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Marital Rape A Privileged Crime

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ABSTRACT

Aim: To bring more awareness about marital rape in the society in order to make women more vocal about it, exposing the extent of damage that a marital rape can do on a woman's physical and mental health at last why new laws should be made regarding marital rape.

All over the history there is prevalent ideology that man own women, women can't revoke man's will and there is an "implied consent" once they are married. it's a shame that women were treated as objects with no individuality.

Rape is just not an intercourse without consent, its stealing and rupturing a women's dignity which might even leave an unhealable scar on her soul. rape is as gruesome as murder or even more, the amount of trauma the women has to go through after the rape is immeasurable, no man can put it in words. When such trauma, pain and agony is caused by a man she shares her life with is unspeakable evil. A rape is a rape no matter it is committed by whom. The worst part of the marital rape is the women are going to be raped again and again, most of the men use coercion, use force, for torment them for having sex, the thing called consent doesn't exist to them, marital rape is not only limited to the vaginal rape, oral and anal are also a part of it.

In the world scenario, New Zealand, Albania, Tunisia, china, Taiwan, united kingdom, Denmark, Hong Kong, united states, Algeria, Belgium, Ireland, Mauritania, Norway, Indonesia, turkey, Thailand, Mauritius, Africa, Scotland, Australia, France, south Africa, Italy, Philippines, Sweden, japan, Germany, Canada have criminalized marital rape and not only made special provisions for marital rape but also distinguished marital rape from rape. More than 100 countries recognized marital rape as an offence violating human rights. But sadly, India is not one of these countries. There are many legislations for protection of women, and safeguarding women's rights but Indian judiciary and government is overlooking the most deep-rooted and complex issue of marital rape which is probably the most common crime committed and criminals are roaming free hence the "privileged crime".

Marital rape is still a taboo in Indian society, where it is linked with culture, prestige of family, society. Many people even refuse to speak about it. Marital rape is one most

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gruesome and traumatic experiences once can go through. Everyday many women go through this and are not able to do anything about it though it is proving detrimental to their mental and physical health.

We as citizens of India have to bring awareness about marital rape and make women comfortable to speak openly it. We should try to educate women who are especially not aware of their rights. We as citizens should be vocal about what kind of true evil marital rape is and educate men that it's not okay to force himself on his wife. It's not just about women non criminalization of marital rape is promoting the toxic ideology that men are owners of women's bodies, women's consent doesn't have any value, men are superior to women, they can be rapists to their wives and walk free. These are the ideologies we are going to pass on to our younger generations we don't act on the issue of marital rape. Judiciary should make new laws and send a message that marital rape is not okay, it is as gruesome as rape and it will be punished in the same manner that rape is punished and a women's consent is the priority, nothing should be detrimental either to her physical or mental health.

I. AN OVERVIEW ON MARITAL RAPE

The word rape traces its roots to Latin “Suspine Stem Raptum” which means to snatch, to steal or to carry off. The law defines rape as sexual assault committed by one or more persons without the consent of other person, the act maybe carried out by force, coercion, manipulation or with a person incapable of giving valid consent.

Non criminalization of marital rape traces back its origin to statements made by sir Mathew hale, 17th century, England who was a chief justice:

“Husband can't be held liable for the crime of marital rape because, he married his wife with mutual consent and contract, she has given herself to him, husband has all the rights on her and wife can't refuse” (marital rape , 2020).

All over the history there is prevalent ideology that man own women, women can't revoke man's will and there is an “implied consent” once they are married. it's a shame that women were treated as objects with no individuality.

Rape is just not an intercourse without consent, its stealing and rupturing a women's dignity which might even leave an unhealable scar on her soul. rape is as gruesome as murder or even more, the amount of trauma the women has to go through after the rape is immeasurable, no man can put it in words. When such trauma, pain and agony is caused by a man she shares her life with is unspeakable evil. a rape is a rape no matter it is committed by whom.

Usually when we hear the term rape we think of a evil, malicious stranger forcing an women to have an intercourse or molesting her, in simple terms a monster, we all hate them, dread their existence and we participate in huge public demonstrations and protests to hang them, bring justice to the victim, what about the same monstrous act committed by the same monster but the victim is his own wife. Now, suddenly all the open minded, we want justice kind of people stay calm and just say “it’s just a minor issue between a husband and his wife we are nobody to interfere”. The reason for this is they both bound to each other by the scared vows of the marriage, it’s just an iron layer of protection for these monsters to hide, if he can’t respect the consent of his own wife, how is he going to respect the consent of other women ? if he can commit a crime against his own wife with whom he is sharing his life with, the person who was supposed to be her protector, is the person subjecting her to unspeakable evil. if they can subject their wives to such atrocities, they are capable of doing anything.

Today in the 21st century people still don’t quite understand the concept of marital rape, especially women who are uneducated or relatively less educated, the age old dogma that prevails in Indian society which teaches people that men are superior to women, women are subject to their husband’s wishes, husband is equal to god, women can’t say no to their husbands and so onwhich all imply the same point that women don’t have right on their bodies and women are a man’s property. So, it’s just rounds up to a man enjoying his property, which is pathetic. The same dogmatic idea reflects in the lawmaking where rape is conceptualized as a stranger enjoying other man’s property rather than defining rape as act of atrocity which destroys her freedom, dignity, right to enjoy her life, right to say no, having full control over what happens with her body but no that’s not the case. The rape within the marriage is not defined by law because, the idea that women is man’s property prevails and a man enjoying his right is not a crime. Men always have seen women as an instrument of pleasure, an object which they can use whenever they want, rather than seeing a woman as person, a living being, who has opinions, who has interests and disinterests.

There is common perception in the society is that marital rape is not a serious offence, it’s just a simple issue between husband and wife, but the truth is marital rape is as gruesome as a murder or attempt to murder or any other case of physical violence. A research study conducted in America states that women who have reported the marital rape were usually found with the following injuries:

- Injuries to vaginal and anal areas
- Lacerations
- Soreness, bruising, torn muscles

- Fatigue, vomiting
- Broken bones
- Black eyes, bleeding noses
- Vaginal stretching
- Pelvic inflammation
- STDs
- Miscarriages
- Still births
- HIV
- PTSD
- Bladder infections
- Shock
- Intense fear
- Anxiety
- Depression
- Sexual disfunction (raquel kennedy, 2006).

The worst part of the marital rape is the women are going to be raped again and again, most of the men use coercion, use force, for torment them for having sex, the thing called consent doesn't exist to them, marital rape is not only limited to the vaginal rape, oral and anal are also a part of it. According to Indiana coalition against sexual assault there are three different kinds of marital rape they are:

Force only rape: where primarily there is only verbal abuse or use of force only occurs during sexual intercourse, it implies that husband uses certain degree of force or coercion or verbal threats or verbal abuse in order to induce wife to have intercourse.

Battering rape: where husband causes physical and emotional trauma to the wife by physically abusing her, causing her harm and emotionally disturbing her, rape is an extension of the trauma caused by him. in these kinds of cases husband causes her not only physical harm but also disturbs her emotionally with verbal abuse and rapes her on regular basis.

Obsessive rape: where husband rapes in obsessive manner, implying an addiction or psychological disorder. it is also observed that he gets aroused when he uses violence.(marital rape , n.d.)

Research study states that women are more prone to marital rape under the following circumstances:

- Abusive partners
- Pregnant women
- Weak and ill women
- Women with dominating partners
- Men with addictions
- Men who view women as their property (raquel kennedy, 2006)

Marital rape is the worst kind of rape, because it's done by the person whom you trusted your life with. In India women don't tend to report marital rapes because there are no particular laws regarding it, the society won't accept it, they just keep quiet because their families will fall apart, most of them even don't know what is marital rape, rest of the keep quiet and bear everything without saying a word because their family and society won't accept it, we live in a society where talking about sex is a sin and reporting a marital rape with all the male superiority dogma going on in the society makes it impossible to women go and openly speak about their issues. in the absence of apt statistical data, an article published by the Hindu throws some light on the circumstances in Mumbai where in an NGO Sneha's 664 cases were reported for domestic violence in 2015 for crisis counselling, in which 159 women reported marital rape (srivastava, 2016).

According to Dilaasa, a counselling centre based on an hospital in Mumbai, number of marital rape cases reported are very few because, marital rape is not included in the definition of rape in Indian penal code (srivastava, 2016)

In the world scenario, New Zealand, Albania, Tunisia, china, Taiwan, united kingdom, Denmark, Hong Kong, united states, Algeria, Belgium, Ireland, Mauritania, Norway, Indonesia, turkey, Thailand, Mauritius, Africa, Scotland, Australia, France, south Africa, Italy, Philippines, Sweden, japan, Germany, Canada have criminalized marital rape and not only made special provisions for marital rape but also distinguished marital rape from rape. more than 100 countries recognized marital rape as an offence violating human rights.

In United States it is reported that in the one third of the married women have unwanted intercourse and 10-14% of the women are raped by their husbands (raquel kennedy, 2006).

But sadly, India is not one of these countries. There are many legislations for protection of women, and safeguarding women's rights but Indian judiciary and government is overlooking the most deep-rooted and complex issue of marital rape which is probably the most common crime committed and criminals are roaming free hence the "privileged crime".

II. ROLE OF JUDICIARY

Judiciary had completely abandoned the idea that married women too have personal liberty and personal interests, marital rape is one of the most heinous crimes that nobody talks about in the society, if a women is married it just doesn't imply that her husband is her god, in the modern day judiciary should make new laws regarding marital rape and treat it equal to the offense of rape. judiciary being the most powerful organ, it has power to change the fates of the married women and make sure that justice is served. rape is a rape no matter committed by whom.

These are the few landmark judgements relating to marital rape.

[EMPEROR VS SHAHU MEHRAB] AIR1917 SIND42

The husband was convicted for the death of child wife, for negligent intercourse.

[QUEEN EMPRESS VS HAREE MYTHEE] 1891ILR18CAL.49

The court held that husband can't be punished for rape of his wife who is above 18years.

[STATE OF MAHARASHTRA VS MADHUKAR NARAYAN MANDIKAR] AIR 1991SC 207

The court held that prostitutes have right to say no to unwanted sexual intercourse. The principle of right to privacy of one's body has been laid down. The following provision has been given for offences committed by strangers but nothing had been laid down for the offences done by husbands.

The Indian judiciary must make amends in the laws, they should recognize that marital rape is far more dangerous and gruesome than it is presumed to be, the victim will be subjected to assaults numerous times, resulting in degradation of victim's mental and emotional health, not only enduring the assaults but to cohabit with a rapist is a living hell. the trauma that the victim goes through on everyday basis can't be measured and certainly can't be compensated with anything. The only thing that can be done is to make sure that our future generations women doesn't suffer and men doesn't stay in the assurance that they can rape their wife, treat her like an object and fulfill their whims.

The laws should be made for the better generation and a better nation.

III. PROVISIONS FOR MARITAL RAPE IN INDIA:

According to section 375 IPC:

Rape – a man is said to have committed the offense of rape under the following circumstances:

- Against her will
- Without her consent
- When the consent is given but by putting any person under threat or harm

- By any other person who is not her husband
- Consent given by not understanding the circumstances, intoxication, unsoundness of mind
- With or without consent, when the victim is under 16 years of age, mere penetration is sufficient

Exception: a man having intercourse with his wife who is not under 15 years of age doesn't amount to rape (section 375 ipc , n.d.).

According to section 376 IPC:

punishment for rape- (1) whoever commits rape shall be punished for either description for a term not less than 10 years and extending up to a life time and also fine except for the subsection (2).

(2) whoever –

- a) A police officer committing crime
 - i. Within the limits of his appointed police station
 - ii. In the premises of the station
 - iii. Rape of a women in custody of a police officer subordinate to him
- b) public servant committing rape of a woman in his custody or by an officer subordinate to him (or)
- c) a member of armed forces deployed in an area by central government commits rape (or)
- d) management or staff of jail or remand home or place of custody established under law or women's or children's institution commits rape (or)
- e) management or staff of hospital committing rape in the hospital (or)
- f) guardian, teacher or relative or a person who is in position of trust commits rape(or)
- g) committing rape during communal violence(or)
- h) committing rape of a pregnant women(or)
- i) committing rape of a women incapable of giving consent(or)
- j) a person in position of dominance committing rape(or)
- k) committing rape of a women who is mentally or physically disabled(or)
- l) committing of rape causing grievous hurt or endangers life of a women(or)
- m) committing rape repeatedly on the same women is punished with imprisonment not less than 10 years, exceeding till his death with fine.

(3). committing rape of women under 16 years of age is punishable with imprisonment not less than 20 years and exceeding till the death of the person with fine (devgan, 2018).

According to the protection of women from domestic violence act 2005, considered marital rape as a form of domestic violence for which women seek relief of separation from her husband, yet marital rape is still not a crime (domestic violence act 2005, n.d.).

Section 498-A IPC: husband or relative of husband subjecting women to cruelty

Whoever being a husband or relative of husband of a woman, subjecting her to cruelty is punishable with imprisonment which may extend to 3 years and shall be liable for fine

- a) any willful acts done by husband or relative which resulting in death or grievous hurt or injuries (mental or physical) to the woman is liable for punishment.
- b) Harassing woman for a particular materialistic purpose, is liable for punishment (devgan, section 498-a ipc, 2018).

As the provisions provided by IPC are insufficient and vague relating to the martial rape, which are jeopardized with sec 375 which states that no man can rape his wife who is above 15 years of age is ridiculous and is needed to be changed, **172nd law commission report** was submitted in year 2000 suggesting the following changes :

- a) Sexual intercourse defined under 375ipc should include all forms of penetration such as vaginal, oral, finger, anal, object
- b) Rape should be replaced by the term sexual assault
- c) Sexual assault on any part of the body should be recognized as rape
- d) Rape laws should be made gender neutral
- e) Custodial rape of young boys should not be neglected by law
- f) A new section titled “unlawful sexual conducted” should be introduced as section 376e
- g) 376 -A and 375 (2) should be deleted, marital rape should be punished (gupta, 2009).

After 20 years of submitting of report still there is no action that has taken place.

IV. MARTIAL RAPE VIOLATIVE OF ARTICLE 21 OF INDIAN CONSTITUTION:

Article 21 of the Indian constitution guarantees right to live and personal liberty which has wide interpretation, marital rape is violative of article 21 on the following grounds:

- **Right to personal interest**

Marital rape is determinant to the right to personal interest, as it is just being forced by the other person for an sexual intercourse, women should have right to act according to their interests and will not according to the will of other person. women should be in control of their interests and bodies and not subject others interests.

- **Right to be healthy**

Marital rape can lead to many health issues for women, sometimes fatal, Injuries to vaginal

and anal areas, Lacerations, Soreness, bruising, torn muscles, Fatigue, vomiting, Broken bones, Black eyes, bleeding noses, Vaginal stretching, Pelvic inflammation, STDs, Miscarriages, Still births, HIV, PTSD, Bladder infections, Shock, Intense fear, Anxiety, Depression, Sexual dysfunction are the common health issues faced by women who endure marital rape which is detrimental to their health and right to live under article 21.

- **Right to say “no”**

Women should have right expressed their disinterests and their disinterest should be respected. sadly, we live in a society where consent of a married women for a sexual intercourse just doesn't matter to men, men just think that they are superior to women and it is deemed that once they are married the consent is implied which is pathetic and violative of article 21.

V. CONCLUSION:

Marital rape is still a taboo in Indian society, where it is linked with culture, prestige of family, society. Many people even refuse to speak about it. marital rape is one most gruesome and traumatic experiences once can go through

Everyday many women go through this and are not able to do anything about it though it is proving detrimental to their mental and physical health.

We as citizens of India have to bring awareness about marital rape and make women comfortable to speak openly it. We should try to educate women who are especially not aware of their rights. We as citizens should be vocal about what kind of true evil marital rape is and educate men that it's not okay to force himself on his wife.

It's not just about women non criminalization of marital rape is promoting the toxic ideology that men are owners of women's bodies, women's consent doesn't have any value, men are superior to women, they can be rapists to their wives and walk free. These are the ideologies we are going to pass on to our younger generations we don't act on the issue of marital rape.

Judiciary should make new laws and send a message that marital rape is not okay, it is as gruesome as rape and it will be punished in the same manner that rape is punished and a women's consent is the priority, nothing should be detrimental either to her physical or mental health.