

Criminalisation of Marital Rape

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Context- Recently the Supreme Court has agreed to hear a series of petitions seeking to criminalise marital rape.

Key Highlights

- The foundations of the “marriage immunity” accusation of rape arose from the patriarchal system of society.
- According to it, a man cannot be guilty of raping his legal wife, because she has given herself to him through their joint marriage and agreement, which he cannot annul.
- Influenced by the second wave of feminism in the 1970s, Australia became the first common law country to adopt reforms in 1976, and many Scandinavian and European countries subsequently criminalized marital rape.
- Previously, the Karnataka High Court had ruled that if a husband has forcible sex with his wife, he can be charged with rape under the Indian Penal Code (IPC).
- The Karnataka Government had upheld the High Court judgment in a sworn statement in the pinnacle court accordingly.

Legal Provision Regarding Marital Rape

- **Marital Rape Exception:**
 - Section 375 of the Indian Penal Code, which exempts a man from the crime of rape for having forced intercourse with his wife if she is over 15 years of age.

Issues related to marital rape:

- **Against Women's Fundamental Rights:**
 - This exemption clause violates women's fundamental right to equality, freedom of expression and especially the right to life and personal liberty.
 - It also denies women agency over their own bodies.
 - **Dismal State of Judicial System** Reasons for low prosecution of marital rape cases in India include:
 - Low crime reporting is due to social conditions and weak legal awareness.
 - Inaccurate method of data collection by National Crime Records Bureau (NCRB).
 - Out-of-court settlements due to lengthy court proceedings/lack of admissible evidence.
 - **Justice J. S. Verma Committee Recommendation:**
 - Justice J. S. Verma Committee set up after the horrific Nirbhaya gang-rape in 2012.
 - While some of its recommendations helped shape the Penal Code (Amendment) Act 2013, its most radical proposals, including marital rape, were swept under the carpet.
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- **Role of the Government:**
 - **Disruptive effect on marriage:** The government has so far said repeatedly that criminalizing marital rape threatens the institution of marriage and also violates the right to privacy.
 - **Misuse of statutory provisions:** Section 498A of the IPC (harassment of a married woman by husband and in-laws) and the Protection of Women from Domestic Violence Act, 2005 are increasingly being used. Criminalizing marital rape can become an easy tool for teasing their husbands.

Way forward

- **A multi-stakeholder approach:**
 - criminalizing marital rape is certainly a symbolic start.
 - The punishment can be decided by an expert committee consisting of medical professionals, family counselors, judges and the police, based on various aspects, such as the sexual history of the couple, the physical and mental damage caused to the victim.
- **Bring about behavioral change:**
 - Law reform should be accompanied by information campaigns to inform the public (civilians, police, judges, medical professionals) about the importance of consent, timely medical care and rehabilitation, skill development and employment to promote the economic independence of victims.