**A landmark conviction**

Rida Tahir

Monday, Apr 29, 2024

Spousal violence against women is a pressing issue in Pakistan, linked to a distressing array of mental, physical, emotional, and economic health challenges.

According to estimates published by the WHO, approximately one in three (30 three) women worldwide has experienced either physical and/or sexual intimate partner violence (IPV) in their lifetime. Pakistan is no exception. Almost 34 per cent of ever-married women aged 15-49 have experienced IPV, according to the Pakistan Demographic and Health Survey 2017-2018. Therefore, recent news regarding Sindh’s first conviction for marital rape is a step forward.

However, continued efforts, including continuous legal and gender sensitization training, are necessary along with the concerted efforts by all criminal justice system (CJS) actors to prevent IPV in all its forms. It is important to highlight that Pakistan is yet to see the first conviction for marital rape under Section 375 of the Pakistan Penal Code (PPC). As per the judgment dated January 15, 2024 by the Additional Sessions Judge (South), the convict was punished under Section 377 (unnatural offences) of the PPC to three-year rigorous imprisonment and a fine of Rs30,000.

Section 377 of the PPC states that: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life…” It was introduced in the penal code in 1861, during the British rule of the Subcontinent. Modelled on the Buggery Act 1533 in England, it criminalizes sexual activities “against the order of nature.” The section on rape in the PPC is 375. Therefore, the case highlights the reluctance of CJS actors to acknowledge marital rape under Section 375, as it would challenge patriarchal norms in the country.

Let’s travel through time to understand the amendments in law and the journey of women’s rights activists that criminalize marital rape in the legal system of Pakistan. This is important to explain because it took massive efforts by women’s rights activists in the country to criminalize various forms of sexual violence against women. Therefore, the reluctance to use the correct sections of the law marks a significant challenge in tackling violence against women.

The Offence of Zina (Enforcement of Hudood) Ordinance 1979 removed ‘rape’ from the PPC. Under Section 6(1) of the Hudood Ordinance, Zina bil-jabr was defined as “sexual intercourse with a woman…to whom he or she is not validly married.”

However, after years of advocacy by women activists, the Protection of Women (Criminal Laws Amendment) Act 2006 was passed by the parliament of Pakistan. This inserted ‘rape’ and its punishment into the PPC through Sections 375 (rape) and 376 (punishment for rape). The definition stipulated in Section 375 stated that: “a man is said to commit rape who has sexual intercourse with a woman…(i) against her will and (ii) without her consent.” Marital rape was read into the law because the phrase “he or she is not validly married’’ was removed. By comparison, in India, exception 2 of Section 375 of the Indian Penal Code explicitly states that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”.

Nevertheless, many core components were still missing from the law in Pakistan, which are essential in a trial of sexual violence. The Criminal Law (Amendment) (Offences Relating to Rape) Act 2016 aimed to fill these gaps. Although this amendment did not amend the definition of rape in Section 375, it amended Section 376 (punishment for rape) of the PPC, establishing that whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or life imprisonment, including public servants such as police officers, medical officers, or jailers, who, taking advantage of their official position, may commit rape of vulnerable persons.

It was through the Criminal Laws (Amendment) Act 2021, in the backdrop of the Lahore-motorway rape case, that the definition of ‘rape’ stipulated in Section 375 of the PPC was redefined. The new definition of rape encompasses gender-neutral language and increases the scope and the ambit of the complex crime of rape. It covers all facets of rape and penetration of a sexual nature, including through objects. Therefore, after the amendment, marital rape falls within the definition of rape stipulated in Section 375 of the PPC. As per the judgement dated 15.01.2024 by the Additional Sessions Judge (South), neither the FIR was lodged under Section 375 or 376, nor did the trial court examine the applicability of Section 375 (rape) to the facts of the case.

While the conviction is the first step in the right direction, it also highlights the reluctance of CJS actors to acknowledge marital rape under Section 375 of the PPC and instead terms the serious offences against women as ‘unnatural offences’. Due to this, the correct section that defines the offence of rape will not evolve.

In the 1991 case of RvR in the United Kingdom, the House of Lords established that it is a crime for a husband to rape his wife, effectively abolishing marital rape exemption under common law. This case was reviewed by the European Court of Human Rights, which stated that the case was the ‘’evolution of law’’. The parliament of Pakistan has progressively criminalized marital rape; however, our laws must progressively evolve through the jurisprudence of the high courts and the Supreme Court of Pakistan as they set a binding precedent for the trial courts. The law (Section 375) should be actively applied by CJS actors – by prosecutors when scrutinizing the challan, the police when lodging the FIR, and trial court (and superior court) judges when interpreting the law.

The conviction leaves room for progress across the country. However, capacity-building training needs to continue along with efforts to improve the reporting of these cases. Keeping this in mind, the Sindh Human Rights Commission (SHRC) has requested the establishment of women police stations in all districts of Sindh while conducting training for law inspectors, investigating officers and the newly appointed judicial magistrates/civil judges/family court judges.

Such initiatives need to be replicated in other provinces as well. As we move forward in the journey to eliminate violence against women, we see light at the end of the tunnel. We must walk towards the light. This conviction is definitely a step forward.

The writer is a barrister. She tweets/posts @RidaT95 and can be reached at: ridaatahir@gmail.com