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Recognition of Marital Rape as a Grievous wrong: A Necessary Legal and Societal Analysis

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A confrontation over the commendation of exceptions to section 375 IPC[1] has been beheld a lot in the legal profession in the last few years. Delhi high court judgment over the recognition of marital rape has put the tool on the front foot for scholars and experts to duel over from the last few years. The following articles bring out the earnestness and graveness of the crime not as an emotional erroneous towards women but also as very disastrous aftermath on the community. The article substantiated by various comprehended courts and judgments helps to excavate the violation of benevolent and constitutional rights of women because marriage acts as a canopy against sexual assault within the institution.[2]

Keywords: *rape, marital rape, sexual assault, marriage, court.*

INTRODUCTION

Section 375 of the Indian Penal Code defines Rape mentioning marital rape as an exception. Recently in the Delhi High court, a case on this topic has been in India all over the news. The following exception has been itself an International Human Right Law violation. The argument

[1] Indian Penal Code 1860, s 375
[2] *Ibid*

that marriage is an institution that forms a lineage conveys the interpretation that a husband has the right to force his wife into sexual copulation is mentally disturbing and cruel. Indeed the Supreme Court of India affirmed that connubial rape isn't a felonious act if the victim is above the age of eighteen. The non-recognition of connubial rape as a wrong renders the women of India devoid of initially honored mortal rights violations. The lack of recognition and requital could indeed have adverse physical or cerebral counter-accusations.

MARITAL RAPE: INTERNATIONAL STATUS

Marital rape is criminalized in the United States of America. And it is treated in the same way as Rape. In the UK where common law originated and is seen in India The law system has criminalized Marital Rape too. India's non-recognition of connubial rape as a crime violates transnational mortal right instruments, videlicet the **International Covenant on Civil and Political Rights[3] (ICCPR)** and the **Universal Declaration of Human Rights[4] (UDHR)** in addition to **CEDAW** to which it's a party. The IPC description of rape discriminates against wedded women and therefore lies in violation of Article 26 of the ICCPR.[5] *Article 26 of ICCPR* requires that domestic law of guarantee equal and beneficial protection against demarcation on any grounds including any other status of a person, besides those formerly mentioned in the provision similar as race or coitus.[6] Non-recognition of equal protection of wedded women in IPC amounts to a failure to fairly guarantee equal quality to all women. ***Article 1***[7] of the **UDHR** asserts that all mortal beings are free and equal in quality and rights.[8] This protestation of equal quality and rights makes no distinction between humans based on their statuses, like all mortal entities, and consequently indeed wedded women have rights equal to those of unattached women.

[3] International Covenant on Civil and Political Rights 1966
[4] Universal Declaration of Human Rights 1948
[5] International Covenant on Civil and Political Rights 1966, s 26
[6] *Ibid*
[7] Universal Declaration of Human Rights 1948, s 1
[8] *Ibid*

BASIC RIGHT VIOLATION UNDER MARITAL RAPE

Article 21[9] of the Indian constitution provides the right to Life and Liberty to every person. And it includes the liberty to choose whether one wants to get involved in sexual intercourse or not, it's one right to live with dignity.[10] The argument that marriage automatically provides a receipt for sexual intercourse is problematic at every level. In ***Chairman, Railway Board & Others v Chandrima Das & Others***[11], the Supreme Court on this regarded mentioned that rape isn't simplest against the law in opposition to the sufferer person however,[12] it's also against the law in opposition to the society at large. Rape disturbs the comprehensive society in addition to the sufferer equally. Hence, just because it's happening to one person by their spouse because they are married is a violation of the basic features of the constitution. One's sexual preference over their body is a matter of privacy.[13] So not only it's a violation of one's right to Life and Liberty but also their Right to privacy. In the case of ***Justice K S Puttaswamy (Retd) v Union of India***[14], the Supreme Court held the Right to Privacy is an important part of *Article 21*.[15] Further, in the case of the ***State of Maharashtra v Madhukar Narayan***[16], the SC held that a women's sexual status is not for people's exhibition according to their wishes.[17] **Article 14**[18] of the constitution provides the Right to equality to every person and discriminating against heinous crimes like rape on basis of biased status is quite prejudiced. The basic argument, that marital status acts as a free pass for forced sexual intercourse lunges towards violation of basic human morality towards society, and non-recognition of such grave crimes is not just person harm but a socially harmful mentality.[19]

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[9] Constitution of India, art 21
[10] *Ibid*
[11] *Chairman, Railway Board & Ors v Chandrima Das & Ors* AIR 2000 SC
[12] *Ibid*
[13] *Ibid*
[14] *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1
[15] *Ibid*
[16] *State of Maharashtra v Madhukar Narayan* AIR 1991 SC 207
[17] *Ibid*
[18] Constitution of India, art 14
[19] *Ibid*

The further argument that goes against this crime is that there are many reliefs like section **498A IPC**[20] are also provided for women i.e. cruelty. But the nature of crime like marital rape which emotionally and physically and psychologically affects the victims would be sufficient to not be put into a separate crime seeing its grievousness is still questionable.[21] One of the most used arguments that are used repeatedly in courts is that misuse of this offense would be done by Women. This argument is quite absurd as every law has its advantages and disadvantage just like it's used in the right way but in the improper way too. So we can't spare punishing people who don't follow rules just because they are breaking them.

MARITAL RAPE: A LEGAL & SOCIETAL ANALYSIS

Exempting and saying things like ***"rape is okay because it's between husband and wife"*** is depriving one of their basic rights and belief in the legal system. The sudden increase in more prominent laws against crimes like marital rape has increased over the past few decades because of the great hyped up in the statistics of the crime against women over the last few decades. And India's capital Delhi given a status as the "rape capital" has just added the much more needed solemnity to such infractions against women. As the saying goes "change starts from home", taking the cynical approach to this famous saying, often half of the women suffer from non-consensual sexual intercourse with their spouses in the name of *"trying something new or kinks."*

The basic concept of consent has never been explored vividly in such transgressions. Free will in any kind of sexual exploration is a proper indispensable phase for both spouses but has been mostly skipped or not talked about much by members of society, reasoning out as improper and against morality. Sex education at pedagogy institution is always been a tongue-right conversation, resulting in a lack of knowledge about the difference between forced and consensual sex. A progressive society is a waste if the women in the society aren't safe within their houses. Allowing marital rape as a no offense is implying women's toys in a hand of their husbands. The importance of consent in books is just not necessary its significance in acts especially sexual act is of utmost importance. Free consent is a must in every sexual activity

[20] Indian Penal Code 1860, s 498A
[21] *Ibid*

whether it involves marriage or not. A few days back a ***#marriagestrike*** went viral with a few men saying that they would rather be unmarried than see Marital Rape get criminalized. The Human Rights Commission affirmed that violence against women constituted a violation of the mortal rights and abecedarian freedoms of women as it bloodied their enjoyment of similar rights and freedoms.

As a matter of fact, the very learned society continues to violate transnational mortal rights morals, and laws by ignoring the reality of connubial rape within its governance and rather conforming its laws to traditional and unethical norms. Anyhow of their conservative beliefs, every institution in Indian society must admire the introductory mortal rights norm of treating each other with quality. The state should condemn any diversion from mortal rights principles, to ensure the abecedarian well-being and development of its women. We are a society of literate mortal beings but chaos like this tells us how we are not progressive about our legal system and crimes. Marital rape is rape, just because the spouse has married as a pass doesn't allow him to force another spouse into intercourse without consent. The ideology of free consent is not so mended in society. Kerala High court gave a contrary opinion and considered Marital Rape as a ground for seeking a divorce. But the view that marriage lawfully gives license to the spouse to force his wife into intercourse is written loud and clear till this offense is taken seriously.

On 29th September 2022, the Hon'ble Apex Court of India for the very first time recognizes the existence of "marital rape". In the case of ***X v Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi***[22], the bench led by J. Chandrachud recognises and held that the definition of rape must include "marital rape" for the medical termination of pregnancy if the women or female spouse was forced penetrated without consent by the husband and can seek for termination of pregnancy within 20-24 weeks of the conceiving period.[23] Commenting on the Hon'ble Supreme Court judgment, for now, will be a biased opinion but a better step has been taken by the SC for the protection of women against sexual assault in the institution of marriage.

[22] *X v Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi* 2022 LiveLaw (SC) 809
[23] *Ibid*

Justice DY Chandrachud's comment from the judgement of 29 September 2022, held a deep understanding to take head-on crimes like marital rape. He commented that: *"Married women may also form part of the class of survivors of sexual assault or rape. The ordinary meaning of the word rape is sexual intercourse with a person without consent or against their will. Regardless of whether such forced intercourse occurs in the context of matrimony, a woman may become pregnant as a result of non-consensual sexual intercourse performed upon her by her husband."*[24]

Further young age marriages of girls are half the reason for marital rape leading to unwanted pregnancy, which is not only harmful to the unborn fetus but to the mother. Although the Hon'ble Supreme Court in the 29 September 2022 judgement observed that wives who conceive out of forced sex by their husbands will also come under *survivors of sexual assault or rape or incest* and can go for termination of pregnancy under **Rule 3B(a)** of **Medical termination of pregnancy rules[25].** The thoughtfulness of the learned judges in the following judgement prevents the survivors from psychological turmoil and gives them enough time for rehabilitation from such trauma. It eventually helps their autonomy to get at least working but the trauma from a family member is not gone.[26]

The basic idea behind the non-recognition of matrimonial rape by the federation is to consider the wife as the property of the husband. The origin of the word rape from the Latin term ***rapere*** means "***to steal***", and the ideology that the wife is the husband's property vaguely elucidates that stealing is done from others' property and not from itself. Marriage is just a sacramental procedure in journals but in certainty, it's just holding off a woman legally by the husband authorizing him to do whatever he excites. However, in the past few decades, the improvement in understanding of crime against women has somewhat assisted in altering this psyche of people but still, a very wide coliseum is yet not wrapped. The idea of treating life as a slave and not equal has played a very important role in the increase of the status of crimes like this. The holy books have even considered wives as a better half rather than a slave, yet society not recognizing the unjust tone against them puts a huge question mark on the morality and values

[24] *Ibid*
[25] Medical Termination of Pregnancy Regulations 2003, s 3B(a)
[26] *Ibid*

of people. Society makes law for its benefits and punishes its violation, and crimes like marital rape being a societal wrong and not getting recognition from it puts a major back slash to the positioning of women in the mundane world.

CONCLUSION

Concluding that, not comprehending the sexual violence in name of twinges leads to rape, which cannot be blurred out. Marriage or not sexual copulation by a husband will more or less be a violation of a women's prestige. Rape is the fourth largest committed crime in India by the statistic of 2021, and 6% of them are in the category of marital rape by husbands. It's an embarrassment that women are not protected now even in their residences. These momentous crimes hurt society at large and create disarray leading to the disturbance of peace and Harmony. Yes, a factor is that crime like this needs to have a gender-neutral law to protect equality, but time is needed for such amendments. For starters, recognition of marital rape as similar to rape is a first step that is a must. Law is a basic human safeguard from societal injustice for protecting one's rights and demanding their protection. It's the necessary protection on which a common man confides whenever unjust or some wrong is done in them, and runs for relief towards learned courts for their protection. An increase in the feministic approach doesn't hide the brutal reality that we are still bound to a patriarchal mindset. Yes, modifications are made and many relaxations are furnished to women for the preservation of their basic rights but a lot more endeavor is needed on the women's honor exemption behind impenetrable porticoes.