
MARITAL RAPE: DARK SIDE OF MARRIAGE

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Marital Rape as the name itself signifies, refers to the forceful sexual intercourse by husband to his wife without her consent. In today's era, it is one of the most prevalent yet ignored situation against which, even the law of the country also fails to protect its citizens. Section 375 of INDIAN PENAL CODE, 1860, equivalent to Section 63 of THE BHARATIYA NYAYA SANHITA, 2023 punishes the person who has a sexual intercourse with women against her will i.e. without her consent but Exception 2 of Section 375 of Indian Penal Code, 1860 equivalent to Section 63 of THE BHARATIYA NYAYA SANHITA, 2023 also exempts **non-consensual sexual intercourse** by a husband with his wife, the wife being over eighteen years of age.

“Consent” in legal terms means understanding that the parties have of the contract. It means agreeing to a specific situation voluntarily without any unreasonable force. It signifies one's will to engage in an act or permit someone to commit an act on his behalf.

What an irony of the Indian legislature! On one side, law is trying to protect the right of consent of women in a sexual intercourse but on the other hand, the law is ignoring the right of consent of married women in the same. The marital status of the women has completely changed her rights. Why is it so, because marriage is held as an institution in our society that is been laid down as a blanket for the sexual intercourse. In our society it has been presumed that if two people are caged under an institution of marriage then they have consented for the sexual intercourse for all their life.

It seems by this law that the legislature doesn't value the consent of a married women in the sexual intercourse and according to them their consent holds no importance. It can be very well interpreted that the wife are being considered as a property that is used by the husband soon after their marriage. In simple terms they are the playing objects of the husband who can use and throw them anytime. The legislature has very well protected the husband from the offence of forced sex on wife on one hand and rather punished the stranger for the same offence, the

difference being that husband commits forced sex with her wife and a stranger does so with a stranger women.

According to the UNICEF 2017 report Fifteen million adolescent girls worldwide, aged 15–19 years, have experienced forced sex. In the vast majority of countries, adolescent girls are most at risk of forced sex (forced sexual intercourse or other sexual acts) by a current or former husband, partner, or boyfriend. Based on data from 30 countries, only 1 per cent have ever sought professional help. ¹99% of sexual assaults by a husband on their wife goes unreported because there is no as such provision in the law that can give them the full justice. Marital rape becomes a way of showing superiority of men over women. This continuous violence lowers the self-esteem of the women and also reduces them to being only a chattel used for husband's pleasure and comfort throughout their married life.

Our constitution guarantees us the major fundamental rights but the legislation itself contradicts those fundamental right of the women with the exception 2 of the section 375 of IPC, 1860 equivalent to Section 63 of THE BHARATIYA NYAYA SANHITA, 2023. Just the tag of marriage changes the entire rights of women. Article 14 of constitution that guarantees equality before law, forgets about the equality of a “married women” in a sexual intercourse. Article 21 that guarantees right to life and personal liberty to a citizen soon turns blind towards the women who are married and are assumed to have no privacy and right over their bodies once they are married. It should be understood that marriage is contract between individuals, not one-time permission to everything but the IPC has to much disappointment dealt with marital rape in a very piecemeal manner.

In 2022 the Delhi High Court gave the split verdict on the marital rape where the verdict was delivered by a division bench where Justice Shakti, favoured striking down the marital rape exception for being "unconstitutional" and said it would be "tragic if a married woman's call for justice is not heard even after 162 years" since the enactment of IPC, ²whereas Justice Shankar said the exception under the rape law is not "unconstitutional and was based on an intelligible differentia³". This judgment raises the question that is there any difference between the consent of unmarried, married or separated women for their sexual intercourse. The law

¹ UNICEF (2017). A familiar face: Violence in the lives of children and adolescents, p. 73, 82.

² THE INDIAN EXPRESS dated 16 January 2024

³ THE INDIAN EXPRESS dated 16 January 2024

metaphorically states that forced sex between the couple outside marriage is a rape but in a marriage it is anything but rape.

When women is violated by her husband through the vilest form of sexual abuse i.e. the marital rape, it is no surprise that the law protects them by providing civil remedy through the Protection of Women from Domestic Violence, 2005 but one thing seems to be noticed here, that, Is civil remedy enough for such a heinous crime?

If our constitution can give the power to a sex worker to say no to a person then why the married women are refrained of this right. Marital rape leaves a long lasting scar on the women soul. The women is not only physically abused rather mentally and emotionally also tortured. Though consent to marriage is believed to itself encompass consent to sexual intercourse but it should be well understood as well that it doesn't encompasses the consent to sexual abuse and violence.

According to Amnesty International, 77 out of 185 nations (42%) have laws that make marital rape criminal. The UN has encouraged countries to close legal loopholes to stop marital rape, claiming that "the home is one of the most dangerous locations for women."⁴

If the marital rape is been criminalised at an international sphere than why not India is taking such similar step. If they are understanding the urgent need of the hour to criminalise the marital rape, then India should also understand it. Or the matter is that the other countries who have criminalised this has got it all wrong. The law had been questioned by several judges in previous cases. The Allahabad High Court has also observed that marital rape cannot be considered as an offence under the Indian Penal Code (IPC) if the wife is above the age of 18 years. Many such more judgments have been given by various Indian high courts.

The plausible reason for the same can be the gender discrimination where the Exception 2 of Section 375 of Indian Penal Code, 1860 has just added as an advantage for the dominance of men over women. Marital Rape is just a manifestation of dominance of men over women, gender inequality. This makes it difficult for the women to seek legal recourse when they become a victim of marital rape. Sometimes the economical and social power of women also makes it difficult for the women to leave behind her abusive relationship with the husband.

⁴ GLOBAL CITIZEN

Viewed from a feminist perspective, women should have a control over their bodies and should have the right to choose to when to engage in a sexual intercourse. But the gender inequality and the cultural and social norms becomes a burden on the women that forces her to maintain the sanctity of marriage. But lately there is a growing feminist movement in India that is challenging those cultural and social norms and are aiming to raise the awareness about the marital rape.

In the case of *Vishaka v. State of Rajasthan* (1997), the Supreme Court held that “rape is a violation of the dignity and personal liberty of the woman. If sexual intercourse constitutes the offence of rape when committed against the will of the woman, as a woman a wife too is entitled to be respected as she too has the right to maintain her dignity and personal liberty and the right to give and refuse consent”.⁵ In March 2022, the Karnataka high court refused to dismiss rape charges filed by a woman against her husband where the honourable judge stated "A brutal act of sexual assault on the wife, against her consent, albeit by the husband, cannot but be termed rape".⁶ The Gujrat high court in 2023 also passed a statement stating that “Rape is rape , even if committed by husband”.⁷

Thus, it can be understood that there is long on going debate over the criminalization of marital rape and no more delay should be done to protect the married women from this violence because until and unless this chain of complex and interlinked issue is not addressed, the sexual violence against married women and her consequent liberation from fear and subjugation of husband’s cruelty will remain an unfulfilled dream in a vast country like India.

⁵ Case analysis : *Vishaka & Ors. v State of Rajasthan & Ors.* ((1997) 6 SCC 241) - iPleaders

⁶ BBC NEWS dated 11 MAY 2022

⁷ THE INDIAN EXPRESS dated 16 January 2024