

Delhi High Court Verdict on Marital Rape

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[GS Paper 2 - Indian Constitution, Judiciary]

Context - Delhi high court delivers the split verdict.

The two-judge bench of the Delhi High Court delivered a split judgment on a batch of the petition seeking the criminalization of marital rape.

Key Highlights of the Verdict

- Justice Rajiv Shakdher ruled in favor of criminalizing marital rape.
- Justice C Hari Shankar disagreed with the opinion held that the exception to Section 375 does not violate the constitution as it is based on intelligible differences.
- The high court was hearing a bunch of public interest litigations filed in 2015 by a nonprofit RIT Foundation, all Democratic moments association, and two individuals who sought to strike down the exception in Indian rape law on the grounds that it is discriminated against marital rape.
- Justice Rajiv Shakdher, who headed the two-judge Bench, struck down as unconstitutional the exception to **Section 375 of the Indian Penal Code (IPC) which says that sexual 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 criminalize marital rape. In case of a split verdict, the case is heard by a larger bench.

About Section 375 of IPC

- The Indian Penal Code was implemented in India during British colonial rule in 1860. Section 375 of the IPC defines the acts that constitute rape by a man.
- In the former version the marital rape exception was applicable to women over 10 years of age. Later the section was amended, and this age was raised to 15 years.
- In 2017 the Supreme Court ruled that sexual intercourse by a man with his wife who is not under 18 years of age cannot be considered rape.
- The petitions are filed due to the exceptions it holds such as it decriminalizing marital rape and it states that medical procedures or interventions shall not constitute rape.

DO YOU KNOW?

- The grounds for “marital immunity” for rape prosecution have emerged from the patriarchal discourse in society. According to this, a husband cannot be guilty of a rape committed upon his lawful wife because she has given up herself in this kind to her husband by their mutual matrimonial consent and contract, which she cannot retract.
- Under the impact of the second wave of feminism in the seventies, Australia became the first common law country to pass reforms in 1976 and after it, many Scandinavian and European countries made rape in marriage a criminal offence.