

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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MARITAL RAPE A DECRIMINALISED CRIME IN INDIA

Authored By- Dr. S.M Abinaya

ABSTRACT

The term Marital Rape is defined as a “*non-consensual rape committed by a husband against his lawfully wedded wife*”. In a patriarchal country like India where the women are always suppressed and oppressed by men, these kinds of rape are common and often unnoticed and normalised. Marital Rape is a crime that is not punished nor acknowledged or established as a crime in the first place. The term marriage is being conceived as the wife being subordinate to her husband and she is seen as a property of the husband. The rights and freedom of a woman after marriage is being curtailed by her matrimonial ties, which in sake suppresses her and makes her a slave who must obey to all the commands of the husband without any choice. It is pertinent to mention that more than 70 Countries across the world had criminalised the marital rape, a few notable countries are Canada, Australia, Germany, France, Hong Kong, Japan, Nepal, Netherlands, Russia etc. However, the Marital Rape is not criminalised in India. The main theme of this Article is to analyse the history and status of women in India, the causes and the effect of the marital rape and the Legal relief for marital rape.

Keywords: Marital Rape, Marriage, India, Violence, Abuse, Women, Men, Oppression.

INTRODUCTION

The India has a great history which is both impeccable and peccable. In the Ancient history the women were given equal opportunity and treatment, but during the late Ancient period, women were considered as the property of men. The sexual crime against women were considered as

a crime against the property of men, rather than being conceived as the crime against women itself. During Medieval time, the treatment towards women drastically changed due the establishment of Slavery, societal beliefs and immoral customs. A wife was considered to be women who was obliged to take care of her husband needs and was deemed to be a property of the Husband. She was treated as a subordinate to men and was given a position to serve him and the children till her death. Several harmful customs such as Sati & Child marriage were abolished and the prevalence of the same constitute the harmful rituals and customs followed by the society. The empowerment of the women is a predominant factor that could curb the menace practices of the Society.

The women had been suppressed, oppressed and dominated for more than 100 decades. And only through the development of the Law, knowledge and awareness of rights we will be able to fight against the injustice graven to the women. However, it is crucial to mention that the harmful practices against the women still exist and there lies no laws to prevent the commission of the same. One of such practices are Marital Rape, which is highly prevalent in India. The criminalisation of marital rape is a far cry in India. Whereas several countries have criminalised the marital rape by including it in the definition of rape and assault. However, in a Country like India, it is a long fight. In order to understand the compounds leading to the non criminalisation of the marital rape and the necessity why it should be made as a crime, this article has been subdivided under to chapters to understand the causes and impact of the Marital rape and the Legal relief which can be claimed in India.

“Rights of the innocents can be revived only through the implementation of Law”

CAUSES AND IMPACT OF THE MARITAL RAPE IN INDIA

Marital Rape is an offence against human body and a sexual crime which is neither criminalised nor punished in India. As per the Indian Crimes Report, it is estimated that 70 % of married women were subjected to Marital Rape by their husband. The marital rape is prevalent high in both rural as well as urban area in India. The conflicting factor of increase of such crimes are on several factors such as non-criminalisation of marital rape, lack of awareness & knowledge,

dominance of men and immoral marital obligations. The marriage is considered to be sacred in every religion, however along with such sacredness there comes a set of immoral obligations which a wife has to endure to please the society and her husband. Women in this patriarchal society are dominated, suppressed and oppressed by Man. Several Legislations have been passed to ensure equal rights and protection to women. However there lies a great lacuna in our system. Offences against Human Body has been dealt in the Indian Penal Code. The sexual offences such as Rape and its punishment has been widely stated from Section 375 – 377. However the term marital rape has been exempted from being established as a crime, inspite of it having all the necessary characteristics of Rape.

Marital Rape has become a common problem which is not being viewed seriously or intervened due to the marital ties. The Husband instead seeing the wife as a person with feelings, dignity and self-respect; is seeing wife as his possession and property, taking her rights for granted.

The main factors that constitute the marital rape are due to the deteriorated mindset of the society in seeing women as an object, the dominance of men over the women, lack of awareness, knowledge and legislation to curb these kinds of menace activities.

In India the marriage is deemed to be a contract or agreement eg. Muslim Marriages. The wife is deemed to be a care taker, Partner and a property of men, she is deemed to be under the control of her husband when she is married. The Husband is deemed to have all rights over his wife including Sexual rights. Before the enactment of Legislations, the honour killings, sati, Virginty Check on the women were present. However, the abolishment of the above mentioned crimes through Law, restores our rights and hope in humanity.

The marital ties are being viewed and imposing the wife to be subordinate to her husband and must always do him the favours he is seeking for. This in turn had increased marital crimes like Dowry Death, Domestic Violence and Marital Rape in India. The Legislation has been Keen in criminalising the Dowry Death and the Domestic Violence. However, the Law is silent when it comes to Marital Rape which is the aggravated form of cruelty and Domestic Violence.

The impact of the Marital Rape is detrimental to the life of women, her dignity, her mental and

physical health. The victims have a life time impact and has to live with the perpetrator with fear.

THE LEGAL REMEDY

The Marital Rape or forced rape is Crime that is legally committed by the Husband over his Wife. There lies no Direct Legislations to criminalise these crimes. Hence there has been an immense increase of percentage in commission of these crimes. Exception 2 of Section 375 in Indian Penal Code exempts a Husband from raping his wife. However, it is pertinent to mention that all the major ingredients that constitute Rape as mentioned in Section 375 is present in the marital rape. However, our Legislation stays silent to these arising issues. There is a great apprehension from the side of Legislation and Public that, the criminalisation of the Marital Rape would cause false complaints and harassment against men.

Though there lies no direct legislation, the marital rape is considered to be a cruelty and a domestic violence in India. Whereas the available remedy to wife is to claim for divorce in the grounds of cruelty or to register a complaint to the Domestic Violence Officer against the violence committed by her husband. There lies no specific legislation to criminalise or punish the marital rape. However, the same is interpreted as a cruelty and a domestic violence.

There has been a series of interpretation by the Judiciary in dissolving the marriage in the grounds of cruelty when the spouse has been raped by her husband. And the Judiciary had also expressed its view to criminalise the marital rape, however there lies opposing views to the context by other Courts. Hence the status of Marital Rape in India is being considered to be legal.

Many Feminist, several Women associations and Non Governmental Organisations are campaigning against these cruel activities committed by the Husband. However, the Judiciary is reluctant to implement the same.

Article 21 and 14 of the Indian Constitution is the backbone of the rights of people. Whereas Article 21 states that Irrespective of Gender both men, women; irrespective of the marital status of the women, she has a right to life, which also includes her privacy and her choice to make

her independent decisions. Whereas Article 14 establishes a right to Equality, which means a women irrespective of her marital status must be given the same remedy as that of a victim who is being raped. There has been a great err while constituting the Exception 2 of Section 375 of Indian Penal Code, which curtails the right of married women in addressing or criminalising the marital rape. These kinds of crime against the human body must to be viewed seriously and be criminalised.

CONCLUSION

The criminalisation of the Marital rape can bring an end to such a heinous crime practised in our society. The same can be acquired through giving the aggressor a severe punishment. The Law has to be amended and these kind of marital crimes or sexual crimes has to be brought into the lime light. The Women has to be educated and empowered to fight against these immoral crimes. The Government and Non Governmental Organisations has to spread the awareness and knowledge about these crimes to women in both Rural and Urban Areas. The marital rape has to be viewed as rape and has to be punished. The Government must ensure that educate both men and women. The mindset of the patriarchy society has to change. Only these can make a revolution in the life of married women in India.

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