

ANALYSIS OF MARITAL RAPES IN INDIA

Abstract

Marital Rape is considered to be an act done against the interests of Women. At present, it is not considered as an offence in India and Judicial Magistrates have interpreted the legal position of marital rapes in a broad way, but none have arrived at a conclusion. It questions about the position of Women in society, should women be considered as sexual slaves or part of a traditional institution called family. Don't they have any rights and social safety nets to protect themselves from marital rapes? Does a woman have any right over her body? The purpose of marriage is to unify a man and a woman and provide a pathway for children in the wed lock. Marital rapes are predominant in Patriarchal societies like India where male is considered to be dominant in family. The main purpose of this Research is to find out why marital rapes are not yet criminalised in India despite 76 years of Independence and 163 years after the implementation of Indian Penal Code. Doctrinal Method of Research shall be applied in this Research paper.

Keywords: marital rape, offence, sexual intercourse, consent

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I. INTRODUCTION

“The fundamental thing required in a marriage is mutual respect”.

Barbara De Angeles

There is no universal definition of Marriage and various religions in different parts of the world interpret it in different ways. Traditionally, Marriage is considered to be a social union between a man and a woman and also rights and duties which arises in that wedlock. Marital Rapes happen frequently in India, where women are feared to report them to police stations. But the problem which arises is that marital rape is not considered a crime in India. As it is perceived that after marriage man inhabits all rights over his wife. After marriage, it is duty of husband to show due care towards his wife and render support during times of difficulty. Husband is considered to be dominant in a family, but this does not give him the right to commit marital rape against his wife, which affects the fundamental rights of wife. There is mutual respect and dignity within a husband and wife which should stay till they attain old age, or their children become self-sufficient. A wife should have the right to say no to husband and her voice has to be heard in society. In Indian Law scenario, Husbands are immune to marital rapes and Women do not have safety within the familial relationship. She could not even express it to her blood relatives, as it is perceived that Husband has all rights over women after marriage, due to the reason the activities of husband are not regulated. Marital Rape hampers the trust and confidence which is vested on husband. Today, we live in a civilised society where we speak about Right to Equality, Women Empowerment and Women education. But why have the legislators and Jurists have kept silent on the issue despite it is prevalent in diverse country like India. Marital rape is not less gore and heinous as compared to rape. Recognition of marital rape as an offence is to be given primary importance which acts as a social safety net for women in the wed lock and protects the fundamental rights of women.

II. HISTORICAL BACKGROUND

During pre-independence period, there existed various social evils in Indian society, and which led to development patriarchal system in India and position of women slowly got deteriorated. There were practices like Sati, child marriage, no property rights for women, Dowry at time of marriage, discouragement of women education. Social reformers like Raja Ram Mohun Roy, Eswar Chandra Vidya Sagar, Jyothiba Phule have brought reforms to the society which increased the position and status of Women. Only if Women are brought on par with men, there can be inclusive development among all people of the society.

Marital Rape is one such social evil which is still prevalent in India society. The problem with it is that many women are not expressing about the sexual offence which the husband commits. Only when people begin to express (#meeto campaign) then the Court and the legislators can look into the matter as it would become significant. Marital Rape is not a new concept; it existed from the beginning of Vedic period. Before British East India Company occupied India, there were child marriages prevalent in the country, where Women were married of in the early tens and elevens and their sexual organs were not developed. They could not even say no to their husbands, if they protested, they were sexually assaulted

and caged in the rooms. Due to these reasons married women of that period had less life expectancy and suffered with diseases like colon cancer.

In the Vedic texts like Rig Veda, dominance of husband over his wife was written down and it was followed in all matters like decision making, household matters, sexual relations etc. It was traditionally followed by Hindus till recent times. After British advent into India, all the laws were passed by the British Parliament and marital rape was not considered an offence. It was left untouched and interpreted by the Legislature after 1947 and it was perceived that husband exerts dominance over his wife and it is his inherent right after marriage to have sex with his wife, irrespective of her consent. Various Non- Governmental organisations in India like Vimochana, Aarti for girls have been fighting in rural areas to save women who are victims of marital rapes. The main reason why women do not express their bad experiences is that women have to stay with their husbands as their wives, and if husband throws her wife outside of the home, she is left outside to fend for herself, she would be looked inferior in the society and her own maternal blood relatives. In recent times India had received suggestions from International Organisations like UN and Global fund for women to pass legislation criminalising marital rape. As of today, the Parliament passed a bill for reservation of 50% seats for women in both Lok Sabha and Rajya Sabha, which is a welcome move by many popular feminists in India, but still concerns of marital rape still persist in many parts of the country, especially where child marriages are prevalent.

Social media has played a major role in bringing the cases of marital rape into limelight and there are various debates going on in parliament regarding this. Experts in field of family law have criticised the Government for their slow response and Judiciary left it to the interpretation of Legislature regarding the passing of a separate legislation regarding Marital rapes. Many women of India who are victims of marital rape do not have freedom to complain about it in the police stations, due to the fear of her husband, as she has to live by his side throughout the life.

III. STATUTORY LAWS AND LEGISLATION

Indian Penal code was enacted in 1860 and it is a substantive law. It came into force on 1st January 1862. IPC was enacted based on the recommendations of First Law commission in India. The main objective of IPC is to remove ambiguity and confusion among the public, as there were various Provinces and Princely states before Independence and each state followed different criminal Justice system. Section 375 of IPC deals with rape which states that ‘a man committing sexual intercourse with a woman without her consent can be called as rape’. However, if it is inferred from the facts of the case that consent has been obtained by fraud or misrepresentation, then it would be no valid consent. Exception 2 in sec 375 states that “If a husband commits sexual intercourse with his wife, who is below 17 years of age then it would not constitute rape”. It is found to be discriminatory and against the principles of Natural Justice, as it is violating Right to Equality under Article 14 by distinguishing wife’s below and above 15 years of age. In India the punishment for committing rape is 10 years of imprisonment, which may extend to life imprisonment and death penalty depending upon the intensity of the crime committed. Husbands are unpunished for committing marital rape as they are protected by Law.

This exception in Section 375 hugely impacts the wife's as they have no legal remedy available. They can neither complain in the police station, nor with her maternal relatives or share with anyone in the society, as it is normalised and perceived as a right which husband inherits over his wife after marriage. Rape is one of the heinous crimes committed in India and it has no difference if it has been committed by any unknown man or husband of the woman. Wife's face psychological problems like mental trauma and stress disorder. Article 21 of constitution guarantees Right to life and personal liberty, and it is curtailed to a woman in the name of marital rapes. Justice Verma committee recommended that marital rapes should be eliminated and be recognised as a criminal offence, so that fundamental rights women would be protected. It was rejected by many Jurists due to the following reasons:

1. Traditionally marriage is considered to be a social institution in which husband exerts control over his wife.
2. By marrying a man, a woman has given implied consent to have sex with her husband for recreational purposes.
3. The bad consequences of the suit filed against her husband has to be faced by the wife like ill treatment by her husband and in-laws, condemnation by society and in some cases may also lead to divorce.

In Indian Law there are no grounds for divorce in case of marital rape which makes the wife vulnerable and insecure in her own house. However, a wife can file a suit for domestic violence, the wife and husband shall be separated, and husband is compelled to pay maintenance monthly. But marital rapes happen frequently in India, and it is matter of urgent importance which needs to be addressed as it is violating the fundamental rights of women in the name of marriage. Justice should be given for the victims of marital rape and Legislation of India should bring in separate laws like POCSO Act, Visakha guidelines regarding marital rapes in India.

IV. CHALLENGES FACED BY WOMAN

There are various instances where women come to hospitals and report about their reproductive health issues which are caused due to forced sexual intercourse by their husbands. Only a few women who are victims of marital rape report in police stations. There are various instances of rape like Disha, a doctor who was gang raped and burnt alive by 4 people in which 2 were minors. So, a separate clear-cut framework of crimes of women has to be brought up by Legislature so as to tackle the issues faced by women, especially those who are within the marriage wed lock. According to a report by World Health Organisation, more than 33% of women who are married face the consequences of marital rape. According to National Family Health survey and National Crime records Bureau only 0.5% of total cases reported on sexual violence of women are from marital rapes and the main reason is because marital rape is not an offence in India and there isn't any legal remedy available to women who are victims of marital rape. Many husbands in India commit physical abuse against their wives if they do not cooperate with sexual intercourse, in rare cases inserting objects in the vagina of the wife which causes serious health issues. Woman do not have the right to even go for abortion as they are restricted by husbands. In some parts of south India, some women agree that husband can use physical force if wife is not cooperating to have sex.

This shows the situation of women in India. Marital rapes are not limited to normal women but also extend to pregnant women. According to a study conducted by Dr. Varma and his fellow students 17% of women who are pregnant face some forms of sexual abuse by their husbands.

Health issues which women face due to forced sexual intercourse are infections, miscarriages and other reproductive issues. It is implying from the facts that a husband forcing his wife to commit sexual intercourse may have committed sexual intercourse with other women before marriage and there are high chances of transmitting diseases like AIDS. There is little or no redressal mechanisms for women who are victims of marital rapes. Women who face psychological problems after ill treatment by husbands are directed to Counsellors by doctors to stabilise the mental condition of women. It can be illustrated in table below.

Table 1: Various Cases of Sexual Violence Reported to a Counsellor in Delhi

Forms of Violence (Multiple Responses) ¹	Total Number of Women	
	N = 828	%
Forced sexual intercourse	565	68
Withholding sexual pleasure	260	29
Not allowing women to use any contraceptive devices	79	10
Forcing her to have children	119	14
Forcing wife to perform sexual acts against her will (e.g., sodomy)	64	8
Sexual advances from other family members	30	4

V. CASE LAWS AND JUDGEMENTS

In the case of State of Maharashtra & Ors. vs. Madhukar Narayan Mardikar², the respondent was a police constable and approached one woman called Banubi in her house at 8:00 pm in the night, demanding her to have sex. Having refused to have sexual intercourse with the constable, He tried to force her, and she began to shout, and her husband and other people gathered near the hut. Police Sub Inspector came to the spot and inquired about the incident and dismissed the constable from service. An appeal was filed in High court in which the court found that the woman had extra marital affairs with other men and her testimony cannot be considered in court of Law. The petitioner further appealed in Supreme Court in which the apex Court found that a woman has bodily autonomy and “NO means NO”.

In the case of Queen Empress vs. Haree Mythee³ the defendant’s daughter was 11 years old when she was married, and her husband committed sexual intercourse with her against her interests. As it is a known fact that sexual organs of women below 15 do not develop. As a result, her vagina got ruptured and she died due to bleeding. The husband was

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8967187/table/T0002/?report=objectonly>

² AIR 1991 SC 207, (1991) 1 SCC 57

³ (1891) ILR 18 Cal 49

convicted under Sec 338 of IPC for causing grievous hurt to his wife and he was not charged for rape which is injustice done to the poor girl.

In another case Emperor v. Shahu Mehrab⁴, the facts are quite similar to Haree Mythee case, where husband committed forceful sexual intercourse with his minor wife, and she died in the hospital. The main issue here is lack of a clear-cut legislation which criminalises marital rapes and offenders go free into the society after serving some time in Jail.

In the case of Sree Kumar vs. Pearly Karun⁵, the wife and husband had been living separately due to familial issues and they have applied for divorce in family court. Wife went to her husband's home to live with him until divorce proceedings completed, during which her husband committed sexual intercourse with his wife. The court held that husband is not guilty of rape as they did not get divorce yet.

Article 21 of Indian Constitution talks about Right to life and personal liberty and some of the heinous crimes like rapes which are done in a cruel and inhuman manner leading to the death of the women would curtail her right. Marital rape is no exception to this, except that the person committing the rape is the woman's husband. Article 21 has been interpreted in a broad manner by various Judges in India and includes to live a life with dignity in society and not mere animal/ physical existence. Marital rapes also violate right to privacy of a woman, as she has no control over her body after marriage. The article includes all the essential elements like food, clothing and shelter which are required for sustaining lives. Rapes are not considered crimes against a particular individual but the whole state at large and it is the responsibility of the state to ensure that these crimes should not take place again and they should be completely eradicated in a society, especially in a diverse country like India.

The apex court of India has held in various cases that a victim of rape has to face various consequences like alienation from society, no one would turn up to marry a rape victim and many others. Marital rapes degrade the value of women in the eyes of Husband, and it should be curtailed. Forcing a married woman to have sexual intercourse with her husband against her interests is violative of Article 21 of Indian Constitution. Right to privacy of women in matters of Education, Employment, Marriage is essential, and it is included in the ambit of Article 21. It is personal choice of a woman with whom she would have sex and it is more of a private matter. Marital rapes lead to unwanted pregnancies and women do not have option to abort or in cases of marriages where women are married off within 20 years, conceiving at an early age might lead to health issues. In various cases of marital rape, if a wife protests against the act, then the husband would physically abuse her, and wife can sustain injuries during the period. After all, there needs to be a mechanism to protect a woman who married from immoral acts such as marital rapes and men are always protected under the status of Husbands.

VI. POSITION OF MARITAL RAPES IN OTHER COUNTRIES

According to report by United Nations, around 82 countries of the world have laws which criminalise marital rapes and it is considered as an offence for which husband shall be sentenced to imprisonment for a term. Among all countries Poland became the first nation to

⁴ (1911) ILR 38 Cal 96

⁵ 1999 (2) ALT Cri 77, II (1999) DMC 174

declare marital rape as a crime and stating that there is no difference between rapes and marital rapes except that the act in the later one is committed by husband. Some of the south Asian countries like Bangladesh, Pakistan, south Asian countries have not criminalised marital rapes. Earlier United States had an exception in their Penal code which doesn't include husbands in the category of rapes, but that exception was struck down as they found it violative of rights of women and gradually all the states of US have criminalised marital rape. Nepal, the neighbouring country of India has also criminalised marital rape because the country found it violative of Right to privacy of women. In UK marital rape is criminalised as the law makers found that it falls within the category of domestic abuse of women. Most of the liberal democratic countries of the world like US, UK, Australia, New Zealand, South Africa, Austria, Brazil, Canada have criminalised marital rapes. In these countries, the punishment given for husbands for committing marital rape is minimum 10 years and maximum is 15 years. In India if a man commits rape against his wife who is below 15 years of age it is considered as marital rape and punishment of sentence is given.

VII. CONCLUSION

Rape is a gory crime against a woman and categorising women based on their marital status is discriminatory against women. Judiciary in various cases have given remarks regarding a lack of legislation on marital rapes and it should be left to the Indian Parliament to pass a separate legislation or to remove the exception mentioned in sec 375 of IPC. The Government is itself discriminating women by categorising them into 2 categories of women, first who are 15 years of age and second who are above 15 years of age. Rape has the same consequences if it is committed by her husband or by a stranger. India is a diverse country with people of many classes, castes, genders reside, and our laws should be framed in such a manner that rights of all people are protected. If marital rape is criminalised in India, there would be less cases of suicides of married women and also relation between husbands and wives would prosper. One of the prominent committees, Verma committee has recommended the Indian Parliament to pass a bill criminalising marital rape. After marriage, husbands think of their wives as their property and this irrational attitude has to change. Unless many women turn up and report about their experiences about the marital life, then only the Parliament can bring about necessary means to protect women's rights. So, our Legislation has to make laws with regard to the change in times as Laws have to keep evolving in order to carter the needs of all sections of people of a society. India Parliament should go through the legislations of various countries which criminalised marital rape and adopt various changes which would fit the Indian scenario, as marital rapes hamper the institution called marriage as women's rights are violated and they cannot even report in the police stations as it is not considered as an offence. There should be social safety nets and other legal mechanisms available to women who are victims of marital rape. Inclusive development can take place only when Women in a country develop by ensuring that their rights are protected by the State.

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