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Marital Rape: An Unaddressed Stigma

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ABSTRACT

March 8th, a month that has been celebrated worldwide as Women's Day all around the globe for years. It is a month when we rejoice in the existence of women with a lot of fervour and hope. But all of this falls quick whilst we study the gory truth wherein a man can rape a woman so long as she is his spouse without objection or interference from Indian society and the Indian legal system. India is one of the 32 international countries that still does not criminalize marital rape. The loss of consent right here is the important key element. In the past, sexual intercourse within marriage were considered a right of the spouses. The concept stems from the historic difficult notion that the wife is the husband's property. Early laws defined rape as a robbery of a man's property and did now no longer recall it as a criminal offense against women. Therefore, the same law additionally dictated that marital rape was not possible due to the fact a man could do anything he desires with his property as he pleased. In this article, we will dig deeper into the intensity and apprehend the idea of marital rape and the function it performs and the way it has grown to be an unaddressed stigma in our Indian society.

I. INTRODUCTION

Rape

Before we dive into our primary subject matter that is matrimonial rape also commonly known as marital rape, let us first perceive what does rape suggest in keeping with the Indian Penal Code to higher recognize the concept of marital rape in India.

Rape is outlined and defined in Section 375 of the Indian Penal Code, 1860 and in simplified language it states that a man is said to "rape" if he –

- penetrates his penis to any extend;
- inserts any part of the body or object, now no longer being penis;
- or manipulating any part of the body of a woman with the intention to cause penetration;

into the vagina, urethra or anus of a woman or makes her to accomplish that with him or any

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other person without her consent is termed as rape.

However, there are certain exceptions in relation to Section 375 for rape. The very first exception to this section is that, "a medical procedure or intervention shall not constitute rape".

While the second exception to this section says that, "sexual intercourse or sexual acts by a man with his own wife, when the wife is above 18 years of age would not constitute rape". It is this provision that has continuously been a topic of debate whether marital rape should be criminalized or not?

Rape is one in all the foremost common crimes in India and the nation is struggling to decrease this crime as in step with the present statistics. The term rape is every now and then used interchangeably with the term sexual assault.

Marital Rape

Marital Rape or Spousal Rape is the act of sexual intercourse with one's spouse without the spouse's consent.

While marital rape is not a criminal act in India, a woman could file a case under other provision of the Indian Penal Code, such as cruelty, and could also file for a divorce. She could also file a case under the PWDVA Act of 2005.

Section 375 of the Indian Penal Code is referred for marital rape as well but Section 375 of the Indian Penal Code considers the forced sex in marriages as a crime only when the wife is below the age of 15. Marital Rape is when a husband has non-consensual sex with his wife or the wife has non-consensual sex with her husband in an unwanted intercourse where it's against her will or there is no presence of consent or the consent is obtained by force, fear, threat or physical violence. As there is no-where specified that in marital cases its always the husband who is the culprit or its always the wife who is the victim. [2]

But when we talk about rape, we don't see ourselves using the terms like "non-consensual sex", so why does marital rape gets termed as "non-consensual sex" and not just called out as "rape" when the perpetrator is the victim's spouse.[3]

Also one thing to note in section 375 of the Indian Penal Code is that there is the use of "A man is said to rape" which clearly identifies that a man which is a male identity is said to rape and not the term "A person is said to rape" which will get applied to any living individual

[2] Bienen, L. 1980 Rape III--National developments in rape reform legislation. Women's Rights Law Reporter 6(3)
[3] https://www.ibpbooks.com/marital-rape-the-indian-and-global-perspective/p/52028

who tries to commit this offence whether the individual is male or female.

There are various loopholes in section 375 of the Indian Penal Code which is originally created for the offence such as rape and it is also used for marital rape cases but there are certain exceptions to it which we will get to know further about it.

II. IS THERE ANY DIFFERENCE BETWEEN RAPE AND MARITAL RAPE?

When the punishment for rape and marital rape is same than why has it been termed different whether its your spouse forcing you for sexual intercourse or whether it's a total stranger forcing you, rape is rape and a marriage certificate can't normalise this criminal act. In most of the martial rape cases, we hear the word "non-consensual sex".

In India, marital rape exists de facto but not de jure that is the definition of rape under section 375 of Indian Penal Code does not include marital rape as a criminal offence. Exception 2 of section 375 states that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.[4] This is based on the notion that once married, a woman does not have the right to refuse sex with her husband. This gives husbands the right to have sexual access over their wives in direct contravention of the principles of human rights and provide husbands with a license to rape their wives.

Thereof, in India marital rape is not a criminal offence and it is only covered under the definition of domestic violence which is defined under the Protection of Women from Domestic Violence Act, 2005. The domestic violence Act is a civil law and only provides for civil remedies to the wife.

III. MAJOR CAUSES OF MARITAL RAPE IN INDIA

The marital rape exception was premised on archaic concepts. We come from a nation where the husband is given the status of a God in the life of a woman and the concept of marriage for an Indian society is an extremely sacred vow. One of the major causes for marital rape in India is the victim themselves don't want to take any legal action against it due to the pressure the society creates for her.

Most of the woman in our Indian society doesn't even know that it is their right to say no to their husband and they have every right to make decisions regarding their body. One of the major causes for the increase in marital rape is that the woman since childhood are taught to be tolerant in their lives whether it's your husband or any male member from the family.

[4] TRAUMA, VIOLENCE, & ABUSE, VOL. 4, NO.3 JULY 2003

Rape is rape. Why does our constitution even consider "She is my wife" as a defence for this crime. A marriage doesn't give you a certificate to commit this crime without any punishment. Why does our traditions and cultures make us think that our spouse have every right to delve into sexual intercourse with his/her partner while a mutual sexual intercourse without marriage is shamed in our society.[5]

Where are we heading with this ideology in the 21st century where we have normalised rape among spouse by saying it's their personal matter and shame the live in relationships of consensual adults by gossiping about it and making it tough for such people to live in the society freely. [6]

One good example that I can think about when this thought arises in my mind is that we as a society always overlook the troubles and problems in a marriage by saying "its their personal matter", but when this same thing happens with a couple who is not bounded in the relationship of marriage, we don't hold ourselves by giving views on their personal life. [7]

The major cause for this is because our Indian society considers that when the individuals are bounded with marriage no matter where or how their relationship will be going but it will be respected in the Indian society without any interference in their personal matters. Such matters which an individual should speak upon when they see a violence or crime been committed. But whereas when we see individuals living together out of marriage, this concept doesn't get accepted in our society as it's not within our culture. When we value our traditions and cultures so much, but no-where in our culture it has been mentioned that we have to be silent sufferers on the namesake of the culture we all talk about.

We live in the 21st century, and a very small unit of woman who are a victim of marital rape are unaware of their freedom and rights as there are certain privileges that comes with living in the 21st century and one such privilege is people are aware of their rights as we live in the period of evolution. Technology and the various advancements that has been made accessible to us has increased our lifestyle of living from the Ancient India.

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5 Abel, G.G., J.L. Rouleau, and J. Cunningham-Rathner 1986 Sexually aggressive behavior. In W.J. Curran, A.L. McGarry, and S.A. Shah, eds., Forensic Psychiatry and Psychology: Perspectives and Standards for Interdisciplinary Practice. Philadelphia: F.A. Davis.
National Academies of Sciences, Engineering, and Medicine. 1996. Understanding Violence Against Women. Washington, DC: The National Academies Press. https://doi.org/10.17226/5127.

6 Bart, P.B. 1981 A study of women who both were raped and avoided rape. Journal of Social Issues 37
National Academies of Sciences, Engineering, and Medicine. 1996. Understanding Violence Against Women. Washington, DC: The National Academies Press. https://doi.org/10.17226/5127.

7 Adams, D.C., and A.J. McCormick 1982 Men unlearning violence: A group approach based on the collective
National Academies of Sciences, Engineering, and Medicine. 1996. Understanding Violence Against Women. Washington, DC: The National Academies Press. https://doi.org/10.17226/5127.

But a very large portion of woman in our society have become silent sufferers to these offences. The only thought of what the society will think about it or whether their family will support them if they raise their voice against such crimes are the thoughts stopping them from being vocal about their sufferings. When all the woman of our society will come up with their issues without any fear in their heart, that will be a moment a change will be created in our society.

And marital rape is not just a single sided gender-based crime. If the husband can force his wife for an unwanted intercourse, it could be vice-versa too, where the wife can force her husband for an unwanted intercourse. There is nothing specified for Marital Rape where it's a crime always committed by a husband on his wife.

Though we don't have any stricter laws for Marital rape as when a case of Marital Rape is registered it get viewed under section 375 of the Indian Penal Code only when the wife is below the age of fifteen years. If the wife is above the age of fifteen years in a Marital Rape case, it is not even considered as a rape according to the Indian Laws. Such victims have to take recourse to the Protection of Women from Domestic Violence Act, 2005 (PWDVA). But what if the victim is a male? What laws will be referred for him in Marital Rape cases when he is above the age of 15 years.

Our society is in the need to have proper laws for the victim of marital rape cases whether the victim is a male or a female, there is a diverse need to have laws regarding this crime if we want to curb this criminal offence. Either the offence of marital rape should get fully covered in the section 375 of the IPC by amending this section by removing all the exceptions for marital rape or separate laws should be made for the offence of marital rape cases.

The Supreme Court, in recent years, has recognised the importance of privacy and bodily autonomy of married women in sexual relations. For instance, in the right to privacy judgment of 2017, the court affirmed the view that refusing to participate in sexual activity is a part of the right to personal liberty under Article 21 of the Constitution. Further, in 2018, while decriminalising adultery the court held that even marital relations are not exempted from constitutional scrutiny.

In a ground breaking judgement, the Karnataka High Court has upheld framing of charges against a husband accused of raping his wife. The Karnataka High Court held, "The institution of marriage does not confer, cannot confer and should not be constructed to confer, any special male privilege or a license for unleashing of a brutal beast."

Court also stated that if it is punishable to a man, it should be punishable to a man albeit, the

man being a husband.

Presently, the Indian Penal Code, Section 375 grants an exception to sexual activity within marriage. This has provided an exemption to husbands from prosecution for the offence of rape.

However, the court clarified that the order pertains to framing of charges against the husband and is not about whether marital rape should be recognized as an offence.

Thus, we are on our way to make people aware about marital rape that happens in our nation and the laws that could be created or the amendments that could be made to Section 375 for the betterment of the victims suffering from this offence.

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