

MARITAL RAPE: CONCEALED BEHIND THE CRUEL DRAPE OF WEDLOCK.

“Of all the evils for which man has made himself responsible , none is so degrading , so shocking, or so brutal as his abuse of the better half of humanity; the female sex”

- Mahatma Gandhi

INTRODUCTION:

Women have been the victims of domestic violence overwhelmingly in the whole world and most of the times research has established that there exists a direct and proportional relationship between country's level of gender equality and rates of domestic violence of which India is a best example. Marital rape is one of the glaring example of sex based crimes on women in a institution like marriage in India that forms a part of Domestic violence against women. Rape is defined in most jurisdictions as sexual intercourse or other forms of sexual penetration , committed by a preparatory against a victim without their consent and when it comes to sacrosanct institution of marriage it has degraded into much disgusting version of SPOUSAL RAPE OR MARITAL RAPE which refers to the Non consensual act of violent perversion by a husband against the wife where she is physically and sexually abused, this form of heinous crime against women is still a Taboo in India . In spite of all this a shocking picture behind this is that Marital Rape is still a legal concept in India as it is being excluded from the Indian Penal Code's definition of Rape¹, thus excluding the Marital Rape from the ambit of conviction under sec-375 and sec-376 of IPC and only a drooping amount of 1% of such rapes are in fact Reported.

MARITAL RAPE

Marital rape, as defined by oxford English dictionary, is “the rape committed by the person to whom victim is married”.

Rape is an unlawful sex without assent of a man because of physical drive or dangers or due to deceitful demonstration of perpetrator. Marital Rape is sex by spouse with his better half

¹ Indian Penal Code, 1860, (section 375).

without her assent or by compelling her through threat of force or physical violence etc². Thus the idea of consent in a marriage is not followed leading to marital Rape.

FORMS OF MARITAL RAPE:

The subsequent three types of marital rape are identified by legal scholars as by and large prevalent in the society³

- Rapes involving degree of violence also known as Battering Rape
- Rapes involving force only
- Sadistic rape also known as “obsessive Rape” or “pornographic rape”

A CHAUVINISTIC APPROACH

India has been a patriarchal society since ages and women in India have been considered as objects, so Rape of a women in institution of Marriage is given as a protective shield of the wedding right of a spouse. In India it is usually considered acceptable that husbands have an inherent right to force their wives to sex as they wish without even asking them about their consent .Thus Marital Rape is a clear example how the importance of consent stands negligible . More often the husbands are mostly immune from getting behind the bars for this heinous crime on females.

MARITAL RAPE AND LEGAL SCENARIO

Marital rape is still not criminalised in India. Section 375 of our penal code defines Rape elaborately while Exception 2 to sec 375 of IPC, which states that sexual intercourse by a man with his own wife is not Rape which says that “sexual Intercourse or sexual Acts by a man with his wife not being under Fifteen years of age, is not Rape”.⁴ Which means that husband can have Non-consensual Sexual Intercourse with his wife who is above 15 years which is a pathetic and shocking provision. The Honourable supreme-court in a recent judgement on 11th October, 2017, *Independent Thought vs. Union of India*⁵ construed

² Marital rape, available at : <http://www.legalservicesindia.com/article/2369/Marital-Rape.html>, (visited on 19th july, 2019) .

³ Gosselin , D.K., Heavy Hands – An Introduction to the crimes of Domestic Violence (1st Edition ., Prentice-Hall Inc., New Jersey, 2000)

⁴ Soumya Singh Chauhan, “Section 375: Analysis of Provisions Relating to Rape”, available at: <http://www.lawoctopus.com/academike/section-375-analysis-of-provisions-relating-to-rape/> (visited on March 23, 2019).

⁵ W.P No. 382 of 2013.

Exception 2 to Section 375, where the Age was read as 18 years instead of 15 years.⁶ Also there are certain fundamental rights enshrined in our constitution Art. 21 being one of them which talks about right to privacy and right to live with Human Dignity and the marital Rape clearly violate that.

One more legal Provision that deals with Marital Rape is Section 498A of Indian Penal Code⁷ which talks about cruelty and it is available as a ground for divorce under Matrimonial Laws.

Protection of Women under Domestic Violence Act, 2005

This legal provision only talks about civil remedies for heinous crimes like Marital Rape, which is considered as a form of Domestic Violence against Women. Thus no Criminal remedy is available as such. This Act prohibits any form of Sexual abuse in a live in relationship or marital relationship.⁸

Also the addition of sec.376A in IPC which protects woman from this kind of torture i.e. sexual intercourse with a wife who is living separately, in this case the husband can be punished.

NO MEANS NO:

Rape is the violation of sexual autonomy of women by her husband. Respecting each others boundaries while tied in a relation of Marriage is a basic instinct every human should follow and the moment a person deviates from it, that results into the gross violation of Rights of the counterpart and utter violence against that person. Marriage alone does not entitle a husband to have sexual intercourse with his wife without her consent and choice.

OPINIONS PREVALENT IN PATRIARCHIAL CONTEXT

Males have been from the times immemorial enjoying their extensive rights over women as their properties they use their physical strength and valour to suppress the female counterparts and thus enjoy a preferable position over them to break their trust easily.

⁶ Live Law News Network, Sex with Minor wife is Rape, SC Reads Down Exception-2 to S.375 IPC, LIVE LAW IN., available at: <http://www.livelaw.in/breaking-sex-minor-wife-rape-police-can-register-case-wifes-complaints-sc-reads-exception-2-s-375-ipc/> (Visited on March 22, 2019).

⁷ Indian Penal Code, 1860 (sec-498A).

⁸ Domestic Violence Act, 2005(Sec-3).

Marital Rape being a most common and institutionalised crime in our society is non-criminalised.

VIOLATION OF FUNDAMENTAL RIGHTS OF WOMEN INCLUDING HUMAN RIGHTS

Rape is not only a grievous crime against a woman but also it involves the violation of a person's basic ideal to life and individual freedom.

- 1) RIGHT TO LIVE WITH HUMAN DIGNITY
- 2) RIGHT TO SEXUAL PRIVACY
- 3) RIGHT TO BODILY SELF DETERMINATION

LACK OF SEX EQUITY

By decriminalizing Marital rape, our state has proved itself insufficient to guarantee sex equity that includes security from wrong doing and manhandling. If we consider from the patriarchal context Women usually these kinds of cruelties in marriage where a husband non consensual physical relation with his wife without even asking her of her consent.

SUBJECTION TO HUMILIATING PROCESS AT THE TRIAL STAGE:

If a victim of marital rape reports the crime and it goes to the trial stage it will be very difficult for a women to prove that she is subjected to such violence as in most of the cases she doesn't have a corroborative piece of evidence as she doesn't have the admissible evidences like the cuts, lesions etc in most cases. What she is subjected at the trial stage is a kind of 'SECOND RAPE'.

Impact on the women Raped:

This form of heinous crime has led to verbal and physical abuse, often it leads to displacement, divorce, co-dependency and rise of social evils among society. Women when entering into this religious and pious institution of marriage can never imagine such kind of grave crime being inflicted on them. Thus it leads to traumatising among them. It denies a

woman her bodily integrity thus striking a blow at women's rights.⁹ Not only this Marital Rape has led to the spreading and transmitting of sexually transmitted diseases which is also one of the aftermath of Marital Rape, leading to the physical and psychological impacts on the health of the victim. Different from the trauma of getting Raped by a Stranger, Marital Rape is a rape by your very own spouse, so the victim has to go through this form of Mental Cruelty throughout the period of their marriage, Leading to the long term consequences on women being Raped. More often in a Patriarchal setup like ours women often resist to get divorced due to the societal pressures and to save their institution of Marriage.

OTHER FACTORS THAT CONTRIBUTE TO THIS BAD LAW

Justification for Marital rape not being declared as a crime are the Religious connotations of Marriage as a sacred bond between Man and his wife and Rape in Marriage is considered as a taboo and other factors being illiteracy, low level of education, poverty, social customs, norms and beliefs, the mindset of the society to consider marriage as Sacrament. Men had a belief that they have a right of sexual entitlement over their wives. Also the Centre had told HC that criminalising the Marital Rape "may destabilise the institution of marriage" and would become a easy tool for harassing the husband. These being other secondary issues that are responsible for the Marital Rape and due to which a women have to spend her life with a Rapist with a frightening Memory.

CLAIMS AND ASSERTIONS OF THOSE FAVOURING MARITAL RAPE

- 1) There is already a remedy available in IPC to deal with Marital Rape under sections pertaining to Domestic Violence act or Section 498a relating to IPC.
- 2) Such a law will be used to harass men.
- 3) High level of illiteracy
- 4) It will destroy the institution of marriage.
- 5) There is no lasting evidence.

⁹ Saurabh Mishra, sarvesh Singh, "Marital Rape – Myth, Reality and Need For Criminalization", available at: <http://www.ebcindia.com/lawyer/articles/645.html> (Visited on March 24, 2019).

MARITAL RAPE AS A GROUND FOR DISSOLUTION OF MARRIAGE

In India acc To Hindu Marriage Act, withholding conjugal relations is a reasonable ground for dissolution of marriage and divorce but forcing Conjugal relations. In order to break this legal deadlock, however marital rape can be brought under cruelty and hence can act as a ground for divorce. Cruelty refers to an intentional Infliction of harm, either mental or physical on a living being, especially a human.¹⁰ Also, the Indian Penal Code, 1860 explains cruelty as any act by the husband that drives the victim woman to commit suicide or cause to her grave and serious injury, both mental and physical.¹¹ Thus in order to constitute the offence of Marital Rape one has to resort to the ground of cruelty as there is no specific provision for the offence of Marital Rape.

NEED FOR REFORMATION

GOVT needs to recognise and report Marital Rapes, which are increasing day by day with the increased frequency of inhumanity in the society. Most of the Nations today have criminalized Marital Rape but shockingly India being, one of the most leading developing countries still protects such kind of crimes. In 2006 it was assessed that marital rape is an offence rebuffed under the criminal law in no less than 100 nations and India is not one of them.¹² The exception under Section 375 should be deleted in order to protect the dignity of women and punish such heinous crimes. Punishment for Marital Rape should be same as provided for the offence of Rape under Section 375 of the IPC. The factor of consent should be given most importance in order to change the mentality of such Rapists.

CONCLUSION:

India should value Gender equality and its huge importance for the uplifting of women strata who are subject to most cruel crimes from the moment they are in the womb. Husbands should not presume an implied consent of their female counterpart to have a sexual intercourse with him. Govt. must realize that Marital rape is no longer a private affair

¹⁰ Bryan A. Gaener , Black's Law Dictionary, 9th Ed., 2009, p. 434.

¹¹ Indian Penal Code, 1860, Section (498A).

¹² Sangamithra Loganathan, "Marital Rape", available at:
<http://www.legalservicesindia.com/article/2369/Marital-Rape.html> (Visited on March 25, 2019).

happening between husband and wives in their institution of marriage but on the contrary it is a crime against the society, thus such a heinous crime must be recognized and reported. Also police departments can play an active role in curbing this form of violence by more actively responding to the abuse calls by the women on top priority and must not leave the matter as a family issue and not their business. Further women must themselves take initiative and break free the societal hurdles and fight for justice. Marriage should no longer be considered as a factor to reduce the kind of punishment to be inflicted. There is a dire need to change the mindset of the society till then it is hard to criminalize Marital Rape.