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IS INDIAN PENAL SYSTEM GENDER BAISED?

INTRODUCTION:

The Penal system of India was the outcome of the British Raj in India. Lord Thomas Babington Macaulay, who is considered to be the father of the Indian Penal Code, drafted it in the year 1834 however, after certain changes the Indian Penal Code was finally enacted in 1860. Since then, the Indian Penal system has been using the same laws to govern the present scenario. It was in 2023 that the government finally felt the need to let go of the colonial relics and to upgrade the Penal laws and consequently The Bharatiya Nyaya Sanhita came into being. Various changes and modifications were brought into the Penal system with the advent of Bharatiya Nyaya Sanhita however, the gender biases are still deeply rooted even in the newly formulated Penal Code. The Indian Penal system blatantly assumes that women can only be a victim and never a perpetrator. The assumption is nothing but the outcome of long long-standing patriarchal mindset of our society which has even infected our legal system. This mindset has led to the enactment of laws which is highly favourable to women thus, completely ignoring the loopholes that can be used by some to fulfill their ulterior motives. Various State high courts have also recognized the fact that some of the Penal laws that were made by the government to protect women are now used by a few of them as a weapon to inflict harm on others.

ANALYSIS OF GENDER BAISED PENAL LAWS:

The following provisions of the Indian Penal Laws are gender biased

1) RAPE:

According to Indian Penal Code¹ section 375 and Section 63 of Bhartiya Nyaya Sanhita², rape is an act which can only be committed by men against women. According to these sections, "*man is said to commit rape if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her do so with him or any other person*". The sections expressly mention that an only man can commit rape. In the landmark case of *Priya Patel v. State of MP*³ and the recent case of *Suneeta Pandey v. State of UP*⁴, a question was raised before the said High courts, whether a woman can commit rape. It was declared by the court that a woman cannot commit the offence of rape. It is extremely blatant to assume that only men can commit the offence of rape as cases of rape against men are not very uncommon in India and the very prime example of the same is the recent Jalandhar man rape case. This scenario demands gender-neutral rape laws in India. The Government with its Criminal Law (Amendment) Ordinance, 2013 tried to make rape laws in India Gender neutral by adding "person" instead of "man" However the same was highly criticized by women's rights activists therefore it could never come into force.

2) STALKING:

After the Criminal Law (Amendment) Act of 2013 section 354D was added to the Indian Penal Code making stalking a punishable offence. Similarly, in the newly formed Bhartiya Nyaya Sanhita Stalking is made a punishable offence under Section 78. According to these laws, stalking is also an offence that can only be committed by a man and such a man can be imprisoned for a term of three to five years including a fine. However, the laws fail to acknowledge the fact that a woman too can stalk a man thereby mentally and emotionally affecting him. It is obnoxious to assume that women are untouched by the growing technological advancements and therefore, they cannot use such technologies to stalk a man. Hence, a gender-neutral law on stalking is the need of an hour.

3) FALSE PRETEXT OF MARRIAGE:

The punishment for the false pretext of marriage was not expressly mentioned in the Indian Penal Code, however, in the newly formed Bhartiya Nyaya Sanhita, it is expressly written under Section 69 of the Act. According to section 69, a man can be punished if he promises to marry

¹ Indian Penal Code, 1860, 375, No. 45, 1860

² Bhartiya Nyaya Sanhita, 2023, 63, No. 45, Acts of Parliament, 2023 (India)

³ *Priya Patel v. State of MP* AIR 2006 SC 2639.

⁴ *Suneeta Pandey v. State of UP* 2023 SCC OnLine All 44

the woman without intention of fulfilling the same and has sexual intercourse with her on such false pretext. This newly made law is extremely biased towards men as under Section 69 only man can be punished if he has sexual intercourse on the false pretext of marriage and not the woman. This law blatantly assumes absence of sexual autonomy of the women and that the women are always sexually induced by men.

CONCLUSION:

The Indian constitution promotes equality, yet some of its penal laws are gender-biased. While some may argue that the Constitution allows for special laws for women, we cannot ignore that such laws are often biased towards the other gender. The legal system should remain flexible enough to adapt to changing social dynamics. In today's society, it is illogical to assume that only men can commit certain crimes. Consequently, the Indian government recognized the need for gender-neutral laws and made certain gender-biased laws (such as Voyeurism, Disrobing, and affecting the modesty of women) gender-neutral under the newly formed Bhartiya Nyaya Sanhita. This means that both men and women can be punished for such offences. This is a crucial first step towards gender neutrality, but much work remains before we can consider our Penal system completely gender-neutral.