

The Importance of Consent: On Marital rape

The article is related to
General Studies-Paper-I
(Indian Society) & II (Governance)

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The institution of marriage cannot be allowed to sanction force and violence.

A split verdict in the Delhi High Court on the question of criminalising marital rape has reignited the controversy over legal protection for disregard of consent for sex within marriage.

On Wednesday, while Justice Rajiv Shakti, who headed the Bench, struck down as unconstitutional the exception to Section 375 of the IPC, which says that intercourse by a man with his wife aged 18 or above is not rape even if it is without her consent, Justice C. Hari Shankar rejected the plea to criminalise marital rape pointing out that any change in the law has to be carried out by the legislature since it requires consideration of social, cultural and legal aspects.

With the judges differing on key points such as difficulty in getting evidence, the importance of consent, whether the state's concerns about safeguarding the institution of marriage were valid, and if other laws against sexual violence protected married women, the issues involved may have to be ultimately adjudicated with the help of a third judge or a larger Bench of the High Court or the Supreme Court. The Union government has been opposing the removal of the marital rape exception. In 2016, it had rejected the concept of marital rape, saying it "cannot be applied to the Indian context" due to various reasons, not least because of the "mindset of society to treat marriage as a sacrament". However, in the final hearing, the Union government did not take a stand on the issue.

Justice Shakti's opinion goes to the heart of the matter, inasmuch as it treats the absence of consent as the core ingredient of rape. He says what is defined as rape in law should be labelled as such, irrespective of whether it occurs within or outside marriage. He finds that the marital exception violates equality before law, as well as deprives women of the right to trigger a prosecution for non-consensual sex.

Besides, it also discriminates among women based on their marital status and robs them of sexual agency and autonomy. In contrast, Justice Hari Shankar's opinion, somewhat disconcertingly, de-emphasises the element of consent and lays much store by the importance of preserving the institution of marriage to such an extent that he holds that any legislation that keeps rape out of a marital relationship "is immune to interference".

If marriage is regarded as a partnership between equals, an exception in a 162-year-old law should have had no place. While there are other laws governing civil relationships that legitimise conjugal expectations, these cannot be seen as giving a free pass for violence within marriage, which is essentially what sex without consent is.

Whether the legislative route is more appropriate in making marital rape a criminal offence is a matter of detail. What is important is that sexual violence has no place in society, and the institution of marriage is no exception.

GS World Team Input

IN THE NEWS

Marital Rape

Why in news?

- Marital rape is once again in the news. Recently, a two-judge bench of the Delhi High Court took a divided decision on this.
- A judge said- Section 375 of the IPC is a violation of Article 14 of the Constitution. Therefore, the husband should be punished for forcibly having sex with the wife. At the same time, the second judge did not consider marital rape as a crime.

What is marital rape?

- When a man forcibly has sex without the consent of his wife, it is called marital rape. According to the IPC, only a man can be charged with rape. Therefore, "sexual behavior by the husband without the consent of the wife" means marital rape.

What does the Indian law say about marital rape?

- In the case of rape, if the accused is the husband of the woman, then a case of rape cannot be registered against him. Rape is defined in section 375 of IPC. The exception to this is marital rape. Section 375 states that if the age of the wife is more than 18 years, then the relationship made by the husband shall not be treated as rape. Even if for this the husband went against the will of the wife and forced her.

At present, in how many countries of the world, marital rape is a crime?

- Poland is the first country in the world to criminalize marital rape. In 1932 Poland passed a law against marital rape. By 1970, countries like Sweden, Norway, Denmark, Soviet Union, Czechoslovakia also declared it a crime. Australia in 1976 and South Africa, Ireland, Canada and the US, New Zealand, Malaysia, Ghana and Israel also joined the list in the 1980s.
- According to the United Nations Progress of World Women report, as of 2018, only 77 countries out of 185 countries in the world have clear laws to criminalize marital rape. Of the remaining 108 countries, there are 74 such that there are provisions for women to file criminal complaints against their husbands for rape. At the same time, there are 34 countries where neither marital rape is an offense nor a woman can file a criminal complaint against her husband for rape. India is also included in these 34 countries.

Expected Question (Prelims Exams)

Q. Consider the following statements:-

1. Section 375 of the IPC defines rape.
2. Poland is the first country in the world where marital rape is considered a crime.

Which of the above statements is/are correct?

- (a) Only 2
- (b) Only 1
- (c) 1 and 2 both
- (d) Neither 1 nor 2

Expected Question (Mains Exams)

Q. Critically analyze the need for legislation against marital rape in India. Also, discuss the various challenges in legalizing such a law.

(250 Words)

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Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.