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ESTABLISHMENT OF GENDER-NEUTRAL LAWS: A DISCUSSION ON INDIAN RAPE LAWS

Introduction- Sexual penetration carried out against a person without their consent, including non-consensual sexual relations, is known as rape and is considered a horrible crime. To engage in sexual activity against the victim's will, compulsion, force, threats, or manipulation are used. The physical integrity, autonomy, and fundamental human rights of the victim are all violated by rape. The consequences it has on the survivor's body, mind, and emotions can be severe and permanent.

While women are typically the focus of discussions about rape and sexual assault, are they the only victims as well? And what about the men and transgender victims of these horrible crimes? They experience the same trauma, suffering, and humiliation, don't they? This Blog is dealing with the same issue where we will see a recent increase in the number of gender-neutral cases and discuss the issue.

Why this issue was raised?

- According to Section 375 of the Indian Penal Code (IPC), women are the only potential victims of rape in India, and men are the only potential offenders. Both genders are protected by the Protection of Children from Sexual Offenses (POCSO) Act, 2012, although the law continues to be gender-specific after puberty. The legal system does not acknowledge that men can become victims of rape, regardless of the gender of the perpetrator.
- For the first time, the issue of gender neutrality in Indian rape laws was addressed in **Sudesh Jhaku v. K.C. Jhaku**¹, which held that male victims of sexual assault should have the same legal protections as victims who are women. The Supreme Court directed the law commission to investigate the whole issue in **Sakshi v. Union of India**². Consequently, the report of the 172nd Law Commission recommended that legislation regarding rape be rendered impartial. The Nirbhaya Rape Case commonly known as Delhi Rape Case shocked the country before the Criminal Law Amendment Bill of 2012, which included these recommendations, could be signed into law.
- **Delhi Rape Case (2012)**³
The horrific December 2012 gang rape and killing of a young woman in Delhi resulted in widespread public indignation and calls for stricter legislation against sexual assault.

¹ Sudesh Jhaku vs. K.C.J. & Ors. [62 (1996) dlt 563: 1998 crij 2428

² Sakshi vs. Union of India, (2004) 5 SCC 546, AIR 2000 SC 3479

³ Mukesh & Anr vs State for Nct of Delhi & Ors on 5 May, 2017

As a result of the case, the Justice Verma Committee was established, whose job it was to suggest changes to the criminal code that would give offenders accused of sexual assault against women a speedier trial and harsher penalties. The Committee first suggested gender-neutral rape laws, but the idea was shelved due to worries that women might be unfairly targeted by them.

- **Ankur Mittal V/S State (2018)⁴**
The Delhi High Court noted in this case that male victims of sexual assault ought to receive the same protections as their female counterparts. It recommended that Parliament take into account changing the legislation to guarantee sufficient protection for male victims of sexual offences. The argument over gender-neutral rape laws was reignited by this ruling.

Infringement of Fundamental Rights-

- The Universal Declaration of Human Rights and the Indian Constitution, which uphold equality before the law and human rights, serve as the cornerstones of the case for gender-neutral rape laws. Although, indeed, women in India are disproportionately victims of sexual violence, men and transgender people can also become victims. Denying them legal redress and their suffering would be the same as denying them this reality.
Recognizing the existence of transgender and male rape victims goes beyond legal definitions and statistics. It concerns people who have been violated and humiliated. Their suffering, their trauma, and their right to justice are at stake.
- In the cases of **Bodhisattwa v. Shubhra Chakraborty⁵** and **Narendra Kumar v. State (NCT of India)⁶**, the Apex Court acknowledged the claim that rape violates the fundamental human rights guaranteed by the Indian constitution, including the right to life and the right to personal liberty. However, the antiquated belief that rape primarily affects women is still upheld by Indian rape laws, violating the fundamental rights of men.
- The Transgender Persons (Protection of Rights) Act, 2019⁷ has some shortcomings. Among them is the penalty for sexual assault. The Indian Penal Code stipulates that raping a woman is punishable by ten years in prison, a fine, and possibly even life in prison. The Transgender Persons (Protection of Rights) Act, on the other hand, only stipulates a fine and a maximum sentence of six months in jail. Sexual offences of any kind committed against people of any gender hurt them. The fact that they cause mental trauma to the victim is ignored by the Act. The insufficiency of the penalty implies that transgender rape is viewed as a low-level crime.
- Countries that have adopted gender-neutral rape laws are Sweden, Iceland, Scotland, Norway, Finland, etc.

CONCLUSION-

⁴ Ankur Mittal And Anr vs State (Nct Of Delhi) And Anr on 10 November, 2022

⁵ Shri Bodhisattwa Gautam vs Miss Subhra Chakraborty 1996 AIR 922, 1996 SCC (1) 490

⁶ Narendra Kumar v. State (NCT of India) Criminal Appeal No. 53 of 2000

⁷ Transgender Persons (Protection of Rights) Act, 2019, sec-18 of 2019

- Part III of the Indian Constitution outlines each citizen's fundamental rights. Article 14 of the Constitution, which guarantees equality before the law and equal protection under the law, is in line with gender-neutral rape laws. Every gender that has Gender-neutral rape laws aims to provide legal protection to all individuals who have experienced sexual assault, not just women. Legislation against gender-neutral rape must be established for transgender people to be treated fairly in court. Because its absence denies the existence of crimes being committed and denies victims any form of redress, gender neutrality is desperately needed.
- Rape is a sexual offence that can be committed against anyone, regardless of gender. The victim's basic human rights are violated, including their right to life, which is protected by Article 21 of the Constitution. Nonetheless, men are always perceived as the ones who commit wrongdoing, while women are viewed as the victims because of the pervasive belief that men are physically stronger than women. To acknowledge that victims of rape can be of any gender, gender-neutral laws should be in place.
- Enacting gender-neutral rape laws in India is a difficult but important task. It necessitates reevaluating accepted conventions, prevailing social views, and established legal frameworks. But it is a goal that can be attained with teamwork, compassion, and a shared dedication to justice and equality. A society that truly embodies the values of equality and fairness is one in which victims of sexual violence, regardless of gender, can find justice and support.