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Criminalisation of marital rape

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Why is in news? SC agrees to list pleas to criminalise marital rape before 3-judge Bench

Chief Justice of India D.Y. Chandrachud agreed to list early a series of petitions seeking the criminalisation of marital rape.

In an earlier hearing, Solicitor-General Tushar Mehta, for the Union government, had said the case had not only legal ramifications but widespread social impact.

The petitions **are largely triggered by decisions from the Karnataka and Delhi High Courts**, requiring an authoritative pronouncement from the apex court.

Karnataka High Court:

The **Karnataka High Court** had held that a **husband was liable to be charged for rape if he had forcible sex** with his wife. The Karnataka government had supported the High Court judgment in an affidavit in the apex court subsequently.

Exception Two to Section 375 of IPC decriminalises marital rape and holds that sexual intercourse by a man with his own wife, who is **not under 18 years of age, without her consent is not rape**.

“A man is a man; an act is an act; rape is a rape, be it performed by a man the ‘husband’ on the woman ‘wife’,” the Karnataka High Court had observed in its decision, saying an accused should be brought to trial regardless of the immunity in the penal code.

The Karnataka government has **referred to the report of the Justice J.S. Verma Committee of 2013**, which had **recommended the removal of the exception for marital rape** and proposed that the law should specify that “marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation”.

Delhi High Court:

A Division Bench of the Delhi High Court had, however, in May 2022, **delivered a split verdict** in a separate case on the identical issue. Justice Rajiv Shakti, who headed the two-judge Bench, had **struck down as unconstitutional the Exception Two to Section 375** of the Indian Penal Code (IPC).

However, Justice C. Hari Shankar, the associate judge on the High Court Bench, had **rejected the plea to criminalise marital rape**, noting that any change in the law should be carried out by the legislature since the issue required consideration of various aspects, including social, cultural, and legal.

Marital Rape:

Marital rape (or spousal rape) is an act in which one of the spouses indulges in sexual intercourse without the consent of the other.

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Today, **more than 100 countries have criminalized marital rape** but, unfortunately, India is one of the only 36 countries where marital rape is still not criminalized.

Law on Marital Rape:

Section 375 of IPC defines rape

The section lists **seven notions of consent** that, if vitiated, would constitute the offence of rape by a man.

However, the provision contains a **crucial exemption**:

Sexual intercourse or sexual acts by a man with his own wife, the **wife not being under eighteen years of age, is not rape.**

The **only recourse against non-consensual sex** for married women are civil provisions **under the Protection of Women from Domestic Violence Act** or **Section 498-A of the IPC on cruelty against a wife by the husband or a husband's relatives.**

Cases related to the issue of Marital Rape:

The top court ruled in the case of **State of Karnataka v. Krishnappa** that sexual assault is a demeaning act in addition to being a violation of someone's right to privacy and the sanctity of their own body female.

Suchita Srivastava v. Chandigarh Administration is a case where, the Supreme Court compared the freedom to decide on issues that affect sexual action with respect for one's privacy, personal space, and dignity under Article 21 of the Constitution, as well as physical integrity.

In 2018, the Supreme Court in **Joseph Shine v. Union of India** struck down the **158-year-old Victorian morals code regarding adultery.** According to the Supreme Court, husbands are not their wives' masters and wives are not their husbands' property.

The woman is seen as the husband's property when he has control over her sexual agency. The husband's control over the woman's loyalty is considered as upholding the husband's property stake in his wife.

Arguments Against Criminalising Marital Rape:

It may create absolutely anarchy in families and **destabilise the institution of marriage.**

It may become an easy tool for harassing the husbands by **misusing the law similar to the growing misuse of section 498A** (harassment caused to a married woman by her husband and in-laws) of the IPC.

Indian **Law Commission and the Parliamentary Standing Committee** on Home Affairs after thoroughly examining the matter **did not recommend the criminalization** of marital rape.

Criminalizing marital rape will create **serious implementational issues** like veracity of testimony, evidences in the courts etc.

India has its **unique problems due to various factors** like literacy, lack of financial empowerment of the majority of females, the mindset of the society, vast diversity, poverty, etc. and these should be considered carefully before criminalizing marital rape.

Merely criminalizing marital rape may not stop it as "**moral and social awareness**" plays a vital role in stopping such an act.

Arguments For Criminalising Marital Rape:

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It will **ensure that women remain safer from abusive spouses** and they can **receive the help needed to recover** from marital rape and can save themselves from domestic violence and sexual abuse.

A **marriage should not be viewed as a license** for a husband to forcibly rape his wife with impunity. Further, a married woman has the same right to control her own body as does an unmarried woman.

A woman is entitled to refuse sexual relations with her husband as the **right to bodily integrity and privacy is an intrinsic part of Article 21** of the Constitution.

Supreme Court has included sanctity of women, and freedom to make choices related to sexual activity under the ambit of Article 21.

Indian women **deserve to be treated equally under article 14** and an individual's human rights do not deserve to be ignored by anyone, including by their spouse.

A woman who is raped by a stranger lives with a memory of a horrible attack; a woman who is raped by her husband lives with her rapist throughout her life.