
STATUS OF MARITAL RAPE IN INDIA

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ABSTRACT

In India as well as in some other countries there have been prevalence of patriarchal type of society that results into negative impact on women dignity and social conditions. Marital rape is one of the ill acts that tend to deteriorate women dignity and right to privacy. Rape is an unlawful sex without assent and because of physical drive or dangers, or due to deceitful demonstration of perpetrator. In India rape is a penal offence under section 375 and 376 of IPC but it avoids marital rape from ambit of conviction. Sex by spouse with his better half without her assent or by compels or force or threat or danger termed as marital rape.

MARITAL RAPE RELATED LAWS IN INDIA

In India Rape is defined under section 375 of IPC where it is specifically mentioned in its exception clause that “Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.” Marital rape can be termed as rape just if the spouse is under 15 years of age but there is no lawful provisions related to marital rape above 15 years of age which is directly against the human rights. According to Indian Penal Code if there is offence of marital rape where wife is between 12-15 years of age then offence will be punishable with imprisonment up to 2 years or fine, or both; when the wife is underneath 12 years old then offense will be culpable with term which might not be under 7 years but rather which may reach out to life or for a term up to 10 years and should likewise be subject to fine; Rape of a judicially separated wife, offense culpable with detainment up to 2 years and fine; Rape of wife of above 15 years in age is not punishable.

The basic meaning of rape under Indian Penal Code does not cover marital rape due to which at present time there is no any specific provision related to punishment for the offence of marital rape in Indian Justice System.

EFFECTS OF MARITAL RAPE

Marital rape is one of the heinous crimes that directly affects the dignity of women and violate rules related to human rights. In today’s world most of the men who do not consider women rights and use force to fulfil their uncontrolled sex desire even without the assent of the women. This simply arise question is marriage a permit to rape? Marital rape is not only about sex without assent or with force it also includes mental and physical torture to women. love, respect, care, devotion and spiritually together with each other are the motive of marriage but the marriage does not allow men to do forceful sex in the name of love. There is no boundary to human rights where one can easily abrogate one’s right to say no to anything that is not good for one’s physical or mental condition. Marital rape includes different types of acts that directly cause impacts on women like sexual assault on women, sexual abuse and domestic violence. All these acts result into post-traumatic stress disorder, fear, anxiety and depression. Article 21 of our constitution provides right to life and liberty so why the women do not have liberty to say no against the forceful sex? In most of the cases women do not know that sex against their assent or forcefully sex or sexual abuse by husband is against the basic human rights. They do not raise their voice against it due to society and there is no law that can prevent such offence.

WORLDWIDE STATUS OF MARITAL RAPE

In most of the countries there is no law on the offence related to marital rape because there is lack of public awareness as well as reluctance and outright refusal of authorities to prosecute. Most of the countries like Argentina Armenia Australia Belgium Bhutan Canada declared it as offence and provide punishment for marital rape but countries like India China Egypt Iran Iraq North Korea and many more do not have any legislation against marital rape. There are many both contemporary and historical problems that create hindrance in declaration of marital rape as an offence. There are various norms in the society that do not see spousal rape as violation of human rights. Countries where marital rape is illegal even there lot of people do not know that marital rape is punishable crime. there is need to create awareness among worldwide women about their rights and no one should be allowed to cause physical and psychological damage to them. The United Nations has urged countries to end marital rape by closing legal loopholes, saying that “the home is one of the most dangerous places for women”

HISTORY OF MARITAL RAPE LAW IN INDIA

In the year 2015 four petitions were filed by the RIT foundation, the all Indian democratic women’s association in 2017, khusboo saifi, a marital rape survivor, in 2017, one by a man accused of rape by his wife. Hearing in the RIT foundation’s case began in 2015, with the Delhi High Court issuing a notice to the Centre and Delhi government. When the government was questioned in parliament about marital rape, then minister of state of home affairs haribhai parathibhai chaudhary responded “Marital rape cannot be applied in the country since marriage was treated as a sacrament or sacred in the Indian society. In response to petition filed by RIT foundation, Delhi high court issued a notice to the centre and delhi government. In 2016 the Centre filed an affidavit taking the stand that marital rape cannot be criminalised as it would have a negative impact on Indian society. The case remained adjourned for over three years and the hearing finally resumed in December 2021. On January 2022 Delhi high court begins hearing in the case and ask centre to clarify its position thereafter on 21 February high court refuses to grant more time to centre, reserves verdict on petitions. Justices Rajiv Shakhder and C Harishankar, while hearing the pleas, raised several questions and concerns. The court questioned whether it has the power to strike down the provision which would in essence “create a new offence” since there is no punishment under the current statute for rape by a husband. The court also questioned whether it can define a new offence and prescribe punishment, a power only of the legislature.

The bench had also raised concerns about women's rights, questioning whether it was feasible to deny equality and right of choice to a woman “simply due to her marital status”.

The bench had also commented that there cannot be any “implied consent” since it seems to indicate “right to have sexual relations with partner” which takes away a wife's right to say ‘no’.

While reserving its verdict in February, the Delhi High Court also suggested that the Centre should “bite the bullet” and take a stand on the issue as it would not be possible for the court to “wait indefinitely”.

In September 2022, a Supreme Court ruling on women’s right to safe abortions regardless of marital status held that for the purposes of the Medical Termination of Pregnancy Act, the definition of rape should include marital rape.

In 2012, the Justice JS Verma Committee was tasked with proposing amendments to India's rape laws.

While some of its recommendations helped shape the Criminal Law (Amendment) Act passed in 2013, some suggestions, including that on marital rape, were not acted on.

WAY FORWARD

Now a day’s domestic violence, sexually abusing and doing sex forcefully without the consent of women is one of the major concerns related to safety and security of women in her own home. In our country women are treated as deity and any act which is disrespectful and causing affect to their dignity should be penalised.

Supreme court of India which is known as the guarantor of fundamental right should take this matter of marital rape Suo Moto and extend the meaning of fundamental right by giving women right to say no to forceful sex and any type of sexual abuse. There is a need for laws that clarify boundaries in how we relate to one another and uphold constitutional ideas of equality, dignity and bodily autonomy, alongside the unpleasant social realities about their limited use in practice.