

MARITAL RAPE CRISES IN INDIA

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Abstract

Marital rape considered to be an unwanted intercourse by a man with his wife obtained by physical abuse force , coercion, physical violence etc. Basically, is the non conventional act done by the husband to his wife for having a sexual intercourse by the way of physical and sexual abuse. There is a immediate need for the amendment in the said promulgation. Along with this we have to change our mentalities about the same issue as well as sensitising the Judiciary as well as the police is must. Amendment would be made in statutory criminal law for criminalising marital law under **section 375 and 376** for the protection of women rights against this social stigma named as Marital Rape

Introduction

Marital rape or in other words spousal rape first one act of getting intimate having sexual intercourse with one spouse without the consent of that spouse. The major difference between a rape and sexual intercourse is the consent both the parties sex intercourse. Lack of Consent by one of the party amounted to rape. Or in other words, sexual intercourse with wife by the husband without consent resulting into the category of marital rape which is not punishable in India but it is punishable in another countries. In my opinion marital rape should also be punishable in India as well. Marital rape fall under the category of domestic violence or sexual abuse collectively. Perhaps, even Look upon the historical sources and quality Holistic books provides the conservative thinking that sexual intercourse within the marriage Bond rights of a husband itself and there is no place of consent of either of the spouse. To be considered as his legal right to have sexual intercourse with her wife. But in recent years marital rape is now widely has been regarded by the law of various Nations as well as a society also talks about this issue at large scale. Around The World various societies recognised marital rape as offensive in nature which is against the right to dignity, right to public Liberty and right to equality. This

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issue has been repudiated by many of international conventions and treaties etc. Moreover, marital rape considered to be an unwanted intercourse by a man with his wife obtained by physical abuse force , coercion, physical violence etc. Basically, is the non conventional act done by the husband to his wife for having a sexual intercourse by the way of physical and sexual abuse. 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. 56% of Indian women believed occasional wife-beating to be justified.

Meaning of marital rape

The word 'rape' has been derived from the latin term 'rapio', which refers 'to seize'. Rape is thus a forcible seizure, or the ravishment of a woman without her consent, by different methods. Rape refers to an unlawful attempt of sexual intercourse by one party to another party without the consent of another party. It is basically a punishable offence under section 375 of Indian Penal code. Shockingly, in India outside area is a punishable offence where as rape by husband is not punishable or mentioned in any of the promulgation of government of India. Historical framework of our country is evident to consider the fact that system your opinion regarding this is as orthodox as the historians were. They have a stupid mind set that women have a responsibility to satisfy his husband after marriage. This mind set has resulted into the non enactment of any law , provision against marital rape . This mind set give right to the husband to have sexual intercourse and wedding night and by this women are suffering from ages and ages. Today various Nations have either establish laws regarding the same and revoked the laws that provide distinction between the ordinary rape. Just like ordinary rape marital rape is also an infringement of human rights. Marital rape is illegal in 18 American States, 3 Australian States, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia.

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

- 'Rape' should be replaced by the term 'sexual assault'.

- ‘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.
- 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.
- Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
- A new offence, namely section **376E** with the title ‘unlawful sexual conduct’ should be created.
- **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.
- 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.
- 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.

Historical background

Marital rape is a term which was firstly noticed by the lock as a oxymoron in us history . In 1993 all states had finally removed marital rape exceptions. The guidelines for this marital rape exception were as follows:The British common law indicates that marriage is a contractual relationship which gives the right to husband to have intercourse with her wife without her consent after entering the contractual obligations.Another very important excuse there is a privacy between the relationship of husband and wife which act as a shield of having a particular provisions regarding the marital rape public Interest.

Consequences of marital rape

There are various consequences of marital rape that are mentioned below:

1. Social stigma and abandonment

2. Vaginal and anal injuries
3. Post traumatic stress disorder
4. Depression
5. Fear of public places
6. Suicidal thoughts
7. Infertility issues
8. Degrading self image
9. Insomnia
10. Bladder infection etc.

Types of marital rape

The following are the different types of marital rape which are identified by the eminent Scholars as generally prevalent in the Indian society:

- **Battering rape**

In this type of rape women experience both type of violence that physical as well as sexual violence in the relationship. This type marital rape can be seen in majority of the livelihoods.

- **Force only rape**

This is another type of marital rape in which used to threaten her wife by the use of force. This type of rape also includes sexual assault after the refusal of having the sexual intercourse with their husbands.

- **Obsessive rape**

This is the third type of marital rape in which women are assaulted physical violence, sexual torture and many other sort of acts which are brutal in nature.

Indian scenario :marital rape

Even we are celebrating a 70years of Independence but still there are many alarming issues to think about. One of them is marital rape which is in human in nature that is against the will of individual that is women of our society sexual intercourse by her husband. Shockingly, after 17 years of Independence are women still are not free and independent to decide what is to be done with their bodies. It is a harsh reality of India that women of our country are fear for voice

against their husbands regarding the marital rape. It is a deep matter of concern that in one way we are flourishing in GDP economic growth social growth political growth but we are still lagging behind with the rights and liberties given to our women. Judiciary has to do something regarding the protection of women from marital rape in the recent judgements in the matter of **Aadhar Card case** and **triple Talaq case** creating new Benchmarks for the judiciary for the protection of human rights. Just like those cases our Parliament Judiciary collaborates 2 provisions for the production of women's infringement of their human rights.

As observed by eminent Justice Arjit Pasayat:

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."

However despite of increasing in the number of discussions as well as the cases of marital rape we are still placing our hands on hand and doing nothing for the protection women from marital rape. In India, little babies nobody find in any of the promulgation or any provision is made under any law. Further, rabies define under **section 375** of Indian penal code but there is no special a specific definition given under any law regarding marital law till now. It is very disheartened situation when are apex court the supreme court nice to give a judgement on amendment for this issue in that it is a private issue but not a public issues to be talked upon. There are **18 nations** in the world that had already made special laws for the marital rape and considered marital rape to be punishable as well as illegal. In Indian society marital rape is a most common and represent form of mind set.

Reasons for the suppression of raising voices

There are end number of reasons for the suppression of raising voices which are discussed below:

1. Conservative and orthodox mentalities that subjected to the responsibility of a women who have to satisfy her husband .
2. Fear from husband
3. Unfavourable behaviour of bureaucrats and police officers
4. Suppression by the family members

5. Sayings of the historians.
6. Social stigma
7. Women don't want to embarrassed her husband in front of the society.
8. Peer pressure etc .
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STATUTES RELATED TO MARITAL LAW

●Constitutional safeguards against marital rape

Violation of Article 21

Right To Live With Human Dignity :**Railway Board v. Chandrima Das.**

The Supreme Court has observed that rape is not merely an offence but is a crime against the society as whole.

Right To Sexual Privacy.**Kharak Singh v. State of U.P. ; Govind v. State of Madhya Pradesh, ; Neera Mathur v. LIC etc,** Supreme Court has proceed the same judgement and observed that right to privacy which is given under article 21 incorporate the right to be allowed to split unbothered. Any type of sex damages to the person whether male or female comes under article 21 which is against the right of privacy that means if wife is not consensually wanted to have sex with her husband then husband should not force her to be in a sexual relationship.

Right To Bodily Self- Determination

State of Maharashtra vs. Madhukar Narayan Mandikar has alluded to one side of security over one's . This case it was observed that prostitute is also having Human Rights as well as the constitutional rights to deny for sex.

Violation of Article 14 of the Indian Constitution

Marital rape resulted into the violation of article 14 of Indian constitution of India is Right to Equality

●Marital rape within the Ambit of Indian penal code

Rape is defined under Indian Penal Code under section 375 376 but marital rape is not specifically any of the section under Indian Penal Code.

●**Marital rape as a ground of divorce under Hindu Marriage Act 1956**

Under Hindu Marriage Act 1956 wants to give to her husband. Marital rape on non consensual sexual intercourse with her act as a active ground for taking a divorce.

●**Protection of Women from Domestic Violence Act, 2005**

Protection of women from domestic violence act also discussed about the marital rape. This promulgation considered marital rape is a type of violence. There is no specific punishment given for marital rape but just giving a right to a woman to go to the code and get the legal audition from my husband which act as a active ground for the divorce which we discussed earlier.

Arguments in favouring criminalisation of marital rape

1. Marital rape should be recognised by the state legislature of our country under section 35 of Indian penal code
2. Marriage Between the parties does not resulting into the less punishment to the accused.
3. Punishment of attempting marital rape should be as same as under section 376 of Indian penal code.
4. After proving the charge of marital rape, women should be provided as a ground of seeking divorce from my husband as the term marital rape comes within the category of cruelty as a ground of divorce.
5. Matrimonial laws should be changed according to the recent surroundings and crimes.

Conclusion

Changing matrimonial laws regarding the marital law is not a easy task it is very sensitive task for a country like India where there is a historical believes ,opinions as well as conservative mind set. But it is a alarming time to think over it and to tackle the situation marital rape. Amendment would be made in statutory criminal law for criminalising marital law under **section 375 and 376**. There is a immediate need for the amendment in the said promulgation. Along with this we

have to change our mentalities about the same issue as well as sensitising the Judiciary as well as the police is must. So that women would feel free to file a complaint against her husband regarding marital rape. There is a immediate need to aware the masses regarding the same problem as the real objective of declaring marital rape as illegal can only be achieved by operation of the society.