

NATIONAL COLLOQUIUM ON EMERGING ISSUE OF MARITAL RAPE IN MARRIAGE RELATED LAW”

*(Report on the Colloquium, Organized at SLS-N on
October 17th, 2015)*

Abstract: The Legal Aid Center, SLS-N, in pursuance of its mission to realize the ‘vision statement’ of the Symbiosis International University in its activities had organized the ‘colloquium’ on 17th October, 2015 at campus of SLS-Noida. A no. of researchers, academicians, and advocates had participated in the event. While, the researchers had presented their ‘papers’ during 1st session of the colloquium, the advocates & the academicians discussed the subject matter through forum of ‘panel discussion’.

*Organized by,
Legal Aid
Center,
Symbiosis
Law School,
NOIDA
(Constituent
of Symbiosis
International
University,
Pune)*

“National Colloquium on Emerging Issue of Marital Rape in Marriage Related Laws”

The Legal Aid Center, Symbiosis Law School, Noida had conducted its first National Colloquium on the “Emerging Issue of Marital Rape in Marriage Related Laws” on 17th October, 2015 at campus of the college. The colloquium was organized in two sessions. The first session was to be paper presentations from students who were invited from various Law Schools all over the country; and the second session was a ‘panel discussion’ of experts, from the legal fraternity, with student participants of the colloquium.

SESSION - I

The program started with an introductory note by Aerika, co-anchor. She started by asking a question to the audience that whether or not ‘marital rape’ is prevalent in the society. Undoubtedly the answer had to be a ‘yes’. She explained that in India there is no provision for it and no law recognizes it as an offence. Though Marital rape has all the elements of rape, but still it has not been recognized as an offence under IPC.

Nayanika, co-anchor, explained how this very issue of marital rape is covered under the Protection of Women from Domestic Violence Act, 2005; still it is a civil wrong and not considered as a criminal offence.

Dr. C J Rawandale, the Director of Symbiosis Law School, NOIDA, appreciated the efforts of the Legal Aid Centre for taking up topics like these, which are seldom talked upon by the people in normal day to day life. Then giving a piece of his mind on this topic he said, marriage is a pious relationship which is based on the element of security and trust on each other; due to this very issue this pious relation is destroyed. He said that in the society there are many who are for this very issue and many who are against it. *‘It is question that we need to ask ourselves what is right and what is not!’*; by saying this, he opened the house for the discussion which was through paper presentations by students.

The first paper was presented by Dhairya Madan and Bhavya Mishra. The title of the paper that they presented was ***‘Behind the Closed Door’***. They started by explaining the whole concept of marriage that it is a social institution where having a sexual relation with your spouse is an implied right; but not to such an extent that it becomes so much forceful that it destroys the whole institution. Man is duty bound to respect the decisions of his wife and hence marriage gives no right to the husband to force his wife into sex. Then they covered the definition of rape as provided under section 375 of the Indian Penal Code, 1860 and how marital rape is not included in its definition. They then told that the origin of marital rape is unknown as such. It has originated gradually. Then they explained the three types of Marital rape, which are, Battering rape (most prevalent where there is physical violence and sexual abuse involved); Force-only Rape (which involves the use of force limited to a

certain extent); and then is the Compulsive/Obsessive Rape (this assault includes torture). They then explained that women in the USA slowly raised their voice and finally in 1993, marital rape got recognized as an offence in the USA. Also they told how in other countries like the UK, marital rape came to be known as an offence. They then explained the Indian scenario. How T B Macaulay did not interpret the issue of marital rape while framing the laws under the IPC. They suggested that it should become an offence under the Indian laws as it clearly violated the rights of the women enshrined upon them by the Constitution of India, in the form of Fundamental Rights under Articles 14, 15 and 21. They also touched upon a new dimension of Male Rape. They said that male can also be a victim.

The second presenter was Maithili Moondra, title of whose paper was ***'Marital Rape- an Unspoken Reality'***. She explained that there is battle of sexes prevalent in the society and men subjugate the women in whichever way they can. Marital rape or Spousal Rape, as it is usually called, is one of them. She also explained the definition of rape and the three types of Marital rape that is prevalent in the society. She said that Marital rape is the most underrated offence in India due to the following two reasons:

1. Firstly, women hesitate to report such a crime, and
2. Secondly, it is not an offence in the Indian Laws.

She explained how marital rape has been reported under various foreign reports. The reason for depression, abortion and HIV/AIDS in women is also due to this issue of Marital rape. Then she explained the position in various countries like USA, UK, Sri Lanka, France, Thailand, Greece, Switzerland, etc. then she explained the position in India and explained how Section 375 is a violation of the Fundamental Rights (Articles 14, 15 and 21) provided for under the Constitution of India. She then told that the issue of Marital rape was proposed to be made an offence under the IPC by the Justice Verma Committee in the 172nd Law Commission Report in March 2009. Then she also told about the bill proposed by the National Commission for Women for this very issue. She then explained the counter arguments, which are:

1. Concept of Marital rape is quite uncommon,
2. Women may use it in a wrongful manner,
3. It will lead to destruction of the institution of marriage, and
4. It is difficult to prove.

Then she also discussed the arguments in support of it, one of which said that if it is difficult to prove doesn't mean that it shouldn't be made an offence. At the end she suggested that it should be made an offence under the IPC.

Then a presentation was done by Yash Kotak and Vrinda Agarwal. They presented on the topic '**Male Rape and Marital rape**' in which they explained that even men are victims of rape. They explained the gender neutral concept of rape and how it is gender specific under laws in many parts of the world. They explained how section 375 of the IPC is gender specific in its approach. Then Indian law was compared to the international law. They gave reference of section 1 of Sexual Offences Act, 1956 in U.K. which is gender neutral. Also in USA, according to an FBI Uniform Crime Report, rape is gender neutral. They made a suggestion that in India too, rape should be made gender neutral. They then explained the concept of cruelty where the men may face mental agony due to 2 reasons:

1. Where his consent is not taken,
2. Where she doesn't give consent.

Then they showed a video explaining how men can also be a victim of Marital rape.

Then Mr. Vikram, a faculty of Symbiosis Law School, NOIDA, explained that the concept of Marital rape is subdued under various legal conflicts. Also as this subject is very sensitive, he termed it '**Marital rape under Blind Laws**'. He also elaborated upon the gender neutral idea of rape. He further explained the pros and cons of the 172nd Law Commission Report as suggested by the Justice Verma Committee. He further said that as there is too much pressure in relation to culture and religion, so women hesitate a lot to discuss this issue. So this needs to be made an offence in order to women to open up.

Lastly, paper was presented by Nayanika Ruia and Arushi Chauhan, on the title '**Emerging Issue of Marital rape and Marriage Laws**'. They recognized the main issue that whether sex without consent of wife can amount to rape or not? They raised the question that if entry in the marriage is allowed with the consent then why not exit from the same tie is difficult for the women. In 2015, the Supreme Court of India, refuse the plea of a women seeking divorce on the ground of marital rape, saying that it was for a personal cause and not a public cause. They then explained the legal provisions in India and the Justice Verma Committee Report. They discussed the position of marital rape in various religions along with the international scenario. They then discussed the various solutions like including marital rape under the anti-rape laws in India.

With this the paper, the paper-presentation round was brought to an end. Then there was a question answer session held, where the audience asked their various queries to all the presenters regarding the issue in hand, and the presenters answered such queries with best of their abilities. At last, Dr. Madhuker Sharma, head of the Legal Aid Centre, gave his views and suggestions to the presenters on their presentation. He then invited everyone for tea or coffee and marked the end of the 1st session of the colloquium.

SESSION - II

The second session of the colloquium was of 'panel discussion' wherein panellists included Ms. Geeta Luthra (Sr. Advocate), Adv. Jai Bansal, and Dr. Madhuker S. (Asstt. Prof. of Law, SLS-N). Dr. Rawandale, Director, SLS-N, felicitated the guests and thanked them for taking out time to participate in the event. The session started with an introductory note by Maithili, member of the Legal Aid Centre, Symbiosis Law School, Noida. Then the chair Advocate Geeta Luthra, Sr. Advocate, declared the floor open for discussion.

Ist Panellist – Mr. Jai Bansal (Advocate, High Court of Delhi)

The first speaker of the day was Adv. Jai Bansal, who started the discussion with the Indian picture. In India the concept of marital rape has not developed beyond a certain point. It is not accepted by lawyers and there is no formal law that deals with marital rape. He said that he has often observed a certain degree of reluctance of making such laws which directly deals with marital rape as it goes against the traditional view of marriage. In western countries the concept of subordination of wife to husband was challenged and this was done by the 2nd wave of feminism. By late 20th century some countries in the west had criminalised marital rape. However in India little has changed over the years and things have remained where they have been in the 60s and 70s. From his experience he talked about divorce lawyers taking marital rape a ground in some cases. But these cases are few and far between. Our society even today is of the opinion that once married the spouses could not refuse consent and if there is consent then how can such a consented act of sexual intercourse be considered as rape. Initially there was no formal law anywhere in the world with regard to marital rape. Subsequently 20 countries across the globe could criminalise marital rape. But India is still struggling with dowry and cruelty provisions. In the Indian context the forensics are not so advanced in order to prove the offence of marital rape. Hence looking at the condition of our country, maximum it can be a civil offence not a criminal one. As the concepts of Human Rights and Feminism have evolved in the international scenario marital rape has emerged as a topic of great concern. Again over the years women have realised the importance of self-sexual determination. U.N. has mentioned in a report that women have right to their body and they are now all the more aware of it. In this context he explained that how women now-a-days don't take offences committed against their bodies very lightly. They come forward and lodge complaints against their perpetrators which are very much appreciable.

IInd Panellist - Members Of L.A.C. (Presentation by Yash Kotak & Srishti Girdhar)

Before the presentation was made by members of the Center, Dr. Madhuker S. (Head, LAC) gave some background of the work carried by the Center on the issue of marital rape. He started his

speech with how the members of Legal Aid Centre, Symbiosis Law School, NOIDA came up with the idea of working on the issue of marital rape. He talked about how the members worked and how their method of working was very different. They did not put much faith on secondary data so they went forward and collected primary data to understand the issue better. They collected data from wives and lawyers. The lawyers interact with clients who face such problems and thus were very helpful in the process of data collection. The team of para-legal volunteers met the advocates and sought their opinion. They collected data from the various district courts of Delhi, Delhi High Court and the Hon'ble Supreme Court of India. So the presentation is based on the opinion of the Bar.

Yash Kotak, one of the presenter, explained the model framework on the theme of marital rape. The model was based on fundamental premise, variables, design, features, exemplar and merits. In this case the fundamental premises were the existence of any forceful sexual activity with wife by husband and consummation of marriage is essential of marriage. Then, he discussed the variables affecting the premise which were Section 375 of IPC, 1860; Section 3(a) of the Protection of Women from Domestic Violence Act, 2005; Section 20 of the same Act, Section 13 of HMA; Section 10 of Indian Divorce Act; explanation of Section 32 of PMA; Section 27 of SMA; Article 15 (1) and Article 21 of the Constitution of India, 1950.. He then moved on to explain how data was collected and ultimately used for the purpose of the colloquium.

The presentation was further carried forward by the next presenter, Srishti Girdhar who explained the empirical data in great details. According to the primary data collected by the para legal volunteers of LAC, 49% of the lawyers have said that they use Marital rape as a ground for divorce as opposed to 51% lawyers who have said they don't use it as a ground for divorce cases. 43% of the wives allow their advocates to use the argument and 57% do not allow for the same. 48% of the lawyers have said yes to criminalisation of Marital rape, 70% have said no while 2% have remained silent regarding the topic.

The presenter also explained the features of the research work like understanding the situation from the grass-root level; re-establishment of relation between premises and variables; reaffirmation of premise and variables through opinion of experts; entering into target universe at multiple locations; replication of working methods in the same universe. The constraints of the research work like inhibition of the respondents due to lack of acquaintance with the target population and constrains regarding time/human and financial resources were also dealt by her. Finally she discussed the merits of the research work which included re-entering into target universe minimizing inhibition among the respondent, replication of working methods and working at multiple locations.

IIIrd Panellist – Dr. Madhuker S. (Head, Legal Aid Center, SLS-N)

He pointed out that the objective of the colloquium was to look out what is the scope of marital rape in the existing laws. He said that to force the legislative and the executive to make and act upon laws of marital rape we need mass support. Almost more than 50% population in the country is male. They may not welcome these laws with arms wide open, so fulfilling this wish would be very difficult in the current scenario. After discussing with students and colleagues he said that he has got to know that marital rape has some remedies in civil law. In some cases it can come under cruelty. Cruelty consists of mental and physical cruelty and these are punishable. There was a case in February, 2014 where Justice S. Mukhopadhyaya said that denial of sex with no reasonable ground can be ground for divorce. Dr. Sharma discussed how the interpretation of this statement leads to the view that if there is proper reason, then sex can be denied by either of the husband or the wife. In another case *Shashibala v. Rajeev Arora* the judge said that marriage is a sacred bond and making sexual intercourse one of the main objectives of marriage is mockery of the institution of marriage. He pointed out to a great anomaly in the existing law where Section 376 of the I.P.C says that during judicial separation if the spouses get involved in sexual intercourse without the consent of the other then it would be considered as rape. But if the husband and wife are living under the same roof then the same act won't amount to rape. In his opinion, legislature seems to be in doubt. The Supreme Court has recognised live-in relationships to be equivalent to a marriage relationship; the Supreme Court has further termed sexual intercourse with false promise of marriage as rape. With such a great change in the mind-set of the court it is even more surprising that they remain silent in case of marital rape.

Dr. Sharma further spoke about how marriage is considered to be a sacred relation in our society; he posed a question before the audience: 'but is it really so'? He pointed out that ever rising no. of divorce case, especially mutual divorce case, says something else. In his opinion, now-a-days it is very difficult to consider marriage to be a sacred relation. He pointed out that how the lawyers contend that if laws are made with regard to marital rape it will be extensively misused by frustrated wives, at which he pointed out that the important question that needs to be asked today is that just because a provision can be misused should this fear stop us from making any such law. He also wanted to make the audience realise that when a woman comes to lodge a complaint of marital rape they don't want to restrict the issue to their bed rooms; they fearlessly come outside the four walls of the house to lodge their complaint, and we should at least respect their fearlessness. At the end of his opinion, he made it clear that the misogynistic approach of the men in the society cannot stop the Legal Aid Centre from working upon the issue of marital rape; he emphasized that under all circumstances they would carry forward their work.

IVth Panellist – Ms. Geeta Luthra (Sr. Advocate, High Court of Delhi)

She started the discussion with the point that we have not evolved enough as a society to have provisions under criminal law on marital rape. Next she went on to the definition of marital rape which says marital rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Marital rape could be by the use of force only, a battering rape or a sadistic obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused. She also explained the history of marital rape or how it evolved with the help of case laws.

Ms. Geeta Luthra gave reference of *Phulmoni Dasi case (1970)* in which an 11 year old married girl bled of vaginal rupture because her husband continuously raped her. Since back then there was no law on marital rape he was booked under sections 304, 304A, 325, 338 of the IPC and was convicted only under Section 338 which deals with grievous hurt by negligence. The punishment was bare minimum compared to the crime committed by the husband. Today the punishment in this case would have been far more severe. This case made a great impact on the mind of the legislature and they came up with provisions of statutory rape where the wife is below 15 years of age.

Then Adv. Geeta discussed the provisions of marital rape. Although it is not a criminal offence there are provisions to seek remedy for the same in Protection of Women from Domestic Violence Act, 2005. Marital rape may fall under sexual abuse. The wife can apply for separation if she can allege marital rape. The DV Act provides the woman with several protections like custody of children, prevent husband from entering the house etc. She also discussed two important reports with respect to the issue of marital rape.

She took reference of 172nd Report of the Law Commission of India which had pointed out the necessity of excluding marital rape from Sec 375 of the IPC because there were very few prosecutions under sec 375. The 'nirbhaya' case led to agitation and people started asking for amendment as a result of which Justice Verma Committee was set up. This committee report changed the definition of rape. It has made the ambit of rape wider.

She said that here we should ask ourselves a question that, are we broad minded enough to come up with a sexual assault provision which has no gender biases? This widened the scope of sexual assault and included it in the definition of rape. After 'nirbhaya case', punishment for rape in India is made the highest in all the democratic countries. One of the most important questions that come up in this context is what is the conviction rate of our country? Are the reasons for the poor conviction rate is judges being liberal, police being corrupt, parties losing interest because of the long court proceedings? Or is it something other than these? Creating new provisions cannot be the solution to any problem if the conviction rates in our country are so low. The statistics showing conviction rate

goes like this: 26.4% in 2011, 24.2% in 2012, & 27.1% in 2013. The main reasons for the low conviction rates are delay in the procedure, poor investigation by the police officers, police taking bribes. For conviction strong evidence is needed. Lack of evidence is another reason for low conviction rates in India.

Today's India can be divided into urban and rural. The urban population consists of the people who can manipulate and exploit the laws and the rural population consists of the people who need the marital rape laws. These two divisions need two very different legislatures. But in reality it is not possible to have two sets of laws for two sections of people.

She also discussed marital rape in the light of Article 21 of the Constitution with the help of case laws. In *State of Maharashtra v. Madhukar Narayan*, the judges said that women are entitled to sexual privacy. In *Vishaka v. State of Rajasthan*, the right of privacy of women was extended to the workplace. In some cases the Supreme Court has said that even prostitutes have right to privacy. In *Emperor v. Shahu Mehrab*, the husband caused death of the child wife by rash and negligent act and had to undergo bare minimum punishment under 304A of IPC. In *Saritha v. T. Venkata Subbaiah*, Andhra Pradesh High Court held that restitution of conjugal rights thus enforced offends the inviolability of the body and mind subjected to the decree and offends the integrity of such a person and invades the marital privacy and domestic intimacies of a person. In *Sree Kumar v. Pearly Karun*, the couple were going through a period of separation. However they decided to give their marriage a shot and so the wife came back to the husband's house for 2 days. Meanwhile the husband raped the wife. The wife approached the court but the husband was not held guilty as the wife consented to coming back to the matrimonial house. In *Radhu v. State of Madhya Pradesh*, false charges of rape were brought against the accused for financial benefit of the woman. Again in *Rohit Bansal v State of NCT Delhi*, the woman filed a false case of promise to marriage; ultimately the accused got bail.

Adv. Geeta Luthra made it clear that marital rape is not one of the salient reasons of seeking divorce as shown in the graphical presentation by the members of LAC. The statistics presented by the members of LAC regarding the argument of marital rape finding place in the lawyer's argument was also challenged by her. She explained that we as a country, as a criminal justice system have not evolved enough. In our country we consider marriage to be sacrosanct. We have to work on our marriage and not pull away in a contract in just 2 minutes. In moments of vengeance women will come forward and lodge false complaints which would be detrimental for the fabric of marriage. We have to improve the criminal justice system in our country. Till then Marital rape cannot be brought under the ambit of criminal law. She only hoped that it happens sooner than later.

Continuing at above point, the other panellist, Adv. Jai Bansal said that in 12 years' experience he came across only one victim who came up to him and discussed about being raped by the other spouse. But in this case the victim was a man.

Questions & Answers Session

Then there was a question answer session held, where the audience asked various questions which were answered by the chair of the panel discussion, Advocate Geeta Luthra.

Q1. "Law will be misused" can this be an excuse not to make law on marital rape?

Ans. Yes. True. This is very much the case. Fabric of marriage has already been distorted by Section 406, 498A of IPC. These provisions have been misused by wives and this has caused havoc in matrimonial homes. Moreover in marital rape it is very difficult to prove the offence. There would be very little scientific data until and unless the man has brutalised the woman. This makes the scope of this provision being misused even wider.

Q2. Is it an infringement of privacy?

Ans. If I slap you in the bedroom and then you go out and talk about it, there won't be any infringement of privacy as you have committed an offence.

Q3. Time and again you have said that the criminal justice system of our country has not evolved enough to criminalise marital rape. What marker would show that we are ready?

Ans. 1. Ensure most trial to come to an end by 2 years

3. Principles must be similar to that of USA

Q4. What will happen to the genuine victims?

Ans. They have civil remedies. They will get protection under the Protection of Women from Domestic Violence Act, 2005.

Q5. In rape cases people often question whether the women actually consented to the act or not. In these cases if it can be proved that it was not consensual sex, then why can it not be proved in case of marital rape.

Ans. In these cases according to the provision of Evidence Act the woman's words are believed to be true. This creates a lot of problem and is often misused.

Vote of Thanks by Dr. C.J. Rawandale, Director, Symbiosis Law School, Noida

The colloquium came to an end with the Dr C.J. Rawandale, Director, SLS-N, summing up the discussion of the panellist. He ended the event by sharing a personal experience. When he got married his father told him that not to do anything to his wife against her wish. Now-a-days people have reduced the concept of marriage to sexual intercourse but marriage is definitely beyond sexual intercourse. His grandmother used to say that you will be happy only when your wife is happy. So it's important that in marriage the spouses treat each other as humans. He requested every one sitting in the audience to do that and focus more on human relations than anything else in the world.