

'Excessively harsh': Centre opposes marital rape criminalisation in Supreme Court

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NEW DELHI: The central government on Thursday opposed the criminalisation of marital rape in the Supreme Court, stating that matter relating to marital rape needs "a comprehensive approach" rather than a "strict legal approach" as it can have very far-reaching socio-legal implications in the country.

If sexual acts by a man with his own wife is made punishable as "rape", it may severely impact the conjugal relationship and lead to serious disturbances in the institution of marriage, the Centre told the Supreme Court, according to news agency PTI.

In its preliminary counter affidavit in the top court on the marital rape issue, the Centre further said that "while exercising such judicial review on such subjects (marital rape), it is to be

appreciated that the present question is not only a constitutional question, but essentially a social question on which Parliament, after being apprised and being aware of all sides of the opinion on the present issue, has taken a position."

Centre informed the court that Parliament has decided to retain Exception 2 to Section 375 of IPC in 2013 while amending the said section in the year 2013.

"Furthermore, it is submitted that striking down Exception 2 of Section 375 of IPC on the ground of its

constitutional validity will have a far-reaching effect on the institution of marriage if sexual intercourse or sexual acts by a man with his own wife is made punishable as 'rape'," the Centre said in its affidavit, according to news agency PTI.

"It is submitted that the act colloquially referred to as 'marital rape' ought to be illegal and criminalised. The central government asserts that a woman's consent is not obliterated by marriage and its violation should result in penal consequences. However, the consequences of such violations within marriage differ from those outside it," the affidavit said.

It said Parliament has provided different remedies, including criminal law provisions, to protect consent within marriage.

"Given the nature of the marital institution in our socio-legal milieu, if the legislature is of the view that, for preservation of the marital institution, the impugned exception should be retained, it is submitted that it would not be appropriate for this court to strike down the exception," the central government told the Supreme Court.

"It may severely impact the conjugal relationship and may lead to serious disturbances in the institution of marriage," the government said.

"This is more so since the issues involved have a direct bearing on the society in general and is a part of Concurrent List of the Seventh Schedule to the Constitution of India," the Centre said.

The affidavit said a husband certainly does not have any fundamental right to violate the consent of the wife, however, attracting the crime in the nature of "rape" as recognised in India to the institution of marriage can be arguably considered to be excessively harsh and therefore, disproportionate.

"Therefore, it is respectfully submitted that if the legislature decides to exempt, from the rigour of such a charge, and such a label, husbands, vis-a-vis their wives, given the intelligible differentia that exists in a marital relationship vis-a-vis other relationships, the said decision and discretion should be respected and not interfered with especially when a separate suitably tailored penal remedy is provided by the Legislature," it said.

In 2022, in an important verdict reinforcing bodily and decisional autonomy of the pregnant woman, the Supreme Court for the first time recognised marital rape for the purpose of unwanted pregnancy for abortion and held that rape under Medical Termination of Pregnancy (MTP) Act includes a husband's act of sexual assault or rape committed on his wife.