



A CRITICAL STUDY OF MARITAL RAPE LAWS IN INDIA

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Abstract--In spite of the increased recognition of various Penal laws in India, the Marital Rape has generated in the past two to three decades. India is aiming on safeguard and preventions of crime against woman but fail to defend married women from her rapist who actually in these cases is her partner, by not have any lawful provision recognizing marital rape as an offence. There is requirement for urgent criminalization of marital rapes. There is a need of special laws on preventing marital rape in India, which must also be adopted with global standards on this specific problem. Women have been provided with the rights to fight for safety, but her own partner, who she make her partner with complete faith, tries to upset and afflict her by having a forced sex lacking her consents which in the end spoil her health and wellbeing. There is no validation or applicability of the notions of all the marital exemptions in nowadays.

This study tries to address about criminalizing the marital rape and it must be recognized by law that, whatever form the rape might be analysed. Any forceful sex without the spouse consent will amount to Rape. This study also discusses about the identification of marital rape as different from Rape.

This research article also addresses on the legal and judicial framework against marital rape in India. Moreover, this study has examined the final opinions which are being heard by the Court presently on the problem of the validity of marital rape exceptions 2 to Sec 375 of IPC.

INTRODUCTION

Marital rape is referred to the sexual intercourses amongst men and women, who are lawfully accepted as husband and wife, where the women don't offer consents for such intercourses. Marriages also give rights to the husbands and wife to officially carry out their marriages. Consummation is concerned to be an essential requisite after the marriages has occurred. Marital rape is as a forceful sex in which the perpetrator is the victim's husband. It is another type of partner rape, of domestic violence and of sexual abuses. The women have been given the right to struggle for safeguard when the violators are outside entities, but when the perpetrators of her corporal integrity is her own partner, who she is married to with all the showiness, such safety is introvert by the legislator. According to this, the conception that a woman has to have intercourse with her partner irrespective of her will, consents, mental and physical wellbeing, etc, is completely undesirable to civilized societies. Consequently there are no justifications or applicability of the notions of marital exemptions in the modern era. The true fact is that just criminalization of Marital Rape in India will not end the issue, but it certainly is a vital footstep towards altering woman's experiences of sexual abuses in marriages. Hence, the conception of "rape is rape, irrespective of the association among the victim and the perpetrators" is addressed by the laws and put firmly to oblige. There is a vital requirement for distinct laws on Marital Rapes in India, which must be at par with the present global norm on this subject¹.

Once broadly disregarded or ignored by laws and community, marital rape is presently not tolerated by several communities worldwide, repudiated by international convention, treaties and more and more criminalized. The problems of sexual and domestic abuses within marriages and the family units, and more usually, the issues of domestic violence, have come to growing international attention from the second half of the 20th century onwards. Still, in a lot of nations, marital rape

¹ Ayush Choudhary, "Marital Rape: A Crime Undefined", *Academika*, Nov 13, 2015



either remain outside the laws, or is illegitimate but extensively tolerated, with the law against it being infrequently implemented².

Marital rape is considered as a solemn and societal issue that we should have to grant immediately so that no more such offence occurred in future. Any sexual intercourses among partners without consent of wife consent are termed as marital rape.³

OBJECTIVES OF THE STUDY

1. To focus on identification of Marital Rape as different from rape.
2. To examine the legal framework and different perceptions on marital rape in India and USA
3. To study the international legislative measures regarding marital rape in India and USA
4. To suggest measures and remedies to strengthen the existing sociological, psychological & legal mechanisms.

RESEARCH QUESTIONS

1. What are the Punishments for the Act of Sexual Intercourse amounting to Marital Rape?
2. What are the limitations on criminalising marital rape?
3. What possible measures and remedies to strengthen the existing sociological, psychological & legal mechanisms?

LITERATURE REVIEW

Nigam, Shalu (2015) in their study tried to unpack the day by day prospect as well as truth of the living status of woman in the light of repercussion on woman's rights and observe the discussion on criminalizing marital rapes from the gender viewpoint. The study concludes that this conception requires to be examined in the wider outlook of violence and harassment against woman and must be dealt consequently.

Vigneswar and M. Kannappan (2018) points out that "marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. This research paper seeks to bring out the laws regarding rape in India while concentrating on the position of marital rape and its recognition as an offence by the system and the attitude of the society and the judiciary towards marital rape and to check the constitutional validity of S.375 of IPC and to compare the legal scenario regarding Marital rape with other countries like USA and UK .Marital sexual violence including marital rape where permissible by law, amount to legal sanctioning to violence against women in one of the most intimate spaces of their lives."

Jennifer Keshan [2017]. In a research papers examines and analyze the "judicial treatment of marital rape in Canada from 1983 until 2013. It is the first comprehensive review of marital rape decisions in Canada since Criminalization allows an assessment. This marital rape is focusing on issues related to consent, mistake, belief in consent, evidence and sentencing." The study concluded by highlighted overall tendencies in the case laws and addressing prospective responses.

Singh (2022) found out that marital rape is still concerned as an insightful subject and community still be inclined to disregard the consequence of this offence. It is still concerned as a stigma. In the

² Vigneswar and M. Kannappan, "A Study on Constitutional Validity of Marital Rape in India with Special Reference to Sec 375", *International Journal of Pure and Applied Mathematics*, 17 June 2018

³ PB Rao Behere, ST Verma K "Effect of marriage on pre-existing psychoses". *Indian J Psychiatry*, 12 Feb 2011



research paper, the author had tried to analyze the unidentified stigmas of marital rapes, statutory protections against marital rapes and position of safeguard for woman in Indian community with judicial approach.

THE CURRENT LEGAL POSITION OF MARITAL RAPES IN INDIA

Sec. 375 of IPC pertain rape. This section is enormously ancient in case of the exceptions mentioned to S.375 which read as therefore, "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape."

Whereas the Marital rape exception and impugned provisions breeched most of the basic rights comprising Articles 14, 15(1), 19(1)(a), and 21. In addition, it is the Article 13, giving the clear permission to the court to keep back the same without awaiting legal actions. Art 14 guarantees that the State shall not refuse to any individual equal rights before the laws or the equivalent safeguard of the law within India. On the other hand there are absences of equality to all, Indian criminal laws discriminate against woman victim who has been raped by their own husband.

Rape in married relationships is not an offence in India. In India, law against marital rapes is either nonexistent or obscure, and is inferred by the judiciary. "A man's sexual relation with his partner, his wife who is no less than 15 years old, is not rape," as per sec.375 of Indian Penal Code. Except the raped women is the wife and is not below 12 years old, the rapist must be penalized with imprisonment or imprisonments for a time that can broaden to life imprisonments or upto 10 years, additionally to the fine, in Art. 376.

Consequently, marital rapes are only concerned if the wife is below 15 years age, and the sentence is less stern. Above 15 year, the spouses have no legal safeguard, which are against IHR standards. In similar manner the law that increases the legal age of permission for marriages to 18 safeguards only child below 15 years age from sexual harassments⁴.

Now managing the remedies for marital rape, the probable drawback which can be offered is the safeguard of woman from the "domestic violence act, 2005". DV act state compulsory sexual interaction as an activity punished by Indian laws. Marital rape is absurd because it damage women's friendliness and faith, leaving her sensation unconfident and fearful. In the holy place of marriages, he should quit his human right. Conversely, law safeguarding the right of victim of marital rape.

Sec 498A describes the penalization of 3 years and fine for cruelty done against women by her partner or his family members. Though, magistrate cannot penalize husbands by stating he raped his spouse. Still, the conception of marital rapes are stuck in the patriarchal philosophy.

JUDICIAL APPROACH

In the "Suchita Srivastava vs Chandigarh Administration"⁵, the SCI connected the rights to make choice associated to sexual activities with right to individual liberties, privacy, dignities, and bodily integrity as per Art 21.

In a remarkable case "Nimeshbhai Desai vs State of Gujarat"⁶, the judgment condemned the reality of marital rape in India. The judiciary argued that "It is a disgraceful offence that has scarred the

⁴ Kumar, Vidhik, "Marriage or License to Rape? A Socio-Legal Analysis of Marital Rape in India," Dignity: A Journal of Analysis of Exploitation and Violence, 2021

⁵ CIVIL APPEAL NO.5845 OF 2009

⁶ Nimeshbhai Bharatbhai Desai v. State of Gujrat 2018 SCC OnLine Guj 732, [128] 65.



trust and confidence in the institution of marriage. A large population of women has faced the brunt of the non-criminalization of the practice.”

In the “*Arnesh Kumar vs the State of Bihar*”⁷, the apex court held that criminalizing marital rape would be the “fall down of the societal and family system”.

In *Emperor vs. Shah Mehrab*⁸ case, the partner was convicted for cause death of child wife because of negligent activities of sexual intercourse with her, under S.304A. The other key steps were taken in the case of “*Independent thought vs. UOI*”⁹, where the sexual intercourses with spouse less than 18 years of age was criminalized as it infringed the basic Right.

In “*Sree Kumar vs. Pearly Karun*”, the Court observed that the crime in S.376A, will not be drawn in as the wife is not living separately from her partner in declarations of partition or under any customs or uses, in spite of of the chance that she is accountable to sex by her partner without wanting to and without her consent. For this condition, the wife was expose to sex without her will by her husband when she went to live respectively with her husband for two days as result of divorce settlement procedure which was progressing among the two parties. Consequently the partner was not held accountable of raping his wife nevertheless he had committed per se¹⁰.

The Kerela High Court in latest judgments emphasized marital rape as an adequate grounds for separation. It apprehended that even though marital rape is not a crime, the activities of the partner make physical and psychological cruelty which is an enough argument for separation as per the aegis of laws. “*Hrishikesh Sahoo v Karnataka*”¹¹ that husband raped his spouse is agreeable to the crime of rape as per S.376 of IPC. The Court has rejected petitions filed by the husband looking to drop charge of rapes as per S.376, leveled against him by his spouse This optimistic measure taken by the court signal a movement in judiciary by explaining marital rape as an infringement of women’s basic rights to physical and sexual independence. These events underline the significance of legal actions to forbid marital rapes.

WHY MUST MARITAL RAPES BE CRIMINALISED?

Primary, marital rape abuse, humiliates, degrade and violate the pride of women thereby undermine their physical veracity and breaching Art 21.

Secondly, it is beside the rights to equality (Art 14) to employ various criminal provisos on woman centric on their marital position. In addition, if the husband is accused of gang rape of his partner, then he would not be penalized thereby undermine equivalent action of among every accused person.

Thirdly, it is considered as a harsh type of sexual harassment that is punishable in different community as a sign of gender justice and equality.

Fourthly, decriminalizing marital rapes just means concretizing the patriarchal state of mind in the community, under which husband consider that spouse is his property and they can do everything with her.

Fifthly, the civil remedy for marital rape includes protection order, legal divorce and financial reimbursement. Therefore, the Domestic Violence Act, 2005 only gives recourses to the women to

⁷ *Arnesh Kumar v. State Of Bihar*, 8 Scc 273, (2014)

⁸ AIR 1945 PC 118.

⁹ (2017) 10 SCC 800.

¹⁰ Deya Bhattacharjee, “SC says marital rape can't be considered criminal”, *Firstpost*, Oct 17 2017

¹¹ CRIMINAL PETITION No.5515 OF 2018



eliminate themselves from the aggressive and unsafe circumstances and doesn't do anything to discourage the cruel manners of husband.

Next, it has a profound mental effect on the victims. The woman victim of marital rapes is twice as likely to experience hopelessness.

CONCLUSION AND SUGGESTIONS

Indian laws currently afford husband and wife divorce and free legal identities, and much jurisprudence in the contemporary age is clearly concern with the safeguard of woman. Consequently, it is high time that the law must take cognizance of this lawful illness and get marital rape within the purview of rape laws by abolishing S.375 (Exceptions 2) of Indian Penal Code.

A recent development within the Indian courtroom proposes that the discussion may be moving slowly supporting criminalizing marital rapes. The recent judgments have make integrated social media campaigns by some Indian male claim to be man's rights activist who has vowed to remain unmarried if the exemption to marital rape is eliminated. They argued that such criminalization would cause mistreatment of the laws by woman and resulting collapses of marriages.

Enough protections should be included to marital rape law so that they aren't mistreated by anybody such as the husband shouldn't be arrested promptly on the allegations of marital rape by his partner unless appropriate investigations are done incidentally, the relatives of the accused person should not be annoyed in any of these cases.

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