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Marital Rape - A Silent Domestic Violence

Mr. Abhijay Chakraborty
Assistant Professor, Siddhartha Law College Dehradun

Abstract: ***A human being feel safe and protected in his life is at his/her home, and in today's world, Domestic violence is rampant. The effect and result of this domestic violence are most crushing when the perpetrator is the husband who is considered as the protector of the wife. Lamentably, the husband in the name of consent to matrimonial cohabitation inflicts the sexual violence. The society and the law don't perceive such sexual brutality by the husbands, which truly encroaches upon the status of women in the general public and keeps up the status of the women as oppressed position in the family and in addition the general public.***

Keywords: Rape, Marital rape, sexual brutality, legislation, judiciary.

I. INTRODUCTION

A most protected a human being feels it is home. Not only human being every living creature needs a home, habitat etc. Home is a place where human being resides and feels stress free with enjoying comforts. After solemnization of marriage, a woman leaves its paternal home and enters into the home of husband. In that home, husband is considered as protector of wife. In India, it is assumed that both husband and wife has taken seven words in presence of holy fire, where husband takes word that he will be the protector of wife. But today domestic violence is rampant, Married women are considered as the property of his husband. She is being tortured for dowry, money and sex, all forms of Domestic Violence. If we defined Violence it is destruction, suffering or death, which is deliberately inflicted for a purpose which is political in nature.[1] Rape is considered as the worse offence even worse than murder as it kills the woman's dignity which is destined to suffer throughout her life. Marital Rape is a form of rape. Marital rape occurs when women's bodies are outraged, regardless of their consent or willingness.

II. MARITAL RAPE

Marital rape may be defined as " unwanted sexual intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unable to give her consent. The term unwanted sexual intercourse refers to all sorts of penetration whether vaginal, anal or oral , perpetrated against the wife's will or without her consent. Marital rape is recognised as a heinous crime in the western world, notably the US and some European countries. However women in Indian setting do not make it an issue of complaint because it is against social norms and considered acceptable for men to force their wives to sex[2] as and when they wish. Marital Rape has broadly been sub divided into three categories, namely (1) rapes involving a degree of violence ; (2) Rape involving only force; and (3) sadistic rape in which in addition to actual rape , the victim is forced to do acts designed to further humiliate herself . It is also known as " obsessive rape" or pornographic rape.

It is important to note that rape is said to not committed if there is a sexual intercourse by a husband with his own wife, though on the question of consent , there is a rape of wife if she is under 15 years of age. The implication of this short coming violent and unwanted sex is illegal sex not rape.

Sir Matthew Hale has made a statement in 1678, that " the husband cannot be guilty of rape committed by himself upon his lawful wife, for their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband , which cannot retract".[3] It is on the above statement marital exemption is based. There is a common law notion of marital unity that husband and wife is considered as a one entity so, husband could not be held guilty for raping himself. In many of the countries across the world ,there is criminal law immunity for marital rape.

In India, Sec. 375 of Indian Penal Code, 1860 defines rape but marital rape has no legal stands of its own as per now. Every human being possesses certain rights and authorities over his or her own body. If we see the definition of rape which is given under Indian Penal Code under Sec.375 , it states that *A man is said to commit "rape" if he-—*

[1] Dr.Vandana, Marital Rape-Exemption Under Indian Penal Code: Quest for Recognition and Liability (2017) ILI Law Review Vol.II
[2] Debdatta Das: Marital Rape: The Assassination of a women's Dignity 57IPJ(2010).
[3] *Ibid*

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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.

1) Third/y: With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
2) Fourth/y: 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.
3) Fifth/y: 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.
4) Sixthly: With or without her consent, when she is under eighteen years of age.
5) Seventhly: When she is unable to communicate consent.
a) Explanation I: For the purposes of this section, "vagina" shall also include labia majora.
b) 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:
6) 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.
a) Exception I: A medical procedure or intervention shall not constitute rape.
b) 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.'.

If we scrutinise the above definition we find Marital rape amounts to rape only when committed against 15 years of age, it means that it is legally valid to rape a married women above 15 years of age by her husband . It is clearly violates 14, 21 of Indian constitution. It discriminates against married women.

The Protection of Women from Domestic Violence Act, 2005 which came into force w.e.f. October 2006, recognises marital rape as form of Domestic Violence and therefore attracts a lesser jail term than non- marital rape. Indian law recognises domestic violence against women as an offence but it is mainly confined to physical harm or torture rather than sexual abuse of wife.

According to the Centre for Constitutional Rights, marital rape involves sexual acts done against wife's wishes either by physical force or threats of force or by making her fear that she will be harmed if she resist. The husband may use psychological or emotional abuse to make her comply. He may use coercion, verbal threats or physical violence to force his wife to have sex with him. Thus, it is the husband's aggressive attempts to assert control to dominate over his wife. Taking sex by force when wife is asleep or sick is also marital rape.[4]

Marital rape is different from physical and sexual violence. It is betrayal of trust. The affected woman feels betrayed , humiliated and above all, very confused.[5]

In the 42nd Report by the Law Commission it was recommended that criminal liability in rape cases should be attached with minor wife. However, the Committee refused the recommendation stating the husband cannot be guilty of raping his wife of whatever age. Further in 1983 with addition of Sec. 376 A IPC rape of judicially separated wife was criminalized.

Before the change in Indian Penal Code in 2013, when the married woman was between 12-15 years, the radically diminished the quantum of sentence was given which may have stretched out to two years or fine. It added up to assault just when the spouse was beneath 12 years old. The revision in 2013 has discarded this statement however it doesn't perceived marital rape.

Justice Verma Committee Report in 2013 has also recommended the exemption given in IPC regarding marital rape should also be withdrawn.

[4] Prof. N.V. Paranjape, Criminology ,Penology, with Victimology,16th ed.2014 pp.234-236.
[5] *Ibid*

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III. WORLD'S VIEW ON MARITAL RAPE

It was Poland who recognises Marital Rape as an offence in 1932. In 1976 Australia made rape in marriages a crime. "In United States The Federal Criminal Code 1986 makes a distinction between aggravated sexual abuse and sexual abuse. The Code recognises the defence of marital status in case of sexual abuse of a minor or ward, whereas in case of aggravated sexual abuse, the defence marriage is not recognised. As far as States are concerned , all states have recognised marital rape as an offence by the year 1993.[6] Scandinavian countries like Sweden, Denmark, Norway and former soviet union and Czechoslovakia passed criminal marital rape two decades before.

In 2002, Nepal perceived Marital Rape as a criminal offense after its Supreme Court held that it conflicted with the established ideal to approach insurance and the privilege to protection.

In United Kingdom, the legal position is provided under Sexual Offences Act, 2003, the Act recognises marital exemptions.

IV. JUDICIARY ON MARITAL RAPE.

Bishnudayal v. State of Bihar, A.I.R. 1981 S.C. 39 . The accused was held guilty of rape under section 376 IPC. In this case , child under 13-14 years was forcibly married to the accused and held sexual intercourse with her.

RTI Foundation v. Union of India, W.P. (C) No.284/2015. Central Government submitted to Hon'ble High Court of Delhi that Criminalizing Marital Rape may destabilize institution of marriage. Central Government further submitted that that merely deleting Exception 2 will in no way serve any useful purpose as a man is said to commit 'rape' as defined under Section 375 of IPC cannot be the same in the case of marital rape.

Independent Thought v. Union of India, W.P. (c) No. 382 of 2013. The Hon'ble Supreme Court of India on 11th October 2017, In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:–

1) It is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution ofIndia;
2) It is discriminatory and violative of Article 14 of the Constitution of India and;
3) It is inconsistent with the provisions of POCSO, which must prevail.

Therefore, Exception 2 to Section 375 IPC is read down as follows

"Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape". It is, however, made clear that this judgment will have prospective effect. It is also clarified that Section 198(6) of the Code will apply to cases of rape of "wives" below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Code. At the cost of repetition, it is reiterated that nothing said in this judgment shall be taken to be an observation one way or the other with regard to the issue of "marital rape".

The Independent Thought Judgment case is for sure a clear outline of legal activism and craftsmanship to give a socially practical understanding to an arrangement joining a dead idea in the enactment. And yet , it is small disillusioning to take note of that how the preeminent court on a greater number of events than one ,has completely expressed that they might not want to make a remark on conjugal assault by and large where the period of spouse is at least 18.

V. CONCLUSION

It is evident that Marital Rape is worst type of sexual violence occurring in the society. Due to factors such as privacy, patriarchal influence , in some times economical dependence , the woman cannot express her suffering, that's why, it is considered as a silent domestic violence. The male dominant society has set the law to overlook the misery of abused wives and it is also evident the legal system don't even recognise the concept of marital rape as an offence .

Marital rape occurs in all types of marriages. A very limited research data is available on marital rape so it is often overlooked by the government and legislature. The marital exemptions in the law have made the position of women very bad. They are considered as the property of the husband and the marriages are considered as a licensed to coerced sex. The Apex court has recognised rape of minor wife in loud terms and has delivered a landmark judgement suggesting the legislative to make child marriages void ab initio. But on the question of major wives the apex court is silent on this issue of marital rape. The Marital exemptions should be withdrawn and severe punishment is inflicted upon the perpetrator. It is also evident that Marital Rape infringes the constitutional rights under Article 14,15 and 21.

[6] *Ibid*

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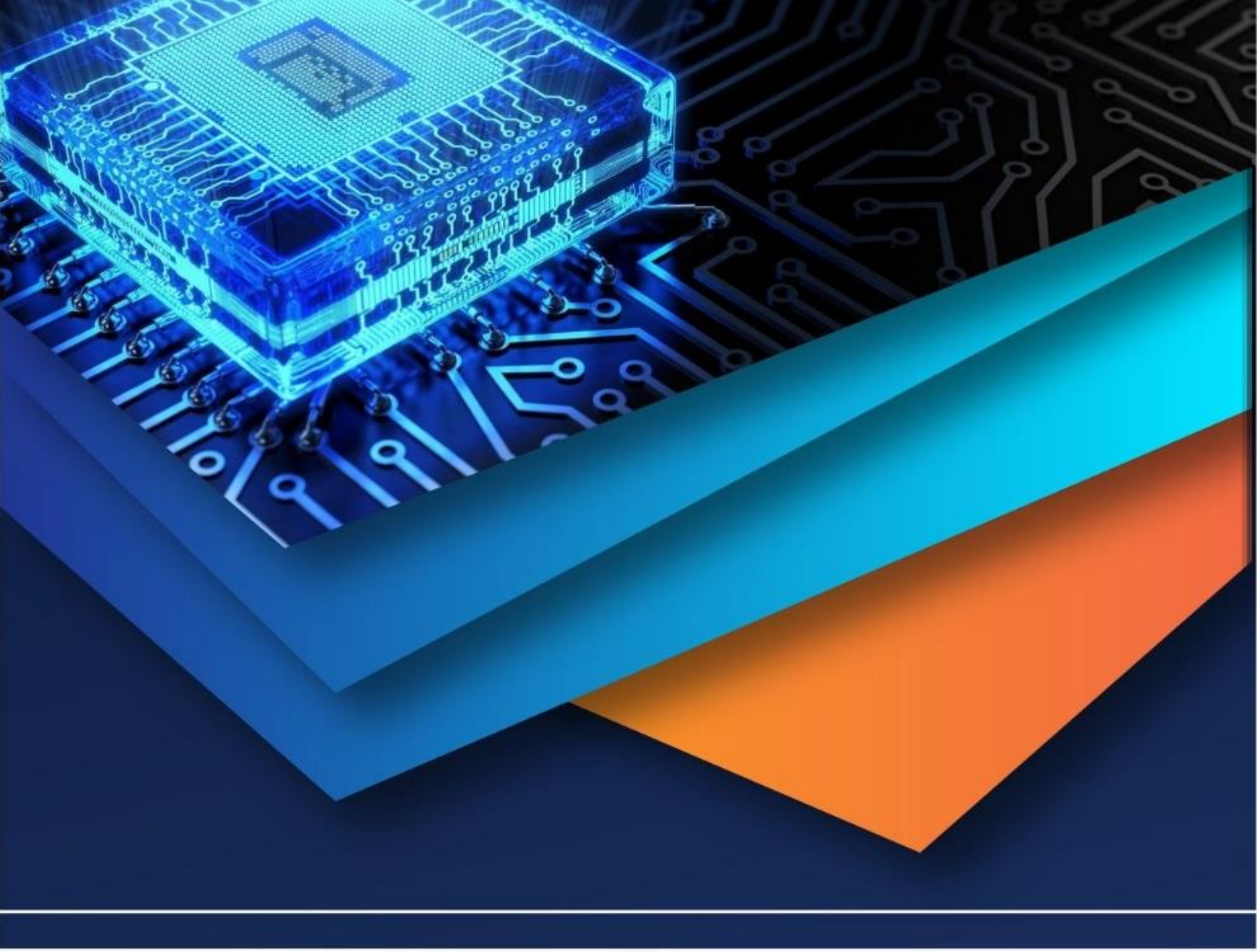
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