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Gender Neutral Rape Laws

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ABSTRACT

Rape is the fourth most leading crime in India and an important issue throughout the world. Generally, rape is considered as a crime done by men against women only but by the progress of time it has been seen those other genders such as males, transgender community and homosexuals are also equally affected by this crime. Actually, rape can happen to anyone regardless of their sexual, age, gender attitude. Though there are large number of such cases but most of them go unreported as people fear that reporting such cases will uplift a question on their potency. Rape done with persons other than females mostly go unreported thus people have a low knowledge about it but it is present need that people should know about such offences and proper law and order should be maintained to get rid of such a serious crime. First of all, we have to accept the fact that the victim and perpetrator of a rape can be of any gender and it can take place anywhere such as office, school, coaching, workplaces, prisons etc. Only after changing mindset that sexual offences can be done only against women, one can understand this issue and its seriousness.

Keywords: *Victim, perpetrator, Rape, Sexual offences, Violence*

I. INTRODUCTION

Gender neutrality is a concept that suggests the eradication of distinction between different sexes in the drafting and execution of laws. Its objective is to make every citizen entitle to equal rights, means equal protection of the law except distinguishing on sex. Rape is one of the disclosures of gender-based violence that is used in the patriarchal society. Women and girls are mostly represented as “victims”, while men are always represented as perpetrator. This is hardly seen that a man is also affected by rape in India. Gender neutrality in Indian rape laws was first time discussed in *Sudesh Jhaku v. K.C. Jhaku*² in this case the court said that sexually assaulted men should be given the same safeguard of the law as given to female victims.

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² 1998 Cr.L.J 2428

II. STATISTICS ON GENDER NEUTRAL RAPE LAWS

1. First dimension

The term 'victim' has been incorrectly interpreted by Indian lawmakers by confining it to only female victims. Victim class should also include male and transgender community. PUCL Karnataka surveyed to study human rights violation in the transgender community and found sexual assault acts quite common in their community. About male as rape victims, a survey was executed between college students in which it was found that 10.5% of men were raped and there were attempts of rape on other 10.5% men.

2. Second dimension

Female committing rape of a male person and of another female also. It is observed that there have been many cases where women have been reported to commit rape against men. A survey figure out that 28.6% of men who experienced sexual assault and 54.8% reported females as the culprit.

In case of *Priya Patel v. State of M.P.*³, the court found it quite unbelievable to consider that a female can rape another female because there is no penile-vaginal intercourse between them. This ground is completely defective as there is certain evidenced which supports the argument of female on female rape. A survey was conducted by the Centre for Disease Control and Prevention which pointed that out of 43.8% lesbians who were accounted as victims of sexual assault, 67.4% reported females as culprit.

III. WOMEN CENTRIC LAWS IN INDIA

a) Dowry death and Cruelty against women

Sec.304 A dowry death and sec.498A cruelty against women, the clear intention behind these sections is to prove husband guilty, or have caused the death or injury. It has become a custom to claim that all the women have been committed suicide, due to dowry harassment. Under these sections, even if the allegation is untrue, there will be a trial and the husband is considered guilty until proven innocent.

According to the 2012 National Crime Records Bureau statistics, nearly 2 Lakh people including 47,951 women were arrested because of no strong allegations of dowry offences. However, only 15% of the accused were convicted.

In every year, married men have committed suicide twice as compared to women for

³ (2006) 6 SCC 263

succumbing to verbal, emotional, economic and physical abuse by their wives and in-laws.

b) Rape (Sec.375)

This section provides the definition of rape and stated that a man is said to commit rape has sexual intercourse with a woman considering that rape can only be committed by man against woman. This section has been amended many times but still, but it is going with old thought where the victim will always be women and the culprit will always be men.

In *Sakshi v. Union of India*⁴ the Apex Court directed the whole matter to law commission. Accordingly, the 172nd Law Commission's report recommended making new laws which is unbiased in nature. These recommendations took form of statute in Criminal Law Amendment Bill, 2012 but before the bill could have become an Act, the nation was shocked by the incident of Nirbhaya Rape Case. After this, the Government constituted the Justice Verma Committee and allotted the task of submitting report on the necessary reforms to be made in rape laws. JVC report recommended that to extend the definition of rape under section 375 of IPC by not keeping it concise to penile-vaginal intercourse. However, it also recommended making gender-neutral rape laws.

c) Laws relating to modesty of a Women (sec.354)

Clause A talks about the unwelcome advances, pornography, sexual remarks which hurts the dignity of the women but in the eyes of legislature men has no value. Similarly Clause B, C and D have no value in the eyes of laws. Sec.509 deals with words, gestures or acts intended to insult the modesty of women and this section is also against the men.

d) Section 47 of The Code of Criminal Procedure 1973

This section gives the power to police to enter into the residence of any person or break when they have a reasonable belief that the person to whom they have to arrest has entered or is within that residence or place. But, this section has an exception in it; that if the place of residence is of a woman who does not appear in public following their customs then the police has duty to give prior notice to withdraw from that place before entering or breaking that residence. This section is gender biased because men are not given prior notice similar to women, and hence Right to the privacy of men gets violated. According to the *K.S. Puttaswamy v. Union of India*⁵ case, Right to Privacy is a fundamental right of every citizen. This section needs amendment in respect to the privacy of men as well and Right to Privacy of men should also be safeguarded. Any person residing inside their home has complete

⁴ (1993) 4 SCR 419

⁵ (2017) 10 SCC 1

freedom to do anything except which is against the law; they can enjoy privacy without any interference. If any man will be arrested by the police just based on reasonable belief without giving prior notice before entering into his/her house then his Right to privacy will be breached. Hence, the word “person” should also include everyone; man; woman and transgender to respect their right to privacy and gender-neutrality can also be maintained.

e) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This act is also women centric and does little to provide any protection for men against a female aggressor.

Above all the outcomes of a woman forcing a man, against his will, hence are not given. On the other hand, Section 377 is a quite different from all the laws favoring women, it criminalizes offenses against the order of nature and covers the offenses such as carnal intercourse against any man, woman, or animal, but still, there is no proviso for the victims of rape except the POCSO Act which criminalizes sexual assault against a male child, and again no provision for an adult male. The ideal approach of the Indian Judiciary dealing with sexual assault against children and women completely defeats the concept of Article 14 of the Constitution of India, which guarantees right to equality.

IV. GENDER SPECIFIC LAWS AND HUMAN RIGHTS

Right to equal protection of law and right to life and personal liberty are some of the basic human rights guaranteed to every human being irrespective of the sex of the person.

In the case of *Bodhisattwa v. Shubhra Chakraborty*⁶ and *Narendra Kumar v. State*⁷ (NCT of India), the Supreme Court of India accepted the claim that rape violates the basic human rights which is enshrined in the Indian constitution, namely right to life and personal liberty. But an Indian rape law continues with the traditional approach of rape wherein only females can be a rape victim and hence, violates the human rights of men.

- Article 2 of UDHR⁸ declares that everyone is entitled to all freedoms and rights which without discriminate on any ground including sex.
- Article 7 also states that every person is equal before the law and is entitled to equal protection of the law without any discrimination.

⁶ 1996 AIR 922

⁷ 2012 (7) SCC 171

⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (iii), available at: <http://www.refworld.org/docid/3ae6b3712c.htm>

- Article 8 and most important in our context specifies that everyone has an exclusive right to avail effective remedy from any national tribunal in case any of his fundamental rights guaranteed by the constitution or by any law is violated.

V. CONCLUSION

The crime like rape should be heinous; they should not be framed by staying into any kind of limitations. Crimes take place in every part of the world; it is the duty of the Judicial System to ensure justice which is unbiased. As the nature of Indian Judicial System is dynamic, provisions and laws for such crimes would be adopted soon. Countries like United Kingdom, USA and Bhutan are already practicing such laws making them safer for all genders to reside peacefully.
