

## Centre cited tradition, wanted Section 375 to stay

The Centre wanted Section 375 of the Indian Penal Code, read down by the Supreme Court on Wednesday, to stay. The Section allowed a man to have sexual intercourse with his wife aged between 15 and 18.

There were deliberations on striking down Exception 2 to Section 375 (rape) in the Home Ministry and the Women and Child Development Ministry after an NGO, Bachpan Bachao Andolan, moved the court. The NGO, run by Nobel laureate Kailash Satyarthi, wanted the Supreme Court to examine the conflict of Section 375 with the Protection of Children from Sexual Offences Act, 2012, which specifies that sexual intercourse with children aged below 18 amounted to rape.

In its response to the WCD Ministry, the Home Ministry, the nodal Ministry for such subjects, said, "Marriage of minors is an old custom in India, practised by all social groups, however, the MHA will abide by the SC directions."

### Exception challenged

On Wednesday, a Bench of Justices Madan B. Lokur and Deepak Gupta read down the Section while hearing a similar petition filed by an NGO, Independent Thought, which challenged the exception, on how when sexual intercourse with a minor aged below 18 with or without her consent amounts to rape under the IPC, it is not so once she is married. The Home Ministry under the UPA government in February 2014 had filed a counter-affidavit against striking down the provision. The NDA government adopted the UPA's affidavit and supported the IPC provision.

The affidavit said, "It is true that the minimum age of marriage of a female is 18 years and punishment has been provided in the Prohibition of Child Marriage Act, 2006 to discourage child marriages. However, it is also a fact that a large section of the Indian society, which is living in rural areas, continues to follow such practices as part of their tradition. As per the data collected in National Family Health Survey-III, 46% of women between 18-29 years in India were married before the age of 18. It is also estimated that there are 23 million child brides in the country. Hence criminalising the consummation of a marriage union with a serious offence such as rape would not be appropriate."

An earlier version of the story wrongly said Section 375 allows a man to have sex with his wife aged below 15. It should have been between 15 and 18.

END

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