

Research Paper

Marital rape: Sacrosanct or Covenant

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“Marriage is a mosaic you build with your spouse. Millions of tiny moments create your love story”.

-Jennifer Smith

As a Girl grows and turns to a women among a lot of duty like taking care of the family and doing the household chores the Indian Society also demands her to get married; become someone's wife to justify her life as a virtuous women. Marriage in India is done with or without the consent of the Girl. Completely ignoring the fact whether or not the Girl is ready mentally and physically to fulfil the marital obligation. The point of Dismay also lies in the fact that Most of the Men fail to understand the Depth of Marriage as an Institution and look upon their wives as objects to fulfil their Sexual needs. As a result the marriage loses its sanctity as a bond of love and togetherness and a woman loses her dignity to her husband in order to complete her duty as a wife. Marital Rape is basically the sexual intercourse which is forced by the Husband over his wife even when she is not willing to do the same. Marital Rape is mostly accompanied by Domestic violence and mental cruelty. Marital Rape leaves a women Helpless when her Husband her protector becomes her plunderer and she becomes prone to Depression and she doubts her own existence.

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INTRODUCTION

Marriage is a social institution where the husband and the wife admit to live together. The key to successful marriage is love, understanding, mutual respect, trust, commitment and togetherness. It is the physical, mental and spiritual unison of two souls. It brings significant stability and substance to human relationships, which is otherwise incomplete. It plays a crucial role in transferring the culture and civilization from one generation to the other, so that the human race is prospered. Marriage is a commitment- a decision to do, all through life, that which will express your love for one's spouse. Marriage is an institution which grants a male and female to live in a customary and statutory law. The daydream turns into a nightmare when the Husband the protector of his wife's dignity becomes the plunderer of the same. In the name

of marital obligation the Husband forces his wife to consummate even when she expressly denies. Marital rape is further accompanied by Domestic violence and mental cruelty upon the wife by her husband.

THE STATISTICS

Approximations have quoted that every 6 hours; a young married woman is burnt or beaten to death, or driven to suicide from emotional abuse by her husband. The UN Population Fund states that more than 2/3rds of married women in India, aged between 15 to 49 have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their

husbands or their husbands' families.

In the present day, studies indicate that between 10 and 14% of married women are raped by their husbands: the incidents of marital rape soars to 1/3rd to ½ among clinical samples of battered women. Sexual assault by one's spouse accounts for approximately 25% of rapes committed. Women who became prime targets for marital rape are those who attempt to flee. Criminal charges of sexual assault may be triggered by other acts, which may include genital contact with the mouth or anus or the insertion of objects into the vagina or the anus, all without the consent of the victim.

Marital rape: The Origin in laws

Marital or spousal rape is rape committed by one spouse against the other. One someone uses the term rape then it is usually being thought that it has been committed by the strangers. Recognition of marital rape as a crime is a recent development in the history of law. State laws on marital rape in the United States can be traced to England, where the first Chief Justice Sir Matthew Hale pronounced that a husband cannot be guilty of rape of his wife "for by their mutual matrimonial consent and contract the wife hath given herself in this kind unto the husband which she cannot retract."¹ This statement became known as the Lord Hale doctrine. Even the women find it difficult to believe that how the husband can rape them. Though marital rape is very common and repugnant form of masculinity of the Indian society, it is being hidden in the iron curtains of the marriage. Marital rape is an serious offence and often insidious form of violence against women.

Constitution of India and marital rape

The constitution of any country represents the soul of any nation. The Indian Constitution organizes and controls power, ensures human rights, balances the competing claims of social and individual interests, mirrors the cultures and experiences of the country and operates as a vehicle for national progress and unity.² As per the Indian constitution every law that is passed by the country must be in regulation with the ideas and the principles which have been given in the constitution of India. And if it doesn't falls within its parameter it shall be declared ultravires and should be declared unconstitutional. Marital rape violates various provisions

¹ Hale, Matthew. History of the Pleas of the Crown. Vol. 1. (1680) (Emlyn, ed., 1847).

² Roy, Sudhanshu & Jain, Iti, "Criminalizing Marital Rape in India: A Constitutional Perspective", Criminal Law Journal, Apr 2008, p. 81-92

of our Indian constitution. Article 14 guarantees a fundamental right of equality before the law and equal protection of laws to every citizen of India.³ Article 15 (i) mandates the state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. But regarding marital rape women in India are not being treated equal. The equal treatment is not being provided to the victims of the marital rape. Article 21 of the Indian Constitution enshrines in it the right to life and personal liberty. Article 21 although couched in negative language confers on all persons the fundamental right of life and personal liberty.

Post the case of Maneka Gandhi v. Union of India⁴ it has become the source of all forms of right aimed at protection of human life and liberty.

In light of this expanding jurisprudence of Article 21, the doctrine of marital exemption to rape violates a host of rights that have emerged from the expression 'right to life and personal liberty' under Article 21. There cannot be a more obvious and blatant violation of Article 21. The marital rape violates article 21 to right to live with dignity. The marital exemption to rape violates the right to privacy, right to bodily self-determination and right to good health, all of which have been recognized as an integral part of the right to life and personal liberty at various points of time.

IPC AND MARITAL RAPE

Section 375 of the IPC that a rape within a marriage will only be considered if the wife is below the age of 15 years else it shall not be considered as rape.⁵

It is also silent about the situation if the rape is committed by third person and Husband jointly.

The 172nd Law Commission report had made the following recommendations for substantial change in the law with regard to rape.

1. 'Rape' should be replaced by the term 'sexual assault'.
2. 'Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.
3. In the light of Sakshi v. Union of India and Others [2004 (5) SCC 518], 'sexual assault on any part of the body should be construed as rape.
4. Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
5. A new offence, namely section 376E with the title

³The Constitution of India, Article 14.

- 'unlawful sexual conduct' should be created.
6. Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.
 7. Marital rape: explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.
 8. Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

Marital rape and Hindu law

The fact that both the parties have sexual obligations to be delivered as a part to fulfil their duties as counterparts, but if the wife is unwilling to do so because of some reasonable cause the Husband should respect her decision and try to work the difference instead of raping her as his right.

In lot of cases it is evident that wife has withdrawn herself from her Husband's society without any reasonable cause and denied him his right to exercise his sexual rights.

In that case the either parties have the remedy of Restitution of conjugal right under the Hindu Marriage Act in section 9.

Thus, under this Section the court may decree the restitution of Conjugal Rights, when-

- (a) Either of the party has, without reasonable excuse, withdrawn from the Society of other;
- (b) The court is satisfied of the truth of the statement made in petition for conjugal rights;
- (c) There is no legal ground that why the application should not be granted.

In *Smt. Harvinder Kaur v. Harmander Singh*⁵

It was held that the object of Restitution of conjugal rights was to bring about cohabitation between the estranged parties so that they could live together in amity. The remedy of restitution aimed at cohabitation but the decree does not enforce sexual intercourse.

So, with this given remedy it is seen that the spouses have right to go to the court if the wife decline right to consummation and the court has passed several decrees in the respect the judiciary also recognizes the right of a Husband to consummate his marriage but forcing the wife for sexual intercourse is inhuman.

THE INTERNATIONAL SCENARIO

Today there are many States that have either enacted marital rape laws, repealed marital rape exceptions or have laws that do not distinguish between marital rape and ordinary rape. These States include Albania, Algeria, Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong, Ireland, Italy, Japan, Mauritania, New Zealand, Norway, the Philippines, Scotland, South Africa, Sweden, Taiwan, Tunisia, the United Kingdom, the United States, and recently, Indonesia. Turkey criminalized marital rape in 2005, Mauritius and Thailand did so in 2007.⁶

Effects of marital rape

Research indicates that marital rape has severe and long-lasting consequences over women and may include physical effects such as injuries to vaginal and anal areas, soreness, vomiting etc.⁷ Worldwide, studies show that health problems caused by marital rape include HIV and other sexually-transmitted infections, vaginal bleeding or infection, genital irritation, pain during sex, chronic pelvic pain, and urinary tract infections. The physical violence associated with marital rape can also lead to complications during pregnancy, resulting in health problems for both women and their children. Mental health impacts associated with marital rape and other forms of abuse by partners include depression, anxiety, emotional distress and suicidal thoughts. Marital rape and violence also undermine children's health and well-being, both through the psychological impacts of witnessing violence and because it can undermine the ability of mothers to care for themselves and their children⁸. Additionally, there may be experiences from a range of symptoms like flashbacks, nightmares that replicate aspects of the rape, always feeling guarded, panic attacks and depression. These are features of Post-Traumatic Stress Disorder (PTSD)⁹. Rape Trauma Syndrome is similar to PTSD but has some rape-specific symptoms.

Proposed changes and amendments

The government is going to propose new law against rape and sexual assault including marital rape to protect women from all kinds of physical and psychological imbalances and hence soon husbands may be behind bars if they commit marital rape The department of legal

⁵5AIR 1984 DELHI 66

affairs has drafted the Criminal Law Amendment Bill based on the suggestions of women and child development (WCD) and National commission for women (NCW) to amend certain sections of IPC and Indian Evidence Act. The proposed change for marital rape under this bill basically includes imprisonment which may extend to 3 yrs. of imprisonment with fine.

The law commission of India in its 172nd report which deals with the 'review of rape laws' as well as national commission of women have recommended for the harsh punishment of rape. Report also proposed that the sexual intercourse by a man with own wife not being under sixteen years of age is not sexual assault. The Protection of Women from Domestic Violence Act, 2005 has only created a civil remedy for marital rape, without criminalizing the same.

The Varma committee report points out a 2010 study suggesting that 18.8 percent of women are raped by their partners on one or more occasion. Rate of reporting and conviction also remain low; aggravated by the prevalent beliefs that marital rape is acceptable or is less serious than other types of rape 2013.

Justice Varma committee's recommendation and subsequent legislation is a "golden moment for India" but recommendations on marital rape, age of consent for sex, etc. we're not adopted in the legislation. The government is hesitant to criminalize marital rape because it would require them to change laws based on religious practices, including the Hindu Marriage Act 1955, which says a wife is duty-bound to consummate her marriage. From the ancient period of time it is being believed that the matrimonial dispute is being resolved by the family members within the four corners of the wall.

The Mindset in Indian Society

The Concept of Marital Rape cannot be applied In India because of illiteracy, poverty and Ignorance. Many women believe it is the duty of a wife to keep her Husband sexually content no matter they are willing or not.

Husbands keep their wife in threaten that they would find ways to fulfil sexual desire elsewhere out of the marriage this makes the women do whatever the Husband wishes. Many Women do not even realise that Rape is committed on them and mostly these types of actions are not even reported.

More than 85% women in India are Financially Dependent on their Husbands so if they deny consummating the husband can simply cut down the wife's expenses to make her life Miserable.

The another most Important Reason would be that people are not free to talk about Marital Rape as it would degrade the reputation of the Family as a whole so women prefer to keep this brutality of the Husband within

the closed doors of the Bedroom itself.

In India as there are no laws to prohibit marital rape and only rape of an outsider is penalised this mostly force men to get married only to derive sexual pleasure from the marriage and adopt methods of violent sex with no emotional Attachment with their spouse.

Men believe marriage to be a contract because it gives men implied consent to have sex in perpetuity. It reinforces man's ownership over his wife and uses his wife as an object and marriage been looked up as a covenant rather than a sacrosanct.

CONCLUSIONS AND SUGGESTIONS

In India marriage is seen as a sacrosanct process but it doesn't mean that it legalises marital rape or gives the power to husband to violate the right of women to live with dignity. Women are the half part of the society's population and in all the circumstances they should be protected from the abusive behaviour even if it comes from their own dear ones. Marital rape violates the human right of the married women i.e. safety and integrity. Moreover, on one hand there are talks of empowering women and at the same time we are not protecting the dignity and right to life of married women. How can the law ignore such a huge violation of a fundamental right of freedom of any married woman, the right to her body, to protect her from any abuse? Marital rape should be covered under anti-rape laws in India because she should be allowed to protect her dignity. The study points out that married women are being raped frequently by their husbands. While official data on marital rape is meagre, activists and lawmakers maintain there is plethora of evidence to imply it is on the rise. Any type of excuse such as that it will be hard to prove marital rape or criminalizing marital rape would destroy the institution of marriage, should not give right to the husband to play with dignity and sentiments of his wife. When husband commits marital rape, he also breaches his promise made by him at the time of marriage. Majority of the Indian women mainly agree with the occasional domestic violence. This mentality is the reason of violence against this much widespread violence. There should be a positive mentality between the couples that there should be no sex until it is agreed by both the parties of the sex. I find no valid justification in viewing non-consensual sex between married couples to be different from that of non-consensual sex between strangers. Nobody has a right to force his will upon any other person. Law by exempting such criminal acts expressly for no good reason provides these offenders with an upper hand; it should rather aim at bringing the right change in the society.

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