



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CRIMINALISATION OF MARITAL RAPE

-Ms. Aparajta Singh

2nd semester, BBA LLB (Hons)

Symbiosis Law School, Pune

INTRODUCTION :

“It is not proper, by a gross and puerile joke, to deny the extension of this crime(rape) and to diminish the horror of it.”

-Jeremy Bentham

“Marital Rape refers to rape committed when the perpetrator is the victim’s spouse. The definition of rape remains the same, i.e. sexual intercourse or sexual penetration when there is lack of consent”¹. As well as if we can say in simple words, in India, it’s nothing, but there is said to be a type of ‘implied consent’ after marriage. “As we know, in India, marriage between a man and a woman in India implies that both have consented to have sexual intercourse by not taking the overview of the woman; in Indian marriages, it is said that a woman should listen to their husband without denying their husband order. The IPC,1860 also says the same; section 375 depicts rape, but there is an exception regarding this section the rape, which is said to be done by a man to his wife, and the wife who is not less than 15 years of age is not raped.”²

“In Indian society, the word marital rape is a work of masochism, and it is all hidden behind the unsacred wall of marriage. As well as there is a myth in india that rape by one partner only causes a little trauma or some little physical effects, but that may include injuries to private organs, brushing torn muscles, and major lacerations; serious injuries could be broken bones occurs during sexual violence; specific gynaecological consequences include miscarriages,

¹ Raveena Rao Kallakuru and Pradyumna Soni, Criminalisation of Marital Rape in India: Understanding its Constitutional, Cultural and Legal Impact, 11 NUJS L. Rev. 1, 25 (2018), <http://docs.manupatra.in/newsline/articles/Upload/8787A55C-D93F-4589-8A68-A9A032AF0E.pdf>.

² Aditi Khedagi, “MARITAL RAPE: WHY ARE INDIAN LAWS STILL CONFUSED ABOUT THIS?”, <https://feminisminindia.com/2020/06/11/marital-rape-people-still-confused-india/>.

infertility, bladder infections and the potential contractions of sexually transmitted disease including HIV.”³

There are three kinds of marital rape, as identified by legal scholars:

- * Battering Rape
- * Force only Rape
- * Obsessive Rape

Inside India Non- consensual sex exists de facto but de jure.

As stated by IPC 1860, a woman holds no legal right to deny his husband from having sex with her. By the authority of law, there is permission to husband to rape their wives as much as they want. As far as we can see, a committee said that no husband could be said to be guilty of raping his wife, regardless of her age, because when a man marries a woman, sexual intercourse comes under the term of the marriage, and no woman can deny that.

MARITAL RAPE EXCEPTION IN THE INDIAN CONTEXT

As stated by S.375 of Indian-Penal-Code, Rape is a crime, and its expanded definition also says that oral sex and another form of sexual penetration also come under rape. However, the application of this clause also answers that any sexual contact between husband and wife or even if the wife disallows any sexual contact with his husband, she has no right to refuse her husband as well, and no legal remedy will be provided.

In light of this, marital rape is only regarded as rape if the victim is under the age of 15, and the punishment is less severe. It is also against human rights principles for the spouse to receive no legal security after age 15. Only those under the age of 15 are protected from sexual abuse by the same rule that makes marriage's legal consent age of 18 years old.

In the Independent Thought vs Union Of India, it was held that “Prima facie it might appear that since rape is an offence under the IPC (subject to Exception 2 to Section 375) while penetrative sexual assault or aggravated penetrative sexual assault is an offence under the POCSO Act and both are distinct and separate statutes, therefore there is no inconsistency between the provisions of the IPC and the provisions of the POCSO Act. However, the fact is that there is no real distinction between the definition of rape under the IPC and the definition of penetrative sexual assault under the W.P. (C) No. 382 of 2013 Page 64 POCSO Act. There is also no real distinction between the rape of a married girl child and aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. Additionally, the punishment for the respective offences is

³ *Supra* note 1.

the same, except that the marital rape of a girl child between 15 and 18 years of age is not rape, given Exception 2 to Section 375 of the IPC. In sum, marital rape of a girl child is effectively nothing but aggravated penetrative sexual assault, and there is no reason why it should not be punishable under the provisions of the IPC. Therefore, it does appear that only a notional or linguistic distinction is sought to be made between rape and penetrative sexual assault and rape of a married girl child and aggravated penetrative sexual assault. This distinction has no rationale; it is nothing but a completely arbitrary and discriminatory distinction.”⁴

CONCLUSION :

Women in India are regarded as goddesses and objects that must fulfil their husbands' desires. Although women have been exploited for a long past, this practice, also known as **MARITAL RAPE**—involves severe physical and mental torture. Married women believe that keeping this assault private can maintain their social status, but if we see, on the other hand, if women start to discuss this part of marriage, then there can be a sense of equality. It is pivotal to note that a significant legal gap is now undermining. When the constitutional guarantees for women's equality. As we have also said, criminalisation should vehemently be opposed.

⁴ Mill, J.S., *The Subjection of Women*. S.M. Okin, Indianapolis, Hackett, 1988, p. 33.