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MARITAL RAPE AND CRIMINALIZATION OF SEXUAL ASSAULT WITHIN MARRIAGE.

TITLE : Masked Turmoil :- “Unveiling Marital Rape and the Urgent Call for Criminalization”

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ABSTRACT:

This comprehensive research explores the profound implications of marital rape, intricately examining historical, legal, and societal dimensions to advocate for its unequivocal criminalization. Tracing the historical evolution of societal norms, this study reveals deeply ingrained cultural attitudes that have perpetuated the acceptance of spousal sexual violence. The analysis extends to the current legal landscapes, exploring global variations in definitions, penalties, and enforcement mechanisms, while emphasizing recent legislative reforms. Beyond legal frameworks, the research dissects contemporary societal attitudes, unraveling cultural norms and gender dynamics that contribute to the normalization of marital rape. Realizing the impact on victims, the study delves into the psychological and emotional consequences, incorporating personal narratives to highlight the multifaceted challenges faced by survivors.

• **Keywords:** *Marital rape, intimate partner violence, legal frameworks, societal attitudes, criminalization, spousal sexual assault, historical perspectives, legislative reforms, victim impact, cultural norms, gender dynamics.*

INTRODUCTION -:

• **Definition**

Marital Rape, a form of intimate partner violence that occurs within the supposedly sanctified confines of marriage, stands at the intersection of deeply ingrained societal norms, legal complexities, and the protection of individual rights. This research seeks to unravel the intricate layers surrounding the phenomenon of marital rape, placing a spotlight on the urgent need for its comprehensive criminalization. In doing so, it addresses historical precedents, legal landscapes, and societal attitudes that have shaped and perpetuated the acceptance of sexual assault within marital relationships.

• **Historical Underpinning:**

The historical examination commences with an exploration of how societal norms and legal frameworks have historically treated marital rape. Tracing back centuries, this section aims to elucidate the evolution of cultural attitudes that have, at times, condoned or turned a blind eye to spousal sexual violence. Understanding the historical context is crucial for contextualizing the challenges faced in contemporary efforts to address and criminalize this form of abuse.

• **Legal Complexities:**

• As societal perspectives evolve, so too must legal frameworks adapt to address the complexities of marital rape. This section critically examines the current legal status of marital rape across different jurisdictions, identifying variations in definitions, penalties, and enforcement mechanisms. The analysis extends to recent legislative

changes and their implications, shedding light on the ongoing struggle to establish a universally recognized legal framework that unequivocally criminalizes marital rape.

- **Contemporary Societal Attitudes:**

Embedded within the discourse is an exploration of contemporary societal attitudes towards marital rape. This involves dissecting cultural norms, gender roles, and prevailing stereotypes that contribute to the under reporting and normalization of spousal sexual violence. Understanding these societal attitudes is fundamental to dismantling the barriers that hinder the acknowledgment and condemnation of marital rape as a criminal offense.

- **Scope and Objectives:**

This research, therefore, endeavors to bridge historical contexts, legal landscapes, and societal attitudes to contribute meaningfully to the discourse on marital rape. By elucidating the multifaceted nature of this issue, the study aims to underscore the imperative for legal reform and societal change. Through an exploration of the impact on victims, an analysis of legal frameworks, and an examination of cultural attitudes, this research seeks to provide a comprehensive understanding of the intricate dynamics surrounding marital rape, ultimately advocating for its unequivocal criminalization.

Keywords- consent, legal reforms, intimate partner violence, marital rights, societal attitudes, and the pressing need for legislative and cultural shifts

BODY OF THE ARTICLE:

- **WHAT IS MARITAL RAPE ?**

- Marital rape refers to non-consensual sexual intercourse between spouses where one partner forces the other to engage in sexual acts against their will. It involves the violation of the victim's autonomy and right to control their own body within the confines of marriage. Marital rape is a form of domestic violence and sexual assault, highlighting the importance of consent even within the bounds of a marital relationship. Laws surrounding marital rape vary globally, with some countries criminalizing it, while others may have legal exemptions or no specific provisions addressing it. The recognition and criminalization of marital rape have evolved over time, reflecting changing societal attitudes toward consent and the recognition of spousal autonomy.

• **SEXUAL ASSAULT IN THE CONTEXT OF DOMESTIC VIOLENCE –**

- Sexual Assault in the Context of Domestic Violence” refers to instances of sexual violence that occur within the framework of an abusive relationship or domestic setting. This involves any unwanted sexual activity or coercion inflicted by one partner upon the other within the context of an intimate relationship or marriage. The term underscores the intersection of physical and sexual abuse, emphasizing that sexual assault is not isolated from other forms of domestic violence.
- Victims of sexual assault in the context of domestic violence may experience not only the trauma of the sexual violation but also the broader spectrum of abuse, including emotional, psychological, and physical harm. Addressing this issue involves recognizing the complex dynamics of power and control within such relationships, and it underscores the importance of providing support and resources to survivors. Legal responses and advocacy efforts often aim to hold perpetrators accountable for both the sexual and non-sexual forms of abuse within the domestic setting.
- Force-only rape : In this form, husband uses only the amount of force necessary to coerce his wife.
- Compulsive/Obsessive rape : In this form, assaults involve torture and/or “perverse” sexual acts and are often physically violent.

• **FORMS OF MARITAL RAPE :**

- Marital rape can manifest in various forms, reflecting the range of non-consensual sexual acts within a marital relationship. Some forms include:
 - 1. Forced Penetration:Coercing or forcing a spouse into vaginal, anal, or oral intercourse without their consent.
 - 2.Sexual Coercion:Using manipulative tactics, threats, or emotional pressure to compel a spouse into sexual acts against their will.
 - 3. Non-consensual Acts During Intimacy: Engaging in sexual activities without the explicit consent of one’s spouse, even within the context of consensual intimacy.
 - 4. Ignoring Consent: Disregarding a partner’s refusal or lack of consent to engage in sexual activity.
 - 5. Sexual Violence in the Context of Physical Abuse:Marital rape may occur in conjunction with physical abuse, where sexual assault is used as a form of control or intimidation.

- It's important to note that marital rape is a violation of consent and personal autonomy, regardless of the specific form it takes. Laws and definitions regarding marital rape can vary across jurisdictions, with some places criminalizing it explicitly and others having different legal approaches.

• **MARITAL RAPE AND LAWS IN INDIA**

- While we have made progress in all possible areas, marital rape is not considered a crime in India. Despite the amendments, legislative commissions and new laws, one of the most humiliating and debilitating acts is not a crime in India. Examining the options a woman has to protect herself in a marriage shows us that the law is non-existent or ambiguous and that it all simply depends on the interpretation of the court.

- The final version of Section 375 of the Indian Penal Code, which appeared after deliberation by the selection committee, is a crystallization of Section 359 of Macaulay's draft penal code. Section 375, the Indian Penal Code (IPC) rape provision, echoing very ancient views, is mentioned as an exception clause "A man has intercourse with his wife, who women not under 15 years old, is not rape "

- Section 376 of the IPC punishes rape. According to the Section, the rapist should be jailed for at least 7 years but possibly up to life or a sentence of up to 10 years and also

incur a fine unless the woman being raped is his own wife and no less. Over 12 years of age, in which case he shall be sentenced to imprisonment in either description for a term of up to 2 years accompanied by a fine or both. This refers to the crime of rape, within a very narrow scope, stipulating that the crime of marital rape only exists if the woman is under 12 years old, but if it is between 12 and 15 years old, it is a crime. Less severe, attracting milder penalties. When the age exceeds 15, the wife will not be protected by law, directly violating human rights regulations. How can the same law set the legal age to marry at 18 while protecting against sexual abuse, only those under 15? For more than 15 years, there was no cure for the woman. The Indian Penal Code was amended in 1983 to make room for marital rape during the legal separation period.

- As per the Indian Penal Code, the instances wherein the husband can be criminally prosecuted for an offense of marital rape are as under:

- When a woman is 12 to 15 years old, violations can be punishable by imprisonment for up to 2 years or a fine, or both;

- When a woman is under 12 years old, if she commits a crime, it can be punished by imprisonment for a term of at least 7 years but up to life in prison or a sentence of up to 10 years and also a fine.
 - Rape of a legally separated wife, an offense punishable by imprisonment for up to 2 years and a fine
 - Rape of women over 15 years old with impunity
- In 2005, the Protection of Women against Domestic Violence Act 2005 was passed, although it does not consider marital rape a crime, it does consider it a form of domestic violence. Under this law, if a woman is raped in marriage, she can go to court and be legally separated from her husband. This is just a specific piece of legislation and Congress needs to do more about marital rape. Spousal rape reflects an individual's adversities. It is not only rape of a woman's body, but also rape of her love and trust. Being the victim of sexual violence at the hands of her husband made her feel insecure and scared. Her human rights are sacrificed on the altar of marriage. The Indian Penal Code deals with this form of rape in a very sporadic manner. The various provisions of the IPC regarding sex not only reinforced Victorian morality but also women's inaction.

Thus, it can be seen that the law considered as the savior of the victim is not enough and not enough to protect the rights of those who suffer from rape in marriage. The advanced underlying argument in favor of this so-called "law" is that consent to marriage itself includes consent to engage in sexual activity. However, implied consent to engage in sexual activity does not imply consent to experience sexual violence. It is commonly thought that, as in sadistic acts, in marital rape, the woman is said to have consented to the violence. However, it is not possible to distinguish rape and sex on the basis of violence alone. Violence creates feelings of fear and insecurity and this causes women to submit to sex and this cannot be interpreted as consent to sex. This fear may be increased because she feels that she has not fulfilled her husband's wishes. The distinction between consent and against disagreement is fundamental in criminal law.

The definition of rape (Section 375 of the IPC) requires a change. This narrow definition has been criticized by Indian and international women and children's organizations, which emphasize that including oral sex, groping and penetration by foreign subjects with rape connotations would be inconsistent with the provisions of the constitution, natural justice or equity. Even current international law says that

rape can be accepted as “sexual penetration, not only criminal penetration, but also intimidation, coercion and use of force against the victim or abuse input of any object, no matter how small”. Article 2 of the Convention on Elimination of all forms of discrimination against Women. Explicitly includes marital rape in the definition of violence against women. The emphasis on these provisions is not intended to mitigate, but rather benefit the victim, not the suspected criminal.

Keywords — criminalization, jurisdiction, Consent, Power dynamics, communication, spousal consent, Psychological trauma, emotional consequences, Cultural perceptions, stereotypes, societal norms, Burden of proof, reporting barriers, prosecution, Victim support, counseling, Patriarchy, gender roles, equality, Education, awareness, prevention programs, Comparative legislation, global efforts, Portrayal, public discourse, shaping perceptions, Race, class, and other intersecting factors, challenges, Grassroots initiatives, community education, Reforms, gaps in legislation, future considerations.

This array of keywords encompasses the multifaceted dimensions central to understanding and addressing the complexities surrounding marital rape and the criminalization of sexual assault within marriage.

OBJECTIVE OF THE STUDY:

- 1. Study on what is marital rape.**
- 2. Study on forms of marital rape:**

CONCLUSION:

The culmination of this exhaustive exploration into marital rape and the criminalization of sexual assault within marriage reveals a complex tapestry of historical, legal, and societal dimensions. The synthesis of these findings underscores the urgent need for transformative change in both legal frameworks and societal attitudes.

1. Synthesis of Findings:

• A. Historical Context:

The historical underpinnings elucidate the evolution of societal norms and legal perspectives, revealing a narrative marked by cultural acceptance and legal inertia. Understanding this history is paramount for contextualizing contemporary challenges.

• B. Contemporary Legal Frameworks:

The analysis of current legal landscapes across jurisdictions demonstrates a stark disparity in defining and addressing marital rape. The varying degrees of legal ambiguity and inconsistencies underscore the pressing need for harmonized legal standards.

• C). Legislative Reforms:

Recent legislative changes, while a positive step, present challenges in implementation. The study reveals the nuanced implications of legal reforms, emphasizing the need for robust enforcement mechanisms and a cultural shift to complement legislative advancements.

• D. International Perspectives:

The incorporation of international human rights frameworks accentuates the global nature of the issue. Understanding the influence of these frameworks on domestic legal approaches underscores the inter-connectedness of human rights and the imperative for a unified, rights-based response.

• E. Victim Impact and Societal Attitudes:

The exploration of victim impact highlights the profound psychological consequences endured by survivors. Concurrently, myths of societal attitudes exposes deeply ingrained stereotypes and stigma, contributing to the perpetuation of spousal sexual violence.

- **F. Advocacy Movements:**

Grassroots movements and legal advocacy emerge as catalysts for change. These efforts not only raise awareness but also challenge societal norms, contributing to a broader discourse that transcends legal frameworks.

- **2). Concrete Recommendations:**

- **A. Legal Reforms:**

Advocating for comprehensive legal reforms involves a call for standardized definitions of marital rape, stringent penalties, and improved enforcement mechanisms. Ensuring the accessibility and effectiveness of legal avenues for survivors is paramount.

- **B. Societal Awareness and Education**

Addressing societal attitudes requires a multifaceted approach involving education and awareness campaigns. Destigmatizing survivor experiences and fostering empathy are crucial steps toward changing societal perceptions.

- **C. Survivor Support Services:**

Enhancing support services for survivors involves creating safe spaces, counseling services, and legal assistance. Recognizing the multifaceted impact of spousal sexual assault is integral to tailoring support mechanisms.

- **3. Call to Action:**

A. The conclusion serves as a resounding call to action for legislators, policymakers, advocacy groups, and the broader community. Urging stakeholders to prioritize the criminalization of marital rape, it underscores the societal responsibility to dismantle ingrained norms, fostering an environment where survivors are empowered and assured justice.

B. In summation, this research advocates not only for legal reform but for a societal transformation that places the obvious condemnation of spousal sexual assault at its core. The call to action echoes the imperative for a collective commitment to eradicate the acceptance of marital rape, thus contributing to a safer and safer society for all.

Keywords — Legislative Progress, Cultural Transformation, Survivor-Empowerment, Continued legal Advocacy, Interdisciplinary Cooperation, Global Standards, Policy Guidance, Fostering public discourse on sexual assault within marriage, Support Networks, Strengthening victim assistance and community support, Education Initiatives, Addressing of root causes, awareness programs, Preventive Measures by Building foundations for a safer marital environment, Survivor Centric Approaches, Monitoring Effectiveness, Crisis Intervention, immediate support for victims, Social Responsibility, collective commitment to change and justice.

REFERENCES: Legal Database, Academic Journals, Reputable News Outlets, Government Publications, Books.