



ORIGINAL RESEARCH PAPER

Law

Marital Rape in India – A critical analysis

KEY WORDS: Marital rape, constitutional right, human dignity, Social justice.

Dr. B. K. Das

Assistant Professor, L.R.Law College Sambalpur, Odisha, India .

ABSTRACT

We are living in a world which is developed with wide vision of human dignity. The society is changing with humanitarian perception of world order. Both man and women are enjoying equal status. The institution of marriage is treated as most important for maintaining a family life. It is designed to lead a peaceful life. But women are subjected to the evil of marital rape. Rape is a crime in every society and it is treated as most derogatory to the dignity of the women. This paper tries to establish that, marital rape is a social evil need to be declared as crime against masochism in India.

Introduction-

During vedic civilization marriage was treated as a pious and religious act. There was dictum- 'Marriages are solemnised in heaven and it is celebrated on earth'. It is indivisible and permanent and sustain for seven lives. Death cannot cause separation of conjugal lives of husband and wife. Thus wife had no option but to live with husband under all condition of life. She was circumscribed to fulfil the desire of husband's lust every time and under all condition. Her interest is not considered as important. After marriage her body is merged in the body of the husband and being a marriage partner she become the property of the husband. In tort husband can break the finger of wife, but cannot break the finger ring of the wife. Her property right was protected by law –i.e she can acquire, alienate and bequeath the property. She can sue and be sued under civil law in case of violation of her property rights¹ Similarly, law protects women in case of any physical violence which include sexual abuse.² Marital rape is violent act of the husband with a hidden desire to exalt power over his wife. It is the violation of fundamental right to privacy. It is social stigma and violation of individual integrity. It causes both physical and mental torture within the trusted relationship. It is an act against human dignity and constitutional philosophy. Many civilised nations have withdrawn such marital indemnity from husband and declared it as crime.³ In this article it is pleaded that marital rape should be treated as a ground for divorce and it should be treated as an offence under Section 375 IPC.

Meaning and Concept:-

Marital rape is forceful sexual intercourse by a man with his wife. It is a bitter reality of our society is that, rape laws do not give any protection to married women in case their husbands forcefully have sexual intercourse on them. Society as a whole also does not consider marital rape as an issue of any significance and gives full immunity to husbands.. Though the general consciousness of the society might consider marital rape as a morally and ethically wrongful act but it does not regard it as a serious crime; and in fact, directly or indirectly gives it a social sanction in the name matrimonial necessity. The worst part is that the law of the land also, till now, has failed to recognize marital rape as an offence and in a sense gives it a legal sanction also. They cannot complain this to their family due to societal pressure and also they cannot go to police because law does not recognize marital rape as crime. Thus, victims of marital rape are condemned to bear the pain silently and have no remedy in sight.⁴ The reasons of marital rape are sexual perversion of husband; desire to assert superiority of men over women; attempt to undermine women's right in marital relationship etc.

Constitutional right and Marital Rape:-

The Universal Declaration of Human Rights states that, 'Everyone has a right to life, liberty and security of persons.'⁵ The convention on the Elimination of All Forms of Discrimination Against Women, 1979.(CEDAW) promises protection of women against all social disorder. Being the signatory of such international convention, constitution of India provided equal status to women.⁶ Article 21 of the constitution ensures right to life and personal liberty. The Supreme Court in India as a guardian of citizen right expanded the scope of "Life and personal liberty" in the process of judicial

interpretation and decided that right to privacy is coming within the fold of article 21 of the constitution⁷ In Maneka Gandhi's case the apex court held that, the right to 'life' under Article 21 is not confined to mere physical existence. It includes within its ambit the right to live with human dignity.⁸ In case of marital rape the women is denuded with this fundamental right. The law permits her husband to violate her right to privacy and invade her body without her consent or will. Article 23 of the constitution ensures right against exploitation, but in case of marital rape wife is compelled to live under salvage and treated as sex object. It is unjust, arbitrary and opposed to the norms of human right.

Indian Law and Marital Rape:-

Section 375 of IPC defines rape, but it does not recognize forceful intercourse by a husband with his wife as rape. It provides that (as per Exception attached to Section 375), sexual intercourse by the husband with his own wife and wife not being under 15 years of age is not considered as rape. It provides no remedy or protection to the wife if she is above 15 years of age. Section 376B provides that sexual intercourse by a man with his wife without her consent during judicial separation is an offence punishable with imprisonment up to 2 years and fine also. But it does not recognize the said act as rape. Section 498A of IPC defines cruelty, which includes any type of harm both mental as well as physical. Perhaps law take a broader view to save the marriage relation intact and allowed women to suffer under marital rape. The law considered marital rape as a form of 'cruelty' as defined under Section 498A. But strictly speaking it is failed to deal the matter in terms of the doctrine of equality and going too far with the provision of constitution. The marital rape is a brutal and heinous act cannot be equated with cruelty. It requires greater punishment. The recent criminal law amendment i.e. the Criminal Law Amendment Act, 2013 did not make any provision regarding marital rape.

Conclusion:-

Marriage is an institution of great social significance and with social changes; this institution has also undergone change correspondingly. It is certainly not for merely the reciprocal fulfilment of sexual desire, but includes many more social responsibilities. It is not romanticised relationship of married partners or the poetic description of angelic relation. The institution of marriage is subject to human frailty and error. Law presupposes that in a marriage, the wife has consented to provide all types of matrimonial obligations to her husband including sexual intercourse. Hence she cannot retract consent later on and make the marital obligation void. This archaic rule is still subsisting which is undemocratic and it is violating the principles of human rights. It is the time to recognize marital rape as an offence and marital rape be treated as ground for divorce. Victims of marital rape have no option to go anywhere to complain against such moral wrong Without any specific legal provision in place it is almost impossible to stop this perversion of marital rape. The concept of right to equality enshrined in our constitution remained as a dead letter as women of our country have no right even her own body is abused in the trusted relationship of marriage. The legislature of our country must wake up to the changing realty of present social change and provide legal protection to the married women who are suffering silently in their

homes. The Judiciary of our country has invoked its discretionary power in many cases and rendered social justice to disadvantaged persons. Both Legislature and judiciary should recognize marital rape as rape liable under Indian Penal Code. It is high time to provide social security to the married women in case of marital rape.

References:-

1. Under common law jurisdiction husband and wife was treated as single person. But The Married Women's Property Act-1882 permitted married women to sue her husband for the protection of her property.
2. The Law Reform (Husband and Wife) Act-1962 in England and The Protection of Women From Domestic Violence Act-2005 in India.
3. S.G Goudappanavar-Marital rape immunity in India:-needs fresh look,Indian Social-Legal Journal,Vol.XLI Nos.1&2,2015 at p.146
4. http://www.indialawjournal.org/archives/volume2/issue_2/article_by_priyanka.html
5. Universal Declaration of Human Rights, 1948, Art 3, UN Document A/810.
6. Article -14 of the Indian Constitution-1950.
7. Peoples Union of Civil Liberties vs Union of India – AIR 1997 SC 568
8. Maneka Gandhi vs Union of India, AIR 1978 SC 594.
9. People Union for Civil Liberties vs Union of India, AIR 2004 SC 45