
MARITAL RAPE – A THREAT TO HUMAN SOCIETY ENDANGERING WOMANHOOD

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ABSTRACT

Marital Rape is a general concept and absolutely common in human civilization since time immemorial. The basic reason behind this can be the prevalence and the impact of a fake patriarchal society where it is found that a man treats her female counterpart as a slave and owns her like property inherited from his ancestor. The continuance of this unethical, illogical and inhuman practice has put the life of the married women of this so-called civilized society at stake. It clearly indicates that the concept of human rights, fundamental rights, social rights and constitutional rights guaranteed to every citizen irrespective of caste, creed, gender and place of birth are only limited and restricted to a very narrow extent. These concepts absolutely look glamorous in the pages of different books, papers and magazines but when it comes to the floor test, it is no doubt zero and blank as far as this heinous and barbarous act of 'Spouse Rape' is concerned. Thus, human civilization for the sake of protection of humanity must come forward to destroy and diminish this social evil.

Introduction: -

In the words of Mahatma Gandhi, it is said, “To call woman the weaker sex is a libel; it is man’s injustice to women. If by strength is meant moral power, then women is immeasurably man’s superior”. The words of Bapu were clearly meant to empower the women community in human society. He clearly understands the potential of females and also encourages them to go hand in hand with the males of this society.

The world is in the progress of reformation, where the society is beginning its new chapter leaving behind its orthodox outlook and approach. It has now started to visualize and adopt equality in every sphere of human civilization, where male and female is equally sharing hands in the progress of the country’s development. Although it is true that gender equality is quite prevalent in society at present times, it is really disheartening to admit that women’s rights still get curdled and her liberty is constantly been snatched within the four walls of her matrimonial homes in the disgusting fashion of ‘Marital Rape’. The biggest reason for the continuation of this unjust practice against women is that the law does not enter into the bedroom, which I guess is no less than an excuse.

Whenever and however, any matter comes up accusing the husband of committing rape of his own wife, every time law comes in as a defence to the former. It is not only the law that is responsible but also the mindset of the society which tends to believe that Rape against women can only be committed by strangers or malicious persons and not by the husband of the woman. This social stigma stands as a barrier in the path of women's empowerment which disallows them to speak against their in-laws and husband and thus in maximum cases the physical, mental and sexual torture suffered by the women go unreported.

This negative societal view should need to be changed with an optimistic mindset and vision. It is the duty of human society to think and analyse the present world, where we are aware of the fact that women are still not protected in the outer world and we also need to understand that women are yet not safe in their own residences. If any crime against women is committed outside the house, the offender is termed as a criminal/ rapist but when the same offence is committed within the house behind the strong curtains of matrimonial knots, the accused becomes ‘husband’ and the offence gets transformed into matrimonial rights.

The manner of the dominance of patriarchal views and laws that reflects the ideology of patriarchal society should be replaced with new laws uplifting the principles of Article – 14 of the Indian Constitution.

An Analysis of Marital Rape: -

Marital Rape is a disgusting activity where the husband forces his wife to enter into sexual intercourse without the latter's consent, which is undoubtedly unjust but not yet uncommon in Indian society. The practice of marital rape can stand as a barrier to the way of empowerment of women. This unethical practice of spousal rape can be a way dangerous act if not controlled with tough hands soon.

There are more than 100 (hundred) countries in this world which have marched against the practice of 'Marital Rape' in this present time and also made strict laws to deter it. However, it is really unfortunate for us to admit that India being a land of peace and justice has failed to enact laws to prohibit the practice of marital rape in the country.

'Marital Rape', the term whenever heard asks a lot of questions and raises doubt about the fundamental structure of the country and the Constitution. The basic principles of the constitution are constantly hammered on the philosophy of protection of Fundamental Rights and Equality before the law. If the gap is not cemented soon, it will lead to the devastation of the basic foundation of the Constitution which in a long run will cost a lot. Although, many amendments have been made in the criminal law for the protection of women but in a deep sense, marital rape is snatching the dignity and human rights of the women.

In this recent time, the issue of spouse rape has emerged as one of the deep root causes of much domestic violence. According to a recent survey, it is found that 70% of women in India are victims of domestic violence.

It is also found in the NCBR Report that in India a woman is raped every 16 minutes, and every 4 minutes, she experiences cruelty at the hands of her in-laws. National Family Health Survey (NFHS 5) (2019-21) also reports a similar picture of the society where it states that most married women aged 18 – 49 have ever experienced sexual violence among this age group, 83% of the women have experienced sexual violence and un-willing sex from their current husband whereas 13% of the women have suffered sexual violence from their former husband,

1.6% of the women faces sexual abuse from their current/former boyfriend, 1.4% of the women experiences the same from their immediate family members and 0.2% of the women suffered sexual abuse from the strangers.

The report also clearly mentioned that Karnataka is the only state having the highest proportion of women who reported sexual violence experienced by their husbands (10.3). Karnataka is then followed by West Bengal where the number is 9, then Bihar (8.1) and Ladakh (7.7). At the same time, it is also evident that there is only a fraction of women shown their guts to register a complaint after experiencing physical and sexual abuse from their partner.

Thereby, at this present juncture, the picture is crystal clear that marital rape is no doubt a kind of disgusting crime where the man (husband) and the in-laws play with the body of the woman. And thus, put a lot of mental and physical agony on the woman to enter into a sexual relationship with his man against her will in order to procreate future generation and to continue the lineage.

National Crime Record Bureau (NCRB) clearly stated in its report that the 'Crime in India 2019 report is worrisome but not startling'. Although, it is clearly evident that all the above-stated reports, data from different surveys and figures are fearsome but this is the ultimate truth and the mirror of what our society is suffering today.

Societal View on Marital Rape: -

Marital Rape clearly reflects the mentality of the individuals, families and society at large. It is nowhere to deny that marital rape is a grave concern of social disorder. It is undoubtedly an immoral set of practices in society but not yet illegal.

Sexual intercourse between couples for reproduction is not unknown, nor it is unethical or illegal, but if the husband dominates over the will of the wife and forces her or threatens to force her to enter into sexual relations. Then, it will definitely amount to marital rape/spouse rape and it must be an offence.

It is often found that in the course of this practice, the male counterpart tries to dominate/ rule over his wife. Moreover, he has infringed her fundamental rights under Articles 14, 19 and 21 of the Indian Constitution which in its own way have also violated her equality, privacy, individuality and freedom. Thereby, the continuation of this practice in India and the world at

large is constantly raising the question mark of the independency of women and also knocking on the door of the government to enact laws prohibiting and abolishing the practice of marital rape.

If we look keenly, the statutory provision of the Indian Penal Code under section 375 defines the concept of 'Rape' but exception – 2 of the same section is absolutely disheartening and no doubt, it is unconstitutional. Moreover, this specified provision puts the government and the accused of marital rape on equal footing or platforms.

The legal mandate validates the practice of 'Marital Rape'. This has been proved to be arbitrary and ambiguous in nature which in its pragmatic sense is a 'black law'. Because, this clearly indicates that the law instead of protecting the life of the people, is taking away the lives of many innocent women. This law in itself is no less than a rapist and it is the backbone and the deep root cause of countless domestic violence.

This unethical, illogical and inhuman statutory provision promotes the practice of spouse rape and also protects the culprit, which in its actual sense is the violation of fundamental rights under Article 15¹ of the Indian Constitution.

'Rape' is considered to be one of the cruellest forms of offence against women, which hampers the dignity and self-respect of women. The penal provision for this offence is available in the IPC and also strict actions are taken against the accused.

However, it lacks proper logic to understand that, when the same actions/ activities are taking place against the married woman at her in-laws by her husband against her consent, then how it can become the rights of the husband? And why is there no enactment of laws to protect married women? Thus, it is crystal clear that every now and then, the constitutional values and principles are challenged and it is reaped apart. If sexual intercourse is the right of the man against the will and the consent of his female counterpart after marriage then this is the best example of the violation of Article 14² of the Indian Constitution and the scenario state that the human civilization at this present juncture is on a verge of decline.

¹ INDIA CONST. art. 15

² INDIA CONST. art. 14

The slogan “Beti Bachao Beti Padhao” is often heard in promotions of different government policies which means ‘Save the Girl Child, Educate the Girl Child.’ After hearing this slogan, the first thing that comes to mind is that – ‘Is it true?’ Are they really serious? Because the intellectuals and also the common people know and understand everything. These slogans usually come from the political arena mostly during the vote bank politics.

India is an ancient land of many greats and it is true. On one hand, the Government is making new innovative schemes for the women with an objective to promote empowerment and upliftment of the female community and on the very next turn, they are keeping the life of married women at stake, unsecured in a helpless manner. It has constantly been observed that the Government is ignoring the issues of marital rape and also entertaining the offence happening in society, which resulted in the suicide case of many women.

Therefore, the question arises before the government and lawmakers of the land that why they use the slogan ‘Beti Bachao Beti Padhao’, when their ultimate objective is to kill the girls after their marriage.

Legal Status of Marital Rape: -

There is no doubt that Marital Rape is a sensitive topic to keep one’s opinion. Every now and then, it became a mammoth topic of discussion and debate to decide whether it is fair enough to criminalize ‘Marital Rape’. This is tough to believe that India being a land of truth and justice is though having a strong legal foundation to structure the country’s governance but it has severely failed to enact some really necessary laws in order to secure the life of women after marriage.

Marital Rape is in itself is not just a term rather it is a humiliation to the nation before the world. With the advent of time, it was expected that there might have some changes in the law of Rape. However, it is absolutely unfortunate for us to admit that the Indian Legal structure every time tried hard to avoid this topic which left many married women helpless and it became the main reason for the long list of sufferers.

Section 375 of the Indian Penal Code, 1860³ clearly defines the details of Rape where it is clearly stated, “A man is said to commit rape if he penetrates his penis, to any extent, into the

³ Indian Penal Code, 1860, §375, No. 45, Acts of Parliament, 1949 (India)

vagina, mouth, urethra or anus of women or makes her to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of women or makes her to do so with him or any other person; or manipulates any part of the body of women so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or applies his mouth to the vagina, anus, urethra of women or makes her to do so with him or any other person against many other circumstances mentioned therewith”. However, Exception – 2 of the same section states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years later changed from 15 years to 18 years in reference to Supreme Court judgment in the case of *Independent Thought vs Union of India*, 2017⁴. In a narrow view, exception 2 of section 375 of IPC addresses Marital Rape but it is limited to age restrictions. Thereby, the picture became crystal clear that the Indian Penal Code, 1860 within the ambit of the Indian Legal Structure do not punish the accused over the issue of Marital Rape due to lack of provision which stands as the biggest loophole of the law of the land.

The non-enactment of laws to deter Marital Rape made all the ways locked for a married woman to go before any authority including the Judiciary to seek for justice. The law of this ancient land has made marriage liberty for a husband to his wife and that is absolutely disgusting and unethical to every extent. Therefore, Indian society and also human civilization at large truly need a strict law for punishing the accused who commit marital rape.

Marriage Vs Marital Rape: -

India is a holy land for many centuries where marriage rituals are considered to be sacred and pious in nature. Through these rituals, husband and wife enter into sanctification where they promise each other to hold hands together forever. It is believed that the wife and her male counterpart are co-partners in handling and building the family. However, this age-old pious ritual that is the so-called “Marriage” has never made it mandatory to enter into sexual intercourse for the couple nor it has given ever either of gender any extraordinary power to dominate over the other.

‘Rape’ and ‘Marriage’, are the two terms that do not match next to each other according to orthodox societal views. Even, at many stage, it has been heard that sex is the matrimonial right

⁴ *Independent Thought vs Union of India*, (2017) 10 SCC 800

of the husband and giving a proper opportunity to the husband is the duty of the wife. This view clearly signifies the cheap mentality of the orthodox society and it is reducing the woman to mere property of her husband, which is an open violation of constitutional, fundamental and human rights guaranteed to the women.

Women are not the machine for producing kids and marriage is not the legal licence to doing sex. In other words, marital relation does not give any extreme rights to the husband to rule over the wife. Moreover, the wife cannot be the property nor can she be the slave of her husband. Thereby, the mutual consent of both husband and wife is an extreme necessity before entering into a sexual relationship.

Law Commission Report on Marital Rape: -

The 42nd Law Commission Report was the 1st report where the issue of Marital Rape was addressed. The report made two suggestions regarding marital rape. The first suggestion was that if in any case when the husband and wife are judicially separated, the exception clause must not apply. However, the reason for not accepting the suggestion is not appropriate to such an extent.

The second suggestion mentioned in the report is about the non-consensual sexual intercourse between women aged 12-15. It has been mentioned that punishment for this offence should be stated separately and not with the term rape. In brief, the report tried to bring the gap and the difference between 'Rape' and 'Marital Rape'. However, this report does not comment on Exception 2 of Section 375 of IPC.

Judicial Stands on Marital Rape: -

The legality of Marital Rape clearly indicates that India is not on the proper track because supporting or promoting this unjust practice in society has made the women's community insecure even at her own house. Women found themselves protected and secure from the outer world at their own matrimonial residence after marriage, but here, unfortunately, darkness is prevailing under the lamp itself. The husband, who is considered to be the protector of his wife, is himself raping her against her will with the unjust application of force.

There is no space to deny that law originates from society and society is in a developing state and it is revolving around modern ideas, intellectual thinking or notions and rational approach.

Thereby, the time has come and it is knocking on the door of the government and the judiciary demanding the change in the law. The illogical exception attached with section 375 of the Indian Penal Code is raising an unnecessary burden not only on the statute but also upon the women's community.

Indian Judiciary is playing a very crucial role in the protection of fundamental rights and delivering justice to society. So before getting into the interpretations of the Court, I would like to keep my point of view that marriage is the bedrock of the society where two souls meet and get committed for the rest of their life. However, it is an absolute misfortune for this civilization to witness the dominance of patriarchal societal views because according to the views of this society, it is found that the husband misinterprets marriage as an “implied consent” from the wife for sexual intercourse. But, this is completely a wrong concept and I keep a firm stand against this.

It is many times observed with all eyes open that Marital Rape takes away the right to life and the dignity of the woman which is completely a violation of Article 21⁵ of the Indian Constitution. There are many judicial pronouncements having reference to Marital Rape and such are as follows: -

i. Hrishikesh Sahoo vs State of Karnataka⁶

In this case, a criminal complaint was filed by a woman against her husband due to repeated actions of sexual assault and abuse she experiences. The police authority registered the complaint under section 376 of the Indian Penal Code and in addition, the Session Judge took cognizance and framed the charges u/s 376 of IPC. However, the husband of the woman filed a petition to drop the charges of section 376 but the plea is rejected by the Sessions Court. Thereby, the husband approached the High Court seeking to quash the criminal proceedings.

Justice Nagaprasanna held that if a man is given the liberty to take the opportunity of the exception of Section 375 for his act of sexual assault, it would destroy the Woman's right to equality, which is the very soul of the Constitution.

⁵ INDIA CONST. art 21.

⁶ Hrishikesh Sahoo vs State of Karnataka, Criminal Petition No.5515 OF 2018

It is also observed that the Constitution recognises, protects and grants equal status to women and hence wife cannot be treated as subordinate to the husband.

ii. Nimishbhai Bhartibhai Desai vs State of Gujarat⁷

In this case, the question was first raised that whether a husband who is forcing her wife for oral sex would amount to rape or not? And should this act be punishable under section 376 of IPC?

The Court observed and held that our country hasn't made marital rape a criminal offence to date. It is also been found that the lawmakers of the country fear that it may destroy the institution of marriage and the women can also misuse this act by bringing false charges against their husbands. However, the court also stated that Marital rape cannot be made unseen by law as it is equal to any other rape committed by a husband against his wife. So, if the husband commits an assault against his wife, he will be penalised under the provision of IPC but if the same husband forces his wife to enter into sexual intercourse then he would be liable for the offence of assault in valid marriage and not for rape.

iii. In the case of Bodhisattwa Gautam vs Subhra Chakraborty⁸

The Supreme Court ruled that rape is a violation of the victim's right to life, which is guaranteed under Article 21 of the Constitution. In some cases, however, the judiciary contradicts this rule by refusing to recognise Marital Rape explicitly. Former, Chief Justice of India Dipak Misra stated to the Deccan Herald that making Marital Rape an offence in India will "create absolute anarchy in families," and that "our country is sustaining itself because of the family platform which upholds family values."

iv. The Chairman Railway Board vs Chandrima Das⁹

It is a landmark case in which the Hon'ble Court held that rape is more than just a violation of a person's ordinary right but it is also a violation of fundamental rights. Rape is an

⁷ Nimishbhai Bhartibhai Desai vs State of Gujarat, (2018)

⁸ Bodhisattwa Gautam vs Subhra Chakraborty [(1996) 1 SCC 490]

⁹ The Chairman Railway Board vs Chandrima Das, (2000) 2 SCC 465; MANU/SC/0046/2000; AIR 2000 SC

offence not only against women but also against society as a whole.

Moreover, in a very recent time, the Delhi High Court passed a split verdict on a batch of petitions challenging the exception of Section 375 of IPC, which clearly exempts forceful sexual intercourse by a man with his own not amounting to rape.

The split decision was made by the Judges where Justice Rajiv Sakhder held that the Exemption of the husband from the offence of marital rape is unconstitutional. Exception 2 of section 375, 376B of IPC was therefore struck down by him as a violation of Article 14. Justice Sakhder in his statement said, “The impugned provision in so far as they concern a husband having intercourse with his wife without consent is violative of Article 14 and are therefore struck down.”

However, Justice C Hari Shankar clearly said that he does not agree with Justice Sakhder. The former held that Exception 2 of Section 375 of the IPC does not violate Constitution and that the exception is based on an intelligible differentia.

Keeping in view the above judgments, it is very obvious to note that where there is no consent involved, including marital rape, the crime is equally heinous and will be in violation of Article 21 of the Constitution of India.

Conclusion: -

Marital Rape is thus a grave social menace and it should be dealt with tough hands soon. Marital Rape is continuing its evil existence in human civilization which is snatching not only the dignity and individuality of a female but it is to a large extent has put womanhood at stake. An Analysis of National Family Health Survey data indicates a very bad situation for women in India where it estimates that 99.1% of the sexual violence cases go unreported and that average Indian women is 17 times more likely face sexual violence from her husband than from others.

The biggest reason for this problem can be that in India marriage is considered to be the most sacred and ritualistic ceremony and women worship their husbands next to god. Therefore, it gives rise to various misconceptions such as the husband assumes himself to be master of the house and ill-treats his wife which gives rise to domestic violence.

Thus, it is crystal clear that despite having many recent amendments in the criminal law, the Indian legal system has achieved huge progress in providing safety, security and justice to its citizens. Therefore, many laws have been enacted with the aim to protect women from domestic violence and sexual assault. However, it is unfortunate to admit that India still falls on the list of 36 other countries where Marital Rape is not a crime and there are still many laws prevalent in the society which are enacted to protect the women community but are not effective in large extent and do not comply with the necessary requirement. So, the picture is clear that It is the need of an hour for India to criminalize Marital Rape and also to bring strong legislation in order to penalise the accused.