

## General Studies-2; Topic: Mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections.

### 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.