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EVIL LURKS IN THE SHADOWS: **MARITAL RAPE**

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Abstract

Humans as beings are extremely sociocentric. We are wired to act a certain way, have certain social values inculcated into us as a part of a norm and marriage is one of them. Marriage is essentially a social phenomenon which is a union of two people which is legally recognised and identifies them as partners or as a wedded couple. With weddings comes the social evil which is embedded in it called marital rape. Sadly, sexual atrocities towards women remain deeply entrenched all around the globe. Marital rape was seen as an oxymoron in the legal books until dramatically late in the history of legal reforms. To understand marital rape, we must clarify the definitudes of rape. Rape as specified in the legal books is the unlawful and non-consensual sexual assault or penetration carried out by a person towards another. Marital rape in its constituents is sexual assault or rape towards one spouse by the other spouse.

Introduction

Marital rape has been criminalized in 150 countries, India is among the only 32 countries where marital rape is decriminalized. The issue of the exception for marital rape in India has repeatedly been raised, but nothing tangible has been done to address this injustice. The current BJP-led administration rejected to make marital rape a crime on the grounds that doing so would undermine the institution of marriage, as has been brought up more than thrice in the past ten years alone. ¹¹ This government's justification is irrational and brutal. The exception made for marital rape violates both Articles 21 and 14, which guarantee equality before the law and aim to protect married women against marital rape, respectively. Married women are not given protection under the Constitution in circumstances of marital rape.

Rape is seen as a heinous crime but marital rape falls under a grey area until very recently.

Instances of marital rape are significantly associated with higher rates of non-sexual violence and marital discontent, as well as worse perceptions of marital quality. Marital rape victims frequently use verbal retaliation as a kind of defence. However, the majority of spouses who are raped are either unable or scared to fight off their husbands' advances in sexuality. Victims of marital rape are often left scarred and suffer from deep rooted psychological problems like Depression, Anxiety and PTSD which stands for Post Traumatic Stress Disorder.

As per section 375 of the IPC, rape occurs when a man has sex with a woman against her will. Contrastingly, Section 375 does not classify engaging in sexual activity with a wife without her consent as rape. According to the law, a husband cannot be charged with raping an adult wife. Four petitions questioning the constitutionality of the "marital rape exception" have been registered with the Delhi High Court. Since the punishment is less severe, marital rape is only taken into consideration if the victim is under the age of 15. The spouse has no legal protection after the age of 15, which is against international human rights standards. Only minors under the age of 15 are shielded from sexual assault by a comparable law that increases the legal age of consent for marriage to 18.

In accordance with the Indian Penal Code, the offence is punishable by up to two years in prison, a fine, or both if the wife is between the ages of 12 and 15; if the woman is less than 12, the offence is punishable by up to ten years in prison and fines. Rape of a legally separated spouse can carry a sentence of up to two years in prison and a fine, but not rape of a wife over the age of 15.

The Protection of Women from Domestic Violence Act, passed by Congress in 2005, recognizes marital rape as a form of domestic violence. A woman can sue her husband for marital rape under this law through legal division. Marital rape is irrational because it damages a woman's affection and trust, leaving her feeling insecure and afraid. In the sacred place of marriage, he must give up his human rights. On the other hand, laws protecting the rights of victims of marital rape are inadequate and ineffective, and the methods employed are unacceptable.

The Justice Verma Committee's report was ignored by the Central Government, who recently brought the case back before the Delhi High Court. The Delhi High Court's two-judge panel that was charged with making the decision was divided over whether to make marital rape a crime or to maintain the exception. The head of the two-judge bench, Justice Rajiv Shakhder, said that the exception for marital rape in Section 375 of the IPC was unconstitutional. Justice Hari Shankar,

however, was of the opinion that the exception should stay because a modification in the legislation must be made by the legislature.

Literature Review

“MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON ‘CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS”

This text explicitly talks for criminalizing marital rape. It is a pathbreaking piece on institutionalised marriage, rape, human rights and where they intersect. A state that fails to recognize marital rape is essentially committing an international human rights violation. A very important observation, made in the beginning of the text, is how the lack of assertive consent is not considered in a “marriage”. A woman has to give in to her husband’s demand of physical intimacy because of certain social and psychological factors but the scariest part is that in most cases it is a norm to give in to the husband’s demands. While being pro criminalization of marital rape the text talks about how it will potentially affect the social construct. The first point raised was how women's subordination and marital rape are related. Marital rape occurs inside intricate webs of coercion that are challenging to comprehend, let alone disentangle. In other words, it is utterly unclear what causes what. This text focuses on affirmative consent and how an affirmative consent norm might go a long way toward legitimising all of that coercion, and if so, it might make the situation worse by making it even more outside the scope of the law. If we define "rape" as "sex without affirmative consent," we may end up with a world where there is much less rape, but only because we have defined "legal sex" to include a meaningless coerced ritual in which a potential victim mouths a meaningless utterance, making the sex legal. Alternatively, this definition may trivialise the issue. An important solution to this is to define rape as “coerced sex” rather than either non-consensual sex as coerced translates to consent but forced. Even if such a change in definition would have its own issues but it could be a major breakthrough in how we view rape and what makes it both hurtful and gendered. In a world where marital rape is condemned as a crime but everything else stays the same, it's possible that mandated rituals will make married sex consensual. But for that consent to have any real value, it must not just be "affirmative," but also voluntary. And in order for marital sex to not be forced, the circumstances that force women into marriages that are not in their best interests must also alter.

This article is a very critical rebuttal to the criminalization of marital rape in the Indian legal scenario. It opens with the following quote “Adequate Legal Recourse Against Marital Rape

Already Exists". Many supporters of keeping the marital rape exception claim that the Protection of Women from Domestic Violence Act of 2005, Section 498A of the Indian Penal Code, and the Hindu Marriage Act have filled the void left by the exclusion. Sexual abuse is included in the definition of domestic violence under the Domestic Violence Act, which also offers civil remedies like monetary damages, judicial separation, and protective orders. 47 The Penal Code's Section 498A imposes criminal penalties on a spouse or any of his family members who cruelly treat a lady. 48 Furthermore, "cruelty" may be grounds for divorce under Section 13 of the Hindu Marriage Act. 49

The Domestic Violence Act's immediate drawback is that it only offers civil remedies and does not categorise marital rape as a criminal violation. The argument that the concept of marital rape cannot function in India due to the vast cultural contrasts between the dominant culture in India and the concept of marriage in the West is at the forefront of the movement against criminalization. The argument's proponents agree that criminalising marital rape violates the sacrament of marriage's propriety. Defenders of the marital rape exception purport that repealing the exception will allow wives to misuse the law and bring rape charges against their husbands to settle scores in unrelated quarrels. The argument that illiteracy, poverty and lack of education in India make the concept of marital rape unworkable in the country directly contradicts the argument that criminalization of marital rape would lead to misuse.

Analysis

Marital Rape in itself is extremely heinous and numerous advancements have been made in the same. To put things to perspective, 31.2% of women have faced marital rape or violence by their spouse. It is high time laws and reforms are brought into the picture to avoid this from happening. Historically, there have always been certain defences for Marital Rape.

Politicians and judges have long argued that marital rape is not legal and cannot occur as a matter of public policy. The belief in British common law that the wife's acceptance to the marriage's terms for all time constitutes the husband's "right to sex". The common law that the husband's "right to sex" is established by the wife's unwavering acceptance of the parameters of the marriage for all time. Marital rape is still not criminalized in India which adds to the issues faced by the spouse. Another alternative lens to marital rape is the issues faced by men who are victims of marital rape. They are often considered a minority and not taken into consideration but they

comprise of a considerable section of the society. One of the most popular defences to criminalization of marital rape is the filing of false reports by wives against their husbands under the pretext of rape because of other reasons. One of the most practical ways to tackle this evil is by the widespread education and dissemination of information regarding women's equality in social, political and economic institutions as well as women's bodily autonomy before and after marriage.

Conclusion

Marital Rape has affected a lot of women in India. Though, hard to eradicate completely, certain steps can be made to reduce it to a great extent. Helpline numbers, counselling services and screening of women during visits will go a long way. Education and propagation of the effects of Marital rape and the punishment met out to offenders might help too. Marital rape has been criminalized in 150 countries, India is among the only 32 countries where marital rape is decriminalized. It is high time India identifies the fallacies and makes an active effort in safeguarding women and their rights after marriage.

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