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MARITAL RAPE: STRIPPING THE SANCTITY OF MATRIMONIAL RELATION

Dr. Anju Harbansh¹

ABSTRACT

The international community has been paying attention to the significant socio-legal notion of marital rape for many years. Discussions about feminism and women's rights in marriage have been sparked by the political and social discourses around it. These conversations even touch on a married woman's sexual rights and how those rights have been denied her because of society's patriarchal outlook. Judges and jurists have often praised and denounced the idea of treating a woman like property. This offense is covered by numerous municipal laws, and it is also mentioned in a few international agreements. But there hasn't been the anticipated level of social transformation in any country, particularly in those where the married exception is still in place. Consequently, there is a need for an international convention on the topic, which this article examines. The following are the research questions: Is the current judicial system enough and successful in addressing marital rape? Is it necessary for the international community to adopt legislation to make marital rape a crime in home countries without jeopardizing the institution of marriage?

Key words: Domestic Violence, Matrimonial Relation, Marital Rape, Crime

INTRODUCTION

A married couple will be together for the remainder of their lives, making marriage a holy bond. Sacramental marital vows give rise to a partnership that is regarded as holy and pure in all cultures and religions. Certain religions, such as Hinduism, believe that a bond endures beyond a single lifetime. Religious literature discusses marriage as one of the most significant rituals in human life. A marriage is always about the lives of the two people involved. The children and their family are the other parties. The spouses are the main and most significant participants, as they are required to assist and accompany one another. It is no longer the case that women in married relationships have a lower status than men in patriarchal nations, unlike in the past. In egalitarian societies, a woman's job was limited to taking care of the home and providing food for the family, with men expected to earn a living. But these are the discussions of prehistoric societies without developed minds or a

¹The author is an Assistant Professor of Law, MATS University Raipur, CG.

sense of rights. Women are regarded as essential members of the family and society in many religious books, including Hindu holy traditions, which have emphasized their value from ancient times. Ancient beliefs gave way to new ones as times changed. The rights and opportunities bestowed upon women in order to position them on an equal footing with men in society have superseded their previous miserable status in society.² The fundamental rights and unalienable human rights have been extended to women over time. Rather, going a step ahead, various countries made provisions³ for positive discrimination in favour of women for neutralizing cumulative socio-economic, educational and political hardships that were faced by women in society. Apart from these, various conventions⁴ and laws have also been brought in force to protect women in households. After various cases of physical and psychological assault against women in marriages came to light, countries made efforts to protect such existing and prospective victims from abusive relationships. These laws included laws against dowry,⁵ property rights of married women, right to maintenance, protection from domestic violence⁶ amongst others. However, these legislations, which were curated with utmost intelligence, leave out an important aspect of marital relationship. Sexual intercourse is an integral part of marriage⁶ and has been considered by society for thousands of years. Sexual intercourse between spouses is one of the pillars on which a marital relationship stands.⁷ Consummation is fundamental to a marriage.⁸ While sexual relationship remains an innate pillar to marital bond, we need to consider its downside as well. Rape is a heinous offence against men and women alike. However, the offence is widely committed against women in various countries. One of the reasons for this is the comparatively lesser physical power of the woman when compared to the man. It is an offence graver than murder⁹ as the woman who suffers dies a thousand times while recollecting the incidence. Apart from tearing out the victim physically, the unfortunate and abominable act also leaves the soul and the conscience of the victim in shreds. Imprints are left on the mental health of the woman as she is stripped off her dignity in the worst possible manner. While considering the marital relationship and the resultant sexual relation

² S. Zaidi et al., "Sexual Rights and Gender Roles in Religious Context", *International Journal of Gynecology and Obstetrics*, 2009, vol. 106, issue 2, p. 151.

³ Indian Constitution, art. 15, §cl. 3.

⁴ Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

⁵ Dowry Prohibition (1961) (India);

⁶ 9 Cox v. Cox, 493 S.W.2d 371, 373 (Mo. Ct. App. 1973).

⁷ Hangar v. Hangar, Civ. No. D138274 (D.C. Super Ct. 1974).

⁸ Hindu Marriage Act § 11 (1955) (India);

⁹ State of Maharashtra v. Chandrabhan Sudam Sanap, 2018 SCC On Line Bom 6576.

which gets a sanction from society, we need to keep in mind the concept of rape or forced sexual relation between the spouses. Before discussing marital rape, let us have a look at the definition of marriage given in sociology, theology and law.

MARITAL RAPE: DEFINITION AND TYPES

The crime of marital rape has the power to destroy a marriage. It has the power to destroy any mutual respect and trust between partners. In some jurisdictions, spousal rape is another name for marital rape.

Definitions- The 8th edition of *Black's Law Dictionary* classified Marital rape as “a husband's sexual intercourse with his wife by force or without her consent.” Hence, marital rape is using the wife's body as the husband's property and having sexual relations with her against her will. It happens when the husband believes the wife's body belongs to him. As marital rape is not being recognised as rape, it results in complications in seeking divorce or other remedies for women.

Types- Marital rape has been divided into various types. The basic kinds in which this heinous offence has been segregated into are: force-only rapes, battering rapes and obsessive rapes.

Force-Only Rapes: In this kind of rape, the husband uses physical force, threats, and some degree of strength to coerce the victim. In this case, the husband uses only required force to coerce his wife into engaging in sexual activity against her will. The aggression could only take the form of arguments or even physical assault. The man does this to control the lady and force her to comply with his requests. This is not the case of beating the wife.¹⁰

Battering Rapes: Rapes that involve the use of severe physical force on the victim are referred to as "battering rapes." The husband rapes and beats the woman. This type of rape involves both physical and sexual attack on the woman. Physiological, financial, verbal, and emotional abuse may also be included. This is the situation for the majority of marital rape instances.¹¹

Obsessive Rape: Another name for it is “sadistic rape.” Violence arouses the abuser in this type of marital sexual abuse. The husband is a sex addict, and their sexual encounters

¹⁰ K. Yllo, “Marital Rape”, *The Battered Women's Justice Project*, 1996, p. 8.

¹¹ D. Finkelhor, K. Yllo, *License to Rape: Sexual Abuse of Wives*, The Free Press, 1985.

frequently end in physical violence because of the torture and/or deviant behaviors that are involved.¹²

Anger Rapes: Such severe sexual assaults are committed against women as a means of harming, retaliating against, or expressing animosity toward them. The main goal of such an act is to degrade the lady, and she might be made to engage in demeaning sexual behaviors like bestiality or sodomy.

Power Rapes: The purpose of this type of rape is to establish power and authority over the victim. Even without the woman's agreement, the intention is not to hurt the female. The intention is to conceal the male spouse's inferiority and force sexual conquest over the wife, which may not be required in a content and typical marriage. These rapes rise in response to women's arguments and increasing reprisal.¹³

HIS RIGHT AND HER DUTY- TRACING THE HISTORY

One of the first cases where marital rape was considered an exception was Hale's Doctrine. "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract: the wife has given up herself in this kind unto her husband, which she cannot retract," stated Matthew Hale, a Chief Justice of the Court of King's Bench in England in the 1670s. Formerly, a long-held and well acknowledged theory in England known as the "doctrine of coverture" suggested that a man and a woman merge into one person upon marriage. Therefore, it makes sense that the woman's existence or right to exist is suspended during a marriage, or at the very least, united with her husband's. Consequently, a woman was not allowed to take any action that might go against her husband's plans, including buying something or signing a contract.

In addition, the wife owed her husband support and security in exchange for a "consortium" of legal duties, including having sex. When the Indian Penal Code was drafted in British India, the definition of rape included a provision for marital rape because of beliefs such as these and persistent patriarchal beliefs. The claim that wives implicitly consent to their husbands' sexual demands may have had some validity when husbands were the only ones who could make decisions. But since then, society has evolved considerably, and this has been reflected in legislation and case law. In *Joseph Shine v. Union of India*, adultery was

¹²A.N.Groth,H.J.Birnbaum,MenWhoRape:ThePsychologyoftheOffender,PlenumPress,1979,p.227.78Ibid.

¹³A.N.Groth,H.J.Birnbaum,MenWhoRape:ThePsychologyoftheOffender,PlenumPress,1979,p.227.

decriminalized and a comparison was made. The Court held that women have the right to bodily autonomy, which is protected by fundamental rights, and that even married relationships are subject to constitutional examination. It is clear from the Constitutional remedies, the Fundamental Rights, and other sources that every citizen, regardless of gender, has the right to protect their autonomy. The J S Verma committee noted that married status should not be utilized as a justification for leniency in rape cases, and they condemned section 375 IPC exception (2) and recommended deleting it. It is not acceptable to use the victim and defendant's marriage as justification for rape.

Therefore, it would be incorrect to argue that the wife has a duty of forbearance and to engage in sexual relations with her husband, just as it would be incorrect to argue that the husband had the right to rape his wife. To put some order to this turmoil, the law does offer some additional options outside marital rape. However, these options are insufficient, as we shall see in our discussion below. These rules, which aim to be covered under cruelty to obtain a divorce or other relief, are not explicitly stated in family law. In light of the evolving social landscape, this section will explore the origins of this peculiar legal concept and how it came to be included in divorce laws, regardless of the IPC's exemption for marital rape.

LEGAL STATUS THROUGHOUT THE WORLD

The most holy connection in human history, which is based on a great deal of trust and belief, gives rise to the crime of marital rape. In cases of intimate sexual assault, this notion is irreversibly destroyed, and the ensuing terror may never be conquered. "Knowing that the perpetrator and the victim are spouses was shown to alter beliefs about both parties involved in conflictual interactions," according to a group of researchers.¹⁴ The research, which was published in 2006 by the UN Secretary-General and the UN Task Force on Violence Against Women, indicates that intimate relationships are the primary source of violence against women worldwide.¹⁵ Over 40% of women who experience assaults were coerced into having

¹⁴J.LanghinrichsenRohlingetal.,“AttributionsAboutPerpetratorsandVictimsofInterpersonalAbuseResultsfromanAnalogueStudy”

¹⁵UNWomen,Endingviolenceagainstwomen.Fromwordstoaction.StudyoftheSecretary-General,UnitedNationsPublication,2006,p.43.

sex at some point by their male relationships, according to another study.¹⁶ But this isn't the worst aspect of it. Some males don't even hesitate to acknowledge their transgression. Instead, they boast with satisfaction that they have sexually assaulted their girlfriends, spouses, or ex-wife. This was discovered in a South African study wherein 241 out of 1681 men, or 14.3% of the sample, acknowledged robbing their spouses or partners.¹⁷ Ten percent of males in urban areas and fifteen percent of men in rural areas in Bangladesh acknowledged to starting forced sex with their husbands, according to another study.¹⁸ Similar accounts have also surfaced from India, where the majority of marriages include sexual violence.¹⁹ The data indicates that legislation against marital rape is desperately needed. Let's examine the circumstances that exist in different nations.

COUNTRIES HAVING LAWS ON MARITAL RAPE

Marital Rape has been recognized as an offence and criminalized in about 150 countries. These countries include USA, UK, Israel, Poland, Italy as well as Albania. 4 of these countries have been chosen for research. The United States of America has been selected for the study because it is a developed, first world country where the first wave of feminism was propagated and widespread.²⁰ The efforts towards the criminalization of marital rape have been extensive in this country, however researchers are of the opinion that such efforts were insufficient and incomplete in nature.²¹ Including USA in our research would help us determine how an economically sound and socially modern country is dealing with this evil called marital rape. The United Kingdom is a country which has had immense influence on the laws of various countries through colonialization and the common law system.²²

¹⁶J.C.Campbell,P.Alford,“TheDarkConsequencesofMaritalRape”,TheAmericanJournalofNursing,1989,vol.89, issue7,p.946.

¹⁷R.Jewkesetal.,“GenderInequitableMasculinityandSexualEntitlementinRapePerpetrationSouthAfrica:Findingsof aCross-SectionalStudy”,PLoSOne,2011,vol.6,issue12,p.5.

¹⁸R.T.Navedetal.,Men’sAttitudesandPracticesRegardingGenderandViolenceAgainstWomeninBangladesh,icddr,b SpecialPublicationNo.135,2011.

¹⁹99R.Jewkes,RapePerpetration:AReview,SexualViolenceResearchInitiative,2012,p.6.

²⁰R.Walker,“BecomingtheThirdWave”,MsMagazine,1992,pp.39-41.

²¹DickinsonLawReview,1986,vol.90,issue4,pp.777-801.

²²R.J.Danielsetal,TheLegacyofEmpire:TheCommonLawInheritanceandCommitmentstoLegalityinFormerBritish Colonies,OxfordUniversityPress,2011,pp.111-117.

LAW ON MARITAL RAPE AND THE SANCTITY OF MARRIAGE

The crime of marital rape carries the highest severity. Not a single life is impacted by the offense. It has an impact on family dynamics, and the negative effects of this could be seen in the rearing of the offspring of these kinds of socially acceptable non-consensual relationships. The Indian government's 167th Parliamentary Standing Committee Report on Home Affairs on Criminal Law (Amendment) Bill of 2012 issues a warning against making marital rape a crime. The committee noted that increasing injustice would result from straining the family structure, which is why the married exception shouldn't be altered.²³ The majority of the parliament of Trinidad likewise holds the opinion that any judicial or legislative involvement in cases involving marital rape will have a negative impact on marital seclusion and the so-called sanctity of marriage.²⁴ But in the thick of the argument over maintaining a societal fiction that has already been irreparably damaged, we neglect to have a meaningful conversation about an individual's rights.

In a married relationship, the guy and the lady are on an equal footing. But the male has a stronger advantage because of his physical strength and legal protection. Every nation and culture places a high significance on family values. This is why the ideas of divorce and separation were historically denigrated by many religions. But as time went on, these notions gave way to more contemporary and progressive conceptions that discussed men and women having equal rights to divorce. Men and women both had the right to decide when to end a marriage, and there were several grounds available for doing so.²⁵ The fact that trust and mutual reliance are key components of the institution of marriage should also be discussed while talking about the sanctity of marriage.

²³PTI, "Criminalizing Marital Rape Will Hurt Family, Says Parliamentary Panel", Times of India, March 15th 2016.

²⁴ Joseph Shine v. Union of India, 2018 SCC On Line SC 1676.

²⁵N. Gerstel, "Divorce, Gender and Social Integration", Gender and Society, 1988, vol. 2, issue 3, pp. 343-367.

MARITAL RAPE AND THE FUNDAMENTAL RIGHTS OF WOMEN

According to renowned psychologist Morton Hunt, a husband who rapes his wife cannot deny the anarchic idea that women are their husbands' property, subject to their authority.²⁶ These patriarchal beliefs permeated all facets of marriage, including the bedroom, and caused the male to view sexual fulfillment as his birthright, something he may achieve even with the use of force and against the wife's desire and consent. The prohibition against torture and the right to dignity are also mentioned in international law. All men and women have equal dignity and rights from birth, according to Article 1 of the Universal Declaration of Human Rights (UDHR).²⁷ All members of mankind, or more accurately, the human race, are recognized as having inherent dignity and unalienable rights in the preamble of the same document. Article 3 of the same further emphasises on the human right to life, liberty and security of every individual.

CONCLUSION

The issue of marital rape in India is complex, involving deeply ingrained societal norms, legal challenges, and concerns about potential misuse of the law. While it is crucial to address the misuse of laws, it is equally important not to deny justice to genuine victims. A balanced, nuanced approach is needed, one that respects the rights of all parties involved and aims to promote justice, gender equality, and the dignity of women. The journey towards a society free from marital rape is long and challenging, but it is a journey that we must undertake for the sake of justice and equality. As we move forward, let us remember that the change we seek begins with us – with our attitudes, our willingness to speak out, and our determination to demand justice for all victims of marital rape. One of the major and significant barriers which arises while discussing criminalization of marital rape is its inclusion within the ambit of domestic violence. It isn't once that spousal rape has been included in the realms of domestic violence.²⁸ This reasoning rules out the need for separate laws as most countries have laws against domestic violence.²⁹ In some other countries, marital rape is subsumed within the legislations created for criminalization of sexual offences against women. While

²⁶ 183M.Hunt, "LegalRape", FamilyCircle, January9th, 1979, p.38.

²⁷ United Nations, General Assembly, resolution 217(III), Universal Declaration of Human Rights, 10 December 1948.

²⁸ M.L. Woolley, "Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues", Hastings Women's Law Journal, 2007, vol. 18, issue 2, pp. 269-293.

²⁹ UN News, "More Countries Have Laws Banning Domestic Violence, Says UN Women's Right Official", November 22nd 2006

it is a praiseworthy primitive step, the offence of marital rape has unique features which cannot be compared to either domestic violence or rape.³⁰ The laws pertaining to domestic violence have developed on the lines of domestic feuds, family tensions, privacy of households and protection by the State against all kinds of violence. On the other hand, the legislations pertaining to rape run along the lines of consent and are often found caught in a tension between sexual consent and evidentiary proof. Marital rape had differential features which warrants unique solutions and attention¹⁹⁵. It is often quoted that “The nature of violence in an intimate relationship creates some distinct social and psychological problems that affect the victim's position in the legal system The criminal justice system treats rape that involves strangers as more serious than rape involving an intimate.¹⁹⁶” It is widely noted in the offence of marital rape that the economic and emotional hurdles created by a marital relationship between the wife and the husband, who is also the batterer, are difficult to overcome.

³⁰M.L. Woolley, “Marital Rape: A Unique Blend of Domestic Violence and Non-Marital Rape Issues”, *Hastings Women’s Law Journal*, 2007, vol. 18, issue 2, pp. 269-293.