

Marital rape

June 16, 2022

Manifest pedagogy:

When a culture promotes the originality of a woman, it gets affection and respect. Several laws have been passed in recent years to ensure a true spirit of equality and to make individual dignity a holy area of Indian society. Marital rape is one such exception that should be addressed. Consent in marriage cannot be given indefinitely and at the expense of one's dignity. As a result, all stakeholders, particularly states, must band together to put an end to all types of sexual assault or violence.

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).

Placing it in syllabus: Polity

Static dimensions:

- About Marital Rape and Legal position in India
- Relevant facts related to Marital Rape
- Committee recommendations

Current dimensions:

- Issue with Marital rape
- Concerns over criminalization of Marital Rape
- Marital Rape status in different countries
- Way forward

Content:

About Marital Rape and Legal position in India-

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

- **Section 375 of the Indian Penal Code (IPC)** defines the acts that constitute rape by a man.
- Nonconsensual sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is kept as an exception outside the definition of rape.
- The provision, however, lays down **two exceptions** as well.
- Apart from decriminalizing 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”.
- **Although Section 3 of the Protection of Women from Domestic Violence, 2005** contradicts the exception provided by section 375 and considers any physical, sexual, verbal, and emotional abuse as Domestic Violence.

Relevant facts related to Marital Rape-

- **National Crime Records Bureau’s (NCRB) ‘Crime in India’ 2019** reported that a **woman is raped every 16 minutes** and every four minutes, and she experiences cruelty at the hands of her in-laws.
- **National Family Health Survey (NFHS) 2015-16 data** indicate that an estimated **99.1 percent of sexual violence cases go unreported** and that the average Indian woman is 17 times more likely to face sexual violence from her husband than from others.
- **According to one study by the UN Population Fund**, more than two-thirds of married women in India, between the ages of 15 to 49 have been beaten, raped, or forced to provide sex.

Committee recommendations-

- **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.

Issues with Marital rape-

- **Against Basic Rights of Women:** The 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. **(Art 14,19,21)**
- It also denies the agency over their own bodies to women.
- **The doctrine of Coverture:** The marital exception to the IPC's definition of rape was drafted based on Victorian patriarchal norms that did not recognize men and women as equals. It did not allow married women to own property, and merged the identities of husband and wife under the "Doctrine of Coverture."
- **Women safety** from abusive spouses will be **at risk.**
- It forces the wife to live in an environment that is emotionally unsupportive, physically violent, and strongly patriarchal, limiting her individuality and dignity.
- **On Society**– It increases the societal inequalities based on gender and weakens community sanctions against perpetrators, thus creating an environment of tolerance toward sexual assault.

Concerns over criminalization of Marital Rape

- **Threat to the Institution of marriage** as it may amount

to excessive state interference with the marital relationship (172nd Report of the Law Commission on Review of Rape Laws in 2000).

- **Misuse of law:** Risk of its misuse as a tool to harass husband, if criminalized.
- Subject the entire Family system to great stress (Standing Committee on Home Affairs, 2013).
- **High Subjectivity**, as it is difficult to prove in a court of law whether the sex was consensual or not.
- **Implementation issues:** What evidence the courts will rely upon in such circumstances, as there can be no lasting evidence in the case of sexual acts between a man and his wife.
- **Diversity in culture of the states:** 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.
- **Criminal law is in the Concurrent List** and implementation of these laws rests with the states.
- Merely criminalizing marital rape may not stop it as **“moral and social awareness”** plays a vital role in stopping such an act.

Marital Rape status in different countries-

- According to **Amnesty International** data, 77 out of 185 **(42%) countries criminalize** marital rape through legislation.
- **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 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.

Way Forward

It is high time for the legislature to recognize its legal flaws and eliminate Section 375 (Exception) of the IPC, bringing marital rape inside the ambit of rape legislation. Women can then receive the help needed to recover from marital rape and can save themselves from domestic violence and sexual abuse. It is critical that the legal prohibition of marital rape be matched by changes in prosecutors, police officers, and general public attitudes. The need of the hour is that marriage and divorce must come under secular law and there cannot be any difficulty in having a common code of law for all communities, at least for marriage and divorce.