The End of the Marital Rape Exception

Why in news?

The Karnataka High Court's order has refused to quash charges of rape against a man accused of forcibly having sex with his wife.

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.
- 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.
- The concept was that the husband cannot be guilty of a rape committed by himself upon his lawful wife due to their mutual matrimonial consent.
- This was translated into criminal codes, including the Indian Penal Code which India adopted.
- India is one the countries including Pakistan, Afghanistan, Bangladesh, Egypt, Algeria and Botswana that have not criminalised marital rape.
- In the United Kingdom, in 1991, the exception to marital rape was done away stating that law should declare that a rapist remains a rapist subject to the criminal law, irrespective of his relationship with the victim.

What are the provisions available in India regarding marital rape?

- **Section 375** of the IPC defines rape and provides for exceptions in the case of married couples.
- **Exception 2 of Section 375** states that sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape.
- **Section 376** of the IPC provides for punishment for rape.
- **The Justice Verma Committee**, set up in 2012 to reform criminal law has proposed that the exception for marital rape be removed.

The Constitution guarantees women the fundamental rights under Articles 14, 15, 19 and 21 the right to live with dignity, personal liberty, bodily integrity, sexual autonomy, right to reproductive choices, right to privacy, right to freedom of speech and expression.

What is the High Court's view?

- **Case background**-A woman had filed a criminal complaint of rape against her husband due to the repeated acts of sexual assault she had to face.

- The police registered her complaint and the Sessions Judge took cognisance and framed charges under Section 376.
- The husband filed an application to drop the charge of Section 376 but the Sessions Judge rejected it.
- This led to the husband approaching the High Court seeking to quash the criminal proceedings.
- **High Court order**- The court refused to quash the charge of rape against the husband.
- It held that the exception to marital rape in the IPC violates women's right to equality which is the very soul of the Constitution.
- Also it amounts to discrimination because a wife is treated as subordinate to the husband.
- The court also stated that the exemption of the husband on committal of such assault cannot be so absolute that it becomes a licence for commission of a crime.

What were the earlier judgments?

- In *Independent Thought vs. Union of India*, 2017, the Supreme Court held that sexual intercourse by a man with his wife, who is below 18 years of age is rape.
- In 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.
- The Constitutionality of the marital rape exception is also under challenge before the Delhi and Gujarat High Courts.

References

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