

MARITAL RAPE

- BHAVYA GOTTIPATI¹

Abstract

Marital rape is a well prevailing social issue causing trauma to a lot of women who have faced such brutal act, by their very own husbands who are supposed to be protecting them or let's say who are not supposed to force their wife to a forced act that has no equal consent of the wife. Ignoring or not acknowledging the fact that marital rape takes place in real and that the victims are the direct proof to it, somehow the Indian government has managed to make no laws about this brutal act.

This paper covers on the topics of what marital rape is along with a brief introduction, trauma caused to the victims, the infringement of rights, causes, few words on what can be done on this matter, followed by conclusion. It is time that we act up and speak up against the said matter and that how of a grave wrong it amounts to as such

Introduction

We, in India do not tolerate injustice. We the people of this country fight for justice. Many unsung warriors have sacrificed their lives to get us freedom. And we the people still sing upon their bravery every once in a year. While we the Indians got our freedom, there still are people who are fighting for their rights, who still are living in their plight. As we all know how brutal rape is and that it is a punishable offence, there is secretly, in a corner another crime similar to that which needs attention and which needs to be criminalized which needs some spotlight and which needs recognition.

¹ Student, 3rd year, Lloyd law college, Greater Noida

Marital Rape! Yes. Indeed. Marital Rape is a crime, yet not criminalized. Why? Because there is no such thing as “consent” when it comes to a “wife” and why is it? Because the woman is married and the rape laws are restricted.

But what is Marital Rape?

MARITAL RAPE

Well if we go with the literal dictionary meaning, it is “rape committed by the person to whom the victim is married”.

But if we go a little intense it is “the act of rape with one's spouse without the spouse's consent”. The lack of consent is the essential element.

But times have changed and many states as in countries have recognized it as a crime and a part of rape. There are strict laws against marital rape, again there are countries where the laws and recognition of marital rape is taking place and yet there are countries struggling to even notice “that” as a crime.

As the dialogue about criminalization of marital rape continues, medical reports of the survivors show enough reasons as why it must be a crime².

This, we can say as the perfect representation of “knowledge “we all possess too. Marital rape to be understood is no big test, but if we really try, we can say that the position in India is such that it is ready to give importance to culture and tradition neglecting the truth. Now this does not mean that culture and tradition are not cardinal, but if we see, we cannot neglect the truth.

India indeed is a rich land of culture, heritage, traditions, diversity, and the list goes on if we plan on! But when it comes to recognizing the truth of marital rape, somehow we stand behind. It is said that the status of a country can be calculated by 2 things:

1: The national income.

2: The way women of that country are treated.

² <https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/> visited on 5th April 2019

The first one is fine, easy and secure and apt. but the second one is something that tells how friendly or safe a country is. Or how safe it is for women.

Senior lawyer Indira Jaising, appointed as amicus curiae on a group petition on safety of women following Delhi gang rape of “jyoti” in the year 2012 has made the need to make marital rape a criminal offence a key recommendation in the brief that she submitted a few months ago, a copy of which is available with the Hindu . “Forced sexual intercourse within marriage should be brought within the ambit of definition of rape under section 375 ipc by deleting the exemption 2, (sexual intercourse by a man with his wife who is aged over 15³

Ms Jaising also recommended that instead of registering the cases under section 377 of the Indian penal code, they must be registered under section 376* although making it a criminal offence can be a start point; it’s the mindset that creates ruckus these days. Which can further imply that we the future generation have the capability of understating the cruelty of marital rape and that it exists. We need to understand that marriage is not a way to force the wife and that the word “consent “exists.

In a recent video by “scoop whoop” when the interviewee asked few people on what according to them marital rape was or if it is true in the present society we can clearly see people commenting that “if he is a man he has got the right to do it , and how dare she say no to him”? “if she wanted consent why did she marry?” and that women are using this as a publicity stunt and that they shouldn’t be given that much of freedom, others having rationale thinking capacity are heard saying that it exists and that marital rape is a crime indeed.

A study from “African population and health research center” says that 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

³ <https://time.com/3976180/marital-rape/> visited on 09th may 2019

witnessing violence and because it can undermine the ability of mothers to care for themselves and their children.

So we can say that indeed, it does cause women mental, physical and emotional trauma, unlike men who are directly responsible for it.

Not to forget that the said governments that were elected by us had promised for women safety, women protection and promised for some relief on said things , yet somehow they've all managed to escape the core and crucial part , and that is to implement the basic laws on marital rape. Often when neglect takes place in this particular topic, the trauma continues to haunt the women who faced such brutality as they've got no guaranteed remedy available for them.

Does marital rape amount to human rights infringement?

When we talk about human rights its natural to think that these rights are universal and are easily available to all human beings. But what if these rights are being violated and we, the people of India are unable to see? It's the same case when it comes to marital rape. A person's basic right of consent is neglected and right to sexual privacy is not applicable, and why? Because they are married⁴.

In today's world many countries have established rape laws; some have further expressed the need to add the laws for marital rape in them. While there are countries fighting for the strict laws for marital rape, the others are just silent and ignoring the fact of importance the said matter is.

In the case of state of Maharashtra vs. madhkar narayan the Supreme Court held that a woman is entitled to her sexual privacy. Which can further more be interpreted as "a woman has right over her body and nobody else than her can decide for it. After all according to article 21 and 19(a) a woman should be treated with due respect and should be given equal chances to enhance her identity. Marriage does not mean that a woman becomes slave of her husband and does what may ever pleases him, in fact it must be known that marriage is a union of 2 people treating each

⁴ <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/Why-isnt-marital-rape-a-criminal-offence-in-India/articleshow/54223996.cms> visited on 09th june 2019

other equally and if the husband says that he has a right on her, than he may mistake the wife for a commodity because clearly wife is not a commodity, or women let's say.

An act of forced sex with a person is clearly a human rights infringement be it a woman outside the marriage or inside. Something that is against the will of a person is to be considered first. Even if we differentiate as rape and marital rape, it is a crime that has to be recognized if we the people wish to minimize the abuse.

Causes

There can be many causes as to why marital rape takes place. The following are a few according to my observation:

1. The low self esteem.

In many of the cases when heard personally by the victims it was understood that the men who did such a cruel act with their partners do it in order to cover to their low self esteem among their friends, workplace etc .

2. Frustration.

Vimla (name changed) from srikakulam is a migrant worker and her husband works at a factory nearby. She stated that whenever her husband was frustrated due to any of his work life as such, she is forced to do according to him and when she rejects, marital rape takes place. And that is exactly the same reason for many of the rural women who have no idea what marital rape is but are going through that pain and trauma almost every day.

3. A feeling that when married, she is a property.

It is often seen that men assume that a woman is a legal property to the man and that he has got all the rights over her and can do whatever he wishes to

4. The downgrade feeling towards women in general.

Often women are assumed to be weaker sex than compared to men, who further leads to showcasing power over the married women or women in general that a man has got power over

his wife and is his duty to put her under his feet as in order to “protect” her is such an absurd thing to say or even hear. Where as in reality we all know what it is meant to be.

So what can be done?

Stricter laws can be made to protect women even after marriage, as the dowry act was really needed so are laws on marital rape.

A mindset among people who consider women as lesser or weaker sex must change, people must realize that marital rape in fact exists and is an equal crime and an infringement to the human rights and the most basic rights of a woman. Also there must be pretty much open talks about such matters and women or anybody must have the right to speak about it because educating people on marital rape will for sure bring a change in the mind set or society as such. Because when a country that gives importance to traditions and cultures also gives value to the truth and spur of the movement, certain change is taken place. Marital rape has been considered as a crime in more than 105 countries considering it as a special crime and few countries adding it to the existing rape laws. Even though many countries around the world have taken such strong and progressive steps, India is one of the countries where it is still not a criminal offence and is untouched by the lawmakers of our country.

Congress MP Dr.Shashi Tharoor has introduced a private bill in the Lok Sabha to make marital rape a crime. We can consider this a step towards the change, a step towards understanding the problem and facing as well as changing the reality. Gujarat High Court has recently observed in the case of marital rape that it is not a husband’s privilege, but rather a violent act and an injustice that must be criminalized. Justice J.D Pardiwala said that “Making marital rape illegal or an offence will remove the destructive attitudes that promote the marital rape,” he noted. In this very same case (Nimeshbai bharathbai desai vs. state of Gujarat 2018) the honorable judge further said that “The total statutory abolition of the marital rape is the first necessary step in teaching societies that dehumanized treatment of women will not be tolerated and that the marital rape is not a husband’s privilege, but rather a violent act and an injustice that must be criminalized,” so here it is clearly understood the need of criminalizing marital rape is really needed , supported with cases and the causes.

Conclusion

Marital rape isn't completely condemned in India. It certainly is a genuine type of wrongdoing against ladies and deserving of government's consideration. Women who are assaulted by their spouses are increasingly inclined to different strikes and frequently endure long haul physical and passionate issues. In this unique situation, conjugal assault is much progressively awful for a lady since she needs to remain with her attacker regular. As the outcomes of conjugal assault are truly elevated, there is plainly an earnest requirement for criminalization of the offense of conjugal assault. Positive legitimate change for ladies all in all is going on in India, yet further advances are important so both lawful and social change happens, which would come full circle in condemning conjugal assault and changing the demeanor about ladies in marriage. There are numerous escape clauses in Protection of Women from Domestic Violence Act, as the Act does not straightforwardly criticize conjugal assault. On the more brilliant side sanctioning of a particular enactment against abusive behavior at home has opened the entryway for an enactment condemning conjugal assault. This obviously demonstrates move in demeanor of state which prior put stock in non-intercession in family circle