
VIEWPOINT ON THE CRIMINALIZATION OF MARITAL RAPE IN INDIA

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Introduction

The temples of justice may look to be baronial mansions, but they are warrens on the inside. Isn't marital rape a contentious issue? Because it is so evident that the legislature is avoiding its responsibility. The key issue here is why marital rape has yet to be recognised as a criminal offence and why there is an urgent need for marital rape legislation. Rape is a crime against women. Encroachment on her dignity and self-esteem without her agreement, even when perpetrated by her own spouse, reduces the woman to the status of an object used solely to satisfy one's sexual impulses. If rape is a "genus," then Marital rape is its species. According to the Oxford definition, marital rape is "rape performed by the person to whom the victim is married." Marital rape is any unwanted sexual conduct by a partner or ex-partner committed without the consent or against the will of a female, or consent may be obtained by force, threat of force, intimidation, or when a person is not in the state of giving consent, which is forceful sexual intercourse by a man with his own wife. The unfortunate thing is that the concept of "consent" is no longer relevant, and this type of domestic violence and sexual assault is still not considered a crime in India and many other countries of the world. Though marital rape is the most widespread and unpleasant kind of humiliation in Indian society, it goes unnoticed because of marital status. In India, social practises and legal regulations mutually announce the denial of women's sexual agency and body privacy, which is a fundamental human right. India is one of the thirty-six countries that has yet to criminalise marital rape. However, multiple applications have been filed in the Supreme Court and different High Courts questioning the legitimacy of this exemption to Section 375 of the Indian Penal Code (hereinafter referred to as IPC).

Types of marital rape:

There are three types of marital rape that have been established by legal scholars and are widely accepted in society.

1. Rape by battering

This type of rape combines both physical and sexual abuse, which the victim encounters in her relationship; such an encounter involves violence in numerous forms. Some are beaten by their spouses during sexual violence, or while the rape is being done. This is followed by an act of physical violence in which the husband desires sex and compels his wife to have it against her will. This kind of severity is experienced by the vast majority of victims of marital rape.

2. Harassment solely by force

In the force-only category of marital rape, the amount of force employed by the men is restricted to the unit necessary to compel their wives. When the woman refuses sexual intercourse, such force is generally utilised.

3. Obsessive rape

When a husband is obsessed with having sexual activities and forces his wife to have them, and she refuses, the act involves assault, torture, and/or perverse sexual acts, and is frequently physically violent, which has been referred to as sadistic or obsessive rape, which is experienced by the remaining women.

Reasons why rape in marriage is still allowed in India:

There are no laws.

It is not explicitly mentioned in any statute that marital rape is a legal action under Indian laws, with the exception of Section 375 of the Indian Penal Code, which states that a husband engaging in sexual actions with his wife who is not under the age of 15 years is not covered by the definition of Rape.

Social stress

One of the primary prominent causes for this evil of marital rape that is still disguised behind the sacred bond of marriage is a lack of legislation and fear of societal image against the commission of marital rape. The woman has rights to safeguard the privacy of her body if the person breaching such privacy is unknown to her, but when the assassin of her bodily injuries and mental suffering is her own husband, whom she married with all the joy and glee, lawmakers take away such protection.

To emphasise the point, a woman (wife) is required to have sex with her husband on demand, regardless of her will, permission, health, or anything else. i.e. "consent" of a woman has not been addressed anywhere in the entire notion of marriage, beginning with the selection of her spouse and continuing until the conclusion of such a one-sided relationship.

Family obligation

Marriage, according to Hindu Law, is a sacrament that, once linked, can never be torn down by anybody for any cause. The goal of such a partnership is to complete religious responsibilities and have children. As a result, marriage is obligatory, especially for females, although in Muslim law marriage is a social notion with the goal of producing a child as the aim of such a relationship. As a result, Muslim law plainly declares that marriage is a method of gratifying men's sexual cravings, whether a woman wants it or not. There is little emphasis on a woman's human rights as if she has not been recognised as a person.

Economic reliance

Another issue that should be addressed under this heading is a woman's economic dependence on her husband and in-laws because, while this mindset is slowly changing, it still exists in many families; as a result, married women are unable to protect themselves from such a wrongful practise and are forced to face such brutality from their husbands.

Law and marital rape

Despite the fact that Indian laws have improved in every imaginable aspect, marital rape is still not recognised an offence. Despite changes, law commission analyses, and new legislation, one of the most embarrassing aspects is that such horrible and crippling offences are not punished in India. The point that is being made here is that a woman's concern for the protection of her marital relationship, despite the fact that she does not have any personal privacy protection, indicates that legislation is either non-existent or obscure, and everything is dependent on the will and sexual demands of males in a marital relationship. Because there is no express provision for such an offence, judicial interpretation plays a significant role in resolving such situations. Section 375 of the IPC defines rape and outlines the activities that are to be regarded rape before the law. As an exemption clause, any male participating in sexual acts with his own wife who is not under the age of 15 years would not be considered rape. According to Section 376, any person accused of rape shall be punished with imprisonment for

not less than 7 years, which may extend to life, or for a term of up to 10 years, and shall also be liable to fine, unless the victim is his own wife and is not under 15 years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to 2 years, with fine, or with both. Under this clause, marital rape is only regarded an offence if the woman who is the victim of such terrible conduct is under the age of 12. If the wife is between the ages of 12 and 15 years old and her husband does such a forcible conduct or any sexual act without her will, the offence is less serious and the punishment is less severe. She has no legal protection after she reaches the age of 15, which is a flagrant violation of human rights standards. The loophole to be examined here is that if the legal age of consent for marriage is 18, then why is protection from sexual assault granted only up to 15 years of age if married before 18? There is no remedy she has 15 years of age. The Indian Penal Code was changed in 1983 to make marital rape during the period of judicial separation a crime.

Remedies that are available

1. Domestic Violence Act, 2005

Protection of Women from Domestic Violence Act was enacted in 2005 to provide legal protection to a woman who is the victim of any crime of domestic violence, although it did not consider marital rape as an offence. However, under this act, if a woman is the victim of marital rape, she can approach the court seeking judicial separation, implying that marital rape can be used as a ground before court to obtain judicial separation.

This is only a first step taken by the legislation toward the recognition of such offences. There is further work to be done by parliament in this area.

2. IPC Section 376(B)

Section 376B specifies that a husband who is living separately, whether under a divorce judgement or otherwise, and has sexual intercourse with his wife forcibly will be punished with imprisonment for not less than two years and up to seven years.

Conclusion

After reading the entire article, the simple response to the title is "No." In India, marital rape is still not considered a crime. There is a need to comprehend that marital rape is a crime that the government must recognise, and that every individual must report it. There is a call for the

definition of rape to be changed. Men and women must be treated equally under Indian law, regardless of whether they are married or unmarried. Marital rape is not merely something that happens behind an iron curtain; it is a crime that violates women's right to privacy.