

Marital rape – laws and criminalization

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Rape is one in every of the foremost atrocious crime done against the humanity. Rape doesn't solely have an effect on the ladies however the society as whole. In India there are several cases of rape, a number of that are self-addressed and lots of them don't seem to be even told to anyone thanks to the worry of the society we tend to reside in. The society makes the rape victim feel so guilty that it breaks her and force her to kill herself. One of the foremost dangerous form of rape is marital status rape. In India wedding is taken into account as religious ritual, it's thought-about as holy association between male and feminine. The Indian society considers that the bond of wedding shall be maintained throughout the life time of the couple. In such society addressing the issue of marital status rape becomes difficult. It's thought-about that the husband has all the power of getting sexuality with the better half, with or without her consent. The marital rape isn't even thought-about as a tangle in Indian society. It's okay for the society if the husband has forced intercourse with the better half. Thanks to such mentality and upbringing, it becomes tough to deal with the difficulty and tell about it even to the relatives, thus aiming to court is level of issue because the society could accuse the victim of taking her sexual activity to the court.

Indian Penal Code 1860 – defines rape³ as-

a person is claimed to commit “rape” if he—

(a)penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b)inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

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3.Act 45 of 1860,Section 375.

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Exception 2 of section 375, provides that sexual intercourse with the better half not being below the age of fifteen years isn't rape. It says that if the better half is higher than the age of fifteen years than forced sexual intercourse isn't thought-about as rape. This raises the question that why there's this sought of discrimination. A feminine is feminine whether or not below age of fifteen and therefore the crime is the crime. However, the age bar has been raised to eighteen years.

The laws created by Indian penal code are influenced by the Victorian era because it was written throughout the colonial rule. The laws in Indian legal code follows the philosophy of merging women's identity therewith of her husband. The marital status exception relies on the Victorian paternal norms that failed to recognise girls as equal, failed to permit married girls to possess property, and incorporate the identities of husband and better half below the philosophy of coverture.

These laws were created in early era however currently it desires an amendment. The modern jurisprudence addresses the issues of the protection females and considers women as freelance entity.

Article 14 of Indian Constitution⁴, provides right to equality. Each national is equal within the eyes of the law. It eliminates all the kinds of discrimination, however exception 2 of section 375 discriminates between a married and unmarried woman. It discriminates as, the forced sexual intercourse with unmarried woman is a crime however forced sexual intercourse with a wife by her husband isn't against the law. There's victimization of a married girls for no reason aside from their marital status, whereas protecting unmarried girls from those acts.

In case of Budhan Choudhary vs. State of Bihar⁵ and State of West Bengal vs. Anwar Ali Sarkar⁶, Supreme court held that "classification under article fourteen of the Indian constitution is subjected to a reasonable test that may be passed as long as the classification

4.Art.14 in material part lays down that The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

5.AIR 1955 SCC 191

6.AIR 1952 SC 75

has some rational nexus to the target that act seeks to realize.” This classification has no rational relation, it solely discriminates on the premise of marital status.

It is more difficult for a married woman to escape abusive condition at home because they are legally and financially tied to their husband. Exception 2 is against article 14.

Article 21, right to life and personal liberty is very wide right, it includes various rights to health, right to privacy, right to dignity, right to safe living condition, and safe environment among others. It also includes right to abstain from sexual intercourse and right to free of unwanted sexual activities. In case of *Govind vs. state of Madhya Pradesh*⁷, right to abstain from sexual intercourse and to free of unwanted sexual activity was introduced.

In case of *state of Karnataka vs. Krishnappa*, supreme court held, sexual violence apart from being a dehumanizing act is as unlawful intrusion of the right to privacy and sanctity of a female. Non-consensual intercourse amounts to physical and sexual violence.

In case of *Justice K.S. Puttaswamy and Anr. Vs. union of India*⁸ and ors., sexual right is included in right to privacy. It is held that forced sexual cohabitation is a violation of right to privacy. Article 21 in some sense protects the women’s right but there is no specific law for marital rape.

United nations approach- the united nation convention on elimination of all forms of discrimination against women (CEDAW) criminalises the marital rape. India is one of the signatories to CEDAW. It ensures that all the countries observe the law and criminalise the offence of marital rape.

Commission on human rights, at its 51 session⁹, recommended that marital rape should be criminalised.

There are many laws made for the protection of women such as protection of women from domestic violence act 2005, sexual harassment of women at workplace (prevention, prohibition and redressal) act and other such laws. But there is no specific law against the

7.1975 AIR 1378

8(2017) 10 SCC 1

9.resolution no. 1995/85 of 8-3-1995, titled “the elimination of violence against women”

marital rape. There have been many writ petitions filed as to criminalise the marital rape but no action is taken and no specific law is made in this regard.

Exception 2 to section 375 is discriminatory and is against article 14 of the constitution. There is an urgent need to criminalise the marital rape as it results in physical and mental violence against a woman. It is required so that if a woman faces such problem than at least she has law on her side, she feels safe and is not abused.

Reference-

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