

COURTS IN THE COUNTRY CONTINUE TO DIFFER IN VIEWS ON MARITAL RAPE

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Four years after the Supreme Court referred to Justice J.S. Verma Committee's recommendation to make marital rape a crime, besides quoting from decisions of courts across the world that "a rapist remains a rapist and marriage with the victim does not convert him into a non-rapist", Indian courts continue to take views on marital rape that are the polar opposite of each other.

The recent response from courts to complaints of marital rape has been contradictory. When the Kerala High Court backed marital rape as a valid ground for divorce, a court in Maharashtra gave anticipatory bail to a man while concluding that forcible sex with his wife was not an "illegal thing" though she said it left her paralysed.

In 2017, the top court, in *Independent Thought versus Union of India*, refused to delve into the question of marital rape while examining an exception to Section 375 (rape) of the Indian Penal Code which allows a man to force sex on his wife if she is above 15 years of age. However, in its judgment that declared "sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not", the Supreme Court highlighted that legislative immunity given to marital rape stemmed from the "outdated notion that a wife is no more than a subservient chattel of her husband".

Similarly, the Gujarat High Court has held that "a law that does not give married and unmarried women equal protection creates conditions that lead to the marital rape". "It allows the men and women to believe that wife rape is acceptable. Making wife rape illegal or an offence will remove the destructive attitudes that promote the marital rape," the court had suggested.

Legislative amnesty to marital rape continues to survive in the statute book despite a gamut of decisions by the Supreme Court upholding the bodily integrity and privacy of women.

The right to bodily integrity was recognised in the context of privacy in *State of Maharashtra v. Madhukar Narayan Mardikar*. Here, the top court observed that no one has a right to violate the person of anyone else, including of an "unchaste woman".

In *Suchita Srivastava v. Chandigarh Administration*, the top court backed a "woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods". The court has held that "rape is not only a crime against the person of a woman, it is a crime against the entire society". In *State of Punjab v. Gurmit Singh*, the court voiced the extent of trauma suffered by a rape survivor, saying "a murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female".

The report submitted by the Justice J.S. Verma Committee of Amendments to Criminal Law of January 2013 had recommended the removal of the marital rape immunity. "A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape," the committee had advised the government

unsuccessfully.

The report underscored the fact that marital rape immunity had been withdrawn in most foreign jurisdictions. In England and Wales, the House of Lords had held in 1991 that “marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband”.

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