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Rape: Under the Nuptial Knot

JYOTI¹ AND SHIVAM KUMAR²

ABSTRACT

The renowned poet Rabindranath Tagore has expressed his views on the plight of women as:

"O lord why have you not given women the right to conquer her destiny?

Why does she have to wait head bowed?

By the roadside, waiting with tired, patience hoping for a miracle in the morrow?"

The rights of women are always bowed deep down in search of their destiny. Rape per se is an offence against the dignity of women and when it comes to the marital rape i.e. rape within the four walls reduces the status of women to a mere object for the sexual pleasure. Under Indian Penal Code section 375 prohibits Sexual intercourse by a man with his own wife, the wife not being under 18 years of age, is not Rape. Thus provided as when the couple is wedded, it is totally lawful for men to assault a woman in India. . Rape becomes one of the most heinous and barbaric acts ever committed only against woman. It is an act that destroys a woman's personal bodily and emotional equilibrium and turns her to a sociopathic killer. In the instance of women who is Raped by her husband, the seriousness of the transgression and the impact of this brutality are amplified. Sexual assault was not feasible within that marriage whereas a man can do whatever to his spouse considered as his property. In many other states and countries, rape was defined as a violent crime committed against the woman's husband and father, rather than the woman herself. In light of this, the notion that a woman (wife) must have sex with her husband regardless of her will, consent, health, or other factors is unthinkable in a civilized society. As a result, the concept of marital exemption has no rationale or validity in today's world. True, criminalizing marital rape in India will not solve the problem, but it is a significant step toward improving women's experiences with sexual abuse in marriage. It is past time for the concept of "rape is rape, regardless of the relationship between the parties" to be adopted.

Keywords: Rape, Marital Rape, Domestic violence, Assault, Personal liberty, Criminalization.

¹ Author is a student at ICFAI Law School, India.

² Author is a student at Chanderprabhu Jain College of Higher Studies & School of Law(GGS IPU), India

I. INTRODUCTION

Oxford Dictionaries defines Rape as “the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offence against their will”.

Cambridge Dictionaries Defines Rape as “to force someone to have sex when they are unwilling, using violence or threatening behaviour”.

As a result of the foregoing definition, we may conclude that Rape occurs when someone forces another person to engage in sexual activity without their permission.

Rape is seen as a horrific crime against women in all countries, including India. According to data issued by the National Crime Records Bureau, the number of crimes against women in India has climbed recently. An incidence of violence against women is recorded every two minutes in India.³

When we talk about equal rights and positions for women in society in the twenty-first century, and women's rights, one thing that always directly contradicts the government's efforts is the rapid increase of abuse against women. Even though we have a compelling law that prevents women, we still lag behind in controlling such abuse against women.

Now, one issue that comes to mind is that, despite having strong laws in place to protect women, crime against women continues to rise year after year, with some extremely terrible stories like the Delhi Gang Rape Case in 2012 and the latest Nirbhaya similar Rape case of a 30-year-old lady in Kerala. These occurrences demonstrate that the legislation of our land fails to protect our country's women.

Though the concept "marital Rape" first originated in Indian law some years back, it has yet to be criminalised in our nation. Our Indian laws have been unable to provide security to women in the society; women assume feeling threatened even inside their own home; women's conditions have always been the same as before; they are still deemed the property of their husbands, who might have complete rights to abuse her, and there are unfortunately no effective remedies available to combat this. India is a patriarchy nation that has traditionally valued males more than females and handled them inequitably. Women were formerly denied the authority to make any decisions. They were simply supposed to follow their husbands' orders and help with household tasks. Men were seen as superior to women since they used to be the heart and soul of a wedded woman's existence, but there was nothing more out of a woman than her husband, therefore they were shown genuine respect. That is why Sati Pratha reigned supreme in India for so long.

³ Mrs. Pyali Chatterjee *Marital Rape whether marriage is a licence to rape* Research gate (June 2016) https://www.researchgate.net/publication/307583036_MARITAL_RAPE_WHETHER_MARRIAGE_IS_A_LICENSE_TO_RAPE

Women have been subjected to harsh treatment not just from their husbands, but also from their families and society. “Aurat, aadmi ke pairokijooti hoti hai,⁴” says an old proverb. This demonstrates that no matter how irrational a man's decision is, women must blindly obey it. However, our society has progressed, and people's attitudes are changing dramatically. Women nowadays are able to live their lives on their own terms, and many social activists have committed their lives to the advancement of women. Many government-sponsored programmes, such as "Beti Bachao, Beti Pado," have aided in altering people's beliefs. Despite the fact that our society has progressed, we constantly hear of numerous examples of women being victimised in various ways. For instance, Rape, wife beating, domestic abuse, and so on. However a women may have the right to sue her man for criminal assault if he engages in brutal and non-consensual intercourse with her, our criminal codes do not include culpability for marital Rape.⁵

II. MARRIAGE

Marriage is considered a sacrament in Hindu law. Marriage is an institution in which men and women engage to family relationships while maintaining a normal and effective sexual connection. Women, on the other hand, are still reliant on males for a variety of reasons, including custom, religion, poverty, family, and offspring. If a married woman musters the strength to speak out about the Rape, there is no legislation in India that recognises non-consensual Rape in a matrimonial relationship as marital or spousal Rape since it is a kind of domestic abuse against married women⁶.

III. RAPE

Rape is when a man is sexually assaulted without his permission due to a massive physical threat. The retribution is imposed in India under sections 375 and 376 of the Indian Penal Code. And marital Rape is when a spouse has sex with her without her permission. Permission is the main criterion for Rape; if there is a lack of free consent from the woman's side for sexual intercourse, the male cannot even touch her; nevertheless, if this is disrespected, Rape is conducted. Rape is sometimes known as marital Rape, which is a highly significant problem since women in marriage are sexually attacked and are unable to convey their experiences.⁷

⁴ Prachi Sharma *Is Marriage License to Rape*, Vol no 9 ASSC. 2581-5504 (2020)

⁵ Ibid 2

⁶ *Is marriage is a licences to rape*, Advocatespedia ASSN 141466 (July 20, 2020 16:58) https://advocatespedia.com/Is_Marriage_is_License_to_Rape.

⁷ *ibid*

IV. MARITAL RAPE

When it comes to sexual assault and Rape, most people would describe any such transgression as horrific under normal conditions. However, there is one type of Rape that is not unlawful in India, and the offender is not even considered a culprit in the eyes of the law. And that is Rape in the marriage.

According to Section 375 of IPC, Exception 2 of Indian Penal Code (IPC), "Sexual intercourse by a man with his wife, the wife not being under 15 years of age, is not Rape⁸". According to a research conducted by the United Nations Population Fund, more than two-thirds of wedded Indian women aged 15 to 49 had been assaulted, Raped, or forced to perform sex. To summarize, raping a lady in India is lawful as well as you are wedded to her. We are in the year 2021, and our nation has reached this point of savagery.

Undoubtedly, India's failure to make marital Rape a crime sends a message to the whole Indian women's society that their permission to any sexual activity is irrelevant in the context of her husbands'. It informs a woman that once she marries, her body becomes her husband's property, and she loses her freedom, power, and control over her body. India's Rape laws are patriarchal to the point that they explicitly instruct males that whether they want to Rape a woman despite facing jail time, men should wedding her. A woman is supposed to give her husband lifelong permission under Indian law. After all, what is marriage if not an unrestricted right to indulge in sexual activity at any time of day⁹?

Marital Rape, on the other hand, is a violation of the Indian Constitution's Articles 14 and 21. In **Bodhisattwa Gautam v. Subhra Chakraborty**¹⁰ the court ruled that Rape happens against humanity and a breach of the right to life guaranteed by Article 21 of the Indian Constitution, and set down standards for compensating victims. It is apparent from the previous scenario that "marital Rape" is a breach of the core foundational ideas on which the entire system is built. Supreme Court held in this case of **State of Maharashtra vs. Madhkar Narayan**¹¹ that every woman has the right to her sexual privacy, and it is not permissible for anybody to infringe on it at any time.

V. REASONS BEHIND MARITAL RAPE

(A) Dominance

⁸ Indian Penal Code 1860 S 375.

⁹ Nandani Sharma, Marital Rape: Can marriage be taken as a License to Rape , Outlook (March 05, 2021, 7:34), <https://www.outlookindia.com/website/story/opinion-marital-rape-can-marriage-be-taken-as-a-license-to-rape/376280>

¹⁰ *BodhisattwaGautam vs. Subhra Chakraborty* 1996 SCC (1) 490

¹¹ *State of Maharashtra vs. Madhkar Narayan*, 1990 AIR 1991 SC 207

When the couple's disagreement grows, the husband may try to establish himself by imposing himself on the lady. In order to outdo his wife, he will utilise the most powerful weapon in his armoury to humiliate and degrade her. He is demonstrating his dominance over her and damaging her privacy in this manner. He is offending the woman's most precious values by doing so. While Rape is a horrific crime by itself, it is frequently the intricate process of mocking, abusing, and disrobing the victim that makes marital Rape so humiliating for the victim. "The male wishes to establish his superiority over the lady"¹².

(B) Sexual Dissonance between the couple

The lady may deny her spouse because she is not interested in sex for reasons that are only known to her. In general, men are more sex obsessed than women. As a result, when a man is refused sex, he considers it an affront to his masculinity. When the wife resists sex, it might be because she was sexually abused as a child and does not see sex as a good, joyful activity. As a result, she might not react the way her spouse expects her to. As a result, he may not feel welcomed since he is unable to complete the sexual act. This might lead to a rift between the relationships, with the man forcing himself on the woman in order to avoid the shame of sexual rejection¹³.

VI. TYPES OF MARITAL RAPE

(A) Force only Rape

A husband who only abuses force and intimidation to induce sex to the extent required. This sort of Rape is most common in partnerships where the violence is mostly verbal, as well as in partnerships where the abuse is mostly sexual.

(B) Battering Rape

Battering Rape refers to the combination of beating and Rape. Sexual abuse is part of a larger cycle of abuse that includes psychological, verbal, emotional, financial, and physical assault. Rape frequently occurs as a result of a physical attack. Physical violence is sometimes continued during sex, and the sexual act is extremely violent.

(C) Obsessive Rape

Obsessive Rape is the most blatantly cruel kind of Rape. The abuser appears to be preoccupied with sex, and the act is aggressive in nature. The abuser may use violence to elicit arousal in these situations.

The lack of understanding of women's empowerment and low literacy rates, especially in a

¹² SANDHYA RAGHAVAN, *MARITAL RAPE: WHAT ARE ITS CAUSES AND IMPLICATIONS?*

The health site (July 06, 2017, 08:02), <https://www.thehealthsite.com/sexual-health/marital-rape-what-are-its-causes-and-implications-k0617-496751/>

¹³ *ibid*

nation like India, are the reasons why marital Rape has not been mentioned till now. The perpetuation of societal standards that have hegemonically dominated the female mind for ages has also been a major factor in women's refusal to recognise marital Rape as Rape. Women have attempted to think that obeying the husband's demands and gratifying his sexual cravings is their responsibility as an ideal wife since the Manuscript, where beating and sexually abusing wives is justified on the basis of upholding the family hierarchy¹⁴.

VII. IMPACT OF MARITAL RAPE

Women who have been raped by their spouse suffer from embarrassment, anguish, and misery. Marital Rape produces a slew of public health issues, including poor mother and infant health, STI re-infections, and long-term HIV infection risk.

Victims of marital Rape experience the same anguish as stranger Rape victims. In reality, marital Rape is often fairly violent, and it has more severe and devastating effects on the victim than other types of Rape." Stranger Rape is a tragic one-time occurrence, but marital Rape usually entails a succession of traumatic episodes over the period of time.

(A) Stress and Terror

Stress and depression are the most commonly recognised symptoms after Rape.

(B) Depression

It is an emotional illness that occurs when feelings of sorrow and hopelessness last for a long time and interfere with normal cognitive patterns. It has the potential to influence your behaviour and interactions with others. Survivors frequently experience sadness, helplessness, and dissatisfaction. If you have these sensations for a long time, it might be an indication of depression.

(C) Eating Disorder

Sexual assault may affect a person's body image and sense of control, among other things.

(D) PTSD

Post-traumatic stress disorder is an anxiety condition triggered by a stressful event (PTSD). Survivors are bound to experience high amounts of stress, worry, anxiety, and uneasiness. These sentiments are particularly strong in those who have PTSD, and they can make you feel as if you're continually in danger, making it difficult to function in everyday life.

According to research, a Rape by a husband is particularly traumatic for women. They have their lives, homes, and perhaps children defiled by somebody with whom they live their life, homes, and children. They are confronted with a breach of trust and intimacy as a result of the

¹⁴Prof Kshitij Naikade, *Issues and challenges related to marital rape in India*, Vol 7 issue 4. IJHSSI Page on 58-69, 2319-7722 (2018)

violation of their bodies. Victims of marital Rape are more likely to have repeated Rape occurrences than stranger or known Rape victims. Victims of marital Rape endure long-term physical and psychological effects that are comparable to or worse than those suffered by stranger Rape victims. Embarrassment, dread, remorse, blaming one, and injuries such as black eyes and broken bones are some of the side consequences.

VIII. FACTS AND STATISTICS

In eighteen American states, three Australian states, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, the Soviet Union, Poland, and Czechoslovakia, marital Rape is prohibited. *R v R*, a case from the United Kingdom, revolutionised the law by determining that a man may Rape his wife under UK law. Even inside a marriage, the courts declared that any non-consensual sexual behaviour is illegal¹⁵.

Fourteen percent of married women say their husband or wife has raped them. Their figure is likely to underestimate the real frequency of marital Rape. Sole Rape and sexual assault were reported as the only forms of abuse in the marriage by 23% of reporting women. The marital rapist is not a "crazed sex maniac," as other rapists are. He is a man who views sex as a solution to all marital difficulties as well as a source of male identity affirmation. Battered women's syndrome does not usually include marital Rape. However, at least half of all abused women had been raped in their marriage. Adult female survivors of marital Rape are more likely to have been sexually assaulted as children than male survivors. According to a nationwide survey, a spouse or ex-husband was engaged in 10% of all sexual assault incidents reported by women.

IX. INDIAN LEGISLATION ON RAPE

All types of sexual abuse involving non-consensual contact with a woman are included in the definition of Rape specified in Section 375 of the Indian Penal Code. Exception 2 to Section 375, on the other hand, exempts reluctant sexual relations between a husband and wife above the age of 15 from the definition of Rape in Section 375, and so protects such actions from conviction. Rape is punishable under section 376 of the Indian Penal Code. According to this section, the rapist should be sentenced to either a period of detention of not less than seven years but not more than ten years, or a period of detention of not less than 10 years but not more than life, as well as a fine.

¹⁵ Diganth Raj Sehgal, *All You need to know about marital Rape*, Blog.ipleaders.in (Aug 09 2020), https://blog.ipleaders.in/need-know-marital-rape/#Facts_and_Statistics_International_Scenario

According to the Indian Penal Code, a spouse can be punished for marital Rape in the following circumstances:

1. When the wife is between the ages of 12 and 15, the offence is punished by up to two years in jail, a fine, or both.
2. When the wife is under the age of 12, the offence is punished by law of any sort for duration of not less than 7 years but not more than life, or for a period of up to 10 years, as well as a fine.
3. Rape of a judicially separated wife is a crime punishable by up to two years in jail and a fine.
4. Rape of a wife over the age of 15 is not punished.

In a 2013 report, the Justice Verma Committee suggested that the provision for marital Rape be removed. However, in the suit of *Independent Thought v. Union of India*, a division bench of the Supreme Court of India ruled down Exception 2 to Section 375, IPC as a violation of Article 14 and 21 of the Indian Constitution¹⁶.

This established that having sexual relations with one's spouse are a woman's responsibility and that her body is regarded her husband's property. Individuals have filed writs with the Supreme Court and the High Court contesting the marital Rape exception, but they have been unsuccessful. To a limited degree, the 42nd Law Commission Report established the notion of marital Rape due to the lack of permission when a husband and wife are living apart under a legal separation judgement or by mutual consent. In the 172nd Law Commission Report, the Law Commission specifically addressed the constitutionality of section 375's exemption clause. This argument was rejected by the Law Commission, which stated that criminalising marital Rape would result in "excessive interference with the institution of marriage."

To broaden the scope, the Criminal Law Amendment Bill of 2012 substituted the term "Rape" with "sexual assault," although it still did not include a provision for marital Rape. Many suggestions were made, but one of the most persuasive arguments was that appropriate remedies already existed in criminal law, namely the idea of cruelty as defined by section 498 A of the IPC.

The Protection of Women from Domestic Abuse Act of 2005 establishes adequate legal remedies for domestic violence, including marital Rape. Sexual intercourse without permission can be deemed a breach of one's dignity and hence a criminal offence. The statute, which considers this infringement to be a civil offence, provides for a limited number of civil

¹⁶ Atishya Ghosh, *Criminalization of marital Rape in India- A boon or a ban*, V.3 Iss 4 IJLMH 2581-5369 1084 (2020).

remedies, such as fines and protection¹⁷.

X. THE PROVISIONS UNDER INDIAN CONSTITUTION

Part (iii) of the Indian Constitution provides certain fundamental rights to all Indian citizens, regardless of caste, colour, sex, religion, or birth order.

India's Rape laws are in violation of the Indian Constitution's Articles 14 and 21.

“The State must not refuse to any individual within the territory of India equality before the law or equal protection of the laws,” says Article 14. Exception 2 breaches Article 14's right to equality by discriminating against married women by denying them equal protection against Rape and sexual harassment, therefore nullifying the protection provided by SECTION 375 of the IPC.¹⁸The Supreme Court concluded in **State of Bengal v Anwar Ali Sarkar**¹⁹ that each classification made under Article 14 is subject to the reasonableness test, which can only be satisfied if the classification has some rational connection to the goal of the act. Exception 2 defeats the aim of section 375 by exempting husbands from penalty, which is completely at odds with the goal. Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty is likewise violated by Exception 2. The Supreme Court has ruled that the rights established in Article 21 include, among other things, the rights to health, privacy, dignity, and secure living conditions. Under Article 21 of the Indian Constitution, the Supreme Court in **Suchita Srivastava v Chandigarh Administration** linked the freedom to make sexual interaction choices with the rights to personal liberty, security, dignity, and physical integrity. As a result, the marital Rape exception is unconstitutional since it infringes a married woman's right to privacy, personal liberty, and good health by compelling her to engage in sexual intercourse²⁰.

XI. SUGGESTION AND CONCLUSION

Women have fought for their rights since the past. Even after such a long period of modernity, Indian society has failed to fully address the rights of wedded women when it comes to their dignity.

In India, the statute is not quiet when it comes to the safety of women, but it is quiet when it comes to the security of women?

Whether the Rape is done by her spouse or by an unknown person, the suffering of the woman is the same in both circumstances. Why is such anguish not heard by our government, or should

¹⁷ *Supra* note 14

¹⁸ *Supra* note 15

¹⁹ *State of Bengal v Anwar Ali Sarkar* 284 SCR 1952

²⁰ *Supra* note 14

we say that the government of India is waiting for another Nirbhaya in which the victim is a married woman and the perpetrator is her husband? If this is really the destiny of Indian women, only God knows if the day will come, and who will be the privileged victim whose identity will be etched in gold letters in India's history for losing her life to make Marital Rape a criminal offence under Section 375 of the Indian Penal Code.

My only opinion is that it is past time to make Marital Rape an offence under Section 375 of the Indian Penal Code, both for the benefit of women's safety and for the purpose of society. Only when the mother is strong will she be able to give birth to a healthy child. On which our country's future is predicated.

Men and women are deemed equal in significance and have equal rights to express their sentiments and emotions in an idealised society. No one should feel exploited, whether they are men or women. To ensure that justice is done, laws should be gender neutral.

According to Oxford Dictionaries, Rape means “the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will. According to Oxford Dictionaries, Rape means “the crime, typically committed by a man, of Forcing another person to have sexual intercourse with the offender against their will.
