

## The legal message

In the Supreme Court's decision on Wednesday, criminalising sex between a man and his minor wife, while the court refrained from adjudicating on the larger issue of marital rape, its judgment made reference to the Justice J.S. Verma committee recommendations that explained why the exemption of marital rape must be removed, and that a marital or other relationship is not a defence or justification for a lower sentence.

Consider this: 2.6 billion women live in countries, including India, where marital rape is not a crime. Millions of others live in countries including the U.S., where marital rape is treated differently from other forms of rape. The unjust treatment of marital rape as an exemption stems from three common law notions: marriage constitutes a contract, which includes the woman's irrevocable consent to sex; a woman is the property of her husband, and rape is a violation of a man's property rather than a crime against women; and after marriage, a woman's identity becomes part of her husband's. Despite the outdated, problematic origins of this exception, the Indian government has consistently resisted a change in the law.

The gang rape of a 23-year-old student in Delhi in 2012 resulted in an amendment to the criminal legislation in India, including the definition and punishment of rape. However, the exemption of marital rape was retained, despite recommendations by the Justice Verma committee. Lawmakers reacted to its recommendation arguing: "If marital rape is brought under the law, the entire family system will be under great stress." A few years later, we face the same debate as the Delhi High Court hears a petition seeking the inclusion of marital rape under the existing rape law. This inclusion too is being rejected by the government. Counterintuitively, it is also being rejected by some women's rights activists, for completely different reasons. The government thinks it will be used as a tool to harass men, and that it will affect the institution of marriage — an argument that places greater significance on marriage than women's rights.

Women's rights lawyer Flavia Agnes has other objections. She does not "believe in placing rape on a pedestal within the hierarchy of crimes within a marriage. For a woman who is facing domestic violence, it is equally violating if her skull is fractured, her spine is broken, her cornea is damaged, liver is injured, or her vagina is penetrated forcefully. What women object to is the violence involved." She also explains that while sexual violence is "very common, it is never in isolation", and that "those who isolate penetrative sexual violence within marriage, and place it on a pedestal, are oblivious of the women's social realities." Feminist researcher Sahla Aroussi made a similar critique in a recent publication where she examines sexual violence in conflict and argues that a narrow focus on sexual violence ignores the multiplicity of suffering faced by women and can result in inadequate attention being paid to their other needs.

Ms. Agnes and Ms. Aroussi are right that we need to ensure that law and policy interventions do not inadvertently trivialise non-sexual violence and that steps are taken to strengthen compliance and implementation of laws relating to all forms of violence. But we must also recognise that removing the current marital exception, if nothing else, has an important signalling effect. In order to prove effective, such a change needs to be accompanied by a deliberate attempt to shift attitudes that normalise violence in the home. Currently, even in cases of non-marital rape, judges have suggested that rape victims marry their rapist for a "happy conclusion", which highlights the notion that forced sex does not amount to rape if it takes place within a marriage.

The challenge of sticky socio-cultural norms is not unique to India. The experience in countries such as the U.S. where marital rape is criminalised shows that despite changes in the law, the patriarchal notion that marriage overrides the legal and sexual autonomy of a woman still exists. In 2015, U.S. President Donald Trump's counsel Michael Cohen expressed his ignorance about the

legal possibility of a man raping his wife. “You cannot rape your spouse,” he said. “There’s very clear case law.” He later corrected himself, but his comment has sparked conversation about why he made this error. Although all 50 states had enacted laws against marital rape by 1993, almost half the States still treat it differently from rape outside of marriage. In some states, marital rape is a chargeable offence only if the perpetrator uses or threatens to use physical force. In others, proof of marriage is often an easy way to reduce or mitigate the consequences of the offence. These kinds of legal distinctions legitimise the perception among law-enforcement agencies that cases of marital rape should be treated as less serious than rape outside of marriage.

These perceptions among law-enforcement agencies suggest that while it is important to work towards facilitating access to justice for victims, it is crucial to simultaneously focus on preventive measures. This view was reflected in a UN multi-country study on violence in Asia-Pacific which recommended that strategies must focus on structural factors that prevent the incidence of rape, rather than focussing only on strengthening response mechanisms. Since gender socialisation begins young, the study also speaks of the need to focus interventions on children and adolescents. This socialisation is reinforced through family and societal institutions, popular culture and media. Social learning psychologists have found that a disrupted home environment contributes to violent, anti-social behaviour of a child. Therefore, in addition to sensitising law enforcement authorities whose attitudes are merely symptomatic of widely-held beliefs about women and gender roles, we need to work with children, parents and the larger community to ensure marital rape is condemned, not condoned.

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