

ENCOURAGING SEXUAL PARTICIPATION BY WOMEN: REMOVING MISCONCEPTIONS ASSOCIATED WITH ABSTINENCE

ARUSHI ASHEESH CHANDRA, AISHANI DAS

Abstract: Traditionally, theological perspectives have inclined to depicting an image of women - portraying them as “pure and untouched” by maintaining that a pious woman must preserve her sexual chastity, until at least marriage. Islam, for instance, forwards a notion of purity wherein women must show sexual abstinence during menstruation and when on pilgrimage; similarly Hinduism promotes the practice of Brahmacharya for spiritual and intellectual magnification. Christian values have labeled ‘libido’ and ‘lust’ as sins. The central theme of this paper presents the dichotic contradiction in this regard, where, on one hand, the social implications of such abstinence may bear a positive effect on the ostensible dignity and reputation of a woman whereas on the other hand, the biological implication of such forced non-responsiveness of a woman towards her libido is deterrent to her overall bodily health. Using an advocacy-cum-participatory research methodology, the paper aims at evolving an emancipatory ideal, within the permeates of the law to support reform which eliminates women as sexually-vulnerable characters. Borrowing from various perspectives built by ethnological and sexological schools of thought, the paper bases its findings in a cohesive manner understand the basis and repercussions of sexual restraint and its cultural implications within the community. Although studies have shown that the effect of short-term abstinence may reap positive results on the physiological and psychological health of women, long-term abstinence may lead to mental ill-health and heart-related diseases. As against the doctrine of permanent sexual abstinence, even temporary sexual deterrence may lead to neurasthenic disturbances of various kinds, such as nervous irritability, anxiety, depression, disinclination for work, hysteria and hysteron-epilepsy, which can be cured only after abstinence ceases. The paper ponders over the current legal framework in this regard which is discouraging of women empowerment and adheres to the archaic ideology for preserving sexual dignity of women and suggests legal reforms to. Voluntary and temporary abstinence shown by women within the household has lashed out in several instances of domestic violence and higher divorce rates, on the ground of cruelty. The blaring contradiction is further seen in terms of non-recognition of marital rape in the Indian legal system, Article 377 of the Constitution which criminalizes anal sex, oral sex and masturbation and a biased adultery law which recognizes it as an offence by a man against a man, essentially based on subjective and “normative wifely expectations”. Sexual liberation must be promoted by way of en masse sex education, which is free from orthodox impositions and is supported administratively by way of widespread and free availability of contraceptives. The paper concludes by attempting to cement an altered social understanding of a woman’s sexuality, the ascertainment of her choice to abstinence or not and a legal framework which is in tune with empowering women of the 21st century.

Keywords: Theological, Libido, Abstinence, Psychological and Physiological Health, Legal Reforms, Dignity

Introduction: Religion has typically created webs and structures of social and sexual morality. Islam, for instance propagates early marriage of children and thereby marrying immediately post puberty (“*bulugh*”) in order to ensure sexual urges are orderly satisfied only through the moral channels of marriage. In the process, education, which is far more essential for overall character development, takes a back-seat, especially for the girls. Pre-marital sex (“*zina*”) is forbidden under Islamic law. Glen Elder, a sociologist, comments that co-habitation as a practice is found attractive by men and allows scope for women to be cheated on, on false promises of marriage, etc. Adultery, also being considered ‘*haram*’ negates the possibility of any external sexual gratification in the course of marriage. Marriage is tied to the notion of compulsory monogamy and therefore adultery is treated as a perversion of the same. Masturbation is also viewed as self-deprecating

in Islam and is forbidden as it is viewed as a transgression of Islamic law; *imams* comment on it as ‘indecent’ and the act is punishable in a court of law. Gandhian abstinence, expressed by showing self - sexual restraint after voluntarily sleeping naked and bathing with members of the opposite sex, has been heavily criticised. His “celibacy tests” though initially aimed at resisting succumbing to sexual temptation, later dejected having sexual intercourse with one’s wife even for purposes of procreation. Lust-containment was furthered by advocating practices such as vegetarianism and subjecting women to virginity pledges. Sexuality is seen as a domain requiring adult maturity to experience and express, adolescent sexuality is portrayed – even in ostensibly objective research – as tentative, experimental, confused, inept, and innately dangerous, involving ‘risk-taking’ and broad social efforts to suppress or control. Therefore, not surprisingly, sex education

which is often skewed towards abstinence, pregnancy, and sex-specific diseases, with little or no mention of masturbation, sexual pleasure or orgasm. Radicalized theological narratives strengthen further the misconceptions associated with prolonged abstinence, rejecting thereby biological simulations which the human body must recognize and react to. This reaction, if in the form of abstinence, is sometimes coercive and self-imposed against free choice. For instance, a woman's right to the property of her deceased husband may be contingent on her showing sexual abstinence. Judeo-Christian ideology emphasizes on marital relationships as the only appropriate context for sexual intimacy. The nature and manner in which sexual education is imparted is a determinate factor in assessing whether there is scope and what would be the probable direction of legal reform so required. Academic literature has always been a tool in policy planning; such is because it provides insight into matters of everyday public pursuit, concerns of such nature including *inter alia* education and safety and security of the young adolescent population. This brings into question, the debate over whether sexual education must, at all, be a part of the school curriculum. As such, research shows that sex education has no correlation with the onset of sexual activity. The ultimate objective of this inclusion is only to advocate for sexual awareness and inculcate managerial solutions when faced with various kinds of sexual interactions. The fear of early social exposure, and consequent heightened inter-sexual exchange or interaction has deterred an entire school of stakeholders from rejecting the issue from being discussed at the stage of schooling; thereby trashing the need for basic sexual awareness and being equipped to deal with practical instance that repose a judgment of such nature to be made. American schools are known to promote abstinence as a practice in their sex education framework; it is widely thought that practical demonstrations with regard to using of a condom or administering of contraceptive, masturbation etc. are issues of "controversial nature" which must not be publically discussed. Abstinence, as argued by certain parenting techniques, is also the most full-proof way to ensure non-contraction of sexually-transmitted diseases (STDs) and unwanted pregnancies. Abstinence-centric programmes, as against comprehensive sex education, is offering skewed know-how of diseases like Acute Immuno Deficiency Syndrome (AIDS) spread through even body liquids, like saliva and the Human Pappilomavirus (HPV) may be transferred by skin-to-skin contact. Therefore, limitation of instruction can lead to incomplete or restricted knowledge, thereby limiting its reliability and applicability. In sync with certain basic Christian tenets which are not pro-abortion, books in schools

espouse "promoting childbirth and adoption over elective abortion" and "promoting abstinence as the most effective way to eliminate the potential for unwanted pregnancy and sexually transmitted diseases,". The attempt to withhold and manipulate scientific facts and biological information in such literature is blatant; with blaring inaccuracies such as the definitions of contraception ("the deliberate prevention of pregnancy"), oral contraceptives (pills that "contain synthetic estrogen and/or progesterone"), and abortion ("the termination of a pregnancy in process"), such as in the book 'Campbell and Biology' by Jane B. Reece. The infinite conflict between theological morality and scientific sexuality stems up here. The first notion of a sexual identity develops from physiological and bodily changes, and immediately thereafter culture plays its role by imposing gender classifications and allocating gendered roles. A sexual identity also emerges - a sense that one is bisexual, heterosexual, homosexual or transgendered, and a sense of one's attractiveness to others which may be furthered by sexual cognitions such as semen production or erections in boys or experiencing of 'wetness' in a woman. A sense of manhood or womanhood also begins to appear at this stage. Supporters from the organic/biological school of thought recognize developments in the biological and social atmosphere surrounding a person and one's reaction to primitive biological instincts which will nevertheless urge a response, which may not always tilt towards theoretical application given the preclusion of several other factors which would normally determine the nature of response evoked. A breach of these biological thresholds also may have psychological consequences. Sexual Strategies Theory, a blend of biological and psychological perspectives, places desire at the foundation of human sexuality, asking how desire has evolved to maximize reproductive success. For short-term and long-term mating success, the preferences so made, qualities so desired and challenges confronted vary for men and women; thereby contrasting between the sexes desire for sexual variety, what sex differences can be expected in sexual jealousy, and what contexts will trigger sexual conflict between men and women. Sexual frustration, sexual tension and jealousy based on sexual choices are typical psychological responses which manifest in the form of overt biological behaviour. The frequency of sexual intercourse in a long-term relationship reflects both biological changes associated with ageing and illness, and social factors such as habituation to partner which may result in boredom, "dilemmas of desire", quality of the relationship, etc. Schurig's *Spermatoligia* discusses the advantages associated with moderate sexual intercourse and specifically points out that both sexual abstinence and excess can

lead to disorders such as insanity, anorexia, epilepsy, impotence and even death, Renaissance traditions of medicines have also been seen as inadequate to deal with such bodily disorders, further intensifying the opposition between religion and science. Apart from biological urges and psychological repercussions, sexual expression may be impacted by social practice and norms. Some cultures allow for practices which are viewed as beastly in others, such as bondage, whipping, discipline etc. Sex toys, such as dildos and magazines and literature on erotica emanated from cultures where women underwent depression by virtue of being sexually-constrained in times of war and disruption. Strip clubs, bar dancing and one-night stands are also such cultural products. The International Centre for Women (ICRW) and the UN Population Fund (UNPFA) conducted a study in 2014 which provided new insights in the over societal expectations of women empowerment, finding that more than 2/3rds of married women in India, aged between 15 to 49 have been beaten, raped or forced to provide sex. In 2005, 6787 cases were recorded of women murdered by their husbands or their husbands' families. 56% of Indian women believed occasional wife-beating to be justified. The marital rape exemption can be traced to statements by Sir Mathew Hale, Chief Justice in England, in *R v. R*, [1992 1 A.C. 599], during the 1600s whereby he wrote, "*The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.*" Advancing well into the timeline, into the 21st century, where a number of countries such as United Kingdom, United States of America, New Zealand, Canada, Israel, France, Sweden, Denmark, Norway, Soviet Union, Poland and Czechoslovakia have recognized marital rape as a crime, India still does not consider it illegal. Despite amendments, law commissions and new legislations, one of the most humiliating and debilitating acts is not an offence in India. The Centre time and again have reaffirmed their view that marriage is a sacrament and hence an act of marital rape cannot be considered as a crime, in other words, they believe it is the duty of a wife to provide sexual service to her husband. Section 375 of the Indian Penal Code, 1908 echoes archaic sentiments, reading blatantly in its exception clause as "*Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.*" Section 376 of IPC provides punishment for rape. Accordingly, the rapist should be punished with imprisonment and fine unless the woman raped is his own wife, and is not under 12 years of age. While dealing with sexual assault, it lays down a narrow purview lays down that, an offence of rape within marital bonds stands only if the wife be less than 12

years of age, if she be between 12 to 16 years, an offence is committed, however, less serious, attracting milder punishment. Once, the age crosses 16, there is no legal protection accorded to the wife, in direct contravention of human rights regulations. In the Indian society, a wife has essentially always been given a submissive and docile role, the voice of whom was unheard for centuries and sex - obligatory in a marriage and also taboo, prior. It is the very definition of rape under the Indian Penal Code that is flawed and demands change. This has been actively criticized by Indian and international organizations, who insist that including oral sex, sodomy and penetration by foreign objects ought to be added within the meaning of rape, supported by International law that adds within the purview of rape "*also threatening, forceful, coercive use of force against the victim, or the penetration by any object, however slight.*" Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape explicitly in the definition of violence against women. Emphasis on these provisions is not meant to tantalize, but to give the victim and not the criminal, the benefit of doubt. Rape in any form needs to be recognized as it is an act of utter humiliation, degradation and violation of basic human right principles and the restriction of the understanding of 'rape' reiterates the view that rapists treat rape as sex and not violence. Ironically a woman can protect her right to life and liberty under the Indian Constitution but cannot give her consent, cannot protect her body when she is married. The only recourse provided is under 498-A of the IPC which deals with cruelty, to protect themselves against "perverse sexual conduct by the husband". However, there is no standard measure for interpretation of 'perversion' or 'unnatural' by the Indian judiciary. The 172nd Law Commission Report, 2000 made several recommendations with regard to 'rape' such as it ought to be replaced by the term 'sexual assault', should include all forms of penetration, assault on any part of the body ought to be construed as rape, rape laws should be made gender neutral and that a new offence of 'unlawful sexual conduct' ought to be created. It suggested that the definition of marital rape should be deleted, with a view that forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. The Prohibition of Domestic Violence Act, 2005 (DVA) has also been a disappointment. It has provided civil remedies to what the provision of cruelty already gave criminal remedies, while keeping the status of the matter of marital rape in continuing disregard. Section 3 of the Prohibition of Domestic Violence Act, 2005 amongst other things in the definition of domestic violence,

has included any act causing harm, injury, anything endangering health, life- mental, physical, or sexual. It condones sexual abuse in a domestic relationship of marriage or a live-in, only if it is life threatening or grievously hurtful. What must be emphasized here is that honour and dignity remains with an individual, irrespective of marital status. Section 122 of the Indian Evidence Act, 1872 prevents communication during marriage from being disclosed in court except when one married partner is being persecuted for an offence against the other. Since, marital rape is not an offence, the evidence is inadmissible, although relevant, unless it is a prosecution for battery, or some related physical or mental abuse under the provision of cruelty. Setting out to prove the offence of marital rape in court, combining the provisions of the DVA and IPC will be a nearly impossible task. In a country rife with misconceptions of rape, deeply ingrained cultural and religious stereotypes, and changing social values, globalization has to fast alter the letter of law. The non-recognition of marital rape is only an asset to the entire biased adultery laws in force in India. Section 497 of the IPC reads as “Whoever has sexual intercourse with a person who is and whom he knows, or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.” It is important to establish, from the very onset, that the law in this regard does not seek to preserve the sanctity of marriage but it seeks to protect the structure of the institution. In *V. Revathi v. Union of India* (1985 SCALE (1) 960), the Court held that the man was the seducer and not the woman, the aforementioned law is striking in its pursuit to punish only the ‘outsiders’ in the marriage. Adulteration is referred to as the mixing of an undesirable substance in an otherwise ‘pure’ element, parallels drawn to the husband - whose bloodline has been ‘adulterated’ by the outsider. It is taken that the husband has been cheated of his right to a ‘pure’ bloodline, and under the above terms, he should receive some measure of protection under the law. This is essentially saying that if a man’s property is defiled by another, the man can punish the offender and women here are reduced to mere property. Such was reinforced in the case of *Sowmithri Vishnu v. Union of India* (1985 AIR 1618). The Indian Law has been known to advocate gender discriminatory and patriarchal lines of thought making it increasingly that such laws have no place in a modern society which needs to develop beyond the colonial mind set. Section 377 of the Indian Penal Code, plainly read, punishes with imprisonment for

life or for a term of up to 10 years, any person who voluntarily has “*carnal intercourse against the order of nature with any man, woman or animal*”. At its core, therefore, is an intention to enforce a decree against actions that are professed to be beyond the warrants of society’s moral compass. The community’s moral standards thus cannot be arbitrarily gleaned nor can it be a product simply of inexplicable revulsion and disgust. In the case of Section 377, any reasonable analysis would show us that to regard homosexual activity as somehow immoral violates the innate natural autonomy that every person has over his or her respective sexuality. The perversion associated with women engaging in sadomasochist (SM) sexual pursuits nonetheless like to envision women being depicted as submissive subjects with a dominating alpha male. The narrative set out in *R v. Brown* [1994] 1 AC 212, is symbolic of acknowledging same-sex gay SM videos which showed the consenting partners indulging in piercing, whipping and branding; however, permitted such behavior on the grounds of intimacy and privacy within the marital home. Thereafter, in the case of *R v. Wilson* [1996] 2 Crim App Rep 241, the branding of the husband’s name on the buttocks of the wife with her consent, led to the labeling of ‘branding’ as a non-sexual and non-aggressive act and Lord Russell went onto showing the contrasts in the Brown’s and Wilson’s cases by stating that the motivations of dominant partners – gay men apparently engaged in it for “sexual gratification”, whereas for homosexual couples, this act “was done out of love”. The *R v. Emmett* [1999] All ER (D) 641, ruling further intensifies this position by creating somewhat a belief that being female and heterosexual absolves a woman of having participated in kinky social activity. This distinction is not only unreal but also lacks any scientific underpinning. Assigning of gender roles and the prowess expressed in sexual activity and sexual expression has no inter-linkage. For instance, the Senga-Kojja practice in Uganda refers to a systematic learning of marital roles, household management and sexual health for both to-be-married boys and girls, which is only to acquaint them of their gender roles. The mode of sexual expression they take to thereupon does not stem from such learning. Legal instances and distance State surveillance are proof of the fact that both the law and the dominion of the State over the private life of an individual can only be ascertained up to an extent- beyond which such interference is a breach of the fundamental right to privacy as narrated in *Govind v. State of Madhya Pradesh*, 1975 AIR 1378, and the dignity of an individual.

References:

1. Richard A. Setterstan, L. Jacqueline, *Handbook of Sociology of Aging*, Springer Publications, 2011, Pg. 208.
2. Shaykh Salim Ghisa, *Masturbation in Islam, The Revival Editor*, Issue 17, 2010.
3. See at <http://www.independent.co.uk/arts-entertainment/books/features/thrill-of-the-chaste-the-truth-about-gandhis-sex-life-1937411.html>, Last visited 22.01.2017 at 11.00 PM.
4. Bruckner H, Bearman, PS. After the promise: the STD consequences of adolescent virginity pledges. *Journal of Adolescent Health* 36 (2005) 271-278.
5. Schalet, 2004; J. D. Fortenberry, 2003.
6. J. Dennis Fortenberry, 'Puberty and Adolescent Sexuality', HHS Public Access, 64(2) (2013), p 280-287
7. Lindberg et al, 'Changes in Adolescents and Receipt of Sex Education', *Journal of Adolescent Health* (2016)
8. CDC. Sexually transmitted diseases treatment guidelines, 2006. *Morbidity & Mortality Weekly Report* 2006; 55 (RR11):1-94; <http://www.cdc.gov/MMWR/preview/mmwrhtml/rr5511a1.htm>; accessed 4/13/2007
9. Aaron Cline Hanbury, 'Why Christians can't let go of the pro-life issues', The Ethics and Religious Liberty Commission of the Southern Baptist Convention, 2016.
10. 'Sociological Perspectives', DeLamater and Hamsay, Pg. 7-8
11. Deborah L. Tolman, 'Dilemmas of Desire: Teenage Girls talk about Sexuality', Harvard University Press Publication, 2005.
12. Martin Schurig, 'Spermatologia', *FranfurtiadMoenum*, 1728.
13. Sabine Walter, 'Sex for Dummies', 2011.
14. <http://www.thehindu.com/data/statistics-on-marital-rape/article6586829.ece>, Last visited on 22.01.2017 at 11.00 pm.
15. United Nations General Assembly passed on 20th December, 1993, A/RES/48/104.
16. 'Sexual intercourse as contained in **section 375 of IPC** should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.'
17. Twyman v. Twyman, 855 S.W.2d 619 (1993)

Arushi Asheesh Chandra, Aishani Das
Hidayatullah National Law University, Chhattisgarh