

INCIDENCE OF MARITAL RAPE IN TAMILNADU – A CASE STUDY

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Abstract

Marital rape violates the right and dignity of a married woman and breaches the trust of wife. Even then, it is not criminalized as rape in India. This perception reinforces the concept of objectification in which a married woman being considered as an object or the property of the husband. It give rise to the question, if a married woman has right to save her body from the lust of her husband. No doubt the purpose of the marriage is to provide right to have sex with wife. Marital rape refers to redundant intercourse by a husband to his wife without her permission obtained by force to intimidation or when she is unable to give consent. The main purpose of this paper is to find out as to whether sex without the consent of wife should be considered as rape. This is an attempt to expose the discrimination, and fallacy of the criminal justice system in India and it provide arguments, reasons necessitating criminalization of marital rape with case studies of married women at selected Taluk of Tamil Nadu India.

Keywords:

Matrimonial Rape;

Sexual violence;

Discrimination;

Criminallized;

Reinforces.

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Introduction

In Indian culture the institution of marriage has always been considered the most sacred and pleasant relationships between a man and a woman than any other relationships. It is strongly believed that in a civilized society, the institution of marriage is established to give strength and spirit to put up a strong social bond in men and women. Every society formulated certain mandatory implications to give validity to this institution of marriage which is still followed since the dawn of civilization in any progressive society. In the martial bonding sexual relationship plays significant role in sustaining the relationship for long term. However many times the relationship bonding within marital life leads to disagreement in which each one lose respect for the other and take everything for granted. Most of the time Indian women associate sexual relationship with love whereas men look sex and love in different ways. Men look upon sexual relationship as mere pleasure seeking activity, which again make them look upon women as sexual object. This patriarchal attitude leads Indian men to view women's body as their property which make them feel justified to have sexual relationship with their wife without her consent. Marital rape occurs when a man imposes intercourse with his wife either by force or threat of force or when the wife is unable to give consent. The legal system in India does not accept rape within marriage as a crime. However women themselves must free themselves from societal shackles and fight for justice and refuse to comply with the standards applied to them as the weaker sex. Since the late 20th century most of the developed world has criminalized marital rape but India has still not.

“The concept of marital rape, as understood internationally, cannot be suitably applied in the Indian context due to various factors, including level of education, illiteracy, poverty myriad social customs and values, religious beliefs and the mindset of society to treat marriage as sacrament”.

-Haribhai parthibhai chundary.

Physical and Emotional consequences of marital Rape

There are many physical and emotional consequences that may accompany marital rape. Effects like injuries to the vaginal and anal areas, lacerations, soreness, bruising, torn muscles, fatigue, and vomiting are physical. Women who are beat-up and raped frequently suffer from broken bones, black eyes, bloody noses and knife wounds. Gynecological effects include vaginal stretching, pelvic inflammation, unwanted pregnancies, miscarriages, stillbirths, bladder

infections, sexually transmitted diseases, HIV, and infertility. Short-term psychological effects include PTSD, anxiety, shock, intense fear, depression and suicidal ideation. Enduring psychological effects comprises disordered sleeping, disordered eating, depression, intimacy problems, negative self-images, and sexual dysfunction. It is clear that physical and emotional consequences of marital rape engender impact on life.

Legal scenario in India for Marital Rape

Section 375, the provision of rape in the Indian Penal Code (IPC), has echoing very obsolete sentiments, mentioned as its exception clause- “Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.” Section 376 of IPC provides punishment for rape. According to the section, the rapist should be punished with imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine unless the woman raped is his own wife, and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both.

Case Study 1

Smithy (name changed) was a graduate aged about 31 years’ old. Her mother and father were labors working as daily wages. She had two siblings, one younger brother and sister. Her brother was educated up to 10th standard working as a laborer in private sector. Her sister was continuing her studies in higher education. The respondent’s family had a poor economical and social background. Smithy was a tolerant, soft natured and obedient person; hence her marriage was arranged as per her parent’s determination and inclination. Her parents selected a bridegroom with the age of 35, employed as mechanical engineer in a private company. The bridegroom’s family had a good economical background when compared to the bridal family status. Hence smithy’s parents made a decision of marriage just deeming that economic condition of bridegroom family would sustain their daughter’s life. However their dreams were all in vain in a short span of time.

Smithy’s life was happy for some time and then she began to realize that her husband was alcoholic and mentally depressed personality. He also had nervous problem due to excess

alcoholic habit. Smithy's dreams of life shattered and left without choice, but just to move ahead. She tolerated for some time handling the problems smartly, however she could not sustain for long time. He started torturing her for no reason and forced her to have sex even during menstrual cycle which she hated. Finally she made a decision to reveal the difficulties to her parents and so she came back to her parent's home. No wonder her parents advised her to just abide and move ahead with life. The patriarchal notion and fear of image in the society made their parents to do so. They also convinced her saying that "It is respectful for her only when she stays with her husband and so they asked her to get back to her husband's home. In the very beginning of the study, it is already revealed that smithy was tolerant, soft natured and obedient person, hence accordingly she moved back to husband's home left with no choice. Again her life started with new tragedies for three years, she was taken for granted and her husband started using her for his whims and fancies. Amidst of the troubles, smithy was conceived. This worsened her condition more. Her husband did not have courtesy to take care of her and his behaviors were worst and cruel when he used alcohol. His physical and psychological torture for sex ended up in abortion of her first child. Even then he has no humanity, continued with torture, again smithy conceived and gave birth to a child successfully. Even then the torture has no full stop in smithy's life; she gave birth to the second child in the couple of years. Becoming mother of two children did not bring her husband's sexual torture to a standstill. It continued with all sanctity and endorsement from the so called society which failed to protect women from cruelty. It is so disappointing that even parents don't care about the cruelty done for their daughter just because they need an image in so called society. However education empowers women to face her problem independently. In this case also the respondent made a decision to move out from the matrimonial house and gave a complaint on her husband under domestic violence act 2005 wanting justice to her. On the other hand the legal system also prevails in the same patriarchal society and she got the same response as she got from her parents. So the legal system kept hushed making her vulnerable. Even though the entire situation was not favorable to her she had courage to file divorce, in which her husband denied it. When the researcher met the respondent she was all alone fighting against the circumstances. Currently she is employed in a small firm to support herself and her children. Her mother supports her to take care of her children. Now she is earning independently and relieved from torture, however will the society allow her to move ahead in ease?

Case study 2

Rajeshwari (name changed) was 30 years old with mother and father working as a labor. Her family background was poor. Her family was very big family with two elder sisters and one younger brother and one younger sister. All were married; however they had only schooling education. The respondent was also educated only up to 2nd standard. Her parents had a view that only male children should be educated and female children had to take care of family by doing house hold activities. Rajeshwari was married at the age of 16. Her husband was also of the same age and it was a love marriage without her parents consent. Her husband was a driver in a private sector in urban city which is far away from the Rajeswaris's place. She lived in rural area of valpari. She was working in a tea estate. The couple had three children, with one boy and two girls. All children were studying. After marriage her life was happy for some time; however it did not last for long time. Her life became miserable when she understood that her husband was addicted to alcohol. Due to alcoholic addiction the problems boomed in her marital life because behaviors were violent by kicking, beating slapping threatening and forced sex. He always fought with her by accusing that she has illegal contact.

Rajeshwari was hardworking person in the tea estate. She used to complete the given target of picking tea leaves than any others in the estate. So she had opportunity to move on to next estate with increased wages. However these earnings made others to envy about her. So people started to assassinate her character. Hence she became a victim of character assassination. As her husband was far away, the around her took an opportunity to educate her husband about her behaviors. Her husband was already alcohol addict and he also distrusts his wife. He persecuted her to the maximum and checked the vagina during sexual contact. If he found it puffy, he would enquiry her if she had sex with any one earlier. Therefore she was mentally and physically tormented. In spite of her difficulties, she has completed 14 years of life with him. She says that she endured with life only because she had children and her marriage was love marriage. However she is physically tortured everyday and protected by her neighbors. At times even neighbors are threatened by her husband saying that he would kill them if they come to protect her. The place of data collection was also horror to the researcher because the women in that area kept on telling the researcher to hurry up even before the man comes home. There was strong patriarchal notion behind it. Men were bread winners and women were ill-treated and just looked

upon as pleasure giving object. Fearing the man's aggressiveness the neighbors also stopped helping her. Beyond all the circumstance the respondent had an intention to register complaint with the police. However he started threatening her that if she goes to police station he would kill her, so she gave the idea of registering the complaint. She was talented labor, misused by her husband and the society is helpless to her. There is strong need to protect women. Domestic violence and marital rape should be sturdily stopped.

Discussion and Conclusion

Marital rape is looked as a sensitive issue on women in India. It is argued that marital rape should be criminalized in India. Marital rape in Indian society, originated in concept of gender, shame and family honor, rather than women's rights and individual autonomy. If the reformers see rape as a crime against a woman and her person and bodily integrity and humanity, then marital rape and its punishment would be a legal possibility. To bring a change in the existing policy, we may use an individual rights rhetorical approach in working towards criminalizing marital rape in India, because marital rape will not be a State concern until the society and legislators understand that women to have individual rights within marriage. There is grim need to empower the women through the education and employment and to create awareness about legal aids to women it will useful for women lead their life.

The definition of rape (section 375 of IPC) demands change. The narrow definition has been criticized by Indian and international women's and children organizations, who insist that including oral sex, sodomy and penetration by foreign objects within the meaning of rape would not have been inconsistent with nay constitutional provisions, natural justice or equity. Even international law now says that rape may be accepted as the "sexual penetration, not just penal penetration, but also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight." Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. Emphasis on these provisions is not meant to tantalize, but to give the victim and not the criminal, the benefit of doubt.

Marital rape is illegal in 18 American States, 3 Australian States, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia. Rape in any form is an act of utter humiliation, degradation and violation rather than an outdated concept of penile/vaginal penetration. Restricting an understanding of rape reaffirms the view that rapists treat rape as sex and not violence and hence, condone such behavior.

The importance of consent for every individual decision cannot be over emphasized. A woman can protect her right to life and liberty, but not her body, within her marriage, which is just ironical. Women so far have had recourse only to section 498-A of the IPC, dealing with cruelty, to protect themselves against “perverse sexual conduct by the husband”. But, where is the standard of measure or interpretation for the courts, of ‘perversion’ or ‘unnatural’, the definitions within intimate spousal relations? Is excessive demand for sex perverse? Isn’t consent a sine qua non? Is marriage a license to rape? There is no answer, because the judiciary and the legislature have been silent.

The 172nd Law Commission report had made the following recommendations for substantial change in the law with regard to rape.

1. ‘Rape’ should be replaced by the term ‘sexual assault’.
2. ‘Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.
3. In the light of *Sakshi v. Union of India and Others* [2004 (5) SCC 518], ‘sexual assault on any part of the body should be construed as rape.
4. Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
5. A new offence, namely section 376E with the title ‘unlawful sexual conduct’ should be created.
6. Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.
7. Marital rape: explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any

physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.

8. Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

The much awaited Domestic Violence Act, 2005 (DVA) has also been a disappointment. It has provided civil remedies to what the provision of cruelty already gave criminal remedies, while keeping the status of the matter of marital rape in continuing disregard. Section 3 of the Domestic Violence Act, amongst other things in the definition of domestic violence, has included any act causing harm, injury, anything endangering health, life, etc., ... mental, physical, or sexual. It condones sexual abuse in a domestic relationship of marriage or a live-in, only if it is life threatening or grievously hurtful. It is not about the freedom of decision of a woman's wants. It is about the fundamental design of the marital institution that despite being married, she retains an individual status, where she doesn't need to concede to every physical approach even though it is only by her husband. Honour and dignity remains with an individual, irrespective of marital status.

Marriage reinforces the man's ownership rights over the wife. This denies the women any agency over her own body, its sexuality and its reproductive function. Refusing to criminalize marital rape is to accept that sexual coercion against women, so long as it is within a marriage is endorsed by both government and society. If women are to wrest control of their lives, they have to have right to say no to their husbands without being socially penalized for marriage. The myth of the 'wife duty' and the 'conjugal right' must end because marital sex as all sex must be with mutual consent and pleasure. Societies such as India that condemn and penalize sex outside of marriage relationships only for free access to physical consumption, which puts women under incredible sexual threat. A few years ago newspapers carried the story of 26-years old women who returned from a Bangkok honeymoon with serious injuries after her husband forced violent sex on her. This is more common than one would like to think and know of more than one woman who has endured similar sexual abuse in marriage with no legal recourse.

Reference:

- [1] "Bertrand Russell Quotes". Notable-quotes.com. Retrieved 5-06-16

- [2] Blackstone, William. Commentaries on the Laws of England. [http://www.mdx.ac.uk/WWW/STUDY/x Black.htm](http://www.mdx.ac.uk/WWW/STUDY/xBlack.htm)
- [3] Bhadra Sinha, —SC rejects plea to make marital rape a criminal offence, Hindustan Times(18/05/2015)
- [4] Dominique Mosbergen “India’s Marital Rape Crisis Reaches ‘Tragic Proportions’”, Nov 24, 2015
- [5] Definition of rape, available at: <https://www.fbi.gov/about-us/cjis/ucr/recent-program-%20updates/new-rape-definition-frequently-asked-questions>, (visited on June 4th, 2016)
- [6] Editorial , Rape is rape, The Times of India , May 1, 2015
- [7] Hamda Akhtarul Arfeen & Arbeen “Marital Rape: A Scream for Recognition” *International Journal of Economics and Socio-Legal Sciences*, Vol. (12), Iss. (5), 2011.
- [8] <http://www.dar-alifta.org/Foreign/ViewFatwa.aspx?ID=6033> (visited on:6/62016)
- [9] Indian Government States Marital Rape Is Not A Crime, Here Is Why They Are Wrong, available at: <http://www.browngirlmagazine.com/2015/05/indian-government-states-marital-rape-is-not-a-crime-here-is-why-they-are-wrong/>, (visited on June 04, 2016)
- [10] Morton Hunt, —Legal Rape, *Family Circle* (January 9, 1979), p. 38.
- [11] Michael A. Koenig and et al “Individual and Contextual Determinants of Domestic Violence in North India”, *American public health association*, Vol.96, No.1, Pp-132 to 138, 2006.
- [12] Marital Rape, available at :https://en.wikipedia.org/wiki/Marital_rape(visited on 6/06/2016)
- [13] 12 450 U.S. 455 (1981)
- [14] S Murlidharan, *Law on marital rape: why domestic violence Act is a reasonable substitute*, F.INDIA(3/05/2015)
- [15] Marital rape: the numbers don’t lie, *The Hindu* (12/11/2014)
- [16] Nancy Kaymar Stafford , *Permission for Domestic Violence: Marital Rape in Ghanaian Marriages*, *Women Rights Law Reporter*, Vol. 29, p. 63, 2008
- [17] Priyanka Rath, “Marital Rape and the Indian legal scenario” 2ILJ (2007)
- [18] Satya Prakash ,—Debates rages on over criminalizing marital rape in India, *Hindustan Times*, 17th march 2016
- [19] Tamanna Khosla, “Marital Rape in India: A Radical Feminist Perspective” *Mainstream*, VOL LII, No 38, September 13, 2014