

Marital Rape- A shielded Sexual Abuse of Women behind the curtain of marriage¹

Abstract

In a religious and ethical based moral Country like India Woman are treated as Gods and as a Divine source of life in Earth. But when we move from this ethical view to the realist view, women are not treated with such dignity and honor. In the contrary they are only seen as a sex objects, a gender inferior to the Men in terms of both Physical and Mental ability. They are abused, ill-treated and sexually molested. But this was not the status of woman in the ancient times. When we look into the status of women in the Vedic period, they were considered and treated equally to that of Men in all aspects of life. They were provided with the Right to education, warfare, and art craft etc. the status of women was glorious during the Vedic period. But this status didn't remain permanently and their status started to witness blockade during the post-Vedic and suffered from complete injustice during the British period. All the abysmal and injustice activities against women started to rise. They were deprived of their educational and property rights. All the above said evil practices against women started to be followed. Of all the evil activities done against women, the Sexual Abuse and Harassment is the most brutal activity ever to be done against women. Women were and are being raped brutally every day in every corner of our country. While Rape is where a woman becomes a victim to an unknown lustful stranger, then Marital Rape is where a woman becomes a victim to a man whom she would have believed to be the man of her dreams and guardian of her life. A woman enters into the phase of marriage with heart fulfilled with love, care and several expectations. But when all these expectations are shattered with one cruel move by her very own husband, then it becomes the most painful truth to be accepted by her. Marriage is treated as a license for a man to take sexual advantage of a women and acts as a shield for him in the eyes of law.

Thus this paper, analysis the consequences of the absence of a suitable law, reveals certain real life experiences by the victims and suggests the urgency for a suitable legislation.

Key words- Marital rape, current laws, victims' stories.

Introduction

In a religious and ethical based moral Country like India Women are treated as Gods and as a Divine source of life in Earth. Many of the Goddesses, Rivers are portrayed in the form of a Female as to reveal their motherly nature. But when we move from this ethical view to the realist view, women are not treated with such dignity and honor. In the contrary they are only seen as a sex objects, a gender inferior to the Men in terms of both Physical and Mental ability. They are abused, ill-treated and sexually molested. But this was not the status of woman in the ancient

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times. When we look into the status of women in the Vedic period, they were considered and treated equally to that of Men in all aspects of life. The women were even allowed to undergo UpanyaSanskara (the thread ceremony which only the men undergo in the present). But this status didn't remain permanently and their status started to witness blockade during the post-Vedic and suffered from complete injustice during the British period. All the abysmal and injustice activities against women started to rise. They were deprived of their educational and property rights. All the above said evil practices against women started to be followed. Of all the evil activities done against a woman, the Sexual Abuse and Harassment is the most brutal activity ever to be done against women. Women were and are being raped brutally every day in every corner of our country.

While Rape is where a woman becomes a victim to an unknown lustful stranger, then Marital Rape is where a woman becomes a victim to a man whom she would have believed to be the man of her dreams and guardian of her life.

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Marital Rape

When one mentions the term rape, one would say that a girl will be raped by a lustful, evil stranger without her consent. His only motive is to sexually abuse her with or without involving in violence. Each and every day we are hearing about various brutal rape cases from every hook and corner of the country. But, one would never think that a girl could be sexually abused by her own husband. But in reality, such instances are prevailing and its rate has also been increasing day by day.

In every religion, when a man and woman enter into the relationship of marriage, all their rights and duties are to be shared with each other. One such Right is the Right of conjugal relationship. In our country majority of the marriages are in the nature of an arranged marriage where two strangers join hands in marriage and is supposed to fulfill all the above said rights and duties. Thus, in India marriage is treated a legal license entrusted upon the male by both the society and the government to take sexual advantage of a woman. Hence, when a woman is not ready to enter the conjugal relationship after marriage and if the husband forces her to involve, then such is termed to be the marital rape. The term 'rape' means 'to seize'. Thus rape has the meaning of to seize the sexual involvement of a woman. This could be done either by force, fraud, coercion etc. But, the reports of marital rape cases is less when compared to the cases filed for rape because the nature of personal relationship makes it hard for the woman to believe herself as a victim.

Today many countries like Australia, United States of America, United Kingdom, Japan etc have enacted laws for marital rape, repealed their laws, made laws with the objective of not to

distinguish between marital rape and ordinary rape as the consent of the woman is absent in both the cases². In India many legislations has been passed for ensuring the security and dignity of the woman among her family like laws for preventing cruelty, dowry harassment, domestic violence etc. against her by her In laws.

But the crime of rape being done by her own husband against her with the only legal fact of marriage has failed to be recognized by the law. In India several woman faces not only anal rape, but also oral rape. They are being raped by their own husband each and every day. According to an estimate, approximately 10-14% of married woman becomes the victims of marital rape³. Marital rape is the worst kind of rape as here the woman is being raped by her own husband which makes it the most cruel betrayal for the woman and hard for her to accept the reality.

Marital exemption- Origin and Rationale

Throughout many countries it is an accepted notion that a husband has every right to force their wives to have sex with them even though they are against it. In many counties, the definition of rape has been given in such a way that one constitutes rape only when the woman is not the wife of the accused man and that her consent is not present. Thus when a man is accused of raping his own wife, then that would not amount to a valid legal issue. The trace of such belief is found in the judgment of Mathew Hale in the 17th century. In his judgment he has stated that, a husband cannot be made guilty of rape of his own wife as by marriage the woman has given up herself to such consent to enter into the conjugal relationship that she cannot retract after the marriage.

He introduced the term 'implied consent' that starts from the time immediately after marriage and continues for her whole life and she has no right to retract her consent as it is in an implied nature.

The other traditional exemption available for marital rape are the various common laws and doctrines that portrays that woman are the property of her husband and the legal existence of a woman is entrusted with her husband. Thus after marriage a woman becomes inseparable from her husband. These two principles acted as the traditional barriers in accusing a husband for committing rape against the consent of his own wife.

Marital rape and laws in India

Though the Indian laws have undergone various amendments and advancements over the past years from the date of its enactment, when it comes to the prospect of woman, the laws has only gradually changed and not drastically. The punishment for a juvenile for rape was amended

²Dr. Bhavish Gupta, & "Dr. Meenu Gupta, *Marital Rape- the Current legal framework in India and the need for change*, 1 GJLS. 16, 18.

³Dr. Bhavish Gupta, & "Dr. Meenu Gupta, *Marital Rape- the Current legal framework in India and the need for change*, 1 GJLS. 16, 18.

only after various women became victims of rape by persons below the age of 16 and the non-availability of the laws to punish such person due to the fact that they are falling under the category of 'child'. They were included under the category of 'adult' only in the amendment of Indian Penal Code done in 2013. But even in that amendment the concept of marital rape was not included. In this amendment the definition for rape under Section-375 was amended in the nature that a sexual intercourse by a man with his wife, where his wife is not being under the age of 15 years of age then it does not constitute rape.

In 2005, The Protection of Women from Domestic Violence Act was passed⁴. Though it didn't recognize marital rape as an offense under sexual harassment, it recognized it as a domestic violence.

Under the provisions of this Act, when a woman is being raped by her own husband, then she could go to the court and obtain judicial separation from her husband. But this mere remedy alone is not enough to eradicate and to prohibit this offense from happening further.

But, it is not that the Indian law has absconded the concept of marital rape completely. It has somewhat recognized certain aspects of it. The few instances where a husband could be held guilty for marital rape are as follows

1. When a wife is between 12-15 years of age, and then a person could be punished with 2 years of imprisonment or fine or both.
2. When the wife is below 12 years of age, then a person could be punished with 7 years of imprisonment which may be extended to life imprisonment or up to 10 years of imprisonment and fine.
3. When the wife is judicially separated from the husband, then a person could be punished with 2 years of imprisonment and fine.
4. Marital rape of wife above 15 years of age is not a punishable offense.

42nd Law Commission Report

The Law Commission in its 42nd report recommended for the exclusion of the rape from the ambit of Section-375 and to provide a separate definition for it. The Task Force on Development of Women and Children which was constituted by the Ministry of Women and Children Development also recommended the same. But the Legislative organ of India has not recognized the recommendations made by both the bodies. The Task Force has stopped making such recommendations thereafter.

⁴Dr. Bhavish Gupta, & "Dr. Meenu Gupta, *Marital Rape- the Current legal framework in India and the need for change*, 1 GJLS. 16, 18.

172nd Law Commission Report

The Law Commission of India once gain recommended for the inclusion of Marital Rape as a sexual offense in its report in 2000. The following are the recommendations given by the Law Commission in its report.

1. 'Rape' should be replaced by the term 'Sexual Assault'.
2. The term Sexual Intercourse under the Section-375 of IPC should be redefined with all forms of penetration.
3. In the light of *Sakshi V Union of India*⁵, the sexual assault on any part of the body should be constituted as Rape.
4. Rape laws should be made gender neutral, as custodial rape of boys is an increasing offense.
5. A new offense under the title of 'unlawful sexual conduct' should be included under a new Section-375E.
6. Section-509 which involves with the sexual intent should be given increased with punishment.
6. The Marital Rape under clause (2) of Section-375 should be deleted as it recognizes only the rape of wife below 15 years of age. Any offense of sexual abuse against woman by her husband should be termed as marital rape.

Though the Law Commission made such reports and many years has been passed since, the government has not considered and brought any such amendment in accordance with the report of the Law Commission.

Constitutional Law and the Marital Rape

Constitution is the fundamental law of a nation. It governs the principles of the laws to be enforced in India, the fundamental rights that have to be entrusted to its citizens, the fundamental duties which are supposed to be done by the citizens in return.

It also establishes the basic procedures of how a law should be enacted, how the government has to build, provisions for election of the executive authorities of the government, how a law should be amended under the required circumstances etc.

Thus any law in violative of the basic principles of constitution and rights conferred by it upon its citizens is termed to be invalid. The Judiciary plays the key role in securing such principles of the constitution.

Article-14- Right to Equality

⁵2004 (5) SCC 528.

The Indian Constitution under Article-14 guarantees one of the basic fundamental right of equality for all its citizens of its country.

But, it does not emphasize the that every human being are treated equally as it may at times could render injustice to some weaker classes of people when they are treated equally with some dominated class of the society. Hence, it is based on the principle that the people of India should be treated on the basis of *Equality among Equals*. Through this principle, the government could make some social privileged provisions for the weaker sections of the society for the welfare and development of such people. When, the concept of marital rape is compared with the principle of this Article it is evident that enforcing a blind right over the men to take sexual control of women through marriage when she herself enjoys the same equal status under the eyes of law. On the other hand, the provision established under the Section-375 of the Indian Penal Code to penalize marital rape of wife below 15 years of age alone and exempting the adults is an unfair provision as in the present scenario majority of women; especially women in the adult age are becoming victims of such marital rape.

Article-21- Right to Life and Personal Liberty

The Indian Constitution under this article, establish one of the widely interrupted and extended right as a right to life and personal liberty for the citizens of India. When the constitution was framed, this right was enacted with the basic objective of ensuring a life of freedom and personal liberty for its citizens. But over the past decades, it undergone various interpretations by the judiciary as a result of which, in the present scenario the right to life includes various dimensions like right to water, right to live in a healthy environment, right to privacy etc. Thus under this article, every person has the fundamental right to choose his own life and has the right to privacy over his life.

The Supreme Court in its judgement has held that right to life under this article should not be treated as mere animal existence, but should be treated in a more widened manner⁶.

When this is compared with the concept of marital rape, every woman has the right over her body even after marriage, and she cannot be forced that, through marriage she has given an implied consent to her husband to control over her body.

This right also encloses other dimensions of right such as right to sexual privacy, right to good health etc.

Judicial history

Though the present Indian laws do not recognize the concept of marital rape as an offense, when looked into the history, the judiciary has recognized the marital rape as an offense. This could be traced through various cases which are as follows.

In *Queen Empress V HareeMythee*⁷, it was held that a man could not be spared from conviction on the mere reason that the woman was his wife. Even after marriage every woman is having her

⁶BandhuaMuktiMorcha v Union Of India, AIR 1984 SC 804, 811.

right over her body and sexual relationship. Hence if a man forcefully has sexual relationship with his wife without her consent, he should be held guilty for his act. Hence in this case, the husband was held guilty for the marital rape of his own wife.

In *Emperor V ShahuMehrab*⁸, the husband was held guilty under Section- 304A of The Indian Penal Code for forcefully involving with the sexual act of his wife.

Real life incidents

Apart from all the above theoretical facts about marital rape, the victim stories gives more information and the pain of reality due to the ignorance of the law and the legislators in framing a law for the marital rape. Some of the stories of the victims are given below⁹.

Anita a regular girl from India has shared her story in internet as how her dreams of marriage were shattered into pieces in just one night. "I still remember the day I got married, at the age of 18. While taking the vows, I glanced at the tall frame of my husband and felt a tug st my heartstrings. I felt tears of joy washing me over, knowing I had a protector now. Alas, even before I could wipe them dry, I was in for rude shock.

On the first night of our marriage instead of care, kind words and companionship, I was met with verbal abuse, force and assault. I could not imagine it was coming from an IAS officer. My dreams drowned in the screams that shot through the abyss of my soul, shattering the night's silence." Here the shocking part of this story is that here the person accused is an IAS which one of the esteemed post in executive organ of the government. This story has showcased that even a high standard education cannot change the cowardness and sadistic character of a human.

Another story¹⁰ shared by an anonymous person about her real life experience. "The happily ever after!. It just happens in movies and not in real life. My husband raped me daily. He forced himself on me, every single day, even on the days I bled. He did not spare me all through the pregnancy and even till the last day of delivery of my child."

The author of the story had put forward a valid question as "Whether Marriage is a certificate to Rape. She has continued by stating that people fail to understand that a wife is not just a machine to enjoy sex, her kids and take care of your family. She is an individual, with her identity and has equal rights to live her life, the way she wants.

⁷1891 ILR 18, Cal. 19.

⁸AIR 1971 Sind 42.

⁹<http://www.dailyo.in/voices/women-marital-rape-sexual-harassment-abuse-arranged-marriage-divorce/story/1/14390.html>.

¹⁰<http://womenpla.net/i-am-raped-everyday-by-my-husband-story-of-marital-rape/>.

She has also shared the quote from a book named Marriage and Morals written by Bertrand Russell that, " Marriage for a woman is the commonest mode of livelihood and the total amount of undesired sex endured by women is probably greater than in prostitution."

So, are social customs and religions so important that we dare to ignore such sensitive issues?

Recommendations

1. The present definition of Marital Rape should be modified to include the wives of above 15 years also.
2. To change the perspective that through marriage, there is an implied consent from the woman that the man has the right to take control over her body.
3. To pass a separate legislation to establish marital rape as an offense.

Conclusion

The status of Women has seen various ups and downs over the past centuries. At one stage they saw glorious times and at the other stage they were treated in such an unjustified manner. In the present century, though the women have been vested with various rights, still the concept of marital rape makes them to feel inferior to men after marriage. Such feeling is not the soul motive of a marriage. Unless the marital rape is recognized as a criminal offense the women will be always seen as a property of men given to them in the process of a marriage. But the marital rape will neither be criminalized nor be penalized unless the women are vested with their individual rights.

References

Journals

Dr. Bhavish Gupta, & "Dr. Meenu Gupta, *Marital Rape- the Current legal framework in India and the need for change*, 1 GJLS. 16, 18.

Cases cited

Sakshi V Union of India, 2004 (5) SCC 528.

Bandhua Mukti Morcha v Union Of India, AIR 1984 SC 804, 811.

Queen Empress V Haree Mythee, 1891 ILR 18, Cal. 19.

Emperor V ShahuMehrab, AIR 1971 Sind 42.

e- sources

<http://www.dailyo.in/voices/women-marital-rape-sexual-harassment-abuse-arranged-marriage-divorce/story/1/14390.html>.

<http://womenpla.net/i-am-raped-everyday-by-my-husband-story-of-marital-rape/>.

