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Sexual Property - Marital Rape: a form of violence against women

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Marital rape is a form of sexual violence that is performed against the will of the women in an institution of marriage. This is one of the forms of oppression on which the law and the courts both are silent in India rape is a cognizable crime defined in section 375¹ of the Indian Penal Code but marital rape isn't a crime it's an exception to section 375. This offence has a historical setting that is still being followed, earlier women were considered the property of their husbands, and they were entitled to perform all the tasks given to them by their husbands the social setting was such that wife couldn't oppose if she dared to oppose, she was beaten and sometimes even burnt alive. Women were not asked about their will and opinion and a forceful act of sexual intercourse was done on them by their husbands to satisfy their sexual desires this wasn't considered wrong as they defended it by saying sexual intercourse in a marriage is different from rape, but it is same as there is something known as 'CONSENT'. As earlier women were dependent on their husbands for all their needs economic, social, etc. So, they kept quiet and suffered there was no bodily integrity and bodily autonomy for women of themselves.

Keywords: *marital rape, sex, sexual violence, harassment, subordination, women suffering.*

¹ Indian Penal Code 1860, s 375

MARITAL RAPE: HISTORY, RESEARCH, AND PRACTICE

Despite the expanded acknowledgement² that the subject of conjugal assault has been created in the beyond twenty years, the writing in this space stays scanty. This article gives a complete survey of the present status of conjugal assault writing. To start with, the extended history of legitimate, social, and expert refutation of conjugal assault casualties, and the subsequent negative treatment suggestions, is talked about. Second, conjugal assault research is audited, including predominance, distinct, and examination studies.

This survey features the earnestness of conjugal assault, concerning pervasiveness and post-trauma trouble, as well as the constraints of surviving exploration. At last, hindrances to treatment and suggestions for experts are examined. In this research, we came across that how domestic sexual violence is used to subordinate women in households and how it differentiates between other women and married women that there is a law to protect women who are not married and doesn't protect those who are married, the section 375³ of Indian penal code clearly states that any unconsented or unwelcomed sexual activity will amount to rape but in that very section it also gives the immunity the husband as husbands don't fall in the definition or the ambit of rape.

Rape is a very old practice that is used to show women down or to subordinate women who are subjected to rape or sexual violence as the society is such that looks at women in a manner that if she is subjected to rape or any kind of sexual violence, she will be the one who will be questioned about that it might be her mistake. Society fails to accept the fact that a nonconsensual act within marriage or outside the marriage is of the same gravity, how does being married this right taken away from the woman?

² Jennifer A. Bennice & Patricia A. Resick, 'MARITAL RAPE: History, Research, and Practice' *Trauma, Violence & Abuse* (2003) 4(3) <<http://www.jstor.org/stable/26636357>> accessed 25 November 2022

³ Indian Penal Code 1860, s 375

INVESTIGATING THE CAUSES AND CONSEQUENCES OF MARITAL RAPE

In organized interviews,⁴ the ladies addressed zeroing in on the frequency of sexual relations against the lady's will and savagery in the marriage. Different phrasings were utilized to figure out what the actual ladies characterized as conjugal assault. Ladies who had not been battered had the least detailed rates. Survivors of conjugal assault experienced numerous close-to-home and conduct responses, some of them serious. The consolidated impacts of assault and battering were more terrible than those of battering alone. One of the reasons is that from the very beginning, the woman is considered the property of the man, he is the one who can give her commands and even if the woman is not consenting to such acts, she needs to fulfil the sexual wants of the man.

The bodily autonomy doesn't belong to the woman herself the consequence of which is that women don't have a stand in the household and their soul is controlled by the husband they can't act independently as they now need to follow the commands of the husband or else they will be subjected to sexual violence in form of rape, the biggest drawback is that women can't speak up against it because whom to say the laws are silent on this issue and if the women inform her parents she will be told to adjust and the same is with the in-laws but this is more dangerous because this will put her life in trouble as husband will get to know about that the wife has informed his parents.

MARITAL RAPE, CONSENT, AND HUMAN RIGHTS

Assault inside marriage⁵ strips its survivors of various common freedoms, and thusly any state's refusal to condemn it is an infringement of worldwide regulation. Be that as it may, the greater part of the nations on the planet, as per the creators, neglect to condemn assault or rape inside marriage expressly. In this remark I will first momentarily expound on the creators' proposition, underscoring everything it says to us about the significance, separately, of "marriage," "assault,"

⁴ Irene Hanson Frieze, 'Investigating the Causes and Consequences of Marital Rape' (1983) 8(3) Signs <<http://www.jstor.org/stable/3173950>> accessed 25 November 2022

⁵ Robin West, 'MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON 'CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS'' (2015) 109 AJIL Unbound <<https://www.jstor.org/stable/27003138>> accessed 25 November 2022

and "regulation." I will then enrol three protests, or capabilities, to their contention. The issue is implied close to the furthest limit of the article. Assault, the creators contend, agreeing with the perspectives of most assault regulation reformers the world over, ought to be characterized distinctly as nonconsensual sex instead of as constrained or brutal sex, and it ought to be perceived to be a wrongdoing against the actual uprightness, independence, uniformity, and freedom of the one who is assaulted, not as a wrongdoing against profound quality, culture, family, or society. Moreover, the "assent" expected for sex to be lawful, both in marriage and beyond it, ought to be "confirmed assent" as opposed to suggested or certain or uninvolved assent; except if a lady positive agrees to sex, all gatherings ought to comprehend her to have kept assent, delivering the sex nonconsensual and consequently assault.

THE MARITAL STATUS EXEMPTION IN RAPE

Conjugal assault⁶ is a socially acknowledged wrongdoing in India. Marriage is a legitimate permit for a spouse for having sex with his significant other even without her assent. In the constitution of India Article 21 furnishes residents to carry on with an existence with respect. Yet, in instances of conjugal assaults, the nobility of a lady is constantly hurt. At the point when we are thinking about assent as a critical component in instances of assaults, why are we overlooking it in the event of a wedded lady? As exemption 2 of Segment 375 explicitly says spouses are a special case for assault. Does that mean we are giving a spouse honour of assaulting his better half or giving him a shield against such an obtuse direct? Under this part, the creator is scrutinizing the capacity of regulation and the fraud is the point at which it is tolerating the conjugal assault in the event of separated a couple yet not in that frame of mind of husband and spouse living respectively. The above position of regulation is by all appearances unclear and needs changes. Additionally, the law commission has given crazy clarifications and ambiguous reasons for not condemning the conjugal assault.

⁶ M V Sankaran, 'THE MARITAL STATUS EXEMPTION IN RAPE' (1978) 20(4) Journal of the Indian Law Institute <<http://www.jstor.org/stable/43950556>> accessed 25 November 2022

MARITAL RAPE AND THE INDIAN LEGAL DILEMMA

In a famous case, *Rafiq v State Justice Krishna Ayer* held that a murderer kills a body but a rapist kills a soul. After *Philomena Dasee's* case, there was a huge outcry in society which forced the legislation to increase the age from:

- 12 years in 1891;
- 13 years in 1925;
- 15 years in the year 1949.

To enter into a sexual act the age prescribed is of 16 years but it is 15 years in the case of married women as mentioned the section 375's exception. This provision shows clearly the misogynistic and patriarchal mindset of people to consider women as sexual objects of their husbands. Forcing someone for her to get into this act is known as coercion makes it one of the most inhuman acts done by the husband. Marital rape is a violation of article 21⁷ as it violates a person's personal liberty the choice that a woman has to make as per her own will and consent.

Married women are discriminated against just because they are married as the exception specified in section 375⁸ gives an exemption to husbands which is a violation of both article 14⁹ and article 15¹⁰ as just because they are married, they are not being given the equal status that of the other women and this is nothing but discrimination against married women. The laws are for society and such problems exist in society but the major lacuna is that society is not ready to accept how will the laws be framed if the society is not welcoming or ready to accept the fact that rape can exist in a household and the husband should be punished for it.

CONCLUSION

Women who have been assaulted by their spouses are more powerless against different assaults and as often as possible experience the ill effects of long-haul physical and intense subject

⁷ Constitution of India 1950, art. 21

⁸ Indian Penal Code 1860, s 375

⁹ Constitution of India 1950, art. 14

¹⁰ Constitution of India 1950, art. 15

matters. Conjugal assault is a lot more frightening for a lady in this present circumstance since she needs to live with her victimizer consistently. Because of the reality of the results of conjugal assault, the wrongdoing should be condemned. Positive legitimate changes for ladies are happening in India, yet more work is expected to accomplish both lawful and social changes, for example, condemning conjugal assault and changing perspectives toward ladies in marriage. The law shielding ladies from abusive behaviour at home has various defects since it doesn't explicitly deny conjugal assault. The addition to side, passing a regulation denying abusive behaviour at home has made ready for regulation precluding conjugal assault. This mirrors a change in the state's mindset.