
STAND AGAINST REFORM

The government needs to rethink its position on the criminalisation of marital rape

TOSHOE UP a bad argument, it is always a good idea to threaten vague but dire consequences for traditional institutions. The central government has reached for this lifeline in its affidavit filed in Delhi High Court, opposing the criminalisation of marital rape for fear of damaging the very institution of marriage. Its stand goes against the grain of recent progressive rulings like the affirmation of the Right to Privacy and the abolition of triple talaq, and recommendations of the Justice J.S. Verma committee in 2013. If the government has its way, a woman subjected to sexual violence within the fold of marriage can only seek civil relief through the 2005 Act protecting against domestic violence.

From the time of John Stuart Mill, Western democracies have grappled with the question of women's sexual autonomy, without which equality is an empty shell. Many have taken the ethical choice. On women's issues, as in the case of recognition granted by the Supreme Court in 2015 to live-in relationships for purposes of inheritance, conferring rights which even reformist Sweden does not offer, Indian courts and legislatures have often taken progressive positions. Now, however, the government is doing a disservice by impeding the momentum of reform in India. It vainly argued against privacy rights, it wants to keep marital rape off the statute books. It must recall Justice J.S. Verma's recommendation of a separate bill of rights for women guaranteeing "complete sexual autonomy".

Autonomy is the big legal question facing India, as the nation decides between a progressive culture of individual dignity and freedom, and a society regimented by traditional norms favouring powers conferred by birth and circumstance. The Delhi High Court is refereeing one skirmish in a larger battle. The contested point is dignity for women who are, by and large, the designated victims of sexual politics. Criminalising marital rape will not damage the institution of marriage, as the government fears. It will humanise it by purging it of its baser elements. The J.S. Verma committee had recommended the mandatory registration of all marriages before a magistrate, irrespective of the personal laws under which they were solemnised. Against the progressive tide of the times, the stand of the government on privacy and marital rape is simply unsustainable. To spare itself further embarrassment, it should seek better counsel.

