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Justice Behind Closed Doors: The Call for Marital Rape to Be a Criminal Offense in India

AISHWARYA SINGH¹

ABSTRACT

Matrimony is a hallowed pledge that not just ties two people, but two families, together. However, if this union is not freely chosen or the parties are not happy, things might go south. Our society is inclined towards a patriarchal system from the ancient times of hunting and gathering. So, it comes as a natural nature for men to display emotions of dominance. Looking around the globe, law and order has a huge role in prescribing and limiting standards for human conduct. Under the "Indian Penal Code, 1860," the laws have been made and appropriate punishment for the same has been provided. But what most of the people fail to comprehend is that these laws were made by the British a long time ago. At that time Marital Rape was not considered a crime which can be one of the reasons why it was exempted under the penal laws. This research paper substantiates and focuses solely on evolution of the rights for women; mainly the effects of Marital Rape; and the reasons how it is in violation of the Constitution of India.

Keywords: *Matrimony, Patriarchal System, Dominance, Marital Rape, Crime.*

I. INTRODUCTION

Rape is a form of sexual violence in which coitus or variants of sexual insertion are executed on someone without their consent. The deed can be accomplished through corporeal pressure, duress, mishandling of power, or against someone who is impotent of providing sound consent, such as someone who is incapacitated, unconscious, has a cognitive dysfunction, or is below the legal age required for the consent to be valid. Rape and sexual violence are terms that are sometimes used as carbon copies. Rape was once thought to be the consequence of unbridled sexual impulse, but it is now recognised as an obsessive contention of force over a victim.

In spite of the case that India has commemorate its 75th independence, in the nation the woman is still resumed to be overlooked and are not truly liberate and independent. Rape is a crime against women in general that infringes her nobility and self-esteem, and it lessens the woman

¹ Author is a student at KIIT School of Law, India.

to the ranking of a carnal piece when it is practiced within her own four walls.² Marriage is revered as a holy social foundation in India. One of the most distinguishing features of a husband and wife's relationship is the legal sanctions associated to their sexual interaction.

II. MARITAL RAPE- AN UNDERSTANDING

Marriage is a legitimate and culturally permitted alliance, generally involving a male and a female, governed by “attitudes, laws, customs, rules and beliefs” that specifies the partners' privileges and obligations and confer dignity on their progeny. Marriage is basically a legitimate contract between a male and a female, which is a legally recognised relationship accompanied by legal sexual intercourse. Due to the legitimacy of intercourse, husbands attains the privilege to coerce their spouse's to have sexual intercourse with them, which could be the cause of marital rape. Although legal interpretations may differ, marital rape can be interpreted as any “unwanted sexual advances or penetration by force, threat of force, or without the consent of the wife”.

Though not solely, spousal rape is more universally suffered by women. Spousal rape is a persistent manifestation of assault for the victim that occurs within the abusive relationships. It exists in a compounded nexus of “state governments, cultural practises, and societal ideologies” that interconnect in different methods to affect each distinct “instance and situation”. The unwillingness to categorize “non-consensual sex between married couples” as an offence and to punish has been ascribed to “traditional views of marriage, interpretations of religious doctrines, ideas about male and female sexuality, and to cultural expectations of subordination of a wife to her husband”— that are still widely held in many regions of the world.

Different types of Marital Rape: -

According to legal scholars, there are three types of marital rape. These are as follows:

- **“Battering rape”:**

In battering rape, women undergo both “physical and sexual violence in the relationship” and they suffer these kinds of abuses in numerous techniques. Some people experience abuse while having sex, or the rape may occur after a “physically violent episode in which the husband wants to make amends by forcing his wife to have sex against her will”. This category caters the vast majority of victims of spousal rape.³

- **“Force-only rape”:**

² Pradeep Tomar and Another v. State of UP and Another, (2021) (INDIA).

³ Nimeshbhai Bharatbhai Desai v. State of Gujarat, (2018) SCC GUJ 732 (ONLINE) (INDIA).

In these kinds of rape, husbands adopt only that extent of force necessarily required to coerce their spouses; battering may not be an attribute to these kinds of relationships. The assaults usually occur after the woman has refused the sexual intercourse.⁴

- **“Obsessive rape”:**

In these kinds of rape women suffers what has been contemplated as “brutal, aggressive or compulsive rape”. These assaults incorporate “cruelty and pertinacious sexual acts and are over and over again bodily violent”.⁵

III. THE IMPACTS OF MARITAL RAPE

Spousal rape is also a type of domestic violence in and of itself. It is an exploitation of vigorous and brutal authority and thus, “sometimes includes physical abuse, emotional abuse, mental abuse, social abuse, financial abuse, and usage of male privilege”.

Spousal Rape has extra acute and enduring sequel for women in the view of the fact that “the rapist is none other than her husband with whom she had expected to spend a lifetime of happiness”. There are 2 groupings:

- **“Physical effects”** - The consequences of spousal rape on the body include “injuries to private organs, bruises, torn muscles, lacerations, fatigue, fractures etc.” Females who are put through bodily savagery, in addition to rape, undergo from various other aggravations like “blackened eyes, broken bones, and wounds inflicted by any sort of weapon, during sexual violence”.

Furthermore, women in addition to aforementioned problems also go through consequences like “miscarriages, infections infertility and also the chances of diseases like HIV etc.”

- **“Psychological effects”** - The agony of a female proceeds through “when her own husband repeatedly rapes her” is something that words cannot adequately convey. The mental consequences are far unfortunate than the bodily consequences, some of the momentary mental consequences are “shock, fear, stress, suicidal tendencies etc.”

On the other hand, the majority of victims of marital rape are also helpless or afraid to fight back against their spouses' sexual assault. “Post-traumatic stress disorder (PTSD), depression, gynaecological issues, and bad physical health symptoms” are very familiar amongst the

⁴ Paul Harvey Wallace & Routledge, Family Violence: Legal, Medical, and Social Perspectives 335 (2015) (8th ed.)

⁵ Ibid.

victims of spousal rape. Sufferers of spousal rape look for aid from a diversity of grounds.⁶ Seeking aid from “social service agencies” and utilizing the law seems to be the most constructive conducts for nulling spousal rape. “The mental agony of being raped, the trauma of being abused by her own husband, the helplessness of remaining silent, and the indelible scars of these incidents are all important components of marital rape.”

IV. WHY IS MARTIAL RAPE STILL NOT A CRIME IN INDIA?

India is still one of the 36 countries in 2023 where a “man can rape a woman as long as they're married”. One of the major subjects being talked over is “whether marriage gives the husband an expectation of sexual relations and whether the wife has implied consent for sex.”

The “Indian Penal code was enacted in 1860” under English colonial reign. There had been a long-standing tradition in England “doctrine of coverture”. As the Supreme Court also coined when “decriminalising adultery in 2018,”⁷ this doctrine denoted that the “husband and wife were one person after marriage” and “the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband”. As an outcome, a female could not do any sort of task against her partner’s will, such as buy an estate or sign a contract. In inclusion, as cited in a case in England from 1707, “in return for support and protection, the wife owed her husband a ‘consortium’ of legal obligations, which included sexual intercourse”.

One of the first instances of spousal rape exemption comes in what is referred to as “Hale’s doctrine.” “Matthew Hale, a chief justice of the Court of King’s Bench in England in the 1670s”, composed in an important criminal law work issued in 1736 that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract: the wife has given up herself in this kind unto her husband, which she cannot retract”. Due to concepts like these, while the "Indian Penal Code" was being written in British India, marital rape found an exemption in the definition of rape.

- **“Marital rape not illegal”:**

A woman from Mumbai said that she became paralysed as a result of her husband forcing himself on her. A month after they wed in November 2020, she claims the husband had intercourse with her without her permission. The offender was given anticipatory bail, albeit the judge ruled that it was not an unlawful conduct. Judge Sanjashree J. Gharat of the Mumbai Additional Sessions noted that a woman's complaint did not hold up under legal examination.

⁶ Code Crim. Proc. § (375,376)

⁷ Joseph Shine v. Union of India, (2018) (India)

The judge had said that the accused “being the husband cannot be said that he committed any illegal thing”.

- **“Sex in marriage not rape ‘even by force’: Chhattisgarh High Court”:**

In yet another surprising ruling, the Chhattisgarh High Court exonerated a man of raping a married lady and added that having intercourse with a married person is not the same as committing rape, even if it is done under duress. “In this case, the complainant is legally wedded wife of applicant No 1, therefore, sexual intercourse or any sexual act with her by the applicant No 1/husband would not constitute an offence of rape even if it was by force or against her wish,” the high court said in its order.^{8 9}

- **“However brutal the husband is...: Supreme Court”:**

The Supreme Court ruled in March 2021 that a sexual conduct between a man and a woman who are living as husband and wife cannot be classified as rape. In a case involving the quashing of a FIR for rape due to a fraudulent promise of marriage, the judge made the comment. Then SA Bobde, the Chief Justice of India, was quoted as stating, “When two people are living as husband and wife, however brutal the husband is, can the act of sexual intercourse between them be called rape?”¹⁰

V. TIME TO RECOGNIZE MARTIAL RAPE IN INDIA

The scant presence of a wedding does not suggest agreement. In practise, however, the judiciary will almost certainly use some extent of force to address consent subject. While criminalising spousal rape, there are three options that deal with consent.

“The first would be to assume consent and place the burden of proof on the victim to disprove it. The second option is to assume that there is no consent, in which case the accused must prove consent. The third option would be to extend a system designed specifically for cases of marital rape, which could necessitate a reconsideration of existing evidence law standards. The best option would be to treat permission in the same way we would in other situations.”

“When the wife swears in the court that she has been raped, a suspicion of lack of consent will be upraised and used against the accused”. In practise, “both of these will be ineffective in determining the existence of 'consent' in cases of marital rape.” Currently, there is no requirement for force to indicate a lack of consent under the law. Now, Circumstantial evidence

⁸ Code Crim. Proc. § (375) (exp 2)

⁹ Dilip Pandey & Ors v. State of Chhattisgarh, (2021) (India)

¹⁰ Farhan v. State & Anr, (2022) (India)

is used to determine consent. Due to the essence of the criminal act, producing evidence in a case of spousal rape is extremely difficult. “This is exacerbated by social perceptions of women bringing rape charges as a means of harassing, injuring, or seeking vengeance.” In consideration to this, when deciding on cases of marital rape, I believe the court should take a few factors into account. Aside from the current situation, established precedent recognises “that a woman's prior sexual acts are not required to demonstrate the presence of consent”. This is often expressed, however, “in terms of the woman's previous sexual relationships with other men”. In these occasions, however, “this ratio can still be used, i.e., regardless of whether the lady has had a previous sexual history with the man”. This is particularly critical in cases of marital rape, “because the woman may have had a consensual relationship with her husband prior to the incident or incidents of non-consensual intercourse, i.e. rape.”

Despite the reality that spousal rape sustains “little public, intellectual, or criminal attention, it is one of the most horrific crimes committed in the name of a female”. Spousal rape has break freed the attention of “Indian legislators”. “The idea of a woman being raped by her husband and the fact that she is unable to seek safety in India due to any rule is distressing. The sacredness of marriage is sullied by marital rape”. Domestic violence, including spousal rape, cannot be convinced merely on the footing of consent. A wife who has been assaulted by her partner is anticipated “not only to remain silent about the abuse, but also to learn how to cope with it and continue living with her husband.” The thing that will cause the biggest disaster is that the woman will have to spend the rest of her life with the man who raped her and also happens to be her own husband. “Modifications to the respective matrimonial legal guidelines are required”. “Although significant changes to the law on sexual offences are needed, such as making them gender-neutral and eliminating inequities, a complete revision of the law on sexual offences is not recommended”.

“Modern females must be psychologically structured and aware of such acts in today's world. In today's world, marital rape may be the most obvious, as rape is legally permissible, eliminating the need for the female's consent. To protect women's rights, India's judicial system must establish legal standards criminalising marital rape.”

VI. CONCLUSION

Marital Rape is still a unrecognised offence in India, which is widely being criticised as it is discriminatory and violative of the Fundamental Rights of the women. As Indian Penal Code doesn't recognise a forced sexual intercourse between a couple if the female is above 15 years of age, so there's no fear in the minds of the people in India.

In contrast to Indian scenario, many other countries have criminalised Martial Rape as an offence and have prescribed laws and protections for women.

The situation in India need an immediate concern and recognition of this crime is extremely important for the future of our country's well-being.
