

Marital Rape: SC asks if the Rapist can Marry the girl

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Feminists and women's rights groups have long demanded criminalising marital rape. But, unlike domestic violence, and the various other aspects of rape, marital rape is yet to be a part of mainstream discourse. Chief Justice of India SA Bobde's observation, in a plea filed by a man accused of rape by a woman who was in a relationship with him for two years, has reignited a longtime debate on marital rape.

In news: Rape and marriage: On the Supreme Court's failure to protect the rights of women

Placing it in syllabus: Law & Policy

Dimensions

- Criticisms of the Conduct of the SC
- Marital Rape : What is it ?
- Why is the Government Averse to criminalizing marital rape?
- How does Criminalizing marital rape help ?
- How do the SC proceedings in the above case impact the issue of marital rape?

Content:

Criticisms of the Conduct of the SC:

The remarks of the Chief Justice of India were criticised by feminist activists and civil society organisations on the basis of the following:

Insensitive

- A relationship between two individuals, including marriage, is built around love, respect, trust and

consent.

- Within that civilised framework, a violent and exploitative act like rape has no place.
- In this context, Supreme Court's latest query to a Maharashtra government employee asking whether he would marry a girl he was accused of raping repeatedly while she was a minor is insensitive to the core.

failed to protect the rights of victim

- Instead of meting out harsh punishment, the Court asked the lawyer representing the accused to find out whether his client would be willing to marry the victim or risk going to jail.
- By offering marriage as a solution to a rape victim, the judiciary failed to protect the rights of a girl.

deep-set prejudice against gender equality

- Equal rights activists have always worked hard against misogyny, patriarchal mindsets and other failings such as blaming the victim for rape.
- This arduous battle for equality becomes even more difficult when people in high offices make offensive remarks.

Marital Rape : What is it ?

- Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent.
- The lack of consent is the essential element and need not involve violence.
- Marital rape is considered a form of domestic violence and sexual abuse.

Marital Rape in India

- India is one of the 36 countries in the world where marital rape is not criminalised.

- This is despite one in every three women in India, between the age of 15 and 49, who have ever been married, stating that they have experienced some form of violence from their spouses.
- India's rape laws does not apply in cases where the perpetrator is a spouse.
- The **Indian Penal Code 1860** differentiates consent given by a married woman and an unmarried woman.
- As per exception clause in **Section 375**, sexual intercourse by a man with his own wife, with the wife not being under 15 years of age, is not considered rape.
- The Supreme Court has read this down to 18 years. This also essentially goes against the Right to Equality enshrined under Article 14
- Marital rape is often referred to as cruelty and domestic violence under **Section 498-A** of the Indian Penal Code in which the convict will get a bonus of having less punishment if the perpetrator is the husband of the victim
- The marital rape victims have the option of seeking help through the Protection of Women from Domestic Violence Act, 2005 (PWDVA) which came into force in 2006, outlaws marital rape as well as other form of domestic violence. However, it offers only a civil remedy for the offence.

Why is the Government Averse to criminalizing marital rape?

- When the IPC was amended in 2013, clauses were added to increase age of consent, acid attacks and voyeurism was included as crimes. But the then government clearly stayed away from touching marital rape
- India's government has said that criminalising marital rape could make men vulnerable to harassment and false accusations by their wives
- It compared the proposal to outlaw marital rape with

India's tough anti-dowry law, which men's rights groups say women are misusing to settle personal vendettas.

- In an affidavit filed before the Delhi High Court in 2017, Indian government said that the law has to ensure adequately that marital rape does not become a phenomenon which may destabilise the institution of marriage

Other common arguments against criminalising marital rape are:

- The term marital rape is itself very insignificant because the marriage itself means that both parties agree upon a mutual contract of sexual intercourse exclusively.
- Criminalising Marital Rape will lead to 'excessive interference with the issue of marriage'.
- There is no need to give any legality to marital rape as it is an uncommon issue and only countable people suffer out of this.
- This is a problem where the proof cannot be submitted very authentically due to which it becomes unfeasible to conclude whether it is rape or mutual intercourse.
- For any personal reasons like anger, the wife may charge the innocent husband with such an offence paving way to gender advantage.
- It becomes a burden to the court as it gets clumsy as this can neither be proved accurately nor dismissed out rightly.

Precedents to Marital Rape:

- The Justice J.S. Verma Committee was clear that the law ought to specify that a marital or another relationship between the perpetrator and victim cannot be a defence against sexual violation.
- Citing the judgment of the European Commission of Human Rights in C.R. vs U.K., it endorsed the conclusion that "a rapist remains a rapist regardless of his

relationship with the victim”.

- Marital rape violates the bodily integrity and autonomy of the woman, and as a consequence violates her fundamental rights.
- The three-member panel clearly and rightly observed that exemption of punishment for marital rape is based on outdated and obsolete views of marriage, and does not align with today’s world where women and men are recognized to be individuals with equal rights and freedoms.

In **Shimbu & Anr vs State of Haryana** (2013), the Supreme Court said the offer of a rapist to marry the victim cannot be used to reduce the sentence prescribed by law.

How does Criminalizing marital rape help ?

Expresses the of disapproval of Marital Rape:

- Criminalising is just the State or the country expressing intent of unacceptability . It is also the expression of disapproval.
- When government disapproves marital rape, within the rape laws, it are expressly, statutorily saying that this is absolutely not acceptable in India

Consistent with UN Resolution:

- The United Nations in its 48/104 resolution of 20 December 1993 proclaimed by The General Assembly made a declaration on the “Elimination of Violence against Women” mentioned some rules against the violence against women including marital rape.

Acts as deterrent:

- If marital rape is made into a criminal wrong then it would act like a deterrent and prevent future crimes.

Protects fundamental Rights of Women

- Marital Rape violates the bodily integrity and autonomy of the woman, and as a consequence violates her fundamental rights. (article 14 and 21)
- The punishment for marital rape is aligned with modern world view where women and men are recognized to be individuals with equal rights and freedoms.

How do the SC proceedings in the above case impact the issue of marital rape?

- The judiciary's shocking remarks echo a deep-set prejudice against gender equality.
- By offering marriage as a solution to a rape victim, the judiciary failed to protect the rights of a girl.
- The battle for equality becomes even more difficult when people in high offices make offensive remarks.
- the SC is expected to be highly judicious and set the best example for lower courts across the country. Unfortunately, the statement has set a bad precedent.

NOTE:

- Chief Justice of India S A Bobde subsequently said his "will you marry her" remark – asking a rape accused whether he will marry the complainant – has been taken out of context and "completely misreported."
- The SC said it had asked the petitioner in the context of the case, whether he would marry the complainant and had not asked him to "go and marry her".
- "The proceedings before the court in that case were completely misreported," CJI Bobde said.

Mould your thought: What is marital rape? How is it treated as per Indian Law? Should it be criminalised?

Approach to the answer:

- Introduction
- Define Marital rape

- Discuss law related to IPC Section 375 and domestic violence act
- Write the reasons for criminalising marital rape and its advantages
- Conclusion