Criminalisation of Marital Rape

1) Introduction
- Marital rape is the act of sexual intercourse with one’s spouse without the consent of the other spouse.
- Although it was once widely unrecognized by law and society as wrong or as a crime, it is now recognized as rape by many societies around the world.
- The Centre has pleaded for not criminalising marital rape in an affidavit filed in response to pleas seeking its criminalisation.

2) Legal Provisions
- Section 375 of the IPC holds that “sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape”
- No other statute or law recognises marital rape
- Victims only have recourse to civil remedies provided under the Protection of Women from Domestic Violence Act, 2005.

3) Arguments for criminalisation of marital rape
- The Justice Verma committee had recommended removing the exception made for marital rape in the law.
- The report ‘Status of Women in India’, by the high-level Pam Rajput committee of the Ministry of Woman and Child Development, criticised the legislature for its failure to criminalise marital rape
- Till date, 51 countries have criminalised marital rape, beginning with Poland in 1932.
- United Kingdom, whose common law was followed by India, made marital rape a criminal offence in 1991.
- There are several studies to show the prevalence of non-consensual sex with their wives, and physically forcing their wives to have sex.
- Marriage is an equal-relationship contract and not a one-time consent to everything.
- The legal exception to the rape laws gives men unequal privilege.
- Marital rape victims suffer from long-lasting psychological scars.
- Exception under Section 375, violates Articles 14, 15, 19 and 21.

4) Arguments against criminalisation of marital rape
- It “may destabilise the institution of marriage apart from being an easy tool for harassing the husbands”.
- “Rising misuse of Section 498A of IPC”, known as the dowry law, “for harassing the husbands”.
- Other countries, mostly western, have criminalised marital rape does not necessarily mean India should also follow them blindly.
- Law Commission on Review of Rape Laws has examined the issue but not recommended the criminalisation of marital rape.

5) Concerns / Challenges
- What may appear to be marital rape to an individual wife, it may not appear so to others.
• There can be no lasting evidence in case of sexual acts between a man and his own wife
• Data from the National Crime Records Bureau and the National Family Health Surveys show that only about 0.6%, or one in 167 incidents of sexual violence by husbands, are reported.
• In the last 70 years, the exemption in Section 375 has remained untouched.
• The prevalence of Child marriages and in many cases women are forcefully married off
• In India, marital rape is not defined in any statute or law, an issue several women’s rights advocates have argued against.
• The patriarchal nature of Indian society, ingrains it in the minds of men that women are expected to comply when their husbands demand sex.
• The victim suffers physical abuse, and she also has to undergo mental trauma of her dignity being violated.

6) **Way Forward**
• What constitutes marital rape and marital non-rape needs to be defined precisely before a view on its criminalisation is taken
• Defining marital rape would call for a broad based consensus of the society.
• States should intervene in the matter, since criminal law is on the concurrent list and implemented by states — and given the vast diversity in cultures across states.
• Factors like literacy, lack of financial empowerment of the majority of females, mindset of the society, vast diversity, poverty, etc., should be considered carefully before taking any decision.
• The need for “moral and social awareness” to stop such an act.
• The recent privacy judgment by the Supreme Court is also set to play an important role. The right to bodily integrity is a crucial facet of Article 21.
• Timely medical care and rehabilitation, skill development and employment for facilitating economic independence of victims.
• Need for undertaking both legal and social reforms to deal with the menace of marital rape.

7) **Conclusion**
• A woman has a right to bodily integrity, sexual autonomy and reproductive choice.”
• Only when individual rights are not sacrificed and two partners are treated equally shall marriage as an institution continue to survive.