

MARITAL RAPE – NO IS NOT AN OPTION?

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ABSTRACT

This paper is to understand the concept and the impunity of marital rape. I have included relevant case laws and provisions along with my personal views and suggestions. Although there is an alternative provision to safeguard women under the domestic violence Act, still it's not criminalized under IPC. Marital rape is a clear violation of Article 14, Article 19 and Article 21, yet there is no law enforced in India to curb this menace. If we go back to history we can see how women were considered inferior and merely treated like a property.

Although we can see a drastic change in status of women over the span of time in various fields, when it comes to marriage we still see a patriarchal system followed where women are having passive role. This paper is to highlight the trauma and the need to bring forth a solution to eradicate marital rape.

I. INTRODUCTION

In order to understand this concept we need to first have a clear picture of the institution of marriage in Indian society. Mostly people tend to marry merely because of societal pressure, Marriage is not considered a contract, yet we talk about social contract between partners. We have rules, boundaries and expectations to define the relationship. The foundation of any marriage should be love as marriage unites their lives not just legally but emotionally. It is an opportunity to grow as a benevolent person. Now let's understand the term Rape. In every society the concept of crime of rape existed. Rape or sexual assault is a serious crime. Defining in literal sense, it is a forceful sexual intercourse done without the consent or the will of the other party. In order to make it clearer and to legally punish the offender Section 375 of the Indian Penal Code, 1860 defines rape under various context. There has always been a common myth about rape that the offender is a stranger, however this is not true. There is another unaddressed issue that has not been considered for a long time. 'MARITAL RAPE'.

Marital rape is a non-consensual sexual intercourse by man with his own wife. It is equally traumatic and painful, it makes no difference whether it is a stranger or your own partner but any kind of advances towards the body without ones consent is violation towards privacy. In Section 375 of IPC, marital rape is only considered as an offense when the sexual intercourse is done with his wife aged below 15 years. So even if there is no consent from wife to engage in any sexual activity as long as she is above 15 years, husband can you use force on her and that is not considered as offence in the eyes of law. The irony is that such laws makes it legal for men to rape women in the name of marriage. It is disheartening to see that women in India are still not free and continue to live in fear.

II. CONSTITUTIONAL ISSUE

A. Violation of Article 14

Article 14 of Indian Constitution guarantees equality to all.

When it comes to Indian criminal law there is injustice done towards the married women community. There is unreasonable classification done between married and unmarried women. When the injury is the same that's inflicted on the person irrespective who has done the act whether stranger or the husband it has to be considered offence. There is a discrimination done against married women, just because she is married does not give her husband the right to sexually abuse her. Sexual violence at all times should be punishable under law. Also most of married women find it hard to escape since legally there is no protection against such barbaric acts.

B. Violation of Article 19

Article 19 - Freedom of speech and expression.

It's the choice one makes whether she wants or not to get intimate. In these situations, Her opinions are not considered and given value to. As discussed earlier marriage should be about love and respect, no law states that women should oblige to all whim of her husband. Without the consent of wife forcing him upon her violates Article 19.

C. Violation of Article 21

Article 21 – Right to life and personal liberty. This is wide area which needs to be interpreted in-depth.

Life includes not just existence but the way its lead. Here human dignity plays a vital role. Rape hence destroys ones existence as a whole irrespective if it's done by husband or mere stranger. Rape of any form causes physical, mental and social harm. Right to privacy is yet very important aspect. Forcing of any kind in the relationship is punitive. By not considering marital rape as offence violates article 21 and is unconstitutional.

III. LEGAL PROVISIONS RELATING TO MARITAL RAPE

While unwilling sexual intercourse is considered offence in most of the countries around the globe, In India marital rape is legally permissible. In India various provisions are introduced to restrain domestic violence like “The Protection of Women from Domestic Violence Act” and the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.”¹

Its traditional school of thoughts that is still followed that by marriage it's a forever consent given by the wife to husband to do as he please. What happens behind closed doors is difficult to prove and hence legal proceedings are not carried out in order to save marriage.

¹ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

A. JUDICIAL APPROACH

1. In *State of Karnataka v. Krishnappa*²

Supreme Court held that sexual violence is against Right to privacy and sanctity of women.

2. In *Suchita Srivastava v. Chandigarh Administration*³

Supreme Court held that Article 21 deals with Right to make choices related to sexual activity.

3. In *Justice K.S. Puttuswamy (Retd.) v. Union of India*⁴

Supreme court held that Right to Privacy is Fundamental Right of all citizens.

The above rulings does not distinguish between married and unmarried women, speaks about women in general and hence it should be interpreted that to engage in any kind of sexual activity has to be by choice and not by force. Absence of consent for sexual intercourse is Violation of Article 21.

IV. STATUS IN OTHER COUNTRIES

Many countries have criminalized marital rape. However India is one of the 36 countries where it's not considered an offence.

In *R v. R*,⁵ The defendant and the wife although not divorced was living separately. One day he broke into her home and tried to sexually assault her without her consent. Court held that irrespective of relationship between the two forcing a women is an offence.

² *The State of Karnataka v. Krishnappa*, (2000) 4 SCC 75 (India).

³ *Suchita Srivastava v. Chandigarh Administration*, (2008) 14 SCR 989 (India)

⁴ *Justice K.S. Puttuswamy (Retd.) v. Union of India*, (2017) AIR 2017 SC 4161 (India).

⁵ *R V. R* (1992)1 ACC 599

Many countries do not collect data on marital rape because they are still not considered offence and also most of the times they are not discussed because of social pressures. Poland, Australia, Denmark, Sweden are few countries that have identified Marital rape as criminal offense. Many common law countries have brought changes in their legislature and marital rape is now considered offense in most of the countries. According to the UN Women's 2011 report⁸, 52 Countries had amendment their legislature out of 179 countries to make Marital Rape a criminal offense, an exception for the marital rape is made in their rape laws for the remaining countries. Where there is no such exception, the spouse can be prosecuted under the general rape laws.

V. CONCLUSION

Law is rule of conduct prescribed for wellbeing of people in the society. India as a country is developing in fast phase but the rules that are governing us is still old school of thoughts. Change in society demands changes in laws too. Recently we have seen many breakthrough i.e. Legal ban on Triple Talaq.⁶In India there is a notion that marital rape will destabilize the institution of marriage. Marital rape is safeguarded in the name of sacred relationship of marriage. But one has to understand that rape is Rape irrespective it's done by a husband or stranger, the relationship does not matter here.

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Women should be treated with respect, not commodities of pleasure. An act which harms the health, safety, life or wellbeing of the victim is called domestic abuse and it is legally punishable under law, then why is marital rape not considered a domestic abuse? Here both physical and mental wellbeing of the victim is affected. There are so many loopholes in our system that we are yet to go a long way before we identify the same and make necessary changes.

⁶ Shayara Bano V. Union of India and others AIR 2017 9 SCC 1 (SC)

The decision to give Immunity to the husband to take advantage of his wife was a savage blow for society. Marital Rape needs to be criminalized in India so no man can take undue advantage of any women even in the pretext of marriage. It's time to awaken the society by large to acknowledge women's rights in a marriage.

The agony, grief and distress one undergoes after a rape is all the same irrespective of the person who does it. In fact the wife will be in constant fear of her husband as she can expect another assault anytime.

From marriage to divorce state involves itself in every matter of family affairs, may it be adultery, cruelty, dowry and anything that threatens the parties in the marriage there are rules for everything. Then why is one of the most important issue like marital rape left alone? It's time to wake up . Understand the real meaning of marriage. With love, respect and understanding for each other there is no scope for rape in a marriage.