



MEN WELFARE TRUST

(Regd. NGO)



To
Hon'ble The Chief Justice
Supreme Court of India
Delhi

Sub: Prayer to take Suo Moto cognizance of patently illegal order, dated 23.03.2022, of Hon'ble High Court of Karnataka allowing framing of charge U/s 376 of IPC against husband

Respected Sir

We at Men Welfare Trust (MWT), registered NGO working for the welfare of men in the domain of male suicides, misuse of gender based laws, rehab & shelter for men, men's health and also running a helpline - 8882498498 - for men in distress, been constrained to write this letter against the order, dated 23.03.2022, of single bench of Hon'ble High Court of Karnataka, in **Mr. Hrishikesh Sahoo vs. State of Karnataka and Ors., W.P. No. 48367/2018 C/W 12976/2018, 10001/2018, 50089/2018** upholding order, dated 10.08.2018, of Special Court in **Spl.C.C.No.356/2017**, to frame charge under section 376 IPC against husband/accused through judicial interpretation. Although, order of Hon'ble High Court touched upon various other issues, but purpose of this letter is to focus on the aspect of allowing framing of charge under section 376 IPC against husband/accused. And in this aspect alone not just the order patently illegal but against all tenets of criminal jurisprudence.

It is expected from Hon'ble High Court, constitutional court, to uphold the current/existing law of country and not be swayed by emotions. But this is exactly what happened during the hearing of case resulting in an order, full of emotions of Hon'ble Judge of High Court, end result law of the land was given total pass.

Suffice to say that **Exception 2** to section 375 ensures that sexual violence/assault between spouses cannot be categorized as Rape. It has been a conscious decision on the part of law makers/legislators to keep **Exception 2** for various reasons. It has been constant stand of MWT that **Exception 2** doesn't mean that spouse, especially husband, got license to sexually assault wife. Any order/judgment by any court at present allowing husband being charged for IPC 376 is in teeth of **Exception 2** effectively meaning intruding into exclusive domain of legislature. No

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court must get into the shoes of legislature and create a new offence even indirectly, and this is what precisely Hon'ble High Court of Karnataka did through its order - created a new offence against husband. The order in question is in clear violation of Article 20(1) of the constitution of India apart from being against the Article 14 & 21 which guarantee equal protection by law and right to life, liberty & dignity respectively. Further, it is also not the case that an aggrieved wife is remediless, in fact she has been provided with a complete framework of laws to prosecute husband against sexual violence/assault.

More one reads the order of Hon'ble High Court of Karnataka more it exposes the passion and not a road to justice. Despite, there being no dearth of legal minds during the hearing of the case to help the Hon'ble High Court of Karnataka for example Smt. Namitha Mahesh, learned Additional Government Advocate representing respondent No.1-State, Sri. Shanthi Bhushan, learned Assistant Solicitor General of India representing the Central Government, and Sr. Counsel of wife/respondent to the case, it is unfortunate that no one except Sr. Counsel of petitioner/husband argued against framing of charge against husband/accused under section IPC 376 which is a blatant ignorance of the law of the land. It is not even warranted to go into the merit of judicial interpretation as Hon'ble High Court is not entrusted with power under any law to create a new offence. What it is entrusted upon is to dismiss down order or judgement against the law of land.

Prayer

It is therefore humbly prayed that Hon'ble The Chief Justice of India take Suo Moto cognizance of the patently illegal order, dated 23.03.2022, of Hon'ble High Court of Karnataka as far as framing of charge U/s 376 IPC against husband/accused is concerned and set it aside to prevent the judiciary to enter into the boundaries of legislative domain in the best interest of justice to every citizen of this country.

Thanking You

Yours Sincerely



Amit Lakhani

President - MWT

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