



Marital Rape

For Prelims: Section 375 of the IPC, Section 498A of IPC, Justice J. S. Verma Committee

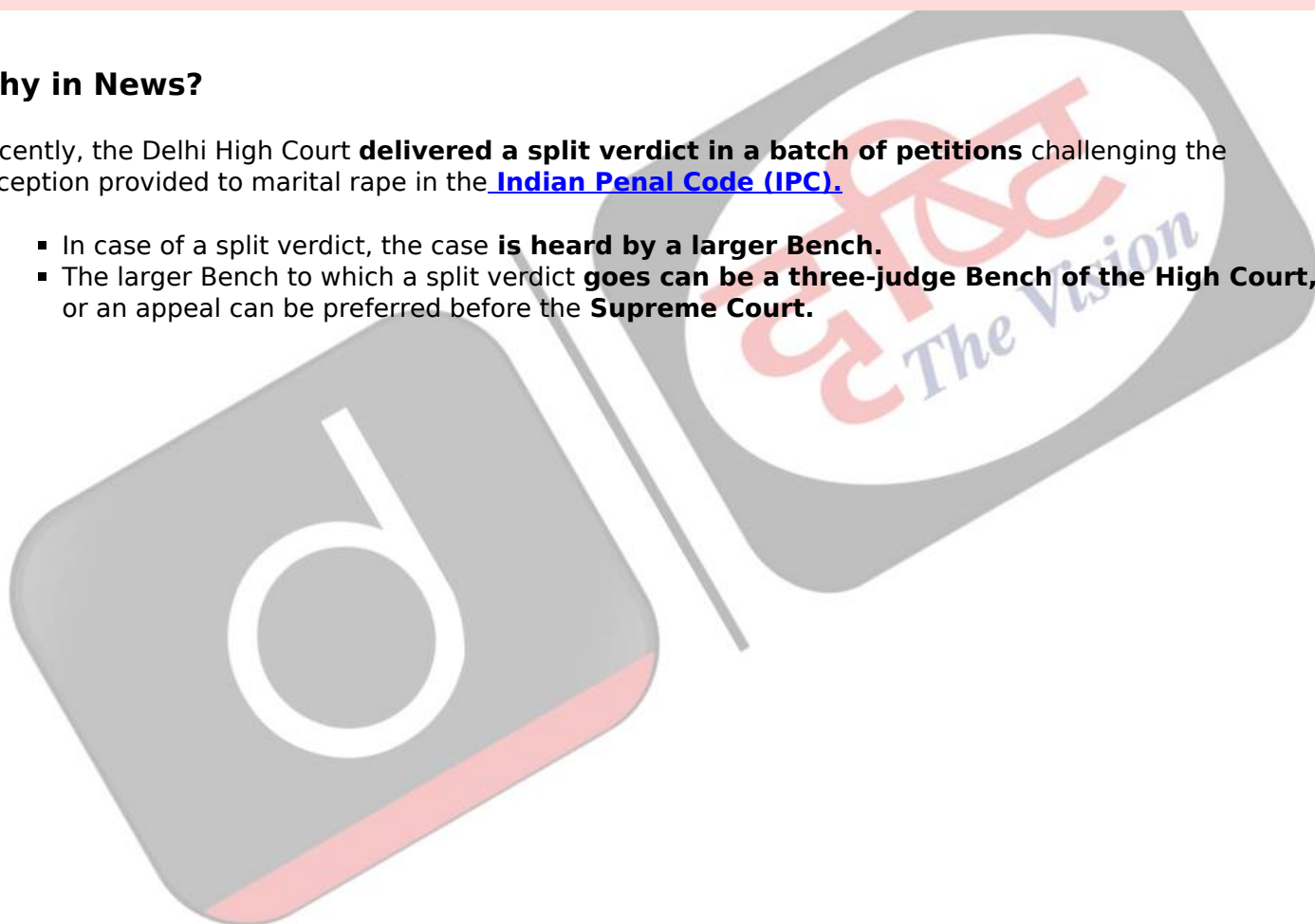
For Mains: Criminalisation of Marital Rape, Section 375 of the IPC, Justice J. S. Verma Committee, Protection of Women from Domestic Violence Act, 2005, Salient Features of Indian Society

Why in News?

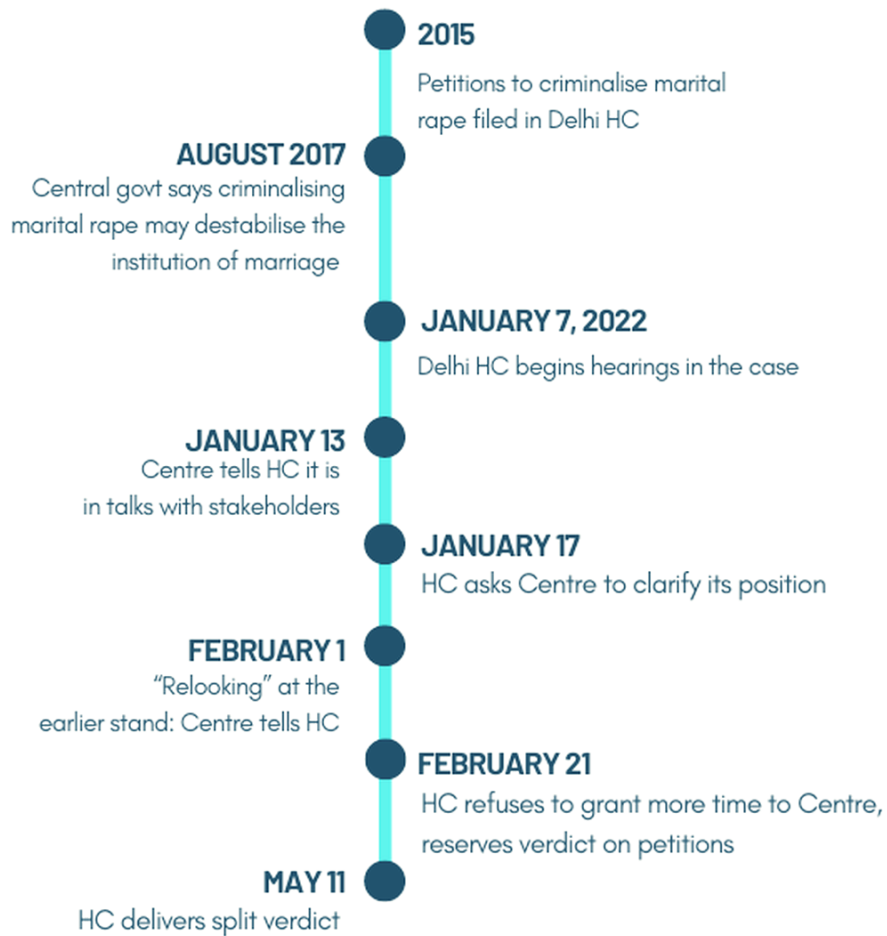
Recently, the Delhi High Court **delivered a split verdict in a batch of petitions** challenging the exception provided to marital rape in the [Indian Penal Code \(IPC\)](#).

- In case of a split verdict, the case **is heard by a larger Bench.**
- The larger Bench to which a split verdict **goes can be a three-judge Bench of the High Court,** or an appeal can be preferred before the **Supreme Court.**

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PETITIONS SEEKING CRIMINALISATION OF MARITAL RAPE IN DELHI HIGH COURT: TIMELINE



What was the Case about?

- The court was **hearing a clutch of four petitions** challenging the constitutionality of the exception to Section 375.
 - The petitioners want the **exception to be struck down in totality**, on the grounds that this exception **violates the fundamental rights of married women**.
- While delivering the verdict, one of the judges **struck down Exception 2 of the Indian Penal Code's Section 375** but another judge **upheld its validity**.

What is Section 375 of the Indian Penal Code (IPC)?

- Section 375 of the IPC **defines the acts that constitute rape by a man**.
- The provision, however, **lays down two exceptions as well**.
 - Apart from decriminalising marital rape, it mentions that **medical procedures or interventions shall not constitute rape**.
 - **Exception 2 of Section 375 states** that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape".

What is the History of the Marital Rape Law in India?

- **Domestic Violence Act, 2005:**
 - It hints at **marital rape by any form of sexual abuse** in a live-in or marriage relationship.
 - However, **it only provides for civil remedies**. There is no way for marital rape victims in India to initiate criminal proceedings against their perpetrator.
- **Delhi High Court:**
 - The Delhi High Court **has been hearing arguments in the case since 2017**.
 - However, this is **not the first time** that the issue of marital rape has been raised in the country.
- **Law Commission of India:**
 - The **need to remove this marital rape exception** was rejected by the [Law Commission of India](#) in 2000, while considering several proposals to reform India's laws on sexual violence.
- **Justice JS Verma Committee:**
 - In 2012, the **Justice JS Verma Committee** was tasked with proposing amendments to India's rape laws.
 - While some of its recommendations helped shape the [Criminal Law \(Amendment\) Act passed in 2013](#), some suggestions, including that on marital rape, were not acted on.
- **Parliament:**
 - The issue **has been brought up in Parliament** as well.
 - Upon being **questioned in a Parliament session in 2015**, the idea of criminalising marital rape was dismissed with the view that **"marital rape cannot be applied in the country** since marriage was treated as a sacrament or sacred in the Indian society".

How did the Exception on Marital Rape find its way into the IPC?

- **British Colonial Rule:**
 - The IPC was implemented in India during **British colonial rule in 1860**.
 - Under the first version of the rules, the **marital rape exception was applicable to women over 10 years of age** which was **raised to 15 in 1940**.
- **1847 Draft of Lord Macaulay:**
 - In January 2022, it was **argued by amicus curiae** (friend of the court) **that the IPC is based on the 1847 draft of Lord Macaulay**, the chairman of the First Law Commission established in colonial-era India.
 - The exception in the draft decriminalised marital rape without any age limit.
 - The **provision is an age-old idea** that implies consent by married women and protects the conjugal rights of the husband.
 - The **idea of implied consent comes from the Doctrine of Hale**, given by Matthew Hale, the then British Chief Justice, in 1736.
 - It **states that a husband cannot be guilty of rape**, since "by their mutual matrimonial consent and contract the wife has given up herself in this kind to the husband".
- **Doctrine of Coverture:**
 - According to the Doctrine of Coverture, a **woman has no individual legal identity after marriage**.
 - Notably, the **Doctrine of Coverture found a mention during the hearing** when the Supreme Court of India struck down adultery as a criminal offence in 2018.
 - It was held that **Section 497, that classified adultery as a crime**, is based on the Doctrine of Coverture.
 - This doctrine, **although not recognised by the Constitution**, holds that a woman loses her identity and legal rights with marriage, is violative of her [fundamental rights](#).

What has been the Government Stand?

- The **Centre initially defended the rape exception** and later changed its stand and told the court that it was reviewing the law, and that “wider deliberations are required on the issue”.
- The Delhi government **argued in favour of retaining the marital rape exception.**
 - The government’s arguments **spanned from protecting men from possible misuse of the law by wives, to protecting the institution of marriage.**

How is Marital Rape Treated around the World?

- **About:**
 - According to [Amnesty International](#) data, **77 out of 185 (42%) countries criminalise marital rape** through legislation.
 - In other countries, it is **either not mentioned or is explicitly excluded from rape laws**, both of which can lead to sexual violence.
 - The [United Nations](#) has urged countries to end marital rape by closing legal loopholes, saying that “the home is one of the most dangerous places for women”.
- **Countries allow Marital Rape:**
 - Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka and Tanzania expressly allow marital rape of a woman or a girl by her husband.
- **Countries which allow to File Complaints:**
 - While 74 countries allow women to file complaints against their husbands, 34 out of 185 do not provide any such provisions. About a dozen countries allow rapists to avoid prosecution by marrying their victims.

What are the Issues with Marital Rape Exception?

- **Against Basic Rights of Women:**
 - This exception clause violates the women’s [fundamental right to equality, freedom of speech and expression, and most of all the right to life and personal liberty.](#)
 - It also denies the agency over their own bodies to women.
- **Dismal State of Judicial System:**
 - Some of the reasons for low rates of prosecution in the cases of marital rape in India include:
 - **Low reporting of crimes** due to societal conditioning and low legal awareness.
 - Inaccurate method of collection of [National Crime Records Bureau \(NCRB\)](#) data.
 - Out of court settlements due to the lengthy process of justice/lack of admissible proof.

Way Forward

- **Indian law now affords husbands and wives separate** and independent legal identities, and much jurisprudence in the modern era is explicitly concerned with the protection of women.
- Therefore, it is **high time that the legislature should take cognisance of this legal infirmity** and bring marital rape within the purview of rape laws by eliminating Section 375 (Exception 2) of IPC.

[Source: TH](#)