

Marital rape laws: the risk of misuse and its implications.

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Abstract

The institution of marriage, often revered for its sanctity and permanence, is increasingly confronted with the harsh realities of marital rape, a subject that remains shrouded in silence and societal discomfort. While discussions surrounding sexual offenses typically underscore the significance of consent, the context of marital rape presents a complex narrative. At its core, the issue revolves around reconciling the sacrosanct nature of marriage, traditionally perceived as a union of souls rather than merely a physical bond, with the introduction of legal frameworks within this revered institution. The Hindu Marriage Act, for instance, conceptualizes marriage as a sacrament, thereby raising pertinent questions regarding the interplay between law and sanctity within marital relationships. This research paper endeavors to explore the intricacies of pious obligations inherent in marriage and the pressing issue of marital rape, with a specific focus on assessing the efficacy of Indian laws in addressing this concern and examining the potential risks of misuse of these laws.

Keys words: Marital Rape, Consent within Marriage, Indian Laws, Sacrament Relation, Women's Rights, Matrimonial Immunity

Introduction

The institution of marriage is a multifaceted construct, underpinned by the perpetuation of lineage and familial legacy. While diverse religious and cultural perspectives shape the understanding of marriage, the dignity and respect accorded to women remain a universal imperative. The feminist discourse advocates for gender parity, underscoring the complexities surrounding consent in marital relationships. The question arises whether the traditional notion of marriage, with its attendant obligations and mutual rights, necessarily implies consent in all aspects of the marital relationship, including sexual relations.

Marriage encompasses a triad of social, emotional, and legal dimensions, with conjugal rights and privileges inherent to the matrimonial bond. These rights include affection, companionship, cohabitation, joint property rights, and sexual relations. The social union of marriage entitles both spouses to each other's company and conjugal rights, which are mutual rights and privileges that arise from the state of being married. If either spouse detaches themselves from the social and emotional companionship of the other without reasonable cause, the aggrieved party may seek recourse through the courts. Section 9 of the Hindu Marriage Act, for instance, provides for restitution of conjugal rights, where the court may direct a spouse to return to their marital home.

The legal framework governing marriage varies across religions, with distinct statutes such as the Hindu Marriage Act, the Parsi Marriage and Divorce Act of 1936, and the Christian Marriage Act of 1872. In contrast, Muslim marriages are governed by religious texts, rather than codified law. Each of these frameworks confers certain legal consequences upon marriage, including the status of husband and wife, legitimacy of children, and rights to maintenance and property.

The pivotal issue that emerges is whether the right to cohabitation implicit in marriage necessarily entails an absolute right to sexual relations without consent, or if such actions would constitute a violation of marital rights. This conundrum highlights the complexities surrounding marital relationships, consent, and the law, underscoring the need for nuanced consideration and critical examination. As the law grapples with these complexities, it is essential to balance the rights and obligations inherent in marriage with the imperative of respecting individual autonomy and dignity.

Causes:

The issue of marital rape in India is multifaceted, with various factors contributing to its prevalence and lack of attention, which are as under:-

1. Underreporting: Cases of marital rape often go unreported due to societal pressures, lack of awareness about legal provisions, and fear of repercussions.
2. Lack of specific legislation: The absence of explicit laws criminalizing marital rape within the Indian legal framework exacerbates the issue, leaving victims without adequate recourse.
3. Limited family support: Victims frequently face a lack of support from their families, who may either deny the occurrence of such incidents or pressure the victim to remain silent due to societal norms.
4. Limited awareness and education: A significant portion of the population lacks awareness about marital rape, its implications, and the rights of victims. This ignorance can lead to victim-blaming and further marginalization.

5. Scarcity of literature and data: The topic of marital rape is often shrouded in silence, resulting in a lack of comprehensive literature and statistical data. This dearth of information hampers efforts to understand and address the issue effectively.
6. Media silence: The media's reluctance to address marital rape contributes to the issue's invisibility, depriving victims of a crucial platform for raising awareness and seeking support.
7. Absence of dedicated helplines: The lack of specific helplines for marital rape victims means that those in need of immediate support often have nowhere to turn.
8. Insufficient NGO support: Non-governmental organizations (NGOs) play a vital role in supporting victims of abuse. However, the lack of focused initiatives on marital rape limits the support available to victims.
9. Social stigma: The stigma associated with marital rape prevents many victims from coming forward, fearing judgment and ostracization.
10. Sacrament of marriage: The notion that marriage implies unconditional sexual consent can lead to a lack of recognition of marital rape as a serious issue.
11. Threat of divorce: Fear of divorce and its financial and social implications can silence victims, trapping them in abusive relationships.
12. Future of children: Concerns about the well-being and future of children can also deter victims from reporting abuse, as they may prioritize maintaining the family unit over seeking justice.
13. Sexual obligation: Societal expectations around sexual obligations within marriage can further complicate the issue, making it difficult for victims to assert their rights.

The silence surrounding marital rape in India is mirrored in the broader context of sexual education and awareness. The government's reluctance to engage in open discussions about these topics contributes to the persistence of such issues. Addressing marital rape requires a multifaceted approach that includes legal reform, education, and support systems for victims.

Provisions relating to woman are covered under Chapter V of Offences Against Woman and Child of Sexual Offences from sections 63 to 92 of BNS. Sections 63 to 92 outline various offenses, including rape, sexual harassment, voyeurism, stalking, and cruelty by husbands or relatives.

- These sections provide punishments for different forms of sexual violence and harassment.

Exception 2 to Section 63: This exception states that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under 18 years of age, is not considered rape. This means that husbands are generally exempt from prosecution for raping their wives if the wife is above 18 years old.

Section 67: However, there is an important exception to this exemption. According to Section 67, if a husband has sexual intercourse with his wife who is living separately (whether under a decree of separation or otherwise) without her consent, he can be punished with imprisonment for a term of not less than 2 years but may extend to 7 years, and shall also be liable to fine.

Living Together vs. Living Separately: The law distinguishes between couples living together and those living separately. If a couple is living together, the husband is generally exempt from prosecution for marital rape. However, if they are living separately, the husband can be prosecuted for non-consensual sexual intercourse.

Protection of Women's Rights: The laws outlined above aim to protect women's rights and prevent violence against them. However, the exemptions and limitations in the laws can create complexities and challenges in prosecuting marital rape cases.

Potential Concerns Regarding the Misuse of Marital Rape Criminalization

The criminalization of marital rape is a critical measure aimed at safeguarding women's rights and preventing marital violence. However, apprehensions regarding potential misuse of this legal provision necessitate careful consideration and a balanced approach to ensure its effective implementation.

The fact of misuse of the provision can be depicted from the misuse of section 498A of IPC by the wives, in these days. Section 498A of IPC was inserted in the Indian Penal Code to prevent the wives from harassment at the hands of their husbands or in-laws families. But the ladies started using the said section as a weapon to harass their husbands and in-laws families to achieve their personal score instead of getting the justice and the misuse of the said section was highlighted by the Hon'ble Supreme Court of India as well as Hon'ble High Courts in their various rulings. The tremendous change came in the decisions of the courts after the decision passed by the Hon'ble Supreme Court of India in the case titled as *Arnesh Kumar v. State of Bihar*¹, in which the Hon'ble Supreme Court held that

There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the Indian Penal Code was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this

¹ AIR 2014 SC 2756

provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence u/s 498-A of the Indian Penal Code, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases u/s 498A, Indian Penal Code is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

The data of National Crime Records Bureau, Ministry of Home Affairs clearly shows about misusing of the section by the wives and same is also observed by the Hon'ble Supreme Court while deciding the said case and also found that the section is being misused by the wives with the dishonest intention to harass their husband and in-laws families to achieve their personal evil design inspite of the fact that the said section is a shield not a weapon, rather same now is being used as a weapon instead of shield. The Hon'ble Supreme Court of India further held that

Police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction: (1) All the State Governments to instruct its police officers not to automatically arrest when a case u/s 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure; (2) All police officers be provided with a check list containing specified sub-clauses u/s 41(1)(b)(ii); (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention; (4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention; (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing; (6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing; (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction. (8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

Even after passing of the said directions, there is a still misuse of the section 498A of IPC and the Hon'ble High Courts as well as Hon'ble Supreme Court of India come forward to rescue the residents of the country.

Apprehensions Regarding Misuse

1. False Accusations: The possibility of false accusations being leveled against spouses, potentially resulting in wrongful convictions and harm to the accused's reputation and life, is a concern that warrants attention. The legal system must ensure that allegations are thoroughly investigated, and only cases with credible evidence are pursued.

2. Exploitation for Revenge or Leverage: Another concern is that the law might be exploited as a tool for revenge or leverage in marital disputes, potentially leading to its misuse. It is essential to recognize that the law's primary objective is to protect victims of violence and abuse, not to provide a means for revenge or leverage. Minor disagreements or misunderstandings might be escalated into criminal cases, underscores the need for a nuanced approach to marital rape criminalization. The law should be applied judiciously, with a focus on cases involving clear evidence of non-consensual sexual intercourse.

Mitigating Measures

Law enforcement and judicial systems should conduct thorough investigations, gathering credible evidence and ensuring that only cases with merit move forward. The legal system should provide protections for the accused, including the right to a fair trial and representation, to ensure that their rights are safeguarded.

Balancing Competing Interests

By carefully balancing these competing interests and implementing measures to mitigate potential misuse, it is possible to create a law that effectively protects women's rights while minimizing the risk of misuse. Ultimately, the goal is to promote healthy relationships, prevent violence, and ensure that women have recourse in cases of marital rape.