

MARITAL RAPE IN INDIA

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ABSTRACT

India celebrates its 75th independence still the women in India are neglected and not able to live independently. Rape is an offence violating her dignity and it is punishable under IPC section 375. What if she faced such kind of assault after her marriage in her marital house ? She can't speak it out because of their family reputation and there is no law for the marital rape is provided under IPC .There were no effective laws in India as far as marital rape is concerned . The non consensual sex with their spouse is not considered as the crime in India , not only in India but in few countries in the world. Other countries have tried their best in making laws for the protection of women. India is focusing on protection and prevention of crimes against women but fails to protect a married woman from her rapist who apparently in such cases is her husband. At present 150 countries have criminalized the offence of marital rape but only 32 countries where marital rape is not a criminal offence they are China, Bangladesh, Egypt , Oman, Yemen, Myanmar, Mali, Senegal, Tajikistan, Afghanistan, Malaysia, Lebanon, Kuwait, Singapore, Libya, and others . Lot of people think that marriage is the licence to rape but who gives a right for the husband to rape his wife ? Marital Rape is also a rape but why it is not punishable in India and why it is not spoken out ? There is need to bring strong laws to bell the cat of marital rape in India. Let us discuss briefly about Marital rape in this article.

INTRODUCTION

Marriage is an institution which admits male and female to a family life. Marriage is a contract for the procreation of the children and the maintenance of children . Marriage is a union of men and women because it brings them together for the reproduction of human race which is impossible without the contribution of both sexes .If a wife says “No” to any sexual act, she is

not ready for it but the husband experiences the feelings of rage, anger, rejection, and frustration, because he was never prepared to handle any rejection so he forces her for the sexual intercourse. This kind of sexual pressures were faced by them . Unmarried women are considered as a liability to their fathers and are handed over to another man, her husband, in the contract of marriage . The bitter truth is that even after the marriage the women were not safe in their marital house .

WHAT IS MEAN BY RAPE ?

The Latin term “rapio,” which meaning “to seize,” is where the English word “rape” originates. A rape is a type of sexual intercourse or a sexual penetration carried out against a person (male or female) without their consent. The Rape violates the victim’s fundamental right under Article 21 of the Indian Constitution.

The definition of rape : Rape is codified in Section 375 of the Indian Penal Code [IPC] includes all forms of sexual assault involving non-consensual intercourse with a woman. According to this Section, the rapist should be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine.

It’s Rape If It Falls Under Following Categories:

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
4. With her consent, when, at the time of giving such a consent, by reason of unsoundness of mind or intoxication .
5. With or without her consent, when she is under sixteen years of age.

Exception:

1. Sexual intercourse by a man with his own wife is not considered as a crime in India, the wife not being under fifteen years of age, and
2. In the Exception, for the word “fifteen” substitute the word “thirteen”.ⁱ

CONSENT UNDER SECTION 375 OF IPC :

Consent refers to the voluntary and clear communication by verbal or non – verbal that the women gives for the sexual act . Marital rape is an exemption to giving consent as it is not a crime under Indian penal code, as long the age of the wife is above 18 years .

AMENDMENT TO SECTION 375 OF IPC:

The criminal law amendment act 2013 or **the Nirbhaya case** was passed in the parliament to amend section 375 of IPC. To remove the ambiguity in the earlier law and to provide strict punishment in some rare Sexual assault case, the legislature expanded to define the act that penetration of penis into vagina , mouth , anus or any object or any part of the body into the women’s body part is considered as the offence of sexual assault under IPC section 375. Applying mouth or touching the private parts were also classified as the offence of sexual assault .

PUNISHMENT FOR RAPE UNDER SECTION 375 OF IPC:

Except in certain aggravated situations, the punishment will be imprisonment of not less than seven years which may extend to imprisonment for life, and shall also be liable to fine.

In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than 10 years which may extend to imprisonment for life, and shall also be liable to fine.

Rape and gang rape of girls below the age of 12 years will carry minimum imprisonment of 20 years and is extendable to life imprisonment or death.

In 2016, 21% of the total 39,068 cases of rape were against minor girls below the age of 16 years and several states have introduced or passed Bills to allow death penalty for rape of girls below the age of 12 years.

WHAT IS MARITAL RAPE ?

The sexual intercourse between the husband and wife is legal but if one spouse forces another spouse for sexual intercourse or sexual assault without their consent is known as marital rape or spouse rape. Marital rape is considered as the type of domestic violence . The husband or wife thinks that this is their right to have a sexual intercourse even though the other party is not willing and their consent is not considered here . In India the marital rape was faced mostly by female.

The husbands thinks that the wives are their property and they have all rights on them. Marital rape cannot be criminalized in India because of provisions in the law allowing it.

The English judge and the lawyer **sir Mathew** in the year 1736 stated that “ A husband cannot be guilty of rape committed towards his wife because he is legally married and he has all rights over her and also he doesn't need any mutual consent from her to have any sexual intercourse with her.”

DATA FACT :

1. More than two - third of the married women have been forced by their husbands in sexual intercourse.
2. One in five men has forced his wife or partner to have sex.ⁱⁱ

It has be 75 years that India got its independence but the women's who live in India is still treated as the slaves or properties of men and the women have to be dependent on men still this situation has not been changed in many places. Rape is a crime against the women which violates their self respect and dignity , it is punishable under IPC but the same rape take place for a married women in her marital house no one comes forward to talk about it because women

were considered only as pleasurable object for men. It has been 2022 but still a large population of women were facing the marital rape which cannot be spoken out . The marital rape is one of the ground for getting divorce. At the same time there are some fake cases also filed to get divorce from their spouse.

Today worldwide, India stands one amongst the 36 countries developing nations/countries that haven't criminalized marital rape. In the **Nimishbhai Bhartibhai Desai vs State of Gujarat 2018**, case the question was raised whether a husband who is forcing her wife to indulge in oral sex would amount to rape or not and should be punished under Section 376 of IPC. The court took this matter and said" that our country hasn't made marital rape a criminal offense till now. Because of the fear, that it will destabilize the institution of marriage and also women can misuse this as the case with other laws.

CASE LAWS:

1. Queen Empress v Haree Mythee, observed that in case of married women the law of rape does not apply between husband and wife after the age of 15, even if the wife is over the age of 15, the husband has no right to disregard her physical safety.
2. In Sree Kumar v Pearly Karun , HC observed that because the wife is not living separately from her husband under decree of separation, even if she is subject to sexual intercourse by her husband against her will or without her consent, offence under Section 376A IPC will not be attracted.

MARITAL RAPE ON MINOR WIFE (CHILD MARRIAGE)

Exception 2 of Section 375 did not consider intercourse of a man with his wife as rape if the wife is above fifteen years of age. The Exception considered marital law as a crime only in the case where the age of a minor is less than fifteen years, which now stands annulled.

Independent Thought v. Union of India

The Independent thought judgment is considered a landmark judgment because it annulled Exception 2 of Section 375. This judgement made marital rape on minors below 18 years of age a criminal offence under Section 375 of IPC.

HISTORY OF MARITAL RAPE :

18th century English law has set that the husband is the master and wife cannot be independent, both husband and wife is treated as one entity and the wife is always dependent on husband. They considered the husband as the master of his wife and he can enjoy all privileges over her body and could not be convicted for raping his wife .

In 1857, Massachusetts was the first in the U.S to recognize “contract ” justification for the marital defense to rape. It is the right of the husband to have sex with his wife and also if she refuses it is the ground for getting divorce from his wife . This defense became a part of rape laws in every states. The supreme court of Virginia has noted that it is very hard to imagine a husband for charging marital rape .

The women’s movement in 1970’s leads to change in the law . In 1976 Nebraska became the first state to throw out the marital rape exception .

EFFECTS OF MARITAL RAPE :

The marital rape causes physical , mental health and psychological issues to the victims which hurt them emotionally as well as physically .

1. **Physical effects-** The physical effects of Marital Rape include injuries to private organs, torn muscles, fractures , and some problems like miscarriage, infection, infertility and some time causes diseases like HIV etc. Some women suffer from other complications like blackened eyes, broken bones, and wounds inflicted by any weapon, during sexual violence.

2. **Psychological effects-** The trauma a woman goes through when her own husband rapes her cannot be explained in words. The psychological effects are worse than the physical effects, some of the short term psychological effects are shock, fear, stress, suicidal tendencies etc.

ARTICLE 21 OF THE INDIAN CONSTITUTION:

Article 21 of the Indian constitution states “ Protection of life and personal liberty ” but when a women is forced to have sex with her husband without her consent then the validity of her personal liberty and her consent which is mentioned in Article 21 is questioned here and her dignity, self respect is affected here.

TYPES OF MARITAL RAPE :

There are 3 kinds of marital rape they are,

1. **Battering rape :** The women has been forced or battered, or face both physical and sexual assault in the relationship. Some women experience physical abuse before or after the sexual assault.
2. **Force-only Rape :** Usually physical assault happens when the wife decline to engage in sexual intercourse, the husband employees a minimum amount to physical pressure on his wife.
3. **Obsessive Rape:** The other women undergo a sadistic and obsessive Rape . This assaults involves a physical violence and torture .

The term “ battering rape ” was used to describe 48% of all occurrence of the Marital rape.

According to the Indian Penal Code, the following situations qualify as marital rape offences for which the husband may face criminal charges:

1. If the wife is between the ages of 12 and 15, the offence carries a maximum 2-year prison sentence, a fine, or both;

2. When the wife is under the age of 12, the offence is punishable by either type of imprisonment for a time that must not be less than 7 years but may extend to life or for a term extending up to 10 years, as well as being subject to a fine.
3. Rape of a legally separated wife, a crime punishable by up to two years in prison and a fine;
4. Wife rape committed after the age of 15 is not a crime.

Marital rape faced by husbands :

Although most research is focused on wives as victims of marital rape, husbands experience marital rape as well. The report suggest that men and women have nearly the same annual rates of victimization of violence by a marital. Only little research exist focusing on the specific situation of non-consensual wife-to-husband sexual relations.

Marital rape as a ground for divorce :

Marital rape is one of the ground of divorce under every marriage act i.e., Hindu marriage act, Muslim marriage act, parsi marriage act, etc. But some times criminalization of marital rape could open floodgates of false cases .

MARITAL RAPE OUTSIDE OF INDIA AND PUNISHMENT :

Since 1979, some nations have criminalized marital rape as an offence to protect married women and abolished exemption from the law and , also added new punishments to the offence.

Austria, Belgium, Ireland , Canada, Brazil the Dominican Republic, Finland and Israel, among others, have contributed significantly over time by amending the law.

1. In Austria, the maximum sentence for the rape committed in marriage is 15 years jail in 1979.

2. In Finland , the sentence for the crime committed against the married women is 4 years in jail and violation act against married women carried higher penalties .
3. In Jordan , a man who sexually assaults his wife will be sentenced for at least 10 years in prison.
4. Germany: The liberation was ended in 1947.
5. Ireland: Irish law is no more allow exemption for the marital law.ⁱⁱⁱ

In India, engaging in sexual activity with a divorced woman is illegal and punishable by a 7-year prison term, it is considered rape. But the exception to the IPC's section 375, states that a man who has intercourse with his wife over the age of 15 is not regarded to have been raped by her husband, the country does not consider marital rape to be a crime.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS ON MARITAL RAPE :

India's non-recognition of marital rape as a crime violates international human rights instruments, namely the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) in addition to CEDAW to which it is a party.

The IPC definition of rape discriminates against married women, and thus lies in contravention to Article 26 of the ICCPR. Article 26 of ICCPR requires that domestic law guarantee equal and effective protection against discrimination on any grounds including any other status of a person, besides those already mentioned in the provision such as race or sex.^{iv}

CONCLUSION

Women in the society are silent because of their family. In India marital rape cannot be criminalized because of the traditions and values. According to the former chief Justice of India Dipak Mishra, making Marital rape as a crime would cause complete anarchy in families and our country's survival depends upon family platform which upholds family values.

Our culture is made on the idea that once a women is married to a men , which means she gives her perpetual sexual consent to her husband.

In India marital rape is not entirely prohibited. The law protecting women from domestic violence has numerous flaws because it does not expressly prohibit marital rape .The colonial-era law says that if a man rapes his wife then it is not a crime. The Delhi High Court verdict has again failed to address the issue of marital rape and still remains non-criminalized.

It is said that 90% of women face violence once in their lifetime. The women should be considered as the man's responsibility not the opportunity .

ENDNOTES

ⁱ Mayank Shekhar, Rape – Meaning, Essentials and Punishment, <https://www.legalbites.in/law-notes-ipc-rape-meaning-essentials-punishment/> , (last visited on Feb 16,2018)

ⁱⁱ <https://www.thehindubusinessline.com/data-stories/data-focus/marital-rape-most-married-women-are-sexually-abused-by-their-husbands-says-nfhs-data/article65409875.ece/amp/>

ⁱⁱⁱ Punishment for Marital Rape in these Countries, you didn't know about!- Lexforti <https://lexforti.com/legal-news/marital-rape/>

^{iv} <https://www.berkeleyjournalofinternationallaw.com/post/marital-rape-in-india-an-international-human-rights-law-violation>