Time to criminalise marital rape: An Analytical study in India

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Abstract-

“I say nothing, not one word, from beginning to end, and neither does he. If it were lawful for a woman to hate her husband, I would hate him as a rapist.”- Philippa Gregory, The Red Queen

In Indian Marriage System Marriages are between two families, rather two individuals. Indian Society and Indian legislation attempt to protect marriage. Indian society is patriarchal one and women having a passive role and husband an active dominating role. The primary duty of the woman is to be loyal to the husband. After marriage, husband and relatives control all outside relationships. For a woman her husband is as God and follows him blindly even it is totally against her will. She has no right to speak about her right and her will. She should keep herself behind the four walls of the house. Time change women educate herself work in modern organizations but the situation of women is same. She is still a toy of her husband with which he can play anytime when he wants to play. Under the four walls of her home she is again and again raped by her husband as he has license to rape her body or soul. Marital Rape is very common thing in India because it is not a rape at all. This paper focus on the immediate need is criminalization of marital rape under the Indian Penal Code. The object of the paper is to evaluate various judicial responses related to marital rape.

Key words- Indian society, Marital Rape, Indian Penal Code, Criminalization

Introduction There is various form of marital rape like spousal rape, partner rape, or rape within marriage. When there is forceful sexual intercourse by one spouse with other, it becomes marital rape. So both husband and wife can be perpetrators of marital rape. It’s means rape is gender neutral offence. But in India it is gender specific offence. A large number of women are victim of marital rape. Marital rape is not a novel phenomenon in Indian Society. No part of history is free from this menace. Marital Rape is very common thing in India because it is not a rape at all. It is right of a husband and duty of a wife to surrender herself to her husband. I want to ask why marital rape is not treated as rape why it is not criminalized only because that man (Her Husband) got the licence to use her body whenever he wants. Rape is punishable in India but in case of marital rape neither we have any codified law nor any legislation. Marital rape is hindrance in the development of the society. No society can become modern and developed society as long as evil like marital rape exist within it. There is only way to eradicate this evil is by enacting law.
Research Problem: Whether sexual intercourse without the consent of wife is amount to be rape

Objectives of the Study

- To focus on identification of Marital Rape as different from rape
- To examine the legal framework and different perceptions on marital rape.
- To examine the exception of rape as violative of Constitutional rights
- To suggest some measures to handle the problem of marital rape

Significance of the Study: To highlight the reasons of marital rape in India and the study also suggested that there is need of criminalisation of marital rape

Research Methodology: It is based on doctrinal research. For the purpose of research, Secondary data is used like books, relevant research articles, national and international journals, judicial pronouncements, AIRs, law journals, cases of higher and lower judiciary, reports of the various committee, etc.

Reasons of Marital Rape

It is important to note that there are specific causes or reasons for each crime or offence. There can be no crime if there is no cause or reason. So, in order to understand and eradicate any crime, it is necessary to investigate its causes or reasons; only then can such crime be properly understood and eradicated from society. Marital rape is also a very serious type of crime or offence that must be completely eradicated from society, but first the causes or reasons for committing a marital rape must be determined. There are numerous reasons for committing marital rape. The following are some of such causes or reasons:

Domination

The first major reason or cause for the existence of the offence of marital rape is the inborn desire of one spouse to dominate the other, and marital rape is used as a tool by the offending spouse to achieve that goal. As a result, marital rape is quite often used as a tool of dominance.

No Support from Society

The victim of marital rape is not supported solely by his or her family. The same is true for society. As a result, such victims receive little support from society, and such crimes continue to rise. A lack of support from society is another factor contributing to the rise of marital rape.

Chid marriage

In countries like India, they are still widespread, despite many laws prohibiting the marriage of children. Marriage of these children is also a major cause of evil such as marriage rape. Spouse rape if sexual intercourse between a man and a woman is done without free consent it becomes marital rape because the parties to a child's marriage are minors, they cannot freely
Agree to sexual intercourse because of their minority, and such marriage sexual intercourse turns into rape of marriage

**Absence of effective laws**

In nations like India there are sufficient legal guidelines to punish the perpetrators of rape which act as a powerful deterrent. However the identical isn't authentic within side the case of marital rape as there aren't sufficient powerful legal guidelines to punish the perpetrators of marital rape. so the absence of powerful legal guidelines in a main reason of the blossoming of evil like marital rape

**Illiteracy**

Lack of literacy or education also serves as a breeding ground for evil such as marital rape. People who are illiterate are unaware of their rights and can be victims of marital rape. Also, illiterate people are much more likely to commit such crimes because they are unaware that marital rape is wrong due to lack of education. Therefore, literacy is one of the main causes of marital rape

**Data Related To Marital Rape**

According to the NCRB, 98 percent of all rapes are committed by attackers known to victims like Friends, acquaintances, co-workers, and relatives. but what about husbands? In a survey conducted by the United Nations in 2013, nearly a quarter of 10,000 men in six Asia-Pacific countries, including India, admitted to raping wife. According to the survey, a common rationale is the conviction that they are entitled to sex even if their spouse does not consent. There is no legal provision to save wife as Victim.

In 2019, a total of 4,05,861 occurrences of crime against women were reported, up 7.3 percent over the previous year (3,78,236 cases). The most common offence against women under the IPC was ‘Cruelty by Husband or His Relatives' (30.9%), followed by ‘Assault on Women with Intent to Outrage her Modesty'(21.8%), ‘Kidnapping and Abduction of Women' (17.9%), and ‘Rape' (7.9 percent). Sexual violence victims are the least likely to seek help; only 10% of married victims of sexual violence seek aid

**Legislation** Justice J.S. Verma Committee was founded after the girl was brutally raped by a group of six men on a moving bus in Delhi after the Nirvaya incident announced in 2012. The Commission did a tremendous job of compiling a report in just 29 days and proposing breakthrough changes to India's rape law. One of the Commission's recommendations was to criminalize marital rape. However, this is not taken into account. It is suggested that her husband can have sexual intercourse with her wife without her consent, as the marriage itself is her wife's consent to such sexual intercourse. According to exception of section 375 Indian Penal code Sexual intercourse by with a man with his wife, wife Not being under the age of 15 is not rape,
Section 498A of Indian Penal Code is another section that can be used to assist women who are victims of spousal rape. Section 498A defines atrocities and their punishments, and inflicting serious injuries constitutes atrocities under Section 498A of the IPC. Performers of such acts will be punished by imprisonment and fines of up to 3 years under Section of the same section. Marital rape is not a criminal offense in India. But generally spouse rape involving atrocities. Therefore, women treated as atrocities are not a sufficient remedy compared to horrific threats such as spouse rape. Therefore, Section 498A also provides the only limited remedy for victims of spousal rape.

Judicial Response

As far as marital rape is concerned it is a necessary evil that must be eradicated from Indian society but that can only be done by Indian legislature as Indian judiciary does not have much power . In India Marital rape is only a partially punishable offence . Indian Judiciary cannot put a blanket ban on marital rape in India no matter how grave and big evil it may be. But the Indian judiciary has given some important landmark judgements on it. Which give the hope that marital rape becoming a fully punishable offence in Indian someday.

Independent thought v. Union of India (2017) A Children's Rights Organization, Independent Thought, submitted a written petition to the Supreme Court. The petition challenged the constitutionality of Exception 2 to Section 375 of the IPC which decriminalised sexual intercourse by a husband with his wife between the ages of 15 and 18 years. In this case court provide relief to minor wife against marital rape. Before the judgement only wife who was below the age of 15 year was protected by Indian Penal Code.

Nimeshbhai bharatbhai Desai v.State of Gujrat (2018) court held that marital rape must not be considered as the privilege of a husband rather it must be treated as one of the gravest forms of injustice against women and criminal offence.

Sakshi Mehta v. Sate and another (2019) An important observation by the court that man can be prosecuted and punished for raping but a husband cannot be prosecuted and raping his wife.

Suchita Srivastava v. Chandigarh Administration, In this case, the Supreme Court ruled that the right to life and the freedom of the individual include the right to freely choose sexual activity. Therefore, it is clear that non-consensual sexual activity also violates Article 21 of the Constitution of India.

In State of Maharashtra vs Madhukar Narayan Mandikar, Supreme Court discussed right to privacy about your own body. In a good example, it was established that prostitutes have the right to refuse Sexual intercourse because they are not married to those who make sexual demands. But this is very pathetic .In the situation, all women, except their wives, have the right to refuse.

In Justice K.S. Puttuswamy (Retd.) v. Union of India the apex court held that every forceful sexual intercourse or cohabitation within the marriage amounts to infringement of
fundamental rights of the person and for this there is no such differentiate between married and unmarried female

Shashibhushana .K v.State of Karnataka Justice M. nagaprasanna said that “A man is a man, an act is an act, rape is rape be it performed by a man, the “Husband” on the woman,” 'Wife”.

Kerala High Court recently in August 6,2021 observed that marital rape can be valid ground for divorce

Conclusion and suggestions

Marital Rape is a criminal offense in most countries around the world. There are few countries in the world where marital rape is not a crime. Every country in the world suffers from the evil of marital rape. However, countries where marital rape is a crime do not suffer much, while countries where marital rape is not a crime suffer more in the hands of marital rape. Marital rape is not completely punishable crimes in India. Only Minor married women are protected from marital rape. Major married women are not protected. Since marital rape is only partially punishable offence in India and not fully punishable offence continues to flourish in India unabated. The majority of India's views oppose the criminalization of marital rape in India. The Indian minority view is about the criminalization of marital rape. In general, marital rape is not considered wrong. The Indian government also opposes the criminalization of marital rape. Indian judiciary generally supports the criminalization of marital rape, as evidenced by numerous decisions on the issue of marital rape. However, the role of the judiciary in this regard is very limited. Marital Rape is a major threat to India's gender justice and personal freedom, marital rape is violative of fundamental right to equality as provided under Article 14 of the constitution of India. Marital Rape is violative of fundamental right to life and personal liberty as provided by Article 21 of the Indian constitution. As long as there is evil such as marital rape, we cannot become a modern and developed. Marital rape is a major obstacle to national growth and development. The urgent need is to criminalize marital rape under Indian criminal law. However, the mere decision to act as a criminal offense is not sufficient. We still need to do something to raise awareness of the judiciary and police. The ultimate goal of making marital rape a crime can only be achieved if society recognizes and disagrees with the general myth that marital rape is trivial, so it is necessary to educate the public about this crime.

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