



Marital Rape in India

For Prelims: Marital Rape, Section 375 of the 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?

Out of 185 countries in the world, **77 have laws that clearly criminalise marital rape** while there are **34 countries that explicitly decriminalise marital rape**, or in essence, offer immunity to men who perpetrate rape against their wives.

- **India**, is one of the 34 countries that have **decriminalised marital rape**.

What is Indian Law on Marital Rape?

- **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** of the Indian Penal Code states that “sexual intercourse by a **man with his wife**, and if the wife **not being under fifteen years of age, is not rape**”.
- **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.

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

- **Judiciary:**
 - The Delhi [High Court](#) has been hearing arguments in the case since 2015.
 - In January 2022, two judges of the Delhi High Court started to hear petitions filed by individuals and civil society organisations challenging the exemption.
 - By May 2022, **they had arrived at a controversial split verdict**. One judge was in **favour of criminalising marital rape** as it violated a woman’s right to consent, while the **other was against it**, saying marriage “necessarily” implied consent.
 - The matter was pushed to the [Supreme Court](#).
- **Supreme Court:**
 - In September 2022, a Supreme Court ruling on [women’s right to safe abortions](#) regardless of marital status held that for the purposes of the [Medical Termination of Pregnancy Act](#), the definition of rape should include marital rape.

- **Law Commission of India:**
 - The need to remove the 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".
- **Government's Stand:**
 - The Central Government **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.

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.

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.

How is Marital Rape Treated around the World?

▪ About:

- 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 that have Criminalised Marital Rape:

- **United States**- From 1993, Marital Rape was criminalised in all 50 states of the US but laws differ from state to state.
- **United Kingdom**- Marital rape has also been criminalised in the UK and those found guilty could be sentenced to life imprisonment.
- **South Africa**- Marital rape has been illegal since 1993 in South Africa.
- **Canada**- Marital Rape is punishable in Canada.

▪ Countries that have not Criminalised Marital Rape:

- Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka and Tanzania haven't expressly criminalised marital rape of a woman or a girl by her husband.

What should be the Approach Moving 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**.
- There is a need for laws that **clarify boundaries in how we relate to one another** and uphold constitutional ideas of **equality, dignity and bodily autonomy**, alongside the unpleasant social realities about their limited use in practice.

UPSC Civil Services Examination Previous Year Question (PYQ)

Q. We are witnessing increasing instances of sexual violence against women in the country. Despite existing legal provisions against it, the number of such incidences is on the rise. Suggest some innovative measures to tackle this menace. **(2014)**

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