishable offence while in India there still exist a strong need to formulate effective provision and laws to tackle the issue of Marital Rape. The law seems to have ignored this huge violation of fundamental right of married women to protect her body against any kind of abuse. The non-consensual sexual act not only include Natural sex but also Anal sex , Oral sex and forced sexual behavior upon women with an intent to satisfy the sexual desire of husband resulting in humiliation, unwanted pain, mental agony upon victim.

Comparative Analysis between India and USA with respect to Marital Rape Laws

As per the reports of United Nation Population Fund, it has been stated that more than 2/3rd of the married women in India, who are aged between 15 to 50 years of age are beaten, raped or forced to provide sexual pleasure to husband and further in year 2005 nearly more than 6500 cases were recorded where women were subject to murder by their husband or husband's family.

- **Position in United States**

In year 2006 UN secretary General studied in-depths of all forms of violence against women which is Marital Rape. It also has been objected that still there exist 53 countries where rape by husband is not considered as an offence. In United States, marital rape has become much more criminalized, while in many countries criminalized Marital Rape is still a questionable debate henceforth excluding husband from penalizing if he commits sexual intercourse with his own wife. For example, in 1993 on account of uplifting women's status & safeguarding her rights, every

¹ Section-375 IPC, 1860

State and District of Columbia had passed Laws against Marital Rape. In many of the US states, the criminal is being charged in the same way as that of rape of an unmarried women would be charged. Marital Rape in US, also known as “Spousal Rape” which is non-consensual sexual intercourse by husband over his wife leading her to suffer from physical and mental agony.

- **Position of India**

Indian Law are found to be still silent in terms of framing effective and separate laws for protecting women against marital rape, which is considered to be an infringement of woman’s basic right on account of abuse by her husband. Since domestic violence is a long and most center light topic in India, which has only become worsen in current scenario therefore it is getting difficult to trace cases of marital rape because it occurs within the four walls of home and often goes unreported with the fear of bringing shame.

However as per submission received from Central government to the High Court that criminalizing of marital rape will result into destabilize of the institution of marriage. Also. there can be no lasting evidence in order prove commission of sexual acts between the husband and his wife.

In accordance to Section-375 IPC, which defines Rape but Exception 2 says that happening of any sexual intercourse or acts by a man with his wife, though the wife not being under 15 years of age, is not classifies as Rape. Hence, marital rape is still decriminalized in India, which further is a violation of Article-14 of Indian Constitution because it bifurcates women in two classes that is married and unmarried, where Article-14 talks about equality before law and equal protection of law, exception-2 of Section-375 makes a point of discrimination between married & unmarried women. Further, marital rape is also a violation of Article-21 of Indian Constitution whereby the Supreme Court claims that the right to make choices and consent related to the sexual act with the rights to personal liberty, privacy, dignity and bodily integrity under Article-21. Owing to such repercussions also there is still no law being in existence to directly tackle the issue of marital rape.

As per Maneka Gandhi, “it is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors like level of education, illiteracy, poverty, myriad social customs and values, religious beliefs, the mindset of the society to treat the marriage as a sacrament and concluding that the incidence of marital rape law cannot be put in light under Indian Law”. ²Hence, such lacunas play act as hurdle in successful formulation and implementation of criminalizing the offences like marital rape.

In *Suchita Srivastava v. Chandigarh Administration*³, the Supreme Court equated the right to sexual freedom with the rights to personal liberty, privacy, dignity, and physical integrity under Article-21 of the Constitution.

²Concept of Marital Rape can’t be applied in Indian Context: Maneka Gandhi, The Indian Express (March 11, 2016)

³(2009) 14 SCR 989, (2009) 9 SCC 1

In *State of Karnataka v. Krishnappa*⁴, the Supreme Court ruled that sexual assault is an illegal violation of a woman's right to privacy and to the divinity of her person. It was ruled in the same case that non-consensual sexual activity qualifies as both physical and sexual violence. The second sub-point which can be discussed under the ambit of Article 21 is "Right to Sexual Privacy" which was discussed in the case of *State of Maharashtra v. Madhukar Narayan*⁵, the court ruled that every woman has a right to sexual privacy and it is not permissible to infringe on that privacy

In 2013 UN Committee on Elimination of Discrimination against Women submitted a recommendation to India that Marital Rape in India should stand as a Criminalized offence. Further in 2017, PIL was filed by NGO, claiming that married women over 15 years of age should be provided protection against such physical and mental agony, reforming old fashioned Indian Laws.

It has been observed that Indian is one of the 36 nations where marital rape is still not criminalized, despite of the fact that it has been already stated as criminal offence in more than 100 other countries at present scenario.

In *Nimishbhai Bhartibhai Desai v. State of Gujrat*⁶, the question was raised that whether a man forcing his wife to indulge in Oral Sex will amount to rape or not & shall be punished under section-376 of IPC, in view of this the court stated that our country has not identified any such case of rape so far because of the fear that it will affect their institution of marriage and women may use this to seduce their husband and may further sue them. Marital Rape is not considered legal as it not considered legal and if the husband forces his wife for forceful sexual intercourse then he could be charged for Assault under IPC only and not Rape.

Justice Verma Committee Recommendation

Justice Verma Committee was made to recommend amendments to the Criminal Law in order to lay down quick trail and enhance punishment to criminals who are accused of committing sexual assault against women. The Committee comprises of Justice Leila Seth, former High Court Judge and Gopal Subramaniam, former Solicitor General of India. The Committee furnished its report on 23rd January 2013 with the raising demand to criminalize Marital Rape. The Indian Government however chooses another way by proclaiming that criminalizing marital rape will destroy the essence of institution of marriage and will put Indian family under great stress. Henceforth, the Parliamentary Panel decline to recognize the marital rape as a crime, claiming that it could disturb the marital space of the couple. However, it said that any sexual assault committed by husband on his wife during judicial separation must be treated as a cognizable offence.

⁴ AIR 2000 SC 1740

⁵1991 SC 207

⁶2018 SCC Guj 732

The Committee further also recommended that Exception-2 of section-375 shall be eradicated to place rape and marital rape on same footings, hence the relationship between victim and accused shall not a relevant matter and essence of crime shall remain same in all cases.

Causes of Marital Rape

Through several instances we can trace out that there have been many incidences of marital rape due to numerous reasons such as dominance, treating women as personal property, unemployed women, sexualdissonance between couple.From the ancient time Indian society is viewed as Patriarchal societywhere women are subject to dominance committed by males over theirfemales and further females are subject to be dependent upon theirhusbands for resources. In Hindu Marriage Act 1955, under grounds ofdivorce still marital rape is not being recognized as a valid ground toseek redressal and only civil remedies are available against such crime.

Indian society though being an orthodox society still believes thatwomen are meant to be restrain within the four walls of household andabide by their husband which never let women to be a self-independentindividual.

Secondly, women are treated as a slave or personal property of theirhusbands as a result it was submitted that a husband cannot Rape hiswife since she was in her ownership. However, if a man commits rapeover the wife of another person than it was effectively termed as Theft of Property (sexuality of women).

Thirdly, man who are depressed of their life have generally been foundto commit marital rape in order to release their aggression and angerover female, this attitude may be due to unemployment or any otherissue which may be further attacking the mental state of male andthrough such act man usually force himself on her wife against herconsent for sexual pleasure.

Lack of Reporting

The Indian Penal Code and National Commission for Women (N.C.W) have till the time haven't formulated any provisions for filling of marital rape cases and commission of such crime is still being reported under Domestic Violence or Cruelty under section-498A IPC, hence there is no separate and exclusive provision to administer the marital rape complains.

S.N. Koley, Member Secretary of the West Bengal Commission for Women (WBCW), a state commission for women's rights, says that theirs has been a constant fight against this social evil.

“Indian women are discouraged to file complaints against marital rape. It has taken them time cognize lit as a

crime. The WBCW remains vigilant and we take up complaints of marital rape which are reported by the media or lodged with the police- even if they don't come straight to us," says Koley⁷

As per the findings of Aashish Gupta with the Research Institute for Compassionate Economics compared with NCRB (National Crime Records Bureau) 157 per 1,00,000 women reported to National Family Health Survey that they have experienced rape while 6590 said that their husbands had physically forced them to have sexual intercourse against their consent.

The Social Legal Aid Research and Training Centre is one of the most active forum in providing legal aid to socio-economically disadvantaged women, exclaimed that as now women are taking initiative to come forward and speak about marital rape but all they need is support and encouragement therefore we have to build a strong mechanism that encourage, motivate, stimulate women to report such incidence of marital rape and ensure protection to them under the legal provisions to safeguard their dignity and integrity.

Suggestion

Looking at the situation of the women facing Marital Rape, we can list out certain suggestivemeasures which can help us to eradicate the social evil of rape within the marriage. Some of the vital suggestions of overcome this issue are as follows-

1. There is an emergent need to Criminalize marital rape in India looking at the increasepace of marital rape laws
2. Both Married and unmarried women must be given same protection under Rape laws without any point of distinction between the two
3. Punishment for Marital Rape shall be same and as stringent as that of Rape
4. Women must be educated and shall be aware about their rights and protection policy toraise voice against any form of discrimination
5. In order to conform same status on Rape and Marital Rape, exception-2 of section-375IPC must be repealed
6. Marital Rape shall also be added as a valid ground for Divorce under Hindu Marriage Act1955
7. Provisions of Rape under Indian Evidence Act shall be similarly applicable to MaritalRape.
8. Proper provisions for keeping of victim's identity confidential shall be strictly observedeven though she is married but her dignity shall be prominently maintained.
9. Special Fast Track with females Judges shall be established to administer the casesrelated to Marital Rape.

⁷Marital Rape: still an Underreported Crime in India (October 5, 2020)

10. Provisions for administering False Charges shall also be observed

Conclusion

The sacrament of marriage shall not be considered a legal consent or license to Rape with your own wife, considering her your own personal property and subject to forceful sexual intercourse and thereby putting at stake her physical and mental health. Commission of non-consensual act whether done pre-marriage or post-marriage shall be considered equally grave and heinous. Owing to still prevailing orthodox mindset of our patriarchal society many of the cases related to marital rape remains unreported. Incidence of marital rape not only impact health of a women but it also leads to mental agony therefore, proper access to care, justice must be suitably framed. Further, such act prima facie infringes Article-14 and 21 of Indian Constitution. Non-criminalization of marital rape is the major concern for Indian Legal System in order to protect dignity and integrity of a woman though unfortunately till now. No separate legal provision covering marital rape has been into existence. We cannot deny the fact that even in present century such crimes remain unreported & victim suffer in silence due to lack of necessary legal protection and support as they are still under the pressure of family customs and norms. Thus, avoiding justice and protection for the sake of maintaining continuity of marriage is a failure on the part of our legal system that attempts to prevail equality in every sphere of life to their citizens. Thus, in conclusion it can be said that rape is rape it should be taken in a strict view without having a view that it is committed pre-marriage or post-marriage and measures should be taken focusing on both bodily and mental harm to the victim caused due to such crime.

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