

DELHI HIGH COURT SEEKS REPLY FROM CENTRE IN PIL ALLEGING ANTI-MEN BIAS AGAINST SECTION 375 OF THE INDIAN PENAL CODE

In a PIL by Sanjiv Kumar¹ alleging that anti-rape law in India is biased against men, a bench of Chief Justice Gita Mittal and Justice C Hari Shankar sought reply from Central government on the matter. The PIL alleges that anti-rape law in India violates fundamental rights under Arts. 14, 15 and 21 of the Constitution because it only punishes rapes against women. The lack of protection to adult males in cases of sexual violence against them was tantamount to “robbing of their rights” as per the PIL.

The PIL also seeks to rely on the right to privacy judgement in *Justice KS Puttaswamy v. Union of India* to support its contention that bodily integrity is now a fundamental right of both men and women after the aforesaid judgement.

The petitioner thus submits,

“That, it becomes very difficult to accept that there is a single reality in rape; that is, men rape women and men can never be victimized, or if they are, this act has a meaning so different for men that it cannot be labelled as rape. Another aspect of the backlash argument is the suggestion that gender neutrality undermines feminist conceptions of patriarchy. As such, it is submitted that the recognition of male victimization does not undermine the notion of patriarchy; it merely acknowledges that sexual coercion can also, in a minority of cases, exist in other contexts. To deny this reality creates the danger of theoretical objections to gender neutrality in rape, overriding the reality of rape and sexual assault outside the male-on-female paradigm... What is clear, however, is that while females are the main victims of sexual violence and males the main perpetrators, one still has to consider how sexual assaults beyond the male-on-female paradigm are to be labelled by the criminal law.

That, the Law Commission of India in its 172nd report recommended that the rape law must be gender neutral and replaced the term with “Sexual Assault”. The Criminal Law Amendment Ordinance 2013 made the offence of rape gender neutral. However, due to the pressure from certain vested groups, a step in the right direction was held back and gender specificity was retained in the Amendment Act 2013.

As right to privacy, having bodily integrity and consent, is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution, and currently there are no provisions in IPC or any special laws to implement the same for children, who have just turned 18 and deemed as adult male, using the doctrine of parimateria, Gender Neutral Section 8 of “The Criminal law(amendment) Ordinance 2013 dated 3rd February 2013, No 3 of 2013, published in The Gazette of India (Extraordinary)” pertaining to IPC 375, 376, 376A, 376B, 376C, 376D, which was law of the

land from 3rd February to 1st April 2013, may now be declared law of the land, for all man 18 years and above, so that to protect and enforce their Fundamental Rights.”