



NEED TO CRIMINALISE MARITAL RAPE IN INDIA

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“The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race.”

– Susan B. Anthony

Abstract–The status of women in society is very obvious and known to us. Women and children has always remained vulnerable to crimes in society. A woman is treated as an object of desire. But in addition to all the crimes against women, there is one such crime which is not actually a crime as per law. It is the marital rape which is big threat to the dignity of a woman. Through this research paper the author has tried to bring forward the issue of marital rape and its effect on females. Need of criminalization of marital rape is the essence of this paper. The researcher has also tried to give the relevant suggestions to as to achieve the desired objectives. The researcher has used doctrinal method to complete this paper.

Keywords: *Crime, marital rape, dignity, criminalization*

INTRODUCTION

India is a country of Vedas and Puranas all clearly suggest the important role of women in society and in family. It is often asserted that Hindus have thirty three crores deities and maximum of them we worship are goddesses. We worship Kali for power, Saraswati for education and Laxmi for prosperity and so on but worst is the condition of the original laxmi of our households. Our ancient epics and scriptures enunciate that no religious rites can be performed without wife. She is the ARDHANGINI of male. But in today's world things are changed like no doubt she is ardhangini but not free. We all know that our society is a patriarchal society and status of women has always remained inferior to males. It is a bitter truth that from cradle to grave existence of women is always dependent over the male members of the family. When she is child, she has to act in accordance with her father. When she got married, she is recognized by the name of her husband and she cannot do anything against his will. In later years when she is a mother, her son rules her. So till death she is not independent. We all are working hard towards women empowerment but still no fruitful results have come so far. Still a female feels unsafe to walk on roads in evenings. She is just treated as an object of desire. Women in India are subjected to criminal atrocities such as Rape, Domestic Violence, sexual harassment, eve-teasing, trafficking and forced prostitution. This is just a small part of a never ending list of crimes against women. There is no such day when a rape or any such crime against a female is not reported. Position of women is deteriorating day by day. But these are the crimes that are apparent to us and reported also. There is one such gruesome crime which is not a crime in the eyes of law but poses a great danger over the dignity of a female. In Hindus, Marriage is a Sacrament whereby both male and females agree to serve each other unconditionally. The idea of the “sacrosanct” institution of marriage portrayed in India is contrary and far from women's perception of reality. Hidden under the iron veil of marriage lies the ugly truth of crimes like marital rape, domestic violence etc. Marital rape is not legally recognized as a crime in India and thus, there is no penalization for the same. It is the shortcoming in the present legal system.

WHAT IS MARITAL RAPE?

We all know that marriage is an order of social institution through which every couple wishes to beget a child. And procreation is the basic objective of marriage. It is established fact that consummation is essential in marriage and same is supported by Hindu laws also. Refusal to consummation of marriage can amount to cruelty towards the other respective partner to the marriage and is also a valid ground of divorce between them. There is one such case of Savitha and Keshav (name Changed) reported in the newspaper. In that case it has been stated that if a spouse does not allow the partner to have sex for a long time, without sufficient reason, it



amounts to mental cruelty, the Supreme Court has said, upholding a verdict of the Madras high court to grant divorce to a man¹. Consummation is important but should be consensual. Sex without the consent of wife or forceful sex is not justified. If she refuses with no reasons then the other husband is an obvious sufferer but if she sometimes refuses when she is not willing then she should also be heard. No doubt male partner has full right to have access over his wife any time but does it mean that a female partner be treated as an object just to fulfill the lust of her husband. A female too have will and should have full right to say NO to her husband when she is not ready to have sex or feel uncomfortable to do so. Marriage is a sacrament and gives a sense of security to the females that yes her husband will provide love and care to her. He will take care of his dignity. But what about those circumstances or those cases where wife is overpowered, beaten or humiliated or harassed to fulfill the desire of her husband.

Here point of discussion is that when *husband has full legal right to have access to his wife then why it has been compared with the most horrified crime* i.e. RAPE. Rape means to have sex without the consent of female and the same has been defined under Section 375 of Indian Penal Code, 1860. It has been defined as follows.

Section 375 Rape²: A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First- Against her will.

Secondly,- Without her consent.

Thirdly- 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.

Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

Rape is a most heinous crime and completely shatters the dignity of a female. It is always supported by everyone that there should be harshest possible punishment for any such person who commits Rape. It is now clear that sex with a woman without her consent amounts to rape. Section 375 makes it very clear that unwanted sex with a girl below the age of 16 years is rape irrespective of the fact that it is with consent or without consent. It further gives clear exception that sex with wife is not rape if she is above 15 years of age even if the sex is unwanted. Unwanted sex by any person over a married lady is also considered as Rape but what if such unwanted sex is done by her husband. Why there is such discrimination. Why there is different opinion for unwanted sex in case of below 15 or above 15. Isn't it clearly establishes the fact of male dominance over the females.

Unwanted sex remains same in whatsoever facts. Thus it is appropriate to call sex by husband in absence of the consent of his wife as MARITAL RAPE. But Indian Legal system does not criminalize marital rape. Marital rape (or spousal rape) is the act of sexual intercourse with one's spouse without the spouse's consent. It is a form of domestic violence and sexual abuse. Although, historically, sexual intercourse within marriage was regarded

¹ Newsreport published on webpage of TOI by Manish Raj, "Denial of Sex amounts to cruelty" updated on Sep,26 2014 available at <https://timesofindia.indiatimes.com/india/Denial-of-sex-by-spouse-is-cruelty-Supreme-Court/articleshow/43470243.cms>

² Section 375 IPC available at

<http://www.advocatekhaj.com/library/bareacts/indianpenalcode/375.php?Title=Indian%20Penal%20Code,%201860&STitle=Rape>



as a right of spouses, engaging in the act without the spouse's consent is now widely recognized by law and society as a wrong and as a crime. It is recognized as rape by many societies around the world, repudiated by international conventions, and increasingly criminalized³.

TYPES OF MARITAL RAPE⁴:

1. *Non-physical sexual coercion*: Instead of physically overpowering the woman, the man may use different tactics to make the woman submit to sexual acts such as coercion or threats. According to a 2002 study, 30 percent of married thought they owed their husbands sex because the husbands spent on them. The same study showed that women also felt bullied or humiliated in the sexual activities. Another study said that women gave in the demands of their husband because they were afraid of dire consequences.
2. *Threatened or forced sex*: In such cases, the husband used intimidation techniques to frighten the wife into complying to his demands. He may threaten her with dire consequences or and physically force the woman into conceding.
3. *Battering rape*: It is the commonest form of marital rape according to a study conducted in 1985. Forty eight percent of all marital rapes come under this category. According to a study, such rapes were conducted out of hostility, retaliation and humiliation towards women. Many women in marriages who experience verbal and physical abuse also enduring this kind of marital rape.
4. *Force only rape*: In this type of marital rape, the assaulting husband only used enough physical force to have sex with the woman against her will.
5. *Obsessive rape*: One of the least common types of marital rapes, obsessive rapes are seen only in 6 % of marital rapes. In such cases, men expect their wives to comply with unusual sexual activities like bondage or reenactment of porn. These men have a preoccupation with sex and experience sexual arousal from perverted acts and by inflicting pain on their wives.

EFFECT OF MARITAL RAPE

The long-term effects of marital rape can be severe, especially when there are multiple assaults by someone who is supposed to give a woman love and trust, and who instead violates that trust by violating her body. These can include anxiety, shock, intense fear, depression, insomnia, and post-traumatic stress disorder⁵. These may also include low self esteem and low self confidence also. These problems can lead to further severe psychological and physical problems.

NEED OF CRIMINALISATION

There is an immediate need to take this issue seriously and need to criminalize marital rape. The effect of marital rape is long term and shatters the existence of a female in the household. The status of a country can easily be judged from the status of the women of that country. Our organizations are too working in this field but no desired results have been achieved yet.

The Justice J.S. Verma committee which suggested changes in criminal laws has said that marriage or any other intimate relationship between a man and a woman is “not a valid” defence against sexual crimes like rape. The three-member panel, which was constituted to recommend amendments to criminal laws in the wake of the national outrage over the December 16 gang rape here, has sought “an exception for the definition of marital rape in the existing laws.” “The law ought to specify that marital or other relationship between the perpetrators or victim is not a valid defence against the crimes of rape or sexual violation,” the committee said in its report.

³Definition of Marital rape available at https://en.wikipedia.org/wiki/Marital_rape

⁴ Marital Rape: its causes and implications by Sandhya Raghavan updated on July 6, 2017 available at <http://www.thehealthsite.com/sexual-health/marital-rape-what-are-its-causes-and-implications-k0617/>

⁵ The blog, yes marital rape happens and it is terrible by Dr. Susan Brooks updated on July 28, 2016 available at https://www.huffingtonpost.com/rev-dr-susan-brooks-thistlethwaite/yes-marital-rape-happens_b_7891192.html



The committee said the “relationship between the accused and the complainant is not relevant to the enquiry into whether the complainant consented to the sexual activity and the fact that the accused and the victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.”⁶ But the irony is that no heed has been paid to these recommendations and long standing demands of female activists. In an answer to it A parliamentary committee has endorsed the government's decision not to treat "marital rape" as a sexual offence in the recently-promulgated anti-rape ordinance, agreeing that it could destroy the institution of marriage. However, the panel was silent on rape in live-in relationships, with many members of the view that treating it differently from other sexual offences was not possible in the absence of a law recognizing live-in arrangements⁷

CONCLUSION AND SUGGESTIONS

Rape is worst crime and should never be forgiven under any type of circumstances. Whenever we hear Rape the first thought that comes in our mind is that third person or stranger has attempted it but is more ugly when it is committed by the closed one's so for marital rape also there should be no excuse as it is more painful when such a harm and pain is caused by the one you love and the one who has taken oath before holy fire to respect and take care of his wife. While framing law over marital rape there is a need to keep one thing in mind that there is a need to take deep and closer look to this topic as even marital rape cannot be suggested in every type of unwilling sex between husband and wife. As there may be refusal on her part due to mood swings or any such reason and there can be chances of husband forcing himself on his wife under the state of intoxication. Thus, there is a need to put proper demarcation over the circumstances that when such unwanted sex be termed as marital rape. But obviously law should be there on marital rape because absolute right be not given to husband to take full control over the body of his wife as she too have some basic rights and her privacy deserves respect.

⁶ Article 'Marriage is not valid defence against rape' published on the webpage of The Hindu updated on Sep 06, 2016 <http://www.thehindu.com/news/national/marriage-is-not-a-valid-defence-against-rape-says-committee/article4351148.ece>

⁷ Newsreport published on webpage of TOI by Bharti Jain updated on March 02.2013 available at <https://timesofindia.indiatimes.com/india/House-panel-backs-move-not-to-treat-marital-rape-as-sexual-offence/articleshow/18759230.cms?referral=PM>