

JURISPRUDENCE ASPECT OF PENAL LAW RELATING TO RAPE IN INDIA: SPECIAL REFERENCE TO MARITAL RAPE

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Abstract

In a country like India, where on one side, women are worshipped as Goddesses in temples and on the other side women are raped, humiliated in every corner of the society. Among all crimes against women, RAPE is considered to be one of the heinous crimes. In one of the cases, Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1SCC 490, the Supreme Court of India said that rape is a crime not only against a woman but against the entire society. Further, it also stated that "Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects." Even though in many judgments, the Supreme Court has expressed similar view for rape but when the question comes regarding marital rape, even the highest Judiciary and the Constitution not only fails to consider the gravity of the marital rape but also violates one of the essential and vital rights of the women i.e. Right to Dignity and Right to Privacy by making bias law against married and unmarried women. Through this paper, researcher will discuss about the gravity of marital rape and its need for inclusion in the penal laws.

Keywords: - Indian Penal Code, Marital Rape, Rape, Right to Dignity, Right to Privacy

JEL Classification: [K14]

1. Introduction

Women's rights are human rights. In terms of women's right, the Fourth World Conference on Women which was held in Beijing, 1995, is considered to be one of the important step forward in terms of women's human rights. Even after 20 years of this conference, women's rights are violated every day. According to Mr. Justice V.R. Krishna Myer, former Judge of Supreme Court of India once stated that women continue to suffer from womb to the tomb. Women in India are not only subject to gender bias but they are subject to sexual offences, sexual slavery, forced pregnancy etc. The

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Convention on Elimination of All Forms of Discrimination against Women which came into force on September 3, 1981 asked each state to eliminate every kind of discrimination against women, so that women can enjoy same political, social, cultural and economic rights. Also this convention asked to eliminate all kinds of discrimination in marriage and family life. Article 51-A of the Indian Constitution states that the States shall endeavour to foster respect for International Laws. But when it comes to Marital Rape, the Indian Constitution as well as the penal laws remains silent. No law describes about Marital Rape as a crime in India. It's like after marriage women's body becomes the property of the husband. And it's upon him to do whatever he can with her body and shockingly it will not amount to any crime. Even in one of the World Bank report it is found that compared to cancer, road accident, war etc. women died more due to domestic and sexual violence.

Rape is the most reprehensible atrocity committed against a woman. The crime of rape is considered to be as the highest torture inflicted upon the virginity, youth, motherhood and women hood itself. Rape not only causes physical torture to the body of the women but also intrusion upon her mental, psychological and emotional sensitivity which certainly is irreversible. Rape is therefore the most hated crime against the very basic human rights and violative of the women's most fundamental rights namely the Right to life guaranteed under Article 21 of the Constitution. In all society either primitive or civilized, a sexual intercourse by force or without consent has been prohibited and condemned. Sexual intercourse by a man with a woman against her will or without her consent is rape. The term "Rape" (Abdul, 2008) is defined as the act of seizing and carrying away by force, carnal knowledge of a woman without her consent. According to, Dr. Sir Hari Singh Gour "Rape is essentially a ravishment of a woman without her consent"¹. As we know that rape is criminal offence but when we talk about Marital Rape it is to be mentioned here that it's not a crime in India. Now the question is what marital rape is and why it is not a crime in India?

As per US legal.com, "*Marital rape means any unwanted sexual acts by a spouse or ex-spouse that is committed without the other person's consent. Such illegal sexual activities are done using force, threat of force, intimidation, or when a person is unable to consent. The sexual acts include intercourse, anal or oral sex, forced sexual behaviour with other individuals, and other sexual activities that are considered by the victim as degrading, humiliating, painful, and unwanted. It is also known as spousal rape*"².

According to California Penal Code Section 262, Spousal rape means:

"(a) Rape of a person who is the spouse of the perpetrator is an act of

¹ Ibidem.

² 'Marital Rape Law and legal definition', Uslegal, viewed 1st February 2018 from <https://definitions.uslegal.com/m/marital-rape/>.

sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) was unconscious or asleep.

(B) was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official."³

Thus, marital rape means rape by a husband with his wife.

Marital rape is considered to be a crime in 18 American States, 3 Australian States, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia but not in India.

Marriage is one of the essential institutions of society. And this institution is considered to be important for the procreation of children. But does it allow husband to do torture his wife for the satisfaction of male ego or to dominate his wife? During 1600 century, Sir Mathew Hale, the Chief Justice of England wrote that "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife had given herself in kind unto the husband, whom she cannot retract" (Rath, 2018). One thing which is clear from the statement of the Sir Mathew Hale, that anything done within the wedlock is justified. And consent is immaterial. Women's lives and wishes were not

³ Ibidem.

given importance in law, because of which till now women become the victim of cruelty. Also it's not the fault of the government but it is our fault that we are silent in this regard. Every woman should raise their voice against marital rape and it must be penalised. Marriage neither gives license to rape nor does it gives right to the husband to treat his wife as a property. As per Ambedkar's words from the same address: "Rights are protected not by law but by the social and moral conscience of society... if fundamental rights are opposed by the community, no Law, no Parliament, no judiciary, can guarantee them in the real sense of the word" (Sharma, 2016). Even it should be the morality of a person to treat her wife as a human being, to respect her and to allow her to enjoy her right with full freedom and she should not be the subject of any form of torture. Thus, Marital Rape means unwanted intercourse by a man with his wife obtained by force or physical violence without taking her consent. In one of the survey done by United Nations in 2013, it was found that a quarter of 10,000 men questioned in six Asia- Pacific countries, including India, admitted to have raped their wife.

1.1. Types of marital rape

Based on sexual assault, marital rape can be categorised into 3 types:

1. Force only Rape: In this kind of rape, husband uses threats and violence only to the degree necessary to coerce sex. It usually occurs in a relationship where violence occurs in sexual intercourse.
2. Battering Rape: Here women experienced both physical and sexual violence in the relationship. Often the rape occurs as a continuation of physical assault. And most of the women fall under this category.
3. Obsessive Rape: From the word obsessive one can find that this is sadistic rape. The abuser seems to be obsessed with sex, and the act itself is violent.

Some case studies on marital rape taken from various articles, journals are mentioned below, so that we can understand better when a forced intercourse will be called as Marital rape:

- Ms. Kumari, a mother of four in a recent interview with The Wall Street Journal, claimed that her husband "was rough" on her that night because she denied him intercourse. "He had his way that night," says Ms. Kumar, who alleges her husband forced her to have sex with him. "It wasn't what I wanted to do but who am I to say anything?" Her husband, a daily-wage laborer, could not be reached for comment. Ms. Kumari, 28, who earns her living working as a house cleaner in an upscale east Delhi neighbourhood, says "many women in her locality" - a slum in the eastern reaches of the capital - "are forced daily" to have sex with their husbands. "There is no law which allows us to press charges against our husbands," she says (Rana, 2013).

- "Asha (name changed) aged 42 years, has spent 24 years of her life dreading the next assault. Sitting at a counselling centre in a Mumbai suburb, she vividly recalls each episodes of violence: of being slapped, beaten with a

stick, sexually abused in private and verbally abused in public, being abandoned, and later, treated like a slave. But she says she has clung to her 'married' status for it ensures a roof over her head, a one-room-kitchen flat that is in her husband's name. Having studied up to Class X, she has taken up odd jobs, but says she can't fend for herself with her poor earnings. She first lodged a domestic violence case against her husband in 2007. Nine years later, in August 2015, Asha landed in the emergency room of a public hospital with injuries on her private parts that doctors noted as those inflicted in a sexual assault. At the police station, the assault was seen as "a matter between a husband and wife" and no case was registered" (Srivastava, 2016).

- "Dilaasa analysed 13 cases of sexual violence from the emergency rooms of two of Mumbai's public hospitals, Rajawadi in Ghatkopar, and Bhabha (where the staff has been trained to identify cases of sexual violence) between 2011 and 2014 and found that only in five instances did the police register a case, mostly under Section 498 (A) (domestic violence), or the contentious Section 377 (unnatural offences). Examples: A 31-year-old reached the hospital with bruises all over her body, and though the police recorded her statement, they didn't register a case; no case was registered in the case of a 22-year-old whose husband forced sex on her and later even doused her with kerosene. In some cases, the police did not know what to do after a woman reported sexual assault by her husband. Dilaasa's domestic violence data shows 60% married women report sexual violence, forced sex being its most common form. "Very rarely do patients tell us about marital rape. In a few cases, we see injuries and probe them. They are not aware this is wrong," said Dr Rekha Davar, head of gynaecology at JJ Hospital. There is a pattern to the silence: women stay quiet about the assault when young, but are willing to report it at a later stage. Recalling a particularly gruesome case where a man administered electric shocks to his wife's vagina, lawyer Manisha Tulpule, who handles cases of domestic violence and family matters, said the woman complained after enduring 25 years of this: "The woman was over 50 when she complained." Ms. Tulpule said that in many cases, women are in their forties when they speak out."⁴

From the above case studies, I would like to highlight certain points before dealing with the law provisions-

- **Forced Sex-** In cases of Marital Rape forced sex is common and that too without taking the consent of the women like in any other rape cases.
- **Physical Torture-** Apart from Forced sex, Physical torture is also found in some cases. And in some cases due to the violent nature of the husband women were hospitalised. Whenever a woman is hospitalised in such conditions, sometime complaint is registered

⁴ Ibidem.

under section 498A of IPC or 377 of IPC. But no cases are register under section 375 of IPC.

- **Taboo**- Even any discussion related to marital problems with family members is still considered to be as a taboo especially topics relating to sexual assault. Also regarding marital rape I would like to high light one more point that it is not limited to poor or uneducated family or it's not a problem related to illiterate person alone.

2. Legal provision relating to rape

As per Section 375 of Indian Penal Code, A man is said to commit "rape"⁵ 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
- c. 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
- 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 on 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.

⁵ Universal Criminal Manual containing Code of criminal procedure, 1973, Indian penal code (45 of 1860) Indian Evidence Act, 1872 as amended, 547-548, Universal Law Publishing Co. Pvt. Ltd, New Delh.i

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.

Critical Study of sec. 375

1. Law is silent regarding the rights of women who are victims of marital rape.

2. According to Exception 2 of Sec. 375 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. As per Indian Majority Act, every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before. Also, as per Section 5 of Hindu Marriage Act, 1955, which deals with condition for a Hindu Marriage the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage.

If this is so, then why Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not considered as rape? As per the Indian Majority Act, she is minor and law is silent or not accepting the crime of men because India is a patriarchal society. Here in this regard, one can find the statement of Maneka Gandhi, Indian Union Cabinet Minister for Women and Child Development, regarding marital rape at Rajya Sabha in 2015, “It is considered that the concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors like level of education/illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat the marriage as a sacrament, etc” (Dutta, 2017). It is surprising to see that she is making such a statement despite the fact that she herself is a woman. From a woman sitting in such a higher position, nothing else can be expected except good work for the betterment of women and definitely not such a statement.

3. Vrinda Grover, lawyer and women’s rights activist, “There is increasing evidence in the form of documentation that there is a high incidence of rape within marriage.” She says it is the responsibility of the legislature and the judiciary to protect women’s rights” (Srivastava, 2016).

4. Exception 2 of 375 IPC, clearly speaks that marital rape is a crime but only in cases where wife is under 15 years. This exception failed to include

the marital rape for women of all ages which in itself biased in nature. Also Article 14 speaks about equal protection and equality before law. But exceptions to Section 375 IPC failed to provide benefits to all married women as they are not protected under 375 IPC in cases of marital rape. Also the Right to privacy under Article 21 of Indian Constitution failed to protect the right of the married women from marital rape. As, it has been discussed in numerous cases, that all forms of forceful sexual intercourse violates the right of privacy.

5. On one hand, the Law condemns child marriage that is why the age for consent or we can say the age of majority has been kept to be as 18 years but the law is silent in its applicability. If the intention of the law making body is to strongly abide the rule of majority age, then in that case, the Exception 2 of Section 375 IPC, should be read like ***“marital rape is a crime but only in cases where wife is under 18 years”***. The Indian Majority Act, The Child Marriage Restraint Act, 1929, Hindu Marriage Act, 1955, all these three laws are contradictory to Exception 2 of Section 375 IPC.

6. Also as per The Protection of Children from Sexual Offences (POCSO) Act, 2012, a girl under 18 years of age is treated as a child under this act and sex with them will amount to rape whether it was with consent or without consent, but if the girl gets married, then she is no more a child under the exception 2 to Section 375 of the IPC and sex with them will not amount to crime any more. This is again a mockery of law when question regarding rights of the women is in issue.

3. Judgements

When we are taking about Marital Rape it is to be discussed here that the first case which was registered for Marital Rape was ***Phulmani Case***. *It was after this case only the age for marriage was increased.*

Queen Empress vs. Hurry Mohun Mythee⁶ Or Phulmani Case

“In 1890, eleven year old Phulmani died of marital rape by her twenty nine year old husband Hari Maiti. Her mother Radhamonee’s account of seeing her daughter lying in blood and succumbing to the injuries of forced intercourse paved the ground for the age of consent to a debate. Hindu norms mandated sexual intercourse on men when their child wives attain puberty and the colonial law only penalized marital rape when the child wife was under the age of ten then. Since Phulmani was older, Hari Maiti was not accused of marital rape and murder and charged for rash acts. However, this case pushed the colonial government to rise the age of consent for marriage of girls to twelve. More importantly this case raised questions whether families or

⁶ Indian Law Reports, 18 Cal. 49; J Wilson, July (1890).

communities had the right to inflict pain or suffering on women using the plea of tradition. Both these cases paved the ground for not only raising the age of marriage of girls but more importantly confront issues of choice and consent of women in marriage. These cases in the 19th century were precursors to later discussions and legal interventions on child marriages in 20th century in India” (Goswami n.d.).

As I have already discussed above that Indian Law doesn’t recognize Marital Rape so, hardly there is any case relating to it. Most of the times, any complaint relating to it is filed under Section 498 A of *I.P.C.* or in hurt or grievous hurt depending on the situation.

Shyam Narain v. State⁷

Since rape is an assault on individuality and inherent dignity of a woman and a crime against whole body of a woman and the soul of the society hence, it demands just punishment from court.

State of Haryana v. Janak Singh⁸

Since offence of rape, violates dignity of a woman and erodes her honour, dwarfs her personality and reduces her confidence level hence it violates her right to life guaranteed under Article 21 of Constitution.

Deepak Kumar v. State of Haryana⁹

Crime against women and children violates human rights and it’s a crime against society as it causes psychological, physical harm and degrades and defiled victim’s soul, honour and dignity and leaves a permanent scar on life.

State of Maharashtra v. Madhukar Narain Mardikar¹⁰

In this case, the question before the Supreme Court was that whether a prostitute has a right to privacy and to protect herself from sexual assault? In this case, a police inspector was dismissed from service on his proved involvement in the act of rape. The High court of Bombay quashed his dismissal on the ground that the woman, whom he was alleged to have raped, was a woman of easy virtue.

On appeal, the Supreme Court overruled the decision of the Bombay High court. Speaking on behalf of the Court, Ahmadji, J. held that a woman even of so-called easy virtue was entitled to protect herself against unwilling sexual assault. This was part of her personal liberty, which is included in the right to privacy. Learned Judge observed:

⁷(NCT of Delhi), 2013 (7) SCC 77.

⁸2013 (9) SCC 43.1

⁹2013 (7) SCC 67.5

¹⁰AIR 1991 SC 207.

“She was honest even to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law.”

Sakshi v. Union of India and Ors,¹¹

In this case, Sakshi, an NGO was focusing on violence against women, filed a petition before Supreme Court of India to include all forms of forcible penetration as rape. Later after this case, in 172th Law Commission report, rape law in India under section 375 was amended and included all forms of sexual assault. But marital rape in all cases is still not recognized as crime.

All the above cases are related to rape and the Supreme Court has given statements relating to rape as most heinous crime but the same court is silent relating to marital rape issue. Even a prostitute has a right to file a case for rape. But married wife has no right to file a case against her husband for marital rape. This is the fate of the married women. Another point which needs to be highlight here is that as per the current Rape law and the case study cited above, there are two things which need to considered:

- Medical evidence in Phulmani case testified that “the girl, although was well developed for her age, was immature, had not attained puberty, and was wholly unfit for sexual intercourse. The injury inflicted was a rent in the vaginal wall on the right side of the uteri, measuring 13 / 4 inches in length and 1 inch in breadth. Copious hemorrhage took place immediately after intercourse. The girl died of exhaustion 131 / 2 hours after the act. The vagina was found to be distended with a clot measuring 3 inches in length by 11 / 2 inches in breadth, and there was a globular hematoma in the right broad ligament, measuring 3 inches in diameter... The evidence in this case clearly established the fact that the fatal injury was caused by sexual intercourse of this mature male, with an immature female, his wife” (Pande, 2012). So, this was the reason behind the death of Phulmani case i.e. rupture of uterus in girl-wife by sexual intercourse. Now in 21st century when most of the marriages are conducted after 15 years of the girl and also where child marriage is illegal, in that case, like Phulmani case will not be expected anymore. But this is also true that with the span of time, crime against women has also increased among which one is marital rape. Also due to not recognizing it as a crime has increased the rate of this crime in recent times. No law permits torture to his wife, sexually or physically. Sex is a pleasure for both as a couple and not for torture. So, sex which is obtained by force by hurting your partner cannot be pleasure. From pleasure one cannot be hospitalized or will get bruises on her

¹¹Writ Petition (Crl) 33 of (1997).

body. By not including this crime in penal provisions, the law indirectly supports the crime against women.

- Also consent is one of the important factors to judge when a case will fall under the category of rape. According to John Stuart Mill “A woman is a slave to her master – husband he can claim from her and enforce the lowest degradation of a human being, which of being made an instrument of an animal function contrary to her inclination” (Kumar, 2018). But now slavery system does not exist anymore. Women also have the same right as men had. Then why in a marriage a woman does not have a right to say or say no to torture or fight for her dignity? Why still it is considered a taboo to discuss her problems with others except in severe cases where medical assistance is required? It’s true that marriage is one of the essential SAMSKARA but this SAMSKARA also did not allow anyone to disrespect his wife. If this is so then there should not be the example of SRI RAM (Ramayana).

- Another question which may come regarding the cases is that which cases are to be included in Marital Rape provisions? So, for that the answer is as follows: 1) conduct of parties, 2) medical history, 3) psychology towards each other, and these three things can help us to understand the cases for marital rape. Also like in other rape cases here also one can find the same elements except here the victim is legally married wife of the accused.

- Medical evidence is another important factor to understand the cases of marital rape.

4. International law to combat crime against Women

As per Article 2 of Declaration on the Elimination of Violence against Women, 1993 Violence against women shall be understood to encompass, but not be limited to, the following:

“(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs (Singh & Upadhaya, 2017, p. 779).”

As per Article 4 of the same, States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue

by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

“(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to

eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate” (Singh & Upadhaya, 2017, pp. 779-780).

Thus, from here we can find that at International level also marital rape had been strongly condemned and various measures has been suggested by which violence against women can be checked and stop. But Indian Government not only failed to consider and apply those measures for the safety of the women but it does not even consider marital rape as violence against women.

5. Jurisprudence aspect of rape law

According to the legal philosophy of Jeremy Bentham the function of law is to emancipate the individual from the bondage and restraint upon his freedom. Once made free, the individual will himself look after his freedom. According to him “the end of the legislation is the greatest happiness of the greatest number” (Tiwari, 2013, p. 75). The purpose of the law and thereby the task of the government is to bring pleasure which is the consequence of good and to avoid pain, which is the consequence of evil. Pleasure and pain are therefore the ultimate standards on which a law should be judged. According to Bentham, Security and equality form the main objective of legal regulation.

Also as per to Kelsen, a theory of law must be free from ethics, politics, sociology, history. In other words the law must be “Pure” (Tiwari, 2013, p. 91). According to him every country has its own ground norm from which the other norm is being originated. A ground norm is the constitution of a country from where other laws originates. And all these laws should be according to the constitution. Article 14 of the constitution speaks about equality and equal protection before law. But Section 375 Act does not consider marital rape a crime leaving the exception. Then, how can we say that Section 375 is a good law as per the jurisprudence aspect, victims of marital rape are still not getting any relief before law? So, when a law whose motive is to punish the rape accused but fails to perform its function can't be called as a good law.

Also as per Rosco Pound theory of law, as a tool of social engineering, with the change of society, or with change of time, law should be changed according to the need. But when we speak about the marital rape, law is stagnant and silent. Even in many surveys it has been proved that cases of marital rape has increased and one can find such details from medicals where victims come for treatment.

In the present scenario, it is also not possible to find accurate data of marital rape as normally any cases of sexual violence is treated under section 498 A of IPC and relevant sections of Hurt. Many times, the cases are not even reported before the appropriate authority as it is considered a taboo here.

In one of the research it was found that Married men, who are alcoholic and who drink very often, are more likely to indulge in sexual violence with their wives. Also most of the victims are uneducated. Even in rural areas married women reported sexual violence more compared to urban areas.

According to Anuja Shah an online senior family therapist at ePsyClinic once stated that, “I once got a very disturbing case where the woman was so traumatized that the child born out of wedlock reminded her of the brutality of her bedroom. She adds, once married, men think that any sort of sex he indulges in with the wife is normal. He believes that even if he forces his wife to have sex, it cannot be called rape. And most often I have observed that in such cases, there is some sort of existing torture or physical abuse in the marriage. Marital rape simply means that husband doesn't have sensitivity towards the wife” (Sharma, n.d.).

Even according to Priya Nanda, group director of social and economic development at the ICRW (International Centre for Research on Women), “The reason men don't want to criminalize marital rape is because they don't want to give the woman the power to say no” (Sharma, n.d.).

Conclusion and suggestions

After the above discussions the following are the suggestions-

1. More research is needed in this topic to find out the accurate cases for marital rape.

2. Medical students should be given training to handle cases of marital rape with special care like in other Rape cases.

3. Marital Rape should be included under 375 of IPC. As law should not be different for married and unmarried women in cases of rape. Whatever the case may be NO means no. It should be that anything against the consent of women (married or unmarried) will be a crime.

4. Not allowing marital rape in penal provisions is like giving males the licence to sexually assault women for fulfilling their demand of sex or to rape her.

5. For the protection of women and to control the crime against women marital rape should be considered as a crime.

The only conclusion from entire study is that with the change of society and with immerging new issues law should be changed especially problem relating to women should be tackle immediately. As from beginning they are the victim of society as a whole.

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