

TIME TO CRIMINALISE MARITAL RAPE

Relevant for: Polity | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The recent judgments of two High Courts on marital rape made headlines. Though neither of the Courts delved into the constitutionality of marital rape, their reference to it once again raked up debate on whether Exception 2 to Section 375 of the Indian Penal Code is constitutional or not. According to Exception 2, sexual intercourse by a man with his own wife (provided she is over the age of 18) does not amount to the offence of rape.

The Kerala High Court held that acts of sexual perversions of a husband against his wife amounted to (mental) cruelty and was therefore a good ground to claim divorce (since marital rape is not a punishable offence). The Court said that in modern social jurisprudence, spouses are treated as equal partners and a husband cannot claim any superior right over his wife either with respect to her body or with reference to her individual status.

The Chhattisgarh High Court, while discharging the accused husband, held that the charge of rape framed under Section 376 of the IPC was erroneous and illegal as it was covered under Exception 2 to Section 375 and the wife was not under 18 years of age. As the law on marital rape stands today, both the High Courts were right in their approach but the Kerala High Court was appreciated more for being progressive in its outlook.

The Justice Verma Committee report of 2013 stated that the notion that a wife is no more than a subservient chattel of her husband has since been given up in the U.K. The European Commission of Human Rights has held that “a rapist remains a rapist regardless of his relationship with the victim”. Marital rape is a criminal offence in South Africa, Australia, and Canada, among other countries. After due deliberations, the Committee recommended that the exception for marital rape be removed, but this suggestion was not accepted by the government.

Earlier, in 1983, the Andhra Pradesh High Court, in *T. Sareetha v. T. Venkata Subbaiah*, held restitution of conjugal rights under the Hindu Marriage Act of 1955 to be unconstitutional as its decree could be misused by a husband for enforcing sexual intercourse with his wife. However, the Supreme Court overruled it by declaring that the institution of marriage stood for much more than mere sexual congress.

A section of society feels that once marital rape is criminalised, it may lead to filing of false charges against husbands. It also thinks that it will be very difficult for the police to prove such cases beyond reasonable doubt. The first apprehension is unfounded in the absence of any empirical data. Further, there are legal provisions to deal with false cases. If found ineffective, legal remedies may be revised suitably. Similarly, the difficulty of proof cannot be a criterion for not notifying deviant behaviour as an offence. Like most other sexual offences, the prosecution may establish the case with relevant facts and circumstances. Moreover, doing away with Exception 2 would show complete non-tolerance by the state with respect to rape.

While decriminalising adultery, the Supreme Court in *Joseph Shine vs. Union of India* (2018) said that a legislation that perpetuates stereotypes in relationship and institutionalises discrimination is a clear violation of the fundamental rights guaranteed by the Constitution.

It is undisputed that marriage in modern times is regarded as a partnership of equals. It is an association of two individuals, each of whom has separate integrity and dignity. The violation of bodily integrity of a woman is a clear violation of her autonomy. Any provision of law that is not

reasonable, just and fair, and is against the spirit of Article 21 of the Constitution, is discriminatory and arbitrary and therefore must be declared unconstitutional. It is now only a question of time that exemption of liability from marital rape shall be declared unconstitutional and individual's dignity recognised in full.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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