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MARITAL RAPE IN INDIA: A LEGAL FRAMEWORK

Abstract

Rape is an act that is committed against a woman. The Indian penal Code, 1860 states that a person is liable for the commission of a sexual offence against a woman, but the question arises that when that person commits non-consensual sexual intercourse with the spouse should not it fall under the definition of “Rape”. In Indian context it is believed that doing sexual intercourse with the spouse is one of the criteria of fulfilling the duties of the spouse. The courts over a period of stated that penalizing marital rape is difficult as a no. of false and frivolous cases may be pending before the court without any evidence. Here it is impudent that marital rape needs to be considered as a matter of caution in today's society trying to curb all the problems that have been debated over a period as marital rape has become a social evil in the society.

Relevance of the Study

The offence of rape can also be committed in a marital life as the woman can be the victim of forceful sex or domestic violence. Having non-consensual sex also leads to the commission of rape. In Indian society which is regarded as a male dominant society it becomes important to protect the woman against the evil acts of the husband but it cannot be said that woman can only be the victims of marital rape.

INTRODUCTION

Marital rape stands as the most morally and physically abhorrent transgression within a human society. It infringes upon the fundamental rights of the victim as enshrined in Article 21 of the Constitution. Consequently, the judiciary should handle such cases with utmost seriousness and decisiveness. Sexual violence, aside from its corrupting nature, constitutes an illicit intrusion into a woman's privacy and purity. It deals a severe blow to her esteemed self-worth and disrespects her dignity. It degrades and demoralizes the victim, often leaving behind a

lasting and devastating impact. A perpetrator of such an act not only inflicts physical harm but also leaves an indelible mark on a woman's most cherished aspects, including her dignity, respect, reputation, and innocence. Marital rape is not just a crime against society; it is an offence against women and, by extension, society as a whole. It violates the essence of human rights and breaches the fundamental rights guaranteed by the Indian Constitution.¹

Indian legislature can play a vital role in decimating marital rape in the country. But there is lot of reluctance on part of Indian legislature as far as criminalization of marital rape in India is concerned. In 2013, the J S Verma Committee was established to review criminal law reforms in response to the horrific gangrape and murder of a 23-year-old paramedic in Delhi in 2012. The committee recommended the elimination of the marital rape exception.²

JUDICIAL APPROACH ON MARITAL RAPE

The issue of marital rape has been a contentious and complex legal and social challenge worldwide, and case studies on this subject serve as critical windows into the evolving discourse surrounding this deeply sensitive issue. These case studies will provide valuable insights into how Indian jurisdictions grapple with defining, prosecuting, and addressing marital rape within the context of intimate relationships.

In the case of *Sakshi v. Union of India*³, the Supreme Court emphasized the need for reforms in laws dealing with sexual offences, including marital rape. The court acknowledged that women's rights were human rights and that the government should take steps to amend laws to address concerns like marital rape.

In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*⁴, While this case primarily dealt with the question of whether consensual sex could be considered rape if it later turned into rape due to a change in circumstances, it highlighted the importance of understanding consent and the evolving nature of sexual activity within marriage.

The marital rape is not explicitly criminalized in India. Unlike many other countries, India does not have a specific law that treats marital rape as a separate offence. Instead, it falls under the broader framework of sexual offences within marriage. Further, it is essential to note that the absence of a specific law criminalizing marital rape has been a subject of debate and concern

¹ Dr Satish Kumar Mishra, Mr. Vinay Kant Srivastav, Mr. Aman Gautam, Dr Arti Sharma, Mr. Kshitij Kumar Rai, Mr. Nikunj Singh Yadav EXPLORING CONCERNS ASSOCIATED WITH MARITAL, ECB

² *ibid*

³ 2004 Supp (2) SCR 723

⁴ AIR 1991 SC 207

in India. Activists and organizations have been advocating for legal reforms to address this issue and ensure the protection of spouses from sexual violence within marriage.⁵

CHALLENGES

There are significant no. of challenges that needs to be looked upon before penalising marital rape. The social and the cultural stigma that is prevailing in the society is one of the major obstacle that needs to be faced in India. India being a patriarchal society will face a lot of challenges where the public outrage on the issue could be observed as the literacy rate in India is not very significant. Other issue is the competency of the good Legislature that are experts in the field to understand the laws and frame it in a way that it is least misused by the people. Another significant challenge is the underreporting and lack of documentation of marital rape cases. Due to societal pressures, fear of retaliation, and a lack of support, many survivors choose not to report their experiences to authorities. This lack of reporting not only perpetuates a culture of silence but also undermines efforts to understand the true extent of the problem. Without accurate data and documentation, it becomes challenging to formulate effective policies and interventions.

CONCLUSION & SUGGESTIONS

Marital rape must be completely eliminated from India if India wants to become a developed nation because it is one of the biggest obstacles in the development of India. But for achieving that objective Indian society, Indian legislature as well as the Indian Executive must change its primitive mindset. Marital rape can only be criminalized in India only when the Indian society, legislature and executive play a proactive role in this regard.⁶ Legislative advancements that explicitly criminalize marital rape are vital steps toward justice, but they are not sufficient on their own. Implementation, enforcement, and continuous education are equally crucial to effect real change. Public awareness campaigns, educational programs, and support networks must be established to challenge harmful myths, provide survivors with avenues for healing, and promote a culture of respect and consent.

⁵ ibid

⁶ Kalpana Sharma (2017), Why isn't marital rape a criminal offence in India? Retrieved January 19, 2020

