Criminalising Marital Rape

What is the issue?

The Centre told the Delhi High Court that it was considering a constructive approach to the issue of criminalising marital rape.

What is marital rape?

- The term marital rape (also referred to as 'spousal rape') refers to unwanted intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unable to give consent.
- In 1932**, Poland** was the first to make a law explicitly making it a criminal offence.
- India is one the countries including Pakistan, Afghanistan, Bangladesh, Egypt, Algeria and Botswana that have not criminalised marital rape.

What are the provisions available in India regarding marital rape?

- **Section 375 of the IPC** defines rape and the concept of consent, but also adds that these conditions do not apply in the case of married couples.
- Sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape.
- The origin of the marital rape exception lies in the treatise on criminal law of England called the '**History of the Pleas of the Crown'** pronounced in 1736.
- This immunity has since been withdrawn in several jurisdictions, including in England which held marriage to be a partnership of equals.
- According to the World Bank, there are at least 78 countries including the U.S. and Nepal that have legislation specifically criminalising marital rape.
- **The Justice Verma Committee**, set up in 2012 to reform criminal law has proposed that the exception for marital rape be removed.

What is the issue with the exception?

- It compromises on the **right to bodily integrity** which was recognised in *State of Maharashtra v. Madhukar Narayan Mardikar* where the court observed that no one has a right to violate the person of anyone else.

- It violates **Article 14** (Right to equality)

What is the judiciary's view?

- In a 2017 judgement, the Supreme Court changed the age of consent to 18 for a married woman but that case dealt exclusively with cases of child marriage, and not with the wider issue of marital rape.
- In *Independent Thought vs. Union of India*, 2017, the Supreme Court criminalised rape with a minor wife.
- A two-judge bench of the *Kerala High Court* upheld a family court's decision to allow divorce on the grounds of marital rape because it constitutes physical and mental cruelty.
- In August 2021, *Chhattisgarh High Court* ruled that sexual intercourse or any sexual act by a husband with their spouse would not constitute rape even if it was forcible or against the consent of a legally wedded wife.

In Joseph Shine vs. Union of India, 2018, Supreme Court struck down adultery as a crime on the fact that it is no longer assumed that the wife surrenders her personhood and rights when she enters into a marital relationship.

What is the Centre's stand on this matter?

- **Destabilise the marriage**- The government has reiterated that criminalizing the marital rape would affect the institution of marriage.
- **Misuse of legal provisions**-It has said that it would infringe on the Article 21 (right to privacy).
- There are chances that it could be misused by the wives to harass their husbands using **Section 498A** (harassment caused to a married woman by her husband and in-laws**)** of IPC and the **Protection of Women from Domestic Violence Act, 2005.**
- The Centre has said that it was considering a constructive approachto the issue of criminalising marital rape and that it has sought suggestions from several stakeholders and authorities on comprehensive amendments to the criminal law.

References

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