



MARITAL RAPE

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INTRODUCTION

Marital rape is a widely debated term which means sexual intercourse with one's own spouse without their consent. Majority of the people are reluctant to accept the view of marital rape as, it is considered that the institution of marriage gives unlimited right to the husband to have sexual intercourse with his wife and such act cannot be considered "rape". Marital rape has come to light since the late twentieth century. Most of the countries have criminalized marital rape but some still refuse the existence of the concept of marital rape. The countries which accept the view of marital rape fail in execution of such laws mainly because of non acceptance of the society for example marital rape was criminalized in Ireland in 1990 but till date only two males have been prosecuted for the same.

The idea of marital rape cannot be backed by historical support as it is believed that a husband cannot be guilty of the offence of rape, as at the time of marriage women gives her husband right to have sexual intercourse with her and sexual intercourse within matrimonial relations cannot be considered rape. Also it is believed that by marriage a women gives her husband complete control over her including her body. In the past rape was considered to be an offence against honor and reputation and not against a particular person. It was only after 1990's that laws

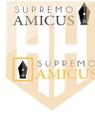
and statutes recognized sexual violence crime against and individual.

From 19th century the feminist movements across the world started challenging the idea of control of a husband in the domestic relationship and his unlimited right to have sexual intercourse with his wife even if it is without her consent. These movement aimed to provide women right over their own bodies and fertility. It was the contribution of these movements that, people started viewing the exception of marital rape as violating the human rights. These feminist movements also lead to criminalization of marital rape in various parts of the world.

Despite these efforts not all countries have criminalized marital rape. While some have completely criminalized marital rape, some explicitly exempt spouse from the offence of rape and consider matrimonial relationship as an exception to rape and laws of some countries remain silent over the issue. Even though marital rape is criminalized in many a countries the society fails to accept marital rape and very limited cases are reported worldwide because traditionally rape as an offence could be committed only outside marriage. These conflicting views about marital rape make it a very controversial topic and worsening the condition of the victims who suffer from a marital rape and other coercive acts in a domestic relationship.

MARITAL RAPE IN INDIAN CONTEXT:

In the present scenario Marital Rape is not criminalized in India. Although most



of the countries have criminalized, but surprisingly there are no laws which protect women from forced sexual intercourse in marriage except for during judicial separation and exemption 2 in Section 375 of IPC which particularly rejects the act of sexual violence in the case of rape in marriage. But exemption 2 in section 375 of IPC also states that if the wife is a minor or below 15 years of age then any sexual intercourse done by the man with his minor wife with or without her consent to commit to rape. Exemption 2 to section 375 of IPC was very important in order to restrict men from taking advantage of their marital rights before the age of maturity. Well, this exemption also states that no man can be held obligated for assaulting his own significant other, when she is over 18 years old. Exemption 2 to Section 375 of IPC is plainly violative of Article 14 of the Indian Constitution which is equality before law as it has a tendency to victimize married women.

In *Bishnudayal v. State of Bihar*¹ where the casualty, a young lady of 13 or 14 years old, who was sent by her father with the in-laws of his elder daughter's husband to take care for her elder sister for quite a while, was coercively 'married' to the litigant and who had sex with her, the accused was held subject for rape under sec 376 of IPC.

However under section 376B of IPC whoever, has sexual intercourse with one's own spouse who is living separately with or without decree of separation, without her consent is deserving of 2 to 7

years imprisonment.

In *RTI Foundation v. Union of India*.² The Central Government submitted to Hon'ble High Court of Delhi that Criminalizing Marital Rape may destabilize foundation of marriage. Central Government additionally presented that simply erasing Exception 2 will not the slightest bit fill any helpful need as a man is said to confer 'rape' as defined under Section 375 of IPC can't be the same on account of conjugal rape. On the off chance that every single sexual act by a man with his possess spouse will fit the bill to be conjugal rape, at that point the judgment in the matter of whether it is a conjugal rape or not will independently rest with the wife. The inquiry is the thing that confirms the Courts will depend upon in such conditions as there can be no enduring proof if there should be an occurrence of sexual acts between a man and his own particular spouse.

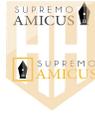
In *Independent Thought V. Union of India*³, The Hon'ble Supreme Court of India with two judge bench consisting of Justices Madan Lokur and Deepak Gupta on eleventh October 2017, In perspective of the above discussion said that sexual intercourse with a minor wife i.e below 18 years will come under the definition of rape. Supreme court accepted the petitioner's argument and considered that Exception 2 to Section 375 IPC in so far as it identifies with a young lady below 18 years is liable to be struck down on the following grounds:-

(I) It is subjective and violates of the

¹ AIR 1981 S.C 39 (INDIA)

² W.P.(C) NO.248/2015 (INDIA)

³ W.P. (C) NO.382 of 2017



privileges of the young girl and not reasonable, just and sensible and, hence, violates of Article 14, 15 and 21 of the Constitution of India;

(ii) It is unfair and violates of Article 14 of the Constitution of India and;

(iii) It is conflicting with the arrangements of POCSO, which must win.

Subsequently, Exception 2 to Section 375 IPC is perused down as follows:

"Sex or sexual acts by a man with his own spouse, the wife not being 18 years, isn't rape". It is, in any case, clarified that this judgment will have forthcoming impact. It is additionally clarified that Section 198(6) of the Code will apply to instances of assault of "spouses" below 18 years, and discernment can be taken just as per the arrangements of Section 198(6) of the Code. At the cost of repetition, it is repeated that nothing said in this judgment might be taken to be a perception one way or the other with respect to the issue of "conjugal rape".

WOMEN AND MARITAL RAPE

Research with women, who have been raped by their partners uncovers the seriousness of this type of brutality against women. Not exclusively do many women encounter rape in their marital connections, yet women who are raped by their partners are probably going to be raped various times through the span of their relationships. Women who have been assaulted by their spouses normally encounter an extensive variety of

violence that includes verbal abuse, battering, strikes with weapons, and forced intercourse with other individuals. Research demonstrates that between 20 percent and 70 percent of battered ladies encounter sexual violence with their partners (Bergen 1996; Campbell 1989; Pense and Paymar 1993). By far most of ladies in Bergen's (1996) and Finkelhor and Yllo's (1985) thinks about experienced both battering and rape. In "battering rapes" women encounter physical abuse and in addition to sexual abuse various number of ways. A few women are battered and raped all the while, while others encounter physical violence and afterward are raped when their partner needs to "make up" (Bergen 1996). A few women' encounters are described as "twisted" or "over the top" rape when the savagery includes torment, unreasonable sexual acts, and, every now and again, the utilization of smut (Bergen 1996; Finkelhor and Yllo 1985). Around 25 percent of Bergen's (1996) example detailed no less than one experience of perverted sexual savagery with their accomplices.

It ought to be noticed that not all ladies who are raped by their partners encounter physical abuse with sexual abuse (Bergen 1996; Finkelhor and Yllo 1985). In what Finkelhor and Yllo (1985) have called "force only rapes," women are compelled to have intercourse without wanting to however their encounters are not described by extreme physical brutality. Twenty-five percent of the women in Bergen's (1996) example experienced power just assault, as completed 40 percent of women in Finkelhor and Yllo's (1985) think about. In Russell's (1990)



think about, 4 percent of the women who had been hitched had been assaulted however not battered by their accomplices. It is important to perceive conjugal rape as an unmistakable type of savagery and think about the different impacts of this kind of violence against women.

Women who are raped by their partners ordinarily encounter an extensive variety of physical and emotional impacts from the violence. As demonstrated above, ladies who are raped by their spouses are frequently physically assaulted, and basic wounds incorporate gashes, broken bones, torn muscles, and bruised eyes. Research shows that when contrasted and women attacked by different culprits, ladies who are raped by their accomplices report more physical wounds. Women who are assaulted by their spouses likewise usually encounter gynaecological outcomes because of the sexual violence, including vaginal and anal tearing, unsuccessful labours, stillbirths, urinary tract diseases, and bladder contaminations.

Research demonstrates that the emotional results of being raped by one's significant other can likewise be very extreme. Women who are raped by their partners, much like ladies raped by different sorts of aggressors, every now and again experience the ill effects of depression, posttraumatic stretch issue, serious dread, resting issues, and stun (Bergen 1996; Riggs, Kilpatrick, and Resnick 1992; Stermac, Del Bove, and Addison 2001). Long haul impacts can incorporate sexual brokenness, dietary problems, poor self-perception, and gloom (Bergen 1996;

Frieze 1983; Ullman and Siegel 1993). At the point when contrasted and different survivors of assault, examine demonstrates that being raped by one's life partner isn't less awful than being raped by another culprit (Bennice and Resick 2003). To be sure, it might be significantly more horrendous given that conjugal rape survivors regularly encounter numerous strikes and that the attacks are executed by somebody whom they know and trust (Bergen 1996; Kilpatrick et al. 1988). A few examinations have likewise endeavoured to inspect the effect of sexual violence contrasted and physical savagery on survivors of conjugal rape. At the point when contrasted women who have been battered by their partners, women who encounter sexual and physical abuse encounter larger amounts of wretchedness, tension, fear, and sexual brokenness, and poorer confidence (Bennice and Resick 2003; Campbell 1989). In this manner, unmistakably being raped by one's partner has genuine passionate and physical outcomes for the numerous ladies who encounter this type of violence.

SUGGESTIONS:

1. The exemption for martial rape be expelled. Matrimonial relationship should not be considered as a license to commit rape, because the offence of rape is an offence regardless of the fact by whom it is committed, from the above discussions it can be clearly said that marital rape is as grave as rape done by other person if not more. The emotional and physical harm done in marital rape is much more grave and it has long lasting



effect due to its continuous nature. Considering these facts, marriage should not be considered as an exception in the offence of rape.

2. The law should indicate that:

i. In our legal system, conjugal or other relation between victim and offender should not be considered as a defence against the offences like rape or sexual violation. There should be proper laws and statues which deal with such offences.

ii. The relationship between the offender and the victim should not be a ground to make a conclusion that the victim has consented for sexual relationship, i.e. by entering into a matrimonial relationship the women does not give complete control over her body to her husband, and the law should come out of these traditional thought process that by entering into a matrimonial alliance the husband has complete control over his wife and has a right to do whatever he want.

iii. Under exception 2 of IPC ⁴the marital rape with a minor wife is considered an offence of rape but forced sexual intercourse with a major wife is not given the same status, this distinction on the basis of age is unjustified and unreasonable because the age should not be a criteria to make an exception if a major wife is victim of forced intercourse, against her will that has the same effect on a women's conscious

weather she is a minor or not.

3. The outlook of the society towards such offences needs serious changes. The society needs to come out of their stereotyped and traditional thinking and accept the nature and existence of marital rape. It is due to the structure and thinking of our society that the victim is forced to live a exploitive and disgraceful life. Most of the cases of marital rape are never reported due to the indifferent nature of our society.

CONCLUSION

“Indian law ignores the fact that a major wife is women first than a wife and when a women says NO it means NO, regardless of the fact the she is a wife and is above 18 years of age”

It is a very disgraceful for a country like India who in all the other fields competes with all the developed nations of the world, fails to come out of its cocoon of traditional thinking which give a male supreme power and control over female, it does not recognizes that a women weather married or not suffers the same if not more mental trauma, physical torture and emotional drainage due to forced sexual intercourse even if it is done by her own husband in her own house. In fact the consequence of a marital rape are more severe as it is done by her husband continuously. Moreover the society we live in does not even considers marital

⁴ Bhattacharyya, T. (2010). *The Indian penal code* (6th ed., pp. 360-361). ALLAHBAD, INDIAL: CENTRAL LAW AGENCY.



rape because according to our society it a husbands right to do whatever he wants with his wife regardless of her opinion. Our so called modernise society which talks about women empowerment on one hand, fails to recognise the rights of a married woman on the other hand just because of the fact that she is married. While entering into a matrimonial alliance a women does not give consent of this unreasonable distinction which is created by our law and society.

It is high time that our society and law makers take some serious steps to prevent marital rape and make provisions for such offenders who commit such offences. The silence of law and society encourages these offenders and forces the victims to live a disgraceful life throughout their relationship.

