

Marital rape: an unspoken crime

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Abstract

Marital rape, though a heinous crime, is not a criminal offense in India, with the only remedy being that of compensation. “Marital rape is one manifestation of violence in the home. It involves more additional injuries than sexual assault by any other type of perpetrator”². Yet, there is a dearth of literature in Australia – a silence that appears to have continued despite recent legislative changes that have abolished the immunity of husbands from prosecution for rape.

The current article examines three dimensions of the crime and how they are experienced by the victims and constructed within the courts: incidence, the dynamics or nature, and the effects. Differences are apparent with few rapes prosecuted, the nature of coercion interpreted narrowly by the court without recognition of the range of duress that can be a part of a violent marriage, and the harms often minimized by judges who see the rapist’s marital tie to his victim as a mitigator. These examples indicate the need for women’s experiences to be validated and their reality reconstructed in the society and in the law .

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²Patricia L. Easteal, *Marital Rape: Conflicting Constructions of Reality*, 3 WOMEN AGAINST VIOLENCE: AN AUSTRALIAN FEMINIST JOURNAL 23, 23-30(1997).

Introduction

A quick turn around a corner and my planet becomes sand on the shore of a dying Universe. A life of subordination, violence, abuse, taunts, labor and submission: Such is thy life, O woman!

The consequence of living in a patriarchal society is that we are surrounded by an ambience of male dominating conventions and customs, which brings with itself uncounted atrocities and agonies against women. One of the major atrocities against women is Marital rape.

Marriage is considered as the most sacred union of two souls. But one of the most grave crime takes place in the cover of this sacred union i.e. Marital Rape, it is basically a non-consensual sexual intercourse with the wife. Bertrand Russell in his book has said that Marriage is the commonest source of livelihood for the woman and the demand for sex in this institution is even larger than the prostitution.

In India, only Rape is a crime and Marital Rape is an exemption. Section 375 defines rape, it makes an exemption (Exception II) where husband is perpetrator saying that “Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.” Even the judiciary has accepted that making marital rape a crime will damage the pillars of marriage. One of the most important case law in this regard is *Sree Kumar v. Pearly Karun*, the wife was subjected to sexual intercourse without her will by her husband when she went to live together with her husband for 2 days as outcome of settlement of divorce proceedings which was going on between the two parties. Hence the husband was held not guilty of raping his wife though he had done so. In spite of criminalizing marital rape as an offense they think sex as an essential of marriage. In cases like *Shakuntla Kumari v. Om Prakash Ghai*⁴ it was held that a normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. Also in a 2012 judgment *Shashi Bala v. Rajiv Arora*⁵ it was held that indisputably, there *has to be* a healthy sexual relationship between a normal couple. In a recent case *RIT Foundation v. Union of India*⁶ which is yet to be decided, petitioners strongly argued that the exception given to Section 375 of IPC (Rape) which non-consensual intercourse by the husband with the wife is not Rape saying that the exception is unconstitutional on the grounds that it discriminates between married women

³1999 (2) ALT Cri 77

⁴(1983) Del 53(India).

⁵(2012) Del 1717(India).

⁶ Writ Petition (Civil) No. 284 of 2015.

and unmarried women, also it does not take into consideration the fact that this exception frees the man who tries to force himself on his partner.

But isn't marital rape graver offense than rape. Should not it be criminalised? Rape shakes the dignity of a woman and what if, this happens in the four corners of marriage, it merely breaks down the trust of women. Even if she tries to raise voice against this crime, she is taught that she somehow has to adjust to these atrocities and not only our society even the constitution says that women has to adjust to this atrocity as the rape is committed by the man she knows and that is not a big deal. Our constitution needs to understand that rape is rape, even if it is committed by the husband.

The problem does not lie with the women, the problem does not lie with the men, the problem lies with the patriarchy, the society always teaches the woman to adjust and also she is considered as the property of the husband and he can use it as per his wish. The argument which is given to defend the criminalization of Marital Rape is that marriage is a sacred institution and it should be protected from all these damages but the question is what is the use of protecting an institution where women dies daily and that also by the hands of the person whom she trusted with blind eyes and had given her heart and soul to him.

Not only this, if legally seen this exception of marital rape violates the human rights of a woman, also it violates Article 14, right to equality as it distinguishes between the married women and unmarried women, it violates Article 15 as it discriminates on the basis of intelligible basis, it violates Article 21 as it takes the right to personal liberty of a women.

Being a developing country and having a huge rise of scholars in the field in the law, no one thinks that marital rape is an issue which is to be discussed. And if someone tries to discuss it, the lessons of marriage are given to him.

Our Indian penal code says that a husband can go to the court if a wife refuses sex but a wife cannot and unfortunately there are no laws as such to punish a man who undignifies a women, a man who breaks a trust of someone. There is utter need of bringing laws to safeguard women as this is high time to taking into consideration the atrocities over the women. Women should not be subjected to abuse or violence committed by parties.

This is high time to bring in laws for the protection of women because women are a core of the society's formation and if they are not safe in their own house, then it is a big stigma on the whole society. Also it is needed to be understood by everyone that women never loses the right to say "NO" not even after marriage. Marriage can't be used as a license to rape somebody, sexual intercourse without consent should be criminalised even if the perpetrator is the husband.