

THE PSYCHOLOGICAL AND PHYSICAL EFFECTS OF MARITAL RAPE ON THE SURVIVORS

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¹Marriage, for centuries, has been considered a sacred institution, a covenant between two individuals bound by love and mutual respect. However, within the walls of this revered institution, a shadowy spectre haunts the lives of countless individuals—the spectre of marital rape.

ABSTRACT

Rape has been defined under section 375 of the Indian penal code which involves all forms of sexual assault involving non sexual intercourse with a woman. So, where it comes to introduce marital rape in which many sections in IPC relates to the topics of Marital rape but they are also very limited and inadequate. Hence the sexual intercourse which happened in the contract of marriage is not be considered as a rape under 375 IPC. But there are certain exceptions in which the intercourse happened in the contract of marriage is considered as rape. And is subject to the punishment under Section 376 of the Indian Penal Code (IPC). Civil remedies of marital rape are already protected in the protection of women from domestic violence act , 2005 under the concept of sexual violence deemed as a form of domestic violence as well as a form of matrimonial law allowing separation of the spouse assuming cruelty as a ground. According to the ²“National Family Health Survey” married women aged 18 to 49 experienced sexual violence, where 83% reports was by their current husbands and 13% reported by the ex-husbands³. So, interpreting the data of “National Family Health Survey” women experienced sexual violence by current husbands and less but facing the experience by the ex-husbands. Because a-lot of women are facing such violations. In such an era where survivor of rape, women are facing a very drastic effect on their body physic and their mental psychology. It can be concluded that sexual intercourse without the

¹ THE LEAFLET FIRST CONSTITUTION, MARITAL RAPE EXCEPTION AND UNNATURAL SEX: GHOSTS OF COLONIALISM – THE LEAFLET, (LAST VISITED DECEMBER 1, 2023)

²THE WIRE, WHY THE 'MARITAL RAPE EXEMPTION' IN CRIMINAL LAW MUST GO (THEWIRE.IN), (LAST VISITED ON DECEMBER 01, 2023)

³ THE HINDU, [HTTPS://WWW.THEHINDUBUSINESSLINE.COM/DATA-STORIES/DATA-FOCUS/MARITAL-RAPE-MOST-MARRIED-WOMEN-ARE-SEXUALLY-ABUSED-BY-THEIR-HUSBANDS-SAYS-NFHS-DATA/ARTICLE65409875.ECE#:~:TEXT=ACCORDING%20TO%20THE%20NATIONAL%20FAMILY,AG O%2C%20ALSO%20NOTED%20SIMILAR%20NUMBERS.,](https://www.thehindubusinessline.com/data-stories/data-focus/marital-rape-most-married-women-are-sexually-abused-by-their-husbands-says-nfhs-data/article65409875.ece#:~:text=According%20to%20the%20national%20family,ag o%2c%20also%20noted%20similar%20numbers.,) (LAST VISITED ON DECEMBER 03, 2023)

consent of the wife comes within the ambit of domestic violence. A wife can seek a civil remedy for marital rape. The civil remedies include the protection orders, judicial separations and monetary compensations.

KEYWORDS :- SEXUAL INTERCOURSE , PHYSIC AND PSYCHOLOGY , CIVIL REMEDIES , JUDICIAL SEPARATIONS , MONETARY COMPENSATIONS.

INTRODUCTION

It is one such social evil which has existed in India since ancient times and still continues to raise havoc in the country. Marital rape is considered illegal but it is tolerated very widely in many of the countries and laws are rarely enforced due to the factors ranging from reluctance of authorities , lack of public knowledge that intercourse in marriage without the consent of the wife is illegal. In the 1960s and 1970s, these perspectives on marriage and sexuality started to evolve in the majority of developed countries, especially due to the rise of second-wave feminism⁴. This led to the recognition of women's legal right to self-determination, or power over all aspects of their physical appearance. In patriarchal society , the decisions of women were considered as unimportant even in the case of having sexual intercourse. Despite of the historical misconception the women suffers from physical problems like miscarriages, discomfort, exhaustion, vomiting, bladder infections, infertility and injuries to their private organs and it can also impact their psychological health which involves anxiety, shocks, panic attacks, depression, suicidal ideation and post-traumatic stress, etc. In some leading judgement we came across to know that how badly the women were raped that causes injury to their private parts, some of the women's die were some of the women are in critical health conditions. Many statistical reports by the health department also show how many women are dead or are critical because of harassed sex. The rules that exist in India are insufficient to prevent something as heinous as marital rape. To stop marital rape in India, strict legislation like to have proper laws and guidelines as far as marital rape is considered. There can be an option for divorce in future once proven guilty, as no such grounds have been made for divorce in marital rape cases.

⁴ WIKIPEDIA THE FREE ENCYCLOPEDIA, SEXUAL REVOLUTION - WIKIPEDIA, (LAST VISITED ON DECEMBER 02, 2023)

RESEARCH METHODOLOGY

This paper is of descriptive nature. And the paper is based upon the research upon the sources like newspaper, journals, different websites are used for the research.

TYPES OF MARITAL RAPES⁵

1. FORCEFUL RAPE :-

This type of rape involves controlling and dominating the wife. When a forceful rape occurs, the spouse employs the degree of physical force required to successfully rape the wife. After the woman declines to have sex, the attacks usually take place. Forceful rape incidents occur in marriages more frequently.

2. BATTERING RAPE :-

Violence both physical and sexual is a part of battering rape. In cases of this kind of rape, the woman could experience physical abuse from her spouse either before or during the rape. Many complaints have also been filled regarding of battering rape. It typically occurs in marriages with high levels of verbal and physical violence. The rapist could be irrationally angry, antagonistic towards his spouse, and addicted to drugs or may consume drugs very often.

3. SADISTIC/OBSESSIVE RAPE :-

Sadistic or obsessive rape in a marriage involves the husband torturing his wife and committing acts of sexual perversion against her. The attacks include forced bizarre sexual acts and are frequently physically violent. Obsessive rape involves the husband acting on bizarre sexual obsessions in which he forces his wife to perform deviant and/or painful sexual acts. The husband may have extreme pornography consumption habits and fetishes.

⁵WASATCH DEFENCE LAWYERS, MOST COMMON 3 TYPES OF MARITAL RAPE | LAWS FOR RAPE IN UTAH (WASATCHDEFENSELAWYERS.COM), (LAST VISITED AT DECEMBER 04, 2023)

STATISTICS

India has a long-standing issue with domestic violence, which has only become worse recently. The 2019 "Crime in India" report from the National Crime Records Bureau (NCRB) states that over 70% of Indian women are victims of marital abuse. Over 100 nations have passed laws against marital rape nowadays, but regrettably, India is one of the remaining 36 that does not have this law in place.

The fact that marital rape is not criminalised in India compromises the dignity and human rights of women, despite the fact that several legislative modifications have been introduced in the criminal code to safeguard women. According to a breakdown of the data, 5.6% of married women reported having sex with their husbands under physical coercion, 2.7% reported being physically pushed into engaging in sexual relationships against their own free will, and 3.7% reported being coerced into engaging in sexual activity against their will through threats of physical injury.

STATUTORY PROVISIONS: AGAINST LEGAL AND CONSTITUTIONAL RIGHTS

1. ⁶ARTICLE 14 :- RIGHT TO EQUALITY

Article 14 of the Indian Constitution guarantees equality for all. The marital law prejudices women who are married and raped by their husband by withholding them equal protection from rape and sexual harassment.

2. SECTION 375 OF INDIAN PENAL CODE (IPC)⁷ :-

Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by harassment, misrepresentation or fraud or at a time when she has been intoxicated by drugs or by some unusual substance.

3. SECTION 376 OF INDIAN PENAL CODE (IPC) :- ⁸

⁶IND. CONST. III, § 14

⁷INDIAN PENAL CODE, 45 I.P.C. § 375 (1860)

⁸INDIAN PENAL CODE, 45 I.P.C. § 376 (1860)

Whosoever commits rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but can be extended up to imprisonment for life, and shall also be liable to fine as well.

4. ⁹ARTICLE 21 :-

No one should be deprived of his life or personal liberty, according to Article 21 of the Indian constitution. It is not appropriate for a woman to be coerced into having sex against her will if it clearly states that everyone is entitled to have the freedom to live their life according to their own terms.

5. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT , 2005 :¹⁰-

This Act came into force in October 26th, 2006. The Protection of Women from Domestic Violence Act of 2005 is in effect. The purpose of the Act is to shield women and other female live-in partners from abuse at the hands of their husbands, other male live-in partners, or their relatives. The Act defines domestic violence as real abuse or the threat of physical, sexual, verbal, emotional, or financial abuse. The concept of domestic abuse would also include harassing a woman victim or her family members through illegitimate dowry demands.

BRILLOPEDIA

CASE LAWS ON MARITAL RAPE

1. ¹¹INDEPENDENT THOUGHT VS UNION OF INDIA :-

The hon'ble Apex court held that intercourse with the girl below eighteen years of her age regardless of her marital status and the marital status of the offender is regarded as rape. Also, the right to abortion of all the women is up to 24 weeks of her pregnancy.

2. JUSTICE K.S PUTTASWAMY VS. UNION OF INDIA¹² :-

⁹IND. CONST. III, § 21

¹⁰THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 43 (2005)

¹¹ INDEPENDENT THOUGHT V. UNION OF INDIA AND ANOTHER, (2017) 10 SCC 800

¹² JUSTICE K.S PUTTASWAMY VS. UNION OF INDIA, (2017) 10 SCC 1

In this case the Hon'ble Supreme Court recognised the fundamental Right to Privacy of each and every individual . The judgment implicates to the protection of women's bodily autonomy and dignity and exception clause of section 375 of IPC could be challenged which excludes the marital rape from the definition of Marital Rape.

3. DELHI HIGH COURT;

In May 2022 delivered a split verdict on the issue of Marital Rape in a bunch of petitions filled by an NGO and the victims of Marital Rape amongst the judges, one of the judges said that marital rape is a criminal offence and struck down the exception clause of section 375 of IPC whereas the other judges upheld the validity of the exceptional clause and referred the case to the larger bench¹³.

CONCLUSION

There is a huge call for outreach and awareness for marital rape victims. Studies that exclusively address a woman's physical, mental, and emotional well-being following marital rape are insufficient. Numerous victims accept self-blame, and there is a wealth of data supporting this explanation. In the year 1993, all 50 states made marital rape criminal. It's noteworthy to point out that by 1920, women had the right to vote yet they were unable to refuse their husbands' inappropriate choice. By providing support and raising awareness about marital rape, women will feel empowered to come forward and ask for the support that they are looking for. Many women experience not just emotional and physical violence at home, but also sexual assault, and because their husbands are the ones committing these crimes, they are afraid to discuss it. It is crucial that women begin to identify it as rape and not as an integral part of their marriage. Women who have been the victims of domestic abuse are more likely to become victims of rape in marriage, have mental illness, and have poor mental health. A further recommendation would be to enhance the understanding and support women of marital rape. In these kinds of instances, it becomes essential to talk about and support the victims so they know they are not alone. Marital rape carries multiple risks to an individual's physically and emotional well-being, making it a health concern. To comprehend and contrast the offender's psychological states and the nature of their activities, further research is required to look at the physical and social lives of the criminals.

¹³ THE WIRE, WHY THE 'MARITAL RAPE EXEMPTION' IN CRIMINAL LAW MUST GO (THEWIRE.IN), (LAST VISITED DECEMBER 01, 2023)



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