

**JOURNAL FOR LAW STUDENTS AND RESEARCHERS****MARITAL RAPE IN INDIA****Ashita Ratra & Nandini Mathur****Manipal University, Jaipur****INTRODUCTION**

India being a patriarchal society has always given more importance to men than women, and has always treated them subjugate to men. Earlier, women were not allowed to say or make decision about anything no matter whether it affected the woman herself. They were expected to obey their husbands and sit as mere maids and do the household chores. Men were considered as superior as they were supposed to be the whole and soul of a married woman's life; men were to be sole bread-earners of the family, so they were given more respect than women. Sati Pratha also prevailed in which the widow immolates herself on her husband's pyre. Women for a long time have suffered torturous behaviour and have faced much turmoil. There is an old saying: "Aurat, aadmi ke pairon ki jooti hai." this elucidates that no matter how arbitrarily the man makes the decision the woman needs to follow it blindly, and the husband can be inconsiderate towards his wife. Gender inequalities have given rise to many atrocities that are administered on females. As the society has evolved, mindset of the people is changing drastically, the gap between men and women is mitigating. Many social activists have devoted their lives for the upliftment of women, so that, she can live her life on her own terms. Government has played a major role in changing the mindset of the people by introducing many programmes like "Beti Bachao, Beti Pado" which has encouraged the people to give birth to girl child and instead of seeing it as a bane people should consider the girl child as boon. Even though the society has been modernized still we hear so many cases of women are being assaulted in some ways or the other. For example: Rape, domestic violence, wife battering, etc. The woman did not say anything against her husband due to fear and also the Indian women are taught to respect her in-laws. Therefore, she tries to save her marriage in all possible manners/ways.

## **RAPE INCLUDES MARITAL RAPE**

The most common and heinous crime that is done to a woman is rape which destroys her dignity and breaks her up into pieces. Rape is defined under section 375 of the Indian penal code, 1860. Section 375 states that rape is committed when a man penetrates his penis into the vagina, mouth, urethra or anus of the woman or forces her to do the same with any other person. There are seven clauses in this section which elucidates the circumstances under which the person who has committed the rape can be convicted. The main criteria is consent, if there is a lack of free consent from the side of women for sexual intercourse then, the man cannot even touch her but when this principle is violated. It gives rise to the crime of rape. The makers of the Indian Penal Code also added two exceptions to it; Exception two is the main concern as it states that: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape." This exception is violating Article 14 i.e. equality before law and being unjust to the females above the age of eighteen. The law is biased as it is not covering the entire female population but covering only a certain age group. Rape also includes Marital Rape which is a very serious topic as a female in marriage is being sexually assaulted and cannot convey what she is going through easily. Marital rape exists de facto not de jure, and is committed when the wife does not give her consent for the sexual intercourse to the husband, but the husband uses force and threat and violence to achieve it the wife in the due process is abused sexually and physically as the husband wants to quench his thirst of lust. Marital rape ruins the sanctity of marriage, and put this sacred bond in question. Many people have undermined the real value of marriage just for the sake of sexual pleasure; marriage does not give right to the person to do anything they want to do with their spouse. Each one has a life and the limits should not be crossed.

## **THE POSITION IN INDIA**

The Indian Penal Code does not criminalize marital rape committed on a woman above eighteen years which causes injustice to them. All should be given equal protection. The law is being discriminatory in nature, if marital rape happens with 17 years old woman then the accused will be penalized but if the same happens with 19 year woman her husband would not be held liable for marital rape. It is very difficult to decide the cases of marital rape as it is a very sensitive issue; the whole sacred bond of marriage is at question with the lives of two individuals. The acts happen behind the four walls where the couple themselves is the

witness, so, they can make up stories. Therefore, until and unless it is proved beyond reasonable doubt the accused will not be convicted, onus is on the prosecution to prove the accused guilty. Making law is straightforward but its implementation is difficult, without any doubt the stringent laws will help to fight this evil of marital rape but with this many fake cases of marital rape will also arise. Already our law is biased towards women; it becomes hard for the men to prove that they are innocent. Till now, we have no such law that punishes marital rape, and the police also do not launch any F.I.R. against the husband in case of marital rape. The women do not feel safe in their own home. Women have many dreams with their marriage, but some ends up being trapped with their husband who does not love their soul, but the body which he uses for his sexual pleasure immaterial what the women feel. The women who are trapped in a sexually-abusive should reach out for help; they should not sit back silently but should rebel against their husbands. We talk about women empowerment in the field of work and education, but we should also consider that women need to be empowered in their personal lives too. If the women are facing marital rape then she should seek legal help, sexual violence has the same meaning whether done by the stranger or by the husband of the woman. Article 21, i.e. Right to life also includes, right to live with dignity, and there is nothing bigger than the dignity of women. Therefore, nobody should hurt it and the woman should give consent whether she wants to get indulged in the sexual intercourse or not. It is not the duty of the woman to do sexual intercourse with her man even though she is not ready. The campaign of #MeToo is just the beginning of actual women empowerment; women are not just meant for giving birth to babies but a lot more. Women are no less than men.

### **THE IDEALIZED SOCIETY WE NEED**

The idealized society is the one where men and women have equal importance and have equal right to express their emotions. No men or women should be feeling exploited. The laws made should be gender neutral so that justice can be provided to the aggrieved person. Not only women, men can also face marital rape, and it is more difficult for them to actually open up, as the society has made an impression that man does not cry. Article 19, gives each of us power to express our emotions so why to hide them, marital rape is a menace in the society which needs to be resolved as soon as possible. And the age limit for the conviction needs to be removed so that all the accused can be treated in the same way. A man who commits marital rape with a 20-year old should not roam freely, when law covers all women till age of 18 then all should be considered as same and equal Therefore, marital rape should be criminalized and

the Legislature should also make strict laws to deal with this. So, there is equality among all the citizens of the country. Many countries have already criminalized marital rape that means it has been acknowledged as a crime throughout the world, now it is our turn to take the big step, so that our society becomes better, and everybody can enjoy their rights.

