



A CRIMINOLOGICAL STUDY ON REFORMS FOR CASES OF MARITAL ASSAULT

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ABSTRACT

Women in India have faced incidents of crimes like rape, outraging modesty, insult, etc., and one of the similar issues that need attention is marital rape. It means that a husband is having sexual intercourse against the will of his wife. In India, it has been a hot topic over the period where debates have raised the question that does a man get the right to have sexual intercourse with his wife against her will or without her consent? The Indian Penal Code doesn't make it an offence if the wife is above the age of fifteen years. So, the consent of the woman is immaterial once she has entered into a bond of marriage with a person. The question that needs to be answered here is why a woman should surrender her decision-making capacity to the husband only because she is married to him. The author of this research paper has tried to find out the loopholes in the criminal laws of India covering the issue and discussed the proposed laws and remedies for married women. The research methodology adopted is purely doctrinal including the principles of applied research. The literature review contains an analysis of articles written by eminent authors, experts, in the field of criminal and marriage laws.

KEYWORDS: Women, Marital, Rape, Loopholes, Doctrinal.

INTRODUCTION

"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

Indian people worship women in form of Goddess Durga, Kali, Lakshmi, Saraswati, etc., and have deep respect for them. Indian laws have played an important role in protecting women from social problems that they have faced before independence

and other crimes that have been unleashed on them. However, some lacunas need to be addressed and one of them is Marital Rape¹. The Indian Penal Code doesn't make it an offence if the wife is above the age of fifteen years². There are many forms of

¹ Here, it means forced sexual intercourse by a husband with his wife against her will or without her consent.

² Section 375, I.P.C. - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

marital rape like Sexual coercion by non-physical – it's a social coercion where the wife is forced for a sexual intercourse and is reminded about her duties as wife, Forced sex- when a women is not willing to have intercourse and use of physical force is involved, Battering Rape- use of aggression and force against the wife for sexual intercourse, Force only Rape- does not necessary batter the wife but uses force against unwilling wife and Obsessive Rape- involving sexual sadistic pleasure by the husband.

So, as per this concept, the consent of a woman is immaterial once she has entered into a bond of marriage with a person, who is her husband, irrespective of the fact that it infringes her Human Rights. How can a husband get the right of having sexual intercourse with his wife when she is not ready for it? The answer to this question should not be given based on relations but the emotions of a person. Needless to emphasize the fact that there are very few women who resist this step of their spouse, as, they fear a backlash in form of anger, frustration, etc. It won't be wrong to say that women, especially in a society like India, are very much concerned about their marital relationship, it being the foundation of their family and it becomes difficult for them to settle a family after divorce, or separation from the husband. But, it doesn't mean that a husband gets a right to force his wife for having sex with him against his will or without her consent. Undoubtedly, the basic reason for entering a marriage is to have kids and make a family, but that should not be the sole motive. The higher judiciary hasn't shown any sincere efforts for making it a crime but has only given lip-service. Former Chief Justice of India, Dipak Mishra, in August 2019, said that marital rape should be legal in India and shouldn't be covered in the definition of

crime³. He justified his point on the basis of the structure of Indian society. However, he erred in understanding the psychological impact of forced sexual intercourse on the mind of a wife. The tendency to think women to be your 'so-called property' makes a husband commit these types of unwanted acts. 'Unwanted', I am saying because the wife isn't ready for this or even if she gives her consent, it is not free but accompanied with an element of fear or surrender. In *Joseph Shine vs. Union of India*⁴, the Supreme Court of India declared that 'Husband is not the master of his wife'. This judgment was given by the bench of Justice Dipak Mishra and Justice A.M. Khanwilkar in the context of decriminalizing adultery in India citing the reason that it violates Articles 15(1) of the Indian Constitution⁵ as it is an offence which discriminates on the basis of gender. So, we can see that the apex court on one hand is accepting the fact that a husband should not control his wife in her everyday affairs⁶, but on the other hand, is not allowing women to take a tough stand against their husbands during involuntary sexual intercourse on her part.

REASONS

There need not be a specific reason in every case of marital rape. It depends upon family to family; rather it's purely a question of fact. However, there are some general grounds which play an important role here and are almost present in most of the cases, paternal social structure being one of them. In Indian society, men consider themselves to be superior to women and this superiority complex has been developed in their minds from ancient times when there were practices like *sati system* where a woman used to end her life after the death of her husband. This gave an intuition to men that a woman is nothing without them. Though,

³ <https://timesofindia.indiatimes.com/city/bengaluru/no-need-to-make-marital-rape-an-offence-ex-cji-dipak-misra/articleshow/68785604.cms>

⁴ AIR 2018 SC 4898.

⁵ The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

⁶ Here, it means day- to -day activities.

this horrific practice was abolished by sincere efforts of Raja Ram Mohan Roy, still it is a matter of discussion in some societies, leading to inferiority complex in women. Secondly, the paraai dhan[7] concept related to women in India is also a reason for creating a feeling of supremacy in the minds of men. They think that once they have married a woman, she has become their 'property' and they are free to do whatever they feel like doing with her. This may sound weird but is practical in some parts of India, specially the rural ones. Apart from these two reasons, the third and the most important point is absence of specific, certain and transparent laws on this issue. Even the Indian Penal Code doesn't punish a husband who is accused of having sexual intercourse with his wife against her wish; provided she is not below the age of fifteen years and the legal age of marriage in India for women is eighteen years. So, I.P.C doesn't punish a person who has married below eighteen years of age. This law needs to be changed as early marriage causes mental health problems, physical problems, etc. Fourthly, sometimes it is seen that a strong financial or political position of husbands create fake ego in their minds that they have the authority over their wife. This is something which gives them a sense of 'mastery' and ultimately leading to their body following the instructions of the mind. The husband's control over political and sometimes judicial system as well, lays down the foundation of implausible thought process creating problems for the wife. Apart from these reasons, there are some men who are corrupt minded and have lascivious thought process which engages them thinking about sex all the time and for satisfying their so called physical needs, their wife is the only person who has to compromise. I am using the word 'compromise' here because it is not necessary that she is always ready to have sexual relations with the husband as it depends upon the mood, health, mental capacity and psychological issues before entering in sexual relation with the other

person. Men, who have low self-esteem and are raised in an environment where respect for women wasn't taught, tend to commit these kinds of acts as they consider the wife to be their property. A man's tendency to think that he is physically stronger than a woman; sometimes play a role in raping his wife. The problem here is that marital rape is not kept on the same platform or is not viewed from the same lens where a case of outside marriage rape is there.

IMPACT ON THE MIND OF A WOMAN

Every person is free to live his life as per his own wish and there should not be any outside interference. Article 21 of the Indian Constitution lays down the foundation of Right to Life and Personal Liberty which can be taken by the State only through a procedure established by law. Therefore, women have the right to choose the time and circumstances when they want to have sexual relations with the husband. They can't be forced to do this. It is needless to emphasize the fact that they have negative impact on their minds once they are the victim of marital rape. They have few options left with them as the person who has committed this act against their wish is her own family member. It is easy to file a complaint or F.I.R. against an outsider, but not insider. Her faith is shaken when her own person is responsible for doing something which is against her will and directly affects her basic human rights. Even if she wishes to file a case against her husband, it is very difficult to prove it in the Court because of the 'consent' factor. It is a tedious task to prove that she didn't consent to have sex with the husband due to the complexity of substantive and procedural laws of India. More importantly, the victim hesitates in fighting her case in the Court because it puts the 'respect' of her family at stake. Her own family members, especially the in-laws are against her. All these things taken together create frustration, annoyance and anxiety in her mind leading to divorce,

suicide, etc. and even if she decides to compromise in these circumstances, letting her husband do whatever he wishes to do, her physical health starts deteriorating, especially her gynecological health. This ultimately leads to complexities like failure to conceive later, hormonal imbalances and

many more. This is totally against Article 21 of the Indian Constitution which is a Fundamental Right. The victim women start showing low self-confidence, hating their own husbands and this disturbs the balance of the family structure.

INSTITUTIONS AND THEIR ROLE

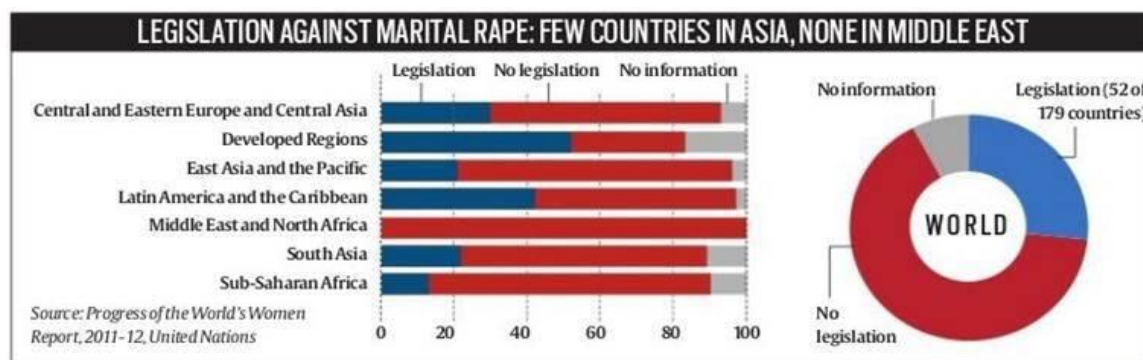


Figure 1. Legislations against marital rape in other countries

According to the World Bank, there are at least 78 countries that have legislation specifically criminalizing marital rape and the first one to do this was the Soviet Union in 1922. If we look at Indian laws, they have played an important role in giving shape to the rights of women. However, with respect to marital rape, the laws aren't well defined or structured. Justice Verma Committee report that was submitted to the UPA Government had recommended for the removal of the exception of marital rape from Section 375, I.P.C. In other words, the Committee proposed that the law must specify that a marital or other relationship between the perpetrator and the victim is not a valid defense against the crimes of rape or sexual violence [7]. Delhi High Court recently has heard the petition related to marital rape filed by two NGOs, RIT Foundation and All India Democratic Women's Association, and two individuals, challenging the constitutional validity of the second exception to Section 375 of the IPC. In *K.S. Puttuswamy vs. UOI* [8], the Supreme Court of India declared that Right to Privacy of a person is a fundamental right

under Article 21 of the Indian Constitution. Applying this judgment in the present case, it can be understood that a woman has got the right to respect her privacy. Privacy, here not only includes sexual privacy but also mental. She has the right to decide her fate by saying a 'no' to her husband, whenever he tries to have forced sexual intercourse with her. In 1983, Andhra Pradesh High Court in *T. Sareetha vs. T. Venkata Subbaiah*[8], held restitution of conjugal rights under the Hindu Marriage Act, 1955 to be unconstitutional saying that the husband may misuse the decree for having sexual relations with his wife. But, it was overruled by the Supreme Court by declaring that the institution of marriage stood for much more than mere fulfilling sexual desire. If we look at Section 3 of the Protection of Women from Domestic Violence Act, 2005, it will give us an idea that the acts done by the husband covering the ambit of marital rape, are well within the definition of 'domestic violence'[8]. The National Family Health Survey – 4 of 2015-2016 showed that 7 percent of married women experienced sexual

offences from the side of the husband [8]. The 172nd report of the Law Commission of India said that there is no need to remove the exception clause from Section 375, I.P.C. as it will amount to unnecessary interference in the marital relationship of the spouses [8]. In *State Of Maharashtra vs. Madhukar Narayan Mardikar*[8] the Supreme Court held that every woman is entitled to right to privacy and under that her sexual privacy is also included and any infringement to their rights will be the violation of their right.

So, we can say that Indian judiciary has, from time to time, tried to fill the gaps that are present in the legal system by connecting the dots together. It has showed through its judgments, that women must be given due respect and their sexual privacy be protected and respected. As the Parliament of India hesitated to come up with a law on this subject, it was for the judiciary to play an ‘activist’ role, which it has played. But, some more concrete and strong steps should be taken by asking the legislature to formulate a transparent and strict law on marital rape. The higher judiciary in India should try to put forward its recommendations to the government and ask it to define the laws related to this.

CONCLUSION AND SUGGESTIONS

Even after 75 years of getting independence, women in India haven’t been given their complete share of rights. I am saying this because they are apprehensive about any crime that may be committed against them and until and unless this reasonable apprehension remains in their mind, they cannot be said to be truly ‘independent’. It is an acceptable fact that marriages are settled in heaven and are an association of two individuals having separate identities and personalities. Every law which is against the Fundamental Rights of the people should be struck down and here in this case, it is totally against Article 21 of the Indian Constitution. After looking into the circumstances or the

conditions in which a woman gives her fake ‘consent’ to her husband, it is required that this problem is solved at the earliest. Even, the Protection of Women from Domestic Violence Act, clearly doesn’t talk about marital rape but only tries to define ‘Domestic Violence’ by including the word ‘sex’ in its definition. There is a need for the Parliament to come forward and implement the recommendations of the Justice Verma Committee report that was submitted to it in the year 2013. Instead of thinking it to be ‘interference’ in a marriage relation, it should be considered as a menace where women are everyday exploited and their dignity is put at stake. Currently, the issue is *sub judice* in Delhi High Court and we can expect it to give a judgment that will redefine the rights of married women in a country like India, where the society is still not ready to give up the patriarchal mindset leading to frequent problems in the life of a married woman. The laws should contain the provisions related to defining marital rape by including all those acts that are mentioned in Section 375 of the Indian Penal Code and the ‘emotional’ condition of women must be given priority. I am saying this because she is not in a condition to speak against her own husband, which ultimately gives birth to anguish in her mind leading to emotional disturbance. She is struck in a dilemma that whether she should come forward and speak about this or continue to live with the husband and accept everything that is happening with her. Strict and harsh punishment should be given to the offender in the same manner as mentioned in Section 376 of the Indian Penal Code because he tries to take ‘undue advantage’ of the position in which he is, ultimately leaving very few options for the victim. The husband should understand that marriage is a sacred practice and is a union of two souls, and this must be preserved and respected. For this, it is necessary to consider and accept the desire of the wife by not compelling her to have sexual relations with the husband. The wife is not a property of the husband, but a human

being which should be given her due share of choice, respect and attention and this can be done by uplifting the moral values and implementing them in true letter and spirit. The law can control things up to an extent; it is the human behavior that plays an important role in solving issues permanently.

We should not forget the words of Robert Uttaro – *“But no matter how much evil I see, I think it’s important for everyone to understand that there is much more light than darkness”*.

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