



## Marital Rape

**For Prelims:** Section 375 of the IPC, Section 498A of IPC, Justice J. S. Verma Committee

**For Mains:** Criminalisation of Marital Rape, Section 375 of the IPC, Justice J. S. Verma Committee, Protection of Women from Domestic Violence Act, 2005, Salient Features of Indian Society

### Why in News?

Recently, the Delhi High Court **delivered a split verdict in a batch of petitions** challenging the exception provided to marital rape in the [Indian Penal Code \(IPC\)](#).

- In case of a split verdict, the case **is heard by a larger Bench.**
- The larger Bench to which a split verdict **goes can be a three-judge Bench of the High Court,** or an appeal can be preferred before the **Supreme Court.**

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## PETITIONS SEEKING CRIMINALISATION OF MARITAL RAPE IN DELHI HIGH COURT: TIMELINE



### What was the Case about?

- The court was **hearing a clutch of four petitions** challenging the constitutionality of the exception to Section 375.
  - The petitioners want the **exception to be struck down in totality**, on the grounds that this exception **violates the fundamental rights of married women**.
- While delivering the verdict, one of the judges **struck down Exception 2 of the Indian Penal Code's Section 375** but another judge **upheld its validity**.

### What is Section 375 of the Indian Penal Code (IPC)?

- Section 375 of the IPC **defines the acts that constitute rape by a man**.
- The provision, however, **lays down two exceptions as well**.
  - Apart from decriminalising marital rape, it mentions that **medical procedures or interventions shall not constitute rape**.
  - **Exception 2 of Section 375 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".

## What is the History of the Marital Rape Law in India?

- **Domestic Violence Act, 2005:**
  - It hints at **marital rape by any form of sexual abuse** in a live-in or marriage relationship.
    - However, **it only provides for civil remedies**. There is no way for marital rape victims in India to initiate criminal proceedings against their perpetrator.
- **Delhi High Court:**
  - The Delhi High Court **has been hearing arguments in the case since 2017**.
    - However, this is **not the first time** that the issue of marital rape has been raised in the country.
- **Law Commission of India:**
  - The **need to remove this marital rape exception** was rejected by the [Law Commission of India](#) in 2000, while considering several proposals to reform India's laws on sexual violence.
- **Justice JS Verma Committee:**
  - In 2012, the **Justice JS Verma Committee** was tasked with proposing amendments to India's rape laws.
    - While some of its recommendations helped shape the [Criminal Law \(Amendment\) Act passed in 2013](#), some suggestions, including that on marital rape, were not acted on.
- **Parliament:**
  - The issue **has been brought up in Parliament** as well.
    - Upon being **questioned in a Parliament session in 2015**, the idea of criminalising marital rape was dismissed with the view that "**marital rape cannot be applied in the country** since marriage was treated as a sacrament or sacred in the Indian society".

## How did the Exception on Marital Rape find its way into the IPC?

- **British Colonial Rule:**
  - The IPC was implemented in India during **British colonial rule in 1860**.
    - Under the first version of the rules, the **marital rape exception was applicable to women over 10 years of age** which was **raised to 15 in 1940**.
- **1847 Draft of Lord Macaulay:**
  - In January 2022, it was **argued by amicus curiae (friend of the court) that the IPC is based on the 1847 draft of Lord Macaulay**, the chairman of the First Law Commission established in colonial-era India.
    - The exception in the draft decriminalised marital rape without any age limit.
  - The **provision is an age-old idea** that implies consent by married women and protects the conjugal rights of the husband.
  - The **idea of implied consent comes from the Doctrine of Hale**, given by Matthew Hale, the then British Chief Justice, in 1736.
    - It **states that a husband cannot be guilty of rape**, since "by their mutual matrimonial consent and contract the wife has given up herself in this kind to the husband".
- **Doctrine of Coverture:**
  - According to the Doctrine of Coverture, a **woman has no individual legal identity after marriage**.
  - Notably, the **Doctrine of Coverture found a mention during the hearing** when the Supreme Court of India struck down adultery as a criminal offence in 2018.
  - It was held that **Section 497, that classified adultery as a crime**, is based on the Doctrine of Coverture.
  - This doctrine, **although not recognised by the Constitution**, holds that a woman loses her identity and legal rights with marriage, is violative of her [fundamental rights](#).

## What has been the Government Stand?

- The **Centre initially defended the rape exception** and later changed its stand and told the court that it was reviewing the law, and that “wider deliberations are required on the issue”.
- The Delhi government **argued in favour of retaining the marital rape exception.**
  - The government’s arguments **spanned from protecting men from possible misuse of the law by wives, to protecting the institution of marriage.**

## How is Marital Rape Treated around the World?

- **About:**
  - According to [Amnesty International](#) data, **77 out of 185 (42%) countries criminalise marital rape** through legislation.
  - In other countries, it is **either not mentioned or is explicitly excluded from rape laws**, both of which can lead to sexual violence.
  - The [United Nations](#) has urged countries to end marital rape by closing legal loopholes, saying that “the home is one of the most dangerous places for women”.
- **Countries allow Marital Rape:**
  - Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka and Tanzania expressly allow marital rape of a woman or a girl by her husband.
- **Countries which allow to File Complaints:**
  - While 74 countries allow women to file complaints against their husbands, 34 out of 185 do not provide any such provisions. About a dozen countries allow rapists to avoid prosecution by marrying their victims.

## What are the Issues with Marital Rape Exception?

- **Against Basic Rights of Women:**
  - This exception clause violates the women’s [fundamental right to equality, freedom of speech and expression, and most of all the right to life and personal liberty.](#)
    - It also denies the agency over their own bodies to women.
- **Dismal State of Judicial System:**
  - Some of the reasons for low rates of prosecution in the cases of marital rape in India include:
    - **Low reporting of crimes** due to societal conditioning and low legal awareness.
    - Inaccurate method of collection of [National Crime Records Bureau \(NCRB\)](#) data.
    - Out of court settlements due to the lengthy process of justice/lack of admissible proof.

## Way Forward

- **Indian law now affords husbands and wives separate** and independent legal identities, and much jurisprudence in the modern era is explicitly concerned with the protection of women.
- Therefore, it is **high time that the legislature should take cognisance of this legal infirmity** and bring marital rape within the purview of rape laws by eliminating Section 375 (Exception 2) of IPC.

[Source: TH](#)