

News

Delhi High Court PIL to acknowledge transgender rape; Amicus appointed by N Hariharan



The Court stated its initial opinion that as it is the responsibility of the legislature, it might not be able to issue such an order.

In response to a plea asking for instructions to recognize the crime of rape against transgender women, the Delhi High Court on Wednesday sent notice to the Central government.

The government was given six weeks to submit its response by a Division Bench consisting

of Chief Justice Devendra Kumar Upadhyaya and Justice Tushar Rao Gedela.

Senior Advocate N Hariharan was also designated by the Bench as an Amicus Curiae to support the Court in this case.

"The petition requests that the court add trans women and trans children to the definition of sexual offenses against women and children covered by Chapter 5 of the BNS. The petition also touches on other concerns, such as the welfare measures that should be offered to transgender people in society in accordance with the Supreme Court's ruling in NALSA. We want Shrin Hariharan to serve as an amicus curiae to the court in light of the nature of the matter at hand," the court stated.

Speaking in court today, Hariharan stated that it could be feasible to identify the offense.

The Court did, however, state that it might not be feasible to interpret the clause to include transsexual women and children in Chapter 5 of BNS (**offenses against women and children**).

It's probable that this interpretation would not be feasible. Our initial opinion is that. The Court noted that if that were feasible, transsexual women would have been included in the interpretation of section 376 [of the IPC], which makes rape a crime.

A Chandresh Jain filed a public interest litigation (PIL) case asking the court to interpret Section 63 of the Bharatiya Nyay Sanhita (BNS) in a way that would cover trans women.

"A man commits rape if he penetrates a 'woman's' body..." is what Section 63 now states.

Transgender women are excluded.

Interestingly, Jain also requested in his plea that the Court provide orders allowing trans males, non-binary people, and intersex people who are physiologically capable of vaginal penetration to be included as victims under Section 63 of BNS.

Additionally, he requested a directive to include transgender individuals in the protection of Chapter 5 of the BNS.

Jain also requested a ruling that the Transgender Persons (Protection of Rights) Act, 2019's Section 18 is unconstitutional.

The offenses against transgender people are listed in Section 18.

In contrast to the criminal provisions in other statutes that penalize offenses against other genders, petitioner Jain contended that the punishments set for the offenses under the clause, which ranged from six months to two years, were unduly light.

The appeal contended that the requirements of Section 18 are in conflict with the Supreme Court's ruling in the NALSA case, which recognized transgender people as the third gender.