

“Is Marriage a License to Rape?”

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Though the term ‘Marital Rape’ came in sight of Indian law a long ago, but it still has not been criminalized in our country. Our Indian laws have failed to provide protection to women in our country, imagine the feeling when one feels unsafe even at her own house, the condition of women is still the same as earlier, now also they are considered as the property of their husband who have all the rights to exploit her and sadly no effective remedies have been provided against it. India is a patriarchal society and has given more value to men than to women, and has always treated them unequally. Previously, women were not allowed to make any decision about anything. They were only expected just to obey their husbands and do the domestic chores. Men were considered as superior to women as they used to be the soul of a married woman’s life and there was nothing more to women than her husband, so they were given more respect than women. That’s why Sati Pratha prevailed in India for such long period. Women have suffered torturous behaviour not only from the husband but from the family and the society. There is an old saying “Aurat, aadmi ke paio ki jooti hoti hai.” this shows that no matter how illogically man makes a decision, woman needs to follow it blindly. Thankfully our society has evolved now, the mindset of people is also changing drastically, women today are living on their own terms many social activists have dedicated their lives for the upliftment of women. Government has also introduced many programmes like “Beti Bachao, Beti Pado” which helped in changing the mindset of people. Even though our society today is modernized but still we continue to hear so many cases against women in some ways or the other. For example: Rape, wife battering wife, domestic violence, etc. Though a husband’s cruel and non-consensual act of intercourse may give the right to the wife to bring an action against husband for criminal assault, the liability against marital rape in our penal laws is not present.

Concept of Rape

Rape depicts an occurrence where any man has forceful sexual intercourse with a woman without her consent or with her consent if that is obtained by force, deceit, fraud, threat, impersonation or intimidation.¹

Rape is considered as the most heinous form of sexual assault which inflicts physical as well as psychological harm to the female, it destroys her dignity and breaks her up into pieces.

Section 375 of the Indian Penal Code, 1860 states that the rape is said to be committed when a man penetrates his penis into vagina, mouth, urethra or anus of the woman or forces her to do the same with any other person.

¹ Itunu Kolade -Faseyi, Spousal Rape in a Globalized World, 9 Nnamdi Azikiwe U. J. Int'l L. & Juris. 107(2018).

There are seven clauses mentioned in this section which states the circumstances under which the person who has committed the rape can be convicted before the court of law. The main criteria of considering of an act as rape is consent, if there is a lack of free consent from the women's side for sexual intercourse man cannot even touch her but when this principle is dishonoured the crime of rape is committed. The makers of Indian Penal Code also included two exceptions to it, Second exception is the main concern as it states that: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not considered to be rape." This exception is violating Article 14 of our Indian Constitution i.e. equality before law and is being unjust to the females above the age of eighteen years. The law is totally biased as it is not including the entire female population but covering only a certain age group. Rape also includes Marital Rape which is a very serious topic as a female in marriage is being sexually assaulted and cannot easily communicate what she is going through. Marital rape exists de facto not de jure, (facts are true but cannot be sanctioned officially) and is committed when the wife refuses to give her consent to the husband for the sexual intercourse and the husband uses violence, force and threat to achieve it, the wife in the due process is abused sexually, physically and mentally while the husband wants to quench his thirst of lust. Marital rape violates Article 14 and Article 21 of our Indian Constitution. Exception 2 of Sec 375 of the IPC is an infringement of Article 14 and Article 21. Marital rape ruins the sanctity of marriage, and put this sacred bond in question. . In the case of Rafiq v. State², Justice Krishna Iyer observed that the murderer kills only the body but the rapist kills the soul³.

According to the definition that is provided by the Wikipedia, Marital rape is also known as spousal rape which is any act of sexual intercourse with one's spouse without the consent of spouse. The essential element of such act is that consent and it need not involve physical violence"

Need for criminalization

Marital rape is not at all like other forms of rape, the victim here has no choice but to carry on living with their husband as obtaining divorce is very difficult and is highly stigmatized. There exists physical and psychological need to criminalize the marital rape as one cannot even understand what a women is going through all along. Also marital rape is violative of article 14 and Article 21 of our Indian Constitution. Article 14 ensures equality before law and equal protection of law which means no discrimination of any kind is allowed .But our criminal law itself discriminates against the female victims who face sexual abuse by their own husbands. Article 21 is violated by our Indian Penal Code, Section 375 exception 2 which revokes the right of individual to live with dignity. It also includes the rights to privacy, dignity, health, safe living conditions, and safe environment, etc.

² Rafiq v. State (1980) 4 SCC 262

³ Anvesha Kumar and Ipsita Mazumdar, 'Bride' and prejudice – Marital and the Indian Legal Dilemma, 2 NSLJ (2013) 15

With the rising need to criminalize the marital rape in India there exists many descending opinions regarding the same because if it is criminalized it can be misused by the angry and frustrated women against her innocent husband with the offence of marital rape, or criminalizing marital rape will be contrary to our Indian customs as marriage here is considered as sacrament, and also it is considered that when a woman gets married there exist an implied consent to have sexual intercourse between husband and wife, but the consent to sexual intercourse between husband and wife denotes the expression of love through sexual intimacy and not to have forced sex.

Conclusion

Marital rape is quite common in our society but is a very under-reported crime. Women frequently does not report such events because the law itself does not support them. Rape should be treated as rape only irrespective of the fact that the offender is husband of the victim. The idealized society is considered where men and women have equal importance and have equal right to express their feelings and emotions. No men or women should be feeling exploited. Laws should be gender neutral so that justice could be served.

Marital Rape should be recognized as an offence in India and also the exception of Marital Rape clause (Section 375 Exception 2) should be repealed from Indian Penal Code. The offender of the marital rape should be punished as the same punishment that is given to the offender of rape which is provided under Section 376 of Indian Penal Code, 1860. Defence should not be taken by the offender that the wife did not shout or scream or resist forcefully. There's also a need to provide awareness regarding the Marital Rape in our society.