

## Marriage no bar

In the aftermath of the December 16, 2012 Delhi gang-rape, India's laws on sexual assault were overhauled. The legal reform, however, left one area untouched: Marital rape. Section 375 of the Indian Penal Code (IPC), which defines the offence of rape, had an exception clause that said, "intercourse or sexual act by a man with his wife, not below 15 years, is not rape". On Wednesday, a two-judge bench of the Supreme Court struck down a part of this clause when it ruled that sexual intercourse with a minor wife is rape and a case can be registered against the husband on her complaint.

In 2013, the Criminal Law Amendment Act raised the age of consent for sexual intercourse for girls, from 16 to 18 years. However, the exception clause retained the age of consent for married girls as 15 years, depriving married girls between the ages of 15 to 18 of legal protection against forced sexual intercourse. The clause was also against the Protection of Children from Sexual Offences Act which considers sex with children - those below 18 - as rape.

These discrepancies, the apex court noted, have created "an unnecessary and artificial distinction between a married girl child and an unmarried girl child". The court's reasoning is salutary given that, in August, the government had argued that the exception clause was necessary to "protect the institution of marriage". "Otherwise, the children from such marriages will suffer," its lawyer had contended, claiming that the country's socio-economic realities cannot be ignored. Significantly, the court has used the language of rights - and dignity - to respond to such arguments: "Unfortunately... if a girl child between 15 and 18 years is married, her husband can have non-consensual sex with her without being penalised, only because she is married to him, and for no other reason. The right of such a girl child to bodily integrity and to decline to have sexual intercourse with her husband has been taken away".

The Supreme Court is categorical that its verdict does not pertain to the other contentious aspect of the exception clause: Marital rape of women above 18 years. It has also stressed that it should not be "understood to advert to that issue even collaterally". There are two reasons for this restraint. The court was responding to a petition that was specifically concerned with the "violation of the rights of girls who are married between the ages of 15 and 18 years". Second, for nearly two months, the Delhi High Court has been hearing a petition to criminalise marital rape, where the government has stuck to its reasoning on the "sanctity of the institution of marriage". But if Wednesday's verdict is anything to go by, higher courts are increasingly recognising that the notion of consent needs to be redefined to do justice to women's rights. It is high time that the government takes that message on board.

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