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Gender Inequality

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ABSTRACT

The need of the hour is protection against violation of sexual abuse by both genders against other or same gender and punishing those who abuse the law for their personal vendetta the media has only conceptualized sexual offences by male predators and sexual victimisation of women.

The only remedy that a man will have after being raped is to make a complaint under Section 377 of the IPC, which states unnatural sex which includes sodomy. The laws under the IPC except for Section 377 meant only for females. Unfortunately for those who were violated in a non-penile manner, no other alternative exists.

The growing trend has been towards glorification of feminism which has created in itself femvertising. The Y and Z generations have made a social change by accepting that responsibilities are shared, that both male and female define their criteria of work not on the basis of societal judgements but on the basis of equality. Gender equality in its true notion is achieved when both genders are treated equally and treat each other equally, neither higher nor lower. Gender Equality should be defined and adopted in its true sense which states people of all genders have equal rights.

“In the present case it appears that both sides have resorted to file complaints of rape without having any sensitivity to the offence of rape. This Court is pained to note that there is an alarming increase of false cases of rape and offences under Section 354, 354A, 354B, 354C and 354D only to arm-twist the accused and make them succumb to the demands of the complainant”² This Delhi High Court judgement has highlighted the very event that has been lurking around for a considerable period of time and has caused an apprehension of fear in men. The definition under Section 354, 354A, 354B, 354C & 354D

starts with “any man” while that under Section 509 states “insult the modesty of any woman” which shows the Parliaments failure to pass a gender neutral law. The society in India has presumed that such offences can only occur to women and all men are sexual predators.

It has become a growing trend wherein the two opposite sex partners move-in together have a live-in relationship and after a substantial period grow tired of each other and end up filing complaints under various sections of IPC. Many false cases are reported under such provision of

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² Vimlesh Aghnihotri v. State CRL.M.C. 1524/2021

law and the male partner or the family of the male partner succumb to such threats and accept whatever demands are made by the threatening party. As per the statistics by an NGO for mens Right group “cases of men being implicated in false rape and dowry cases and charges of fake molestation and attempt to rape by husband's family are the most likely threats to which the men succumb”³. Various High Courts of the Country on multiple occasions have remarked that such step only leads to derogation of the law. While Article 14 of the Constitution of India enshrines in itself equality before law and equal protection of the law, in practical application the state has not performed its duties to ensure equal protection of laws. In equal circumstances persons are entitled to equal treatment under the law and the law should be equally administered to them. Article 15 further states “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”, however the same Constitution further dictates under Article 15 (3) that “Nothing in this article shall prevent the State from making any special provision for women and children”

While the need of the hour is protection against violation of sexual abuse by both genders against other or same gender and punishing those who abuse the law for their personal vendetta the media has only conceptualized sexual offences by male predators and sexual victimisation of women. If a critical analysis is done of the definition of rape as stated under section 375 of the IPC it becomes clear that to constitute the act

of rape the man is the offender and the woman is the victim. Thereby the possibility of a man being raped by another man of a woman is altogether ruled out. The only remedy that a man will have after being raped is to make a complaint under Section 377 of the IPC, which states unnatural sex which includes sodomy. The laws under the IPC except for Section 377 meant only for females. Unfortunately for those who were violated in a non-penile manner, no other alternative exists.

The 172nd Report of the Law Commission had very well realized the need for a gender neutral law and therefore made a recommendation in its report that “Rape’ should be replaced by the term ‘sexual assault’, ‘Sexual intercourse as contained in section 375 of IPC should include all forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal” thereby the Law Commission attempted to make the law gender neutral as the definition of sexual assault is very wide. In spite of such recommendation the same was not accepted. In a Petition filed in 2018 by social activist Sanjeev Kumar in the Delhi High Court, the constitutional validity of Section 375 & 376 was challenged and the Petitioner had stated that “men sometimes fall victim to the same or at least very similar acts to those suffered by women”, “recognition of male victimisation does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts.”

³ NGO namely Save Indian Family Foundation

In June of 2018 Indiatimes reported a news which read as follows “17-Year-Old Boy Gangraped By 5 Men in Ghaziabad, Iron Rod Inserted into Private Parts” it further stated in its article that “police have registered a case under relevant sections of the IPC and the POCSO Act⁴”. To the utter shock the said news went unnoticed and was reported by a very few news media channels. While it is thankful that a male child is protected under the POCSO Act, no similar provisions existed for a male adult. It is presumed by the Indian Society that a male adult can never be a victim but may surely be the accused.

The growing trend has been towards glorification of feminism which has created in itself femvertising⁵, a concept defined in the U.S.A as using feminism for advertising. The #metoo movement began in India in late 2018 wherein multiple female Bollywood personalities came ahead and spoke about the sexual abuse and sexual favours demanded during their heydays. During such movement came a stage wherein false allegations were made by many the repercussions of which led to the #mentoo movement which called out all the false allegations that were being made and reported.

In India rape against men are not reported most of the time as the same is frowned upon, mostly because it is accepted notion of the society that a man cannot be raped. It is understood by the society that it is the man who always wants sexual favours, who is not emotional and who

considers sexual intercourse over emotional bond. It is reiterated in friends and family “Mard ko dard nahi hota” and instil a thought in men in their early childhood that if you get hurt you shouldn’t cry or complain about it. If any such cases are reported the adult male is cornered and shamed for his complaint. This thought process and fear of being shamed has led to lower reporting of male sexual abuse in India. In a scenario wherein a boy receives a sexually offensive joke which he share with his class mates and the class mates have a good laugh about the same, however one of the girl class mate takes an offence of the message and makes a complaint. In such case the boy should be afraid as he will land in serious trouble for his actions, however if the roles are reversed no such complaint can be made by the boy and the girl will be scot free.

The Y and Z generations have made a social change by accepting that responsibilities are shared, that both male and female define their criteria of work not on the basis of societal judgements but on the basis of equality. Gender equality in its true notion is achieved when both genders are treated equally and treat each other equally, neither higher nor lower. Law is the reflection of the will and wish of the society and a transformation in law is truly made when there is change in the mindset of the society. There is an emergence of gender neutral law for the protection of all persons as envisaged by the Constitution makers and the same can be made

⁴ Section 3 to 10 of The Protection of Children from Sexual Offences (POCSO) Act, 2012

⁵ Femvertising: how brands are selling

#empowerment to women – Article published by The Guardian on 12th Oct, 2015

by the acceptance of the society of the same. international law has changed the definition of rape from just as penile-vaginal to penile-orifice and then to penetrative-orifice, all within a non-consensual context. The definition of rape of various countries such as United kingdom⁶ that has changed the definition of rape by including “any male to penetrate with his penis the vagina, anus or mouth of a female or male without their consent”, USA defines rape as “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” India still has a long way to go to amend the laws to make it gender neutral. For economic prosperity it is necessary to have a firm understand of Gender equality. Gender Equality should be defined and adopted in its true sense which states people of all genders have equal rights. Neither men are given preference over women who have the same calibre for the job nor men’s complaint of sexual abuse should be neglected by stating that man cant be raped. As stated by Senior lawyer and Parliamentarian KTS Tulsi “"Law needs to be balanced. The balance has been disturbed. All sexual offences should be gender neutral. Men, women, and other genders can be perpetrators and also victims of these offences. Men, women and others need to be protected,"

⁶ Sexual Offences act, 2003