



MARITAL RAPE: A SOCIAL SANCTION OR AN OFFENCE

Law

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ABSTRACT

"Marital rape" is not recognized as an offence under our legal system. It is a general notion that after marriage "consent" is no longer a requirement between husband and wife and therefore any sexual intercourse between husband and wife after marriage almost inevitably includes the consent of both spouses and the aspect of "rape" is nonexistent. But is it justified to take away the entire possibility of any kind of forced intercourse between married couples? Rape as an offence is severely punishable under our penal code but it is not even considered as an offence if the two people involved are parties to a marriage. Why is marriage a sanction to any spouse in a marriage to force their partner into any form of sexual intercourse and it will be perfectly legal even in the eyes of law? Marriage is a social institution which helps our society to grow and develop and also to have the possibility of an upcoming generation, but it should never act as a shield to any wrong. Moreover, if marital rape gets recognition as an offence then it will create a ruckus in the sanctity of a marriage as well the families involved it which will give the wife an optimum sword to yield against her husband in case there is some kind of altercations between and will completely leave the husband open for punishment. Therefore, it is our legislature's responsibility to come up with a broader definition of the offence of 'rape' which would include the term 'victim' making the offence wholesome rather than gender-centric.

KEYWORDS

Marital rape, Rape, Husband, Wife, Marriage, Consent, Victim

INTRODUCTION

Women have been made to suffer for rights that have been naturally accorded to members of the opposite sex, exposing them to physical pain and emotional humiliation. Atrocities against women have not been restricted to suffrage movements or rape laws. Such circumstances can be linked to gender-based violence against women, which is likely to lead to a string of attacks (including physical and sexual assaults) or psychological injury. These are probably going to result from forceful and arbitrary activities that rob people of their freedom in public or private spaces.

The notion of women today is confined to that of a wholly-owned subsidiary of males, who express their control through rape, including crimes such as sodomy, honour murders, sexual harassment, and rape.

The Particular Issue Of Marital Rape

A typical marital rapist is a man who rules their wives emotionally and sexually asserting himself as the ruler while she is the subject and 'an act of sexual intercourse with one's spouse without consent, is the problem of marital rape, a problem pervasive amongst the class of married women and more than ever now poses as a major socio-cultural issue. The act of ravishing a woman, whether the wife or a stranger, itself purports the use of force to outrage the modesty, and when coupled with the allegation that the act was done against the consent of the woman, technically charges the crime of rape, which is punishable irrespective of marital bonds. But section 375 has become a classic example of archaic views regarding women in the Victorian era, being treated as property. Such an outlook can be attributed to the legal invalidation that has been historically surrounding the issue of marital rape as mentioned by Lord Hale, wherein the husband can't be held accountable for rape of his wife, because of the mutual matrimonial consent and the contract entered upon the time of marriage, which cannot retract be retracted. The doctrine promulgated as the 'Unities Theory' by Blackstone leads to the notion of unpensioning the civil identities (essentially meaning that husband and wife are legally one person, developing the notion dictating rape as a crime against property) of women becoming a property of husbands. Therefore, the concern is now to realize that as the 'concept of crime keeps on changing with the change in political economic and social set up of a country', and such change is essential for the introduction of marital rape in India.

Consent

Consent is an active will of a person, permitting him to do an act, defined by the feeling of willingness, the attitude of being voluntary in nature, and the quality of being unequivocal. Therefore, the understanding between the consent in cases of rape and marital rape is not different from what emanates from section 375 of IPC, the only differentiating factor being the consideration for sentimental values backed by the laws of the land. Consent, therefore, is amongst those

legal terms which are easy to define but difficult to shape in the molds of legislation and the most obvious proposition used (for non-criminalization of marital rape) is the consent of wife to intercourse, given upon marriage, remaining constant during the course of the marriage, which should, however, be reversible, mutual and most importantly be explicitly communicated, however, the laws in India stand in silence for its violation.

Lack Of Consent Stands In Direct Violation Of Article 21

Rape laws in India, does miscarriage of justice, because by failing to even consider the sexual activities that take place without consent of the cohabiting partner it stands in a direct head off with the quality of life inclusive of general well-being, beneficial, salutary and a wholesome environment. The whole idea of removing exception 2 from section 375 is based on the affirmation that married women are not allowed to raise livestock, without dignity. Furthermore, cruelty which is the most common form of marital rape (violent rape) is an insult to dignity and as such a violation of the right to life prohibits the implementation of Article 21. Concept of women's immediate consent to sex act very different from ideas of bodily self-determination, that is, a direct encroachment and violation of the body's integrity, liberty, and self-determination, whether it occurs within or outside an institution of marriage". This right is contingent upon the affirmation that an individual is an authority in areas closely related to his body, his health and his intimate choices. Thus, it suggests that consent complements self-expression and a law preventing this expression directly deprives a person of a person's constitutional right (body self-determination). Good health both bodily and physically is a sacred testament essential for steady growth and inner wellbeing of an individual and any engagement devoid of consent is a clear violation of the right of good health of women.

Women suffering from marital rape have to endure the physical consequence of violent sexual intercourse and stiffening frequency without any medical help, and unintended physical and mental health leaves long-lasting impressions on the psychological health of the victims, because psychological consequences are forgotten where is gynaecological consequences are overlooked.

The marital exemption violates the right to good health of a victim as well as cause physical psyche injuries in the process. In the process of this forced contact, the women stand at a higher chance of contracting sexually transmitted diseases or HIV including but not limited to vaginal bleeding, chronic pelvic pain, and genital irritation.

Whilst even today marital rape remained unrecognized legally due to misogynistic mindset of the law enforces such negative relationship also affects the children and sometimes leads to secondary victimization and the Supreme Court has acknowledged that every person has a right to abstain from unwanted sexual activity since the

Constitution of India guarantees protection from any dehumanizing act.

Leveraging consent that leads to an invasion of privacy and individual liberties

Privacy is the right to be left alone, undisturbed, and to remain free of interpersonal contact. This relationship must be neutral and understand that it is a condition underpinned by ideals supported by values based on the idea of collective self-actualization. "The concept of the right to privacy has a normative value to guide laws, policies and judicial decisions" and is therefore an integral part of the right to life, being "natural, original, fundamental, inherent and inalienable". Privacy is tied to the individual's values, the protection of which is a matter of common moral agreement, thus challenging the idea of consent and its degree of invasion of privacy.

This strength and vitality of the right to privacy depends on the corresponding guarantee of cognitive freedom, because the personal choices that govern lifestyle are intrinsic to the protection of the private sector. Furthermore, privacy allows a person to retain autonomy over their own body by allowing them to take control of their psychological health, as it is not possible to create a life without "isolation", "selective establishment" virtually robs it of the freedom it needs, to decide-to make and to partition.

The law is therefore considered to be one of the most precious assets of man, which is mainly aggravated when the individual is at the center of the constitution. Privacy is the building block of all freedoms because in privacy the individual can decide how to best exercise their freedom. This need for freedom is an unrestricted natural phenomenon, and the current system effectively limits a woman's reproductive options, including her refusal to engage in sexual activities. It therefore asserts that no part of an individual's life can be said to be more private or intimate than that of sex, and that consensual, private sex occupies a prominent place in an individual's personality, located at the center of the "private space".

An invasion without consent or consent is easily violated is described as an invasion of individual liberties caused by a calculated measure of indecent conduct. In the *State of Maharashtra v. Madhukar Narayan*, it has been ruled that every woman is eligible for sexual protection and not everyone should be allowed to abuse her safety whenever and wherever desired. A woman's physical integrity thus shifts directly from her fundamental right to life and dignity, governed by her right to privacy, sexual and reproductive autonomy legally transferred from liberty.

Paradox Of Laws

Lack of coordination amongst the substantial laws clubbed with violation of consent and treatment under the head of domestic violence is less than it should be a pity on poor man's grave. With these archaic laws creating impediments and generating confusion, it's important for the policy drafters to recognize that laws made by them, or pursued by them in continuance are in itself contradictory of the aims and objectives which they wish to pursue e.g. the laws in India are clear to indicate that marital rape is not a crime, but abetting such an act against his wife is a crime as such. This gender ethic is part of a scheme of destabilization rights by which individuals demand the disruption of established institutions and social practices which by their very insularity have contributed to a scheme of social hierarchy, marginalizing and dehumanizing vast sections of Society.

Section 375 exception 2 stands in direct contradiction of Section 377

Coherency and coordination are two tenets that play a very crucial rule in the prevalence of supremacy of laws in India, therefore making the exception to marital rape almost inevitable to survive by themselves following a restrictive approach. Section 375 exception 2 by far comes to be the most dubious clause standing in contravention with the Victorian era euphemism, section 377 dealing with the issue of bestiality opting for a non-discriminatory approach dealing entirely. There is no doubt that rape is a crime against basic human rights, but to completely deny its presence on the one hand and maintain a zero-tolerance policy on the other is a fallacy classical argument and a fascinating question.

The question of endangering a woman's security through forced intercourse with his wife can be brought to justice, but if the same

person, her husband, does it. Acts of forced vaginal intercourse, it cannot be brought to justice. The issue appears to be related to the privacy of marriage, although the amendment is a symbolic representation of the recognition of women's right to equal treatment. Indecision seems to interfere with personal affairs, but then one must understand that the concept of forced sex is out of sync with the concept of intimate marriage.

Individuality crisis

Individuality is related to singularity. Forming the idea of an independent woman while taking what belongs to her as an individual is a difficult task, equanimity is a dream driven by male discourse. Dominion over the wife, followed by continued disregard and disruption of women's most private lives, gives rise to the contradiction between Section 354 and Section 375. The argument is therefore made by the exception. The rule in Article 375 classifies modesty in the peripheral words of married and single as scandalous in nature. What must be considered is that a woman is "*Decorous in manner and conduct; not forward or lowe; Shame-fast; Scrupulously chaste*". Currently, "if an attack involving criminal force is used against a woman with the intent to offend decency, she is liable to custody under Section 354 of the IPC ", but when it comes to sexual privacy, it will take a blow because a court can hold a person accountable for enraging modesty but will never recognize the issue of marital rape. The failure lies in the recognition that corrupt sexual relationships undermine the foundation of a happy married life.

Contradictions with Articles 14 and 15

Since then, in order to avoid conflicts regarding the issue of rape in marriage, policymakers and enforcement agencies have conveniently denied the married women any form of redress from their raping husbands. Such discrimination has no rational basis because in fact there is rape in marriage. The IPC's reluctance to rape within marriage creates a class of preliminary discrimination between married and unmarried women and limits the equal protection of criminal law to formers, thus violation of equal rights. Courts have reiterated on various occasions that all legislative action must be taken with just and just cause. And efforts should always be made to eliminate existing inequalities in society and contemporary legislation through revised, updated or special laws. Article 14 prohibits arbitrary classifications, but the marital rape exception not only unreasonably distinguishes between married and unmarried women, it also promotes perceptive attitudes that are misleading and biased laws. The law of the land must not allow patriarchal ideologies to influence the reasonable classification permitted by Articles 14 and 15.

Section 375 seeks to protect the rights of all women over their bodies and defines rape as a serious crime that violates an individual's rights. Only married women are excluded from protection because of the potential threat to society and the difficulty of proving the claim is arbitrary and capricious. Differential treatment based solely on marital status opens the door to cruelty and sexual violence perpetrated by husbands under the guise of a marital relationship. Women in the world have no legal responsibility to perfect their relationship with their partner, while women who are legally married are not only obligated to end the relationship, but also to endure all cruelty for the betterment of society. The ideal view is to accept that the rapist must be the rapist regardless of his relationship to the victims, and that the pardon of marital rape is the acceptance of the violation by a woman in the marriage.

CONCLUSION & RECOMMENDATIONS

The concept of gender and family honor gives rise to the idea of decriminalization or criminalization of rape in marriage in India, affecting sex taking precedence over individual rights and autonomy. While marriage is a loving relationship where mutual consent and respect is important, violating it compromises an individual's physical integrity and privacy with the quantum of punishment. Currently, whenever this perpetrator is freed with minimal crime, his social position towards people is not affected, on the contrary, women are victims, so the idea of ending discrimination against women.

Furthermore, since the decriminalization of rape in marriage is a disgrace to the sanctity of marriage, most women have no choice but to endure violent sex for their safety, their bodies or for the safety of their children or sometimes even for lack of energy and spirit due to constant physical and mental abuse. However, with groundbreaking rulings, innovative judicial advances, and modernist attitudes, the

possibility of Section 375 exception 2 redundancy remains strong.

Recommendations:

1. Removal of "Exception 2 in Section 375" while recognising the Offence of **'RAPE IN MARRIAGE'**.
2. Feeble **'Yes'** should not be considered as consent.
3. Since the problem is endemic, on an urgent basis an **'Empirical Survey'** be conducted of those impacted and faces such sexual violence by their partners.
4. Enhancement of crisis hotlines, police stations, counselors to assist survivors, coping with post trauma while providing life skills along with employment assistance.
5. Awareness amongst officials, legislators regarding the accessibility availability of social support on first hand basis for reported victims.

REFERENCES

1. Wynne, D. (2016). Women and Personal Property in the Victorian Novel. Routledge.
2. Siegel, L. W. (1995). The marital rape exemption: Evolution to extinction. Clev. St. L. Rev., 43, 351.
3. AIR 1991 SC 207, (1991) 1 SCC 57