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IS MARRIAGE A LICENCE TO RAPE: MARITAL RAPE IN INDIA

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ABSTRACT

Section 375 of the Indian Penal Code (IPC) has the definition of rape. According to this section if the man-

- 1) 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
- 2) 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
- 3) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or
- 4) Applies his mouth to the vagina, anus, and urethra of a woman or makes her to do so with him or any other person.

Along with these things, certain explanations have been provided for a better understanding of the concept. However, from the definition, we can find out that men will be guilty of rape if he does any of the acts that have been mentioned in Section 375 of IPC if the consent of the women is not there. Marital rape in India has not been considered as a crime. It is not important for the husband for intercourse if the age of the wife is more than 15 years. The forceful sexual intercourse by the husband is a legal right of the husband. However, the law here is silent about the right of the women-

- a) All the legal right and remedy of the wife
- b) Related to the free consent of the wife for the consent in the sexual intercourse with her husband
- c) The psychological or the physical trauma of the wife that has suffered from such types of the act that is happening within the four walls of the room.

Can the court explain if they do not consider married women as a human being? With the help of this paper, I will be highlighting all the negative impacts of the law upon the wife for not even considering marital rape under section 375 of IPC and all of its suggestions.

INTRODUCTION

In the Oxford Dictionary, Rape is considered as “the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will”. In the Cambridge Dictionaries, the Rape has been referred to as “to force someone to have sex when they are unwilling, using violence or threatening behaviour”. Therefore with the help of these two definitions, we can find out that Rape has been considered as an act when one person is forcing another person for having the sexual intercourse and not taking the consent of the other person. In India and all the other country rape has always been considered as a heinous crime against women. When referring to report as given by the National Crime records in the recent year the crimes against the women has been increasing at a great pace¹. The law for helping women is strong in India. However, if the rate is increasing so rapidly then we are surely lacking something in protecting the women. In this 21st century, we have been talking about equality among men and women, and we talk about women empowerment but the question is still there upon the efforts of the Government because of the rise of the crime against women². In spite of having strict laws against women, we are lacking behind in controlling the crimes against women. The thing that is striking on my mind is that though we are having great law for the protection of the women but there has been no stoppage against the crime rate against the women³. The incidents like the one Nirbhaya do show us that we have not been able to protect our women⁴.

WHAT IS MARITAL RAPE?

Marital refers is referred to the situation when the two of the persons are married and then the wife is being forced by the husband to do the intercourse. This situation has not been considered as a crime in India. In India marriage has been considered as a sacrament, and one of the most important

¹ <http://www.oxforddictionaries.com/definition/english/rape>

² <http://dictionary.cambridge.org/dictionary/english/rape>

³ Chaitanya Mallapur, Crimes against women reported every two minutes in India, <http://scroll.in/article/753496/crimes-against-women-reported-every-two-minutes-in-india>

⁴ Delhi Gang rape Victims Friend Relives The-Horrifying 84 Minutes Of December 16 Night, for details of the incident, <https://www.indiatoday.in/india/north/story/delhi-gangrape-victims-friend-relives-the-horrifying-84-minutes-of-december-16-night-210874-2013-09-13>

aspects of society⁵. In the ancient period, it was expected that the husband and wife must not disclose anything related to their relationship beyond the wall of the room. After the commencement of the Hindu Marriage Act 1955, there have been some changes made in the marriage concept and the wife and husband can now legally claim for the grievances that they do hold against each other. However, in this great act, there is no mentioning of the marital rape. The wife's plight in India is very miserable in the cases of marital rape and because of the absence of the law, they are forced to keep their mouth shut for this matter. This topic is not even discussed among the people, there cannot be any actual data available. However, to do doing this research I tried to contact some of the women to ask about their situation, it was found that almost all of the women have faced this marital rape in their life. Now the question that arises is whether the husband will be considered guilty for committing something that is not even considered a crime in the country. The answer to the question is no, as not every day both the husband and the wife need to be in the same mood of sexual desires. Sometimes maybe that one of them may not be willing but surrender them so that they do not hurt the other partner feeling but the feeling of the sex must not be compared and considered as Marital Rape.

However in the relation among the husband and the wife when there is no healthy relationship and if the husband is abusing his wife every day in both physical and mental ways, the husband is ill-treating the wife then in those cases if the person has used the physical force and became violent if the wife refuses the sexual intercourse then this act must be considered as a criminal act and then that person must be considered as guilty of committing the marital rape. We can see that marital rape is the violation of Article 21 to the women which says the right to dignity. This act not only physically but mentally disturbs the women and this not well for the health.

WHY MARITAL RAPE SHOULD NOT BE CONSIDERED AS A CRIME

In India bringing any type of reform is very difficult, whenever the questions come related to the right of the women if it is right if the women want to abort or if they should stand against the marital rape it becomes worst. Article 14 talks about the Equality in the eyes of the law “The State

⁵ Justice M. Rama Jois, Legal and Constitutional History of India,247, Universal Law Publishing Co.,(7 th ed, 2010)

shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. However, when the applicability of this act comes for the protection of the rights of all the women, then the judiciary and the government both of them have failed in performing of the functions and have given the excuse that in the Indian history marriage has always been considered as a sacrament and the Indian society is a patriarchal society.

When the Delhi gang-rape came up Justice J.S. Verma committee in time of reviewing the existing rape case did suggest that the marital rape must also be included under section 375 of the IPC, however, the government refused to include the marital rape under section 375 of IPC⁶. Thus it can be concluded that the Indian law has given the license to the husband to commit the rape with their wife. And if any of the women decide to raise their voice by filing a complaint against their husband then in those cases she will alone have to face the consequences and then struggle for her right and then even after going through so much the court will be giving the judgment saying that “it was not possible to order a change in the law for one person.” In many of the research, it has been proved and found that the women in India the literacy of the women have not been subject to marital rape. In a survey that was conducted by the National Family Health Survey in the year 2005-2006 that was conducted among the 124,385 women in the 29 states of the country, it was found that 10% of the total women did report that their husband has used their physical force for having sex with them. In another study that was conducted by the International Centre for Women (ICRW) and the United Nations Population Fund’s (UNPFA) in the seven of the states of India then they covered 9,205 men and the 3,158 of the women aged between 18-49 from each of the states where one-third of the total men that were interviewed did admit that they have had forced sex with their wives⁷.

Even when there is such a strong data and the research report that has been given, the Indian Government has not considered the plight of those women who are suffering just because they do not want to lose the power in the Patriarchal society⁸.

“For generations, women have been given in marriage. Once married she is viewed as property that belongs to her husband and his family. A woman’s right to her body is not recognized” says

⁶ K.D.Gaur, Textbook On The Indian Penal Code,642, Universal Law Publishing Co. Pvt.Ltd,(4 th .ed., 2009)

⁷ India marital rape victims’ lonely battle for justice, BBC NEWS, <https://www.bbc.com/news/world-asia-india-32810834>

⁸ Id.

Ranjana Kumari of the Centre for Social Research. Marital rape has been considered as an offence in more than 52 countries which do include the United States, the United Kingdom, and our neighbour Bhutan⁹. In the words of Advocate Vrinda Grover “Whenever there is a movement to increase a woman’s access to justice, people who are afraid of women being empowered start talking about the misuse of law”¹⁰. According to Frederika Meijer, UNFPA representative “When women experience coercion and violence within relationships, it violates their fundamental right to live in safety, security and with dignity. An intimate relationship, particularly marriage, should be a space of mutual trust and respect”. After going through the whole discussion we can say that India is a male dominating country. Therefore if the marital rape will be included as a crime under section 375 of IPC then in that given case, the male over here will be losing their high power over the women. And they will obviously not want that and that has been the only reason for not including the marital rape as a crime¹¹.

It is a well-known fact that that the right to live with dignity is said to be the basic right of all human beings and it is irrespective of their sex in India and in International Human Rights law. And everyone has the right to curtail the given right upon the basis of sex, religion, race, etc. However, it is very unfortunate that the Indian Government has not been able to protect the right of the women when the question is about the marital rape¹².

INTERPRETATION OF SECTION 375 OF IPC

In section 375 of the IPC, the husband will be guilty of committing the rape only if his wife is below the age of 15 years. And if the woman is above the age of 18 i.e. she has attained the age of majority then there is no law that can protect her dignity. Can’t it be said to be a mockery, and if that is a case then the rape should also be said to be a crime if done with a female below the age of 15. It can be said that this rule is clearly depicting the biasness of the Indian law. The other important point that needs to be highlighted here is that in section 375 of the IPC there is no

⁹ Id.

¹⁰ Poulomi Banerjee, When no is not an option: Marital rape denies right over her body, Hindustan Times, <https://www.hindustantimes.com/india/when-no-is-not-an-option-marital-rape-denies-right-over-her-body/story-MJ3OIHpn9mtVfC3AXbbWOP.html>

¹¹ Id.

¹² Id.

mentioning of marital rape¹³. However, while reading exception 2 of section 375 that says “Sexual intercourse or sexual acts by a man with his wife, the wife not being under fifteen years of age, is not rape”. This particular exception evidently speaks about Marital Rape as here all of the persons were legally married.

It can be said that in Indian law there is no recognition of the marital rape being a crime but the exception 2 that has been given there under section 375 does talk and considers the marital rape though it comes up with a limitation¹⁴.

SUGGESTION AND CONCLUSION

Since the beginning women have been fighting for their rights. Even after such a long period with modernization, but the Indian society that failed to consider all the rights of the married women entirely when the question is about her dignity. We cannot say that the law in India is silent about the protection of the women but it can be said that they are restricted to some level. The pain that women goes through when rape is committed to her then that pain is irrespective of the person who has committed it. The woman’s pain cannot be less if the rape has been done by her husband. Then why that pain is not being able to reach to the ear of the Government or it can be said that the Government of India has been waiting for another Nirbhaya case with a little twist where the girl over here will be married and the offender here will be her husband. If this is the fate then God only knows who will be that unfortunate girl whose life will have to be sacrificed to help the other women here.

The only suggestion that I would like to give is that it is high time for including the Marital Rape as a crime under the section 375 of the IPC for the purpose of protection of the women and do a favour to the society. If the child is born out of the marital rape then how can he have a healthy life as we know a child will only be healthy if the mother is healthy and the future of the country depends upon our children.

¹³ Universal Criminal Manual, 547, Universal publishing house Pvt. Ltd, ISBN: 9788175349193.

¹⁴ Id.

“All involuntary sexual intercourse in marriage is not rape but all rape is involuntary sexual intercourse”.