

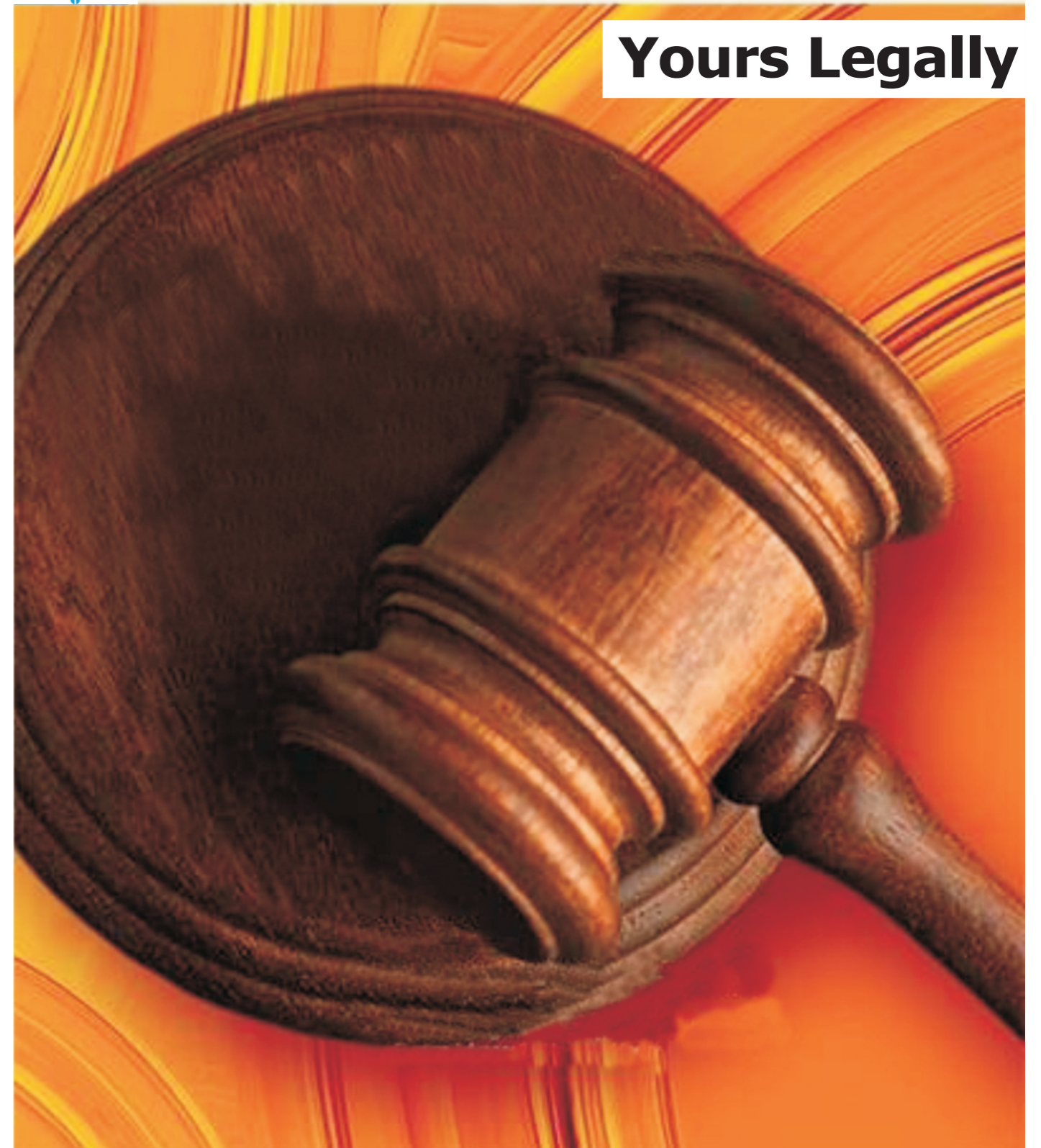


**City Law  
College**

**Year 2023-24 Vol-1**

COLLEGE MAGAZINE

**Yours Legally**



# College Magazine Editorial Board

## AIMS & OBJECTIVES

1. To help the entire college community boost the morale of the college by improving the power of reading/writing skills to a great extent.
2. To inform, inspire and engage the student readers in literacy and other varied dimensions through representative illustrations.
3. To provide opportunities for improving creativity skills and trigger the imagination into reality.
4. To reflect on and showcase academic excellence within the campus community.
5. To nurture latent creative talents and provide a platform to exhibit their interests on varied topics.
6. Educate and entertain by creating a high sensory reading experience amongst the students and boosting their memory retention power.

Sl.No	NAME	DESIGNATION	POSITION
1.	MR. NITISH TIWARY.	Vice-Principal	Chairman
2.	MEENA MISHRA	Asst. Professor	Editor
3.	Sumbul Siddiqui	Asst. Professor	Member
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5.	Shalini Tiwari	Asst. Professor	Member
6.	MALLIKA VIKRAM SINGH	Asst. Professor	Member

## CYBER STALKING: A CRITICAL STUDY

### Introduction

“Cyber stalking” is defined as a crime where the stalkers use internet or any other electronic device to stalk someone. Online harassment and online abuse are synonymously used for cyber stalking. It involves a conduct of harassing or threatening repeatedly to an individual. Stalking can be done in the following ways such as: to follow a person till his home or where he does his business, to cause destruction to a person's property, leaving written messages or objects, or making harassing phone calls. The Cyber stalkers always think that they are anonymous and can hide. In other words, the cyber stalker's biggest strength is that they can rely upon the anonymity which internet provides to them that allows them to keep a check on the activities of their victim without their identity being detected. Thus, there is a need of efficient cyber tools to investigate cyber-crimes and to be prepared to defend against them and to bring victims to justice.

There are various psychological reasons behind stalking like severe narcissism, hatred, rage, retribution, envy, obsession, psychiatric dysfunction, power and control, sadomasochistic fantasies, sexual deviance, internet addiction or religious fanaticism. Some of them are discussed below:

- **Jealousy:** Jealousy can be a strong motive behind stalking especially when it is towards ex-partners and their current partners.
- **Obsession and attraction:** Another motive behind stalking could be obsession and attraction. The stalker could be attracted to victim sexually or mentally. There's a fine line between admiration and stalking.
- **Erotomania:** It is a kind of belief in which the stalker assumes that the victim, usually a stranger or famous person, is in love with him. It always involves sexual

inclination towards someone.

- **Sexual harassment:** It is said to be the main motive behind cyber stalking. This is so because the internet reflects the real life.
- **Revenge and hate:** Sometimes the victim is not reason for the feeling of hatred and revenge in the mind of the stalker yet he/she becomes the target of the stalker. Internet appears to be the most convenient platform for the stalker to express his feeling of hatred and revenge.

Based on the above mentioned motivations behind stalking, a stalker could be an obsessed one or enraged or psychopathic or deranged. More specifically, there are three categories of stalkers: Obsessional stalkers are those stalkers whose motivation are their obsession for sexual harassment and sometimes love; the delusional stalkers are those stalkers who feel the need to prove their power and the vengeful stalkers are those stalkers who want to take revenge.

- **Cyber space:** Before studying the topic in detail, there is a brief description of the basic terminology which will be used frequently i.e., cyber space. The term “cyber space” means the environment where the communication takes place using internet. In other words, it is a world created by internet. Cyber space can be defined as follows: “a global domain within the information environment consisting of the interdependent network of information technology infrastructures, including the Internet, telecommunications networks, computer systems, and embedded processors and controllers.”<sup>3</sup> Another definition is “the virtual space in which the electronic data of worldwide PCs circulate.”<sup>4</sup> This is a vague description of cyber space.

The main characteristic of cyberspace is that it is composed of various computer networks, switches, routers, servers, etc. It is a cluster of various infrastructures such as transportation, banking, finance, telecommunication, energy.

### Legislative framework and its shortcomings

In this section, the author shall focus on the legislative provisions as are mentioned in the Indian laws more specifically with respect to Information Technology Act, 2000 and Indian Penal Code, 1860. There shall be explanation as to how these provisions are related to cyber stalking and under what all sections can the perpetrator be booked. In India, the laws are gender biased as the law-makers considered women as the weaker section of the society hence; every statute revolves around protecting women. There are no direct provisions that deal with the issue of cyber stalking. However, the author has tried to explain few sections of Information Technology Act and Indian Penal Code that have some link with this offence and the explanation has been given regarding the relation between the provisions and the crime.

Let's discuss the Indian laws with respect to cyber stalking in detail:

*Firstly*, Section 354D of IPC defines “stalking”. It reads as follows:

“(1) Any man who—

- i. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication commits the offence of stalking;..”<sup>9</sup>

The section was added by Criminal Amendment Act 2013 post *Delhi gang-rape* case. This section takes into account both, the physical stalking and cyber stalking. The section defines its scope in terms of activities that forms the offence of “stalking.” The

Section clearly mentions that if anyone tries to monitor the activities of a woman on internet, it will amount to stalking. Thus, if the stalker indulges in any of the activities defined in the section, he shall be guilty of the offence under Section 354D of Indian Penal Code.

This section has many loopholes such as firstly; the section only considers “women” to be the victim and ignores the fact that even men can be the victim. The Section states that whoever tries to monitor the usage by a woman of internet, e-mail or any other mode of electronic communication shall be liable for committing the offence of cyber stalking. We can see that it focuses only on women. Thus, it is gender biased legislation. Secondly, the legislators have not mentioned the “method of monitoring.” It might happen that the person might lack the intention but his actions amount to stalking.

*Secondly*, Section 292 of IPC defines “obscenity”. The offence of cyber stalking takes within its purview the act of sending obscene materials to the victim on a social networking site or through e-mails or messages etc. Where the stalker attempts to deprave the other person by sending any obscene material on internet with the intention that the other person would read, see or hear the content of such material then he shall be guilty of the offence under Section 292 of Indian Penal Code.

*Thirdly*, Section 507 of IPC relates to “criminal intimidation by anonymous communication.” This section states that where the stalker tries to hide his identity so that the victim remains unaware of the source from where the threat comes, it amounts to an offence. Thus, it ensures the very characteristic of cyber stalking i.e., anonymous identity. The stalker shall be guilty under this section if he attempts to conceal his/her identity.

*Aliza Arif*  
*LL.B. (Hons) 5th Semester*

## Animal Rights: Capabilities Approach, Animals, and India

Being part of the global justice requirement, the capabilities approach has been extended towards animal rights and animal welfare for the sake of animals only. As Nussbaum writes, it “requires looking around the world, at the other sentient beings with whose lives our own are intexicably and complexly intertwined.” The core focus of the CA has thus been on the moral responsibilities of humans towards the ecosystem where animals and humans are living in connection with each other.

Going beyond utilitarian, Kantian, and contractarian approaches to justice, the capabilities approach holds that every life form, including non-human animals, deserve due entitlements, dignity, respect, and scope to flourish. Differing particularly from the utilitarian approach, the capabilities approach recognizes that animals have got intrinsic rights to utilize their own potentials, rather than depending on humans to use them. As against the Kantian approach, the capabilities approach holds that animals have got their due rights and entitlements, for they have their own moral status to live their lives by using the practical reasoning that they possess. And in contrast to the contractarian approach, the capabilities approach conceives that animals do have the potentialities to choose the life they want to have and desire to lead. In short, according to the capabilities approach, non-human animals do have the moral capacity to think about their well-beings, to be and to do and therefore deserve a moral status. The capabilities approach views non-human animals as agents who are capable to flourish and subjects of interaction who share the same resources and space to live with humans in this world. Animals, as the CA claims, deserve moral entitlements, rights of not being made to suffer, sacrificed, abused, or mistreated for the sake of animals themselves. Being influenced by Aristotelian philosophy, the CA admires that “there is something wonderful and wonder-inspiring in all the complex forms of animal life” and argues for a world where the diverse and complex life forms of the world get the opportunity to flourish with humane guidance and responsibility, for the sake of the diverse life forms, not for any human benefits. It, thus, focuses on the welfare of all, and prescribes protection of intrinsic dignity as a basic entitlement of every life form, including non-human animals.

In India, when animals are sacrificed in the name of great religions or for public health reasons, the emotions and senses of the animals are ignored and undermined. Consequently, animals are made to suffer in their bodily integrities. As a result, even though these animals cannot protest against the injustice, the injustice occurs at the level of their capabilities to live the life they deserve, the treatment they have the right to claim, and in exercising their right to the just provision of their bodily health.

As mentioned before, hunting, poaching, and animal trafficking are still dominant causes of animal sufferings in India, more so because of gaps in international laws. While suffering from these activities, non-human animals lose control of their own environment in a drastic and an unjust manner. They are also made to suffer from their affiliation with humans and in their abilities to live with other members of their part of the eco-system. Making them suffer cause injustices at the level of their rights to basic life

functions.

In India, gaps and lapses in such legal scopes have failed to enable many animals to lead their lives to full forms. As a result, over and above the legal injustice, an ethical injustice is caused at the level of ensuring and enabling the animals' right to life. For instance, even though the use of animals in research and experimentation has been prohibited in India, in many cases, it has continued for the commercial benefits of businesses in the country. While this has led to the violation of law, it has also caused an ethical injustice; animals, being maltreated for research and experimentation purposes, have been deprived of their intrinsic rights of maintaining bodily health and integrity, as well as exercising their skills and natural competencies to play and affiliate with others.

**Pragati Garg**  
*Asst. Professor*

# IMPACT OF CLIMATE CHANGE ON HUMAN HEALTH

## Introduction

Climate change refers to any change in climate over time either due to natural change or human intervention. Climate change is a serious and hazardous to the health of a human. Climate change can affect human health in two main ways i.e. first, by changing the severity and recurrence of health issues that are affected by climate change. Second one is by designing unparalleled or unexpected health problems. Due to climate change the condition of human become very complex and number of various different thousands of disease are born. Pollution environment being pollute by human, due to which environment pollution is increasing very fast which is having an effect on the climate due to which the climate is changing very fast and that climate changing is affecting our human health very badly. Now we can say that human themselves are responsible for human health because they are not affecting environment directly. Due to which the condition has become very pathetic regarding health and the climate also getting affected by human activities.

Climate change is a big issue in today's time. Climate change factors increases day by day mainly by human intervention. Human intervention includes cut the trees, not planting the trees, polluting the environment, throw out the wastes on road etc.

**According to United Nations Framework Conventions on Climate Change**, 'Climate Change' is defined as: 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural variability observed over comparable time periods'.

Climate change brings mental health problems and stress-related disorders. In some cases, mental health problems can also lead to become such that it takes the form of death. Stress-related disorders arises from abnormal result to acute or prolonged anxiety and included diseases such as obsessive-compulsive disorder and post-traumatic stress disorders. Family members loss is also a part of mental health problem and stress-related disorders.

Climate change affect the people who is mainly poor and marginalized from developing countries who directly or indirectly depend on the ecosystem for survival. Poor people have lack of land, unavailability of water and many problems faced by them. The objective of this paper is to protect the environment from pollution by which climate doesn't change and human health can't affected.

### Impacts of Climate Change on Human Health

Climate change can affect the health of human and well-being

<sup>2</sup>**According to Intergovernmental Panel on Climate Change**, extreme temperatures can lead directly to loss of life, while climate -related disturbance in ecological system can indirectly impact the incidence of infectious disease. On the other, warm temperatures effect water and increase pollution which lead to harm human health. Due to the air pollution which cause the effect on the respiratory system of a body. Few change or predictable changes of Climate and climate impacts will directly or indirectly impact on Human Health.

#### Directs impacts

- Extreme Heat
- Higher temperatures and respiratory problems due to build up harmful air pollutants
- Extreme heat events can trigger a variety of heat stress conditions, such as heat stroke
- Raise the levels of ozone and other pollutants in the air that exacerbate disease

#### Indirect impacts

Food availability i.e. affected due to impairment of food producing ecosystem

-Agriculture quality of the lands get affected.

-May lead to food insecurity.

<sup>16</sup>"For an initial phase of modest global warming, average impacts on agriculture are ambiguous and may be benign globally on average, but it would be a serious mistake to infer from such a diagnosis that little should be done to curb climate change".

#### Water quality and availability

-Floods and extreme precipitation are also increasing in frequency and intensity

-Fresh water aquifers in all continent are being depleted.

-Water -related political and public health exists.

-Climate change strongly affect water -borne disease.

#### Disease arises by many ways-

##### Vector borne Diseases

It arises by, changing in the transmission, behaviour, geographical distribution and the incidence of vector -borne disease which is the major cause of mortality and morbidity in most tropical countries.

Diseases transmitted through insects,snail or other cold blooded animals also alters.

##### Malaria.

Malaria is a hazardous diseases which makes the body very weak. The person condition not so good to do anything People throws out the garbage on the road ,canal and other places from where many hazardous diseases arises from one of them is malaria which spread by biting of mosquitoes.

##### Dengue.

Due to climate change dengue also spread rapidly . The effect of future climate change on the rates of dengue transmission is complex. The rate of dengue transmission may actually increase in regions that are projected to become more prone to drought, because the *Aedes* mosquitoes which carry dengue breads in containers used for household water storage.

#### WHO: Five major health impacts of Climate Change

- Malnutrition
- Deaths and injuries caused by storms and floods.
- Water scarcity/contamination -increased burden of Diarrhoeal disease.
- Heat waves-direct increase in morbidity and mortality; indirect effects via increases in ground -level ozone, contributing to Asthma attack .
- Vector-borne disease - Malaria and Dengue .

#### Conclusion –

So we conclude that from this research paper that if human have to survive with less climatic change effects we should accept the ecological strategies which are helpful to ensure the sustainability.we must act now because the rate at which the human environment is changing is alarming and the impact of climate change on human health is getting worrisome. . Now we can say that human themselves are responsible for human health because they are not affecting environment directly. Due to which the condition has become very pathetic regarding health and the climate also getting affected by human activities.

#### Recommendations-

it is recommended that working groups , NGOs, health professionals and all tiers of government should be constituted on protecting health from climate change .

*Shruti Mishra*

*LL.B. (Hons) 5th Semester*

## DIVORCE: A GENERAL SCENARIO IN MODERN LIFE

India is a country which give more importance to cultural and ancient values even if we are evolving in the modern times. As a general sociopath it is noticeable that the divorce rate has been increasing in last few decades. Divorce is the legal ending of a marriage, which is considered to be a pure and peaceful sacrament under the ancient values. Now a days divorces so familiar with every person between any age as 1 among ten of their family members might have applied for divorce in these days. Here I would like to emphasize on Hindu Marriage Act and Divorces as it has been an origin of history from ancient days in India.

### **DIVORCE**

Divorce under Hindu Marriage Act, 1955 is mentioned under Section. 13 (1) where it explains:- Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce.

Marriage is a promise between two individuals to take care of each other until their existence. Where divorce is the breach of this trust and promise under several circumstances where these two individuals cannot stand by with each other. In olden days women used to sacrifice their pride, voice and self-respect in order to maintain their marital status even though they are exhausted and drowsy with their relationship for the family status under so called society which was always vigilante about the mistake of others.

### **GROUND OF DIVORCE:**

#### **ADULTERY**

Adultery is one of the main causes for the divorce in a modern life where the generation doesn't have a proper knowledge and control for their emotions. Under Hindu Marriage Act, 1955 Sec. 13 (i) a person can apply for divorce if the spouse had a voluntary sexual intercourse with someone else than their spouse after the solemnization of the marriage. Two individuals are agreeing upon some points with consensus mind for their marriage, if the other partner cannot fulfill it then it would be better for them to take two paths instead of one, they are going through. Even though Adultery is considered to be an offence under Section 497 of Indian Penal Code until 2018 and struck down on September 27<sup>th</sup> 2018 and it has been practiced since the ages of Pandavas and Kauravas. It is the basic ground for divorce under H M Act, 1955.

#### **CRUELTY**

Cruelty is a specific behavior in which a person finds pleasure in the suffering of other persons. In a marriage in India, it is majorly visible that the husband is dominating and independent where the wife is considered to be the weak one which can be manipulated by the husband generally. Under Sec. 13 (ia) of H M Act, 1955 cruelty have been mentioned. Where it is treated under two sub topics;- a. Physical Cruelty: a person shows of express or feel happiness in the suffering of opposite person or cause suffering to the opposite person by beatings, through hard sexual intercourse, through other means to make pain by acting violence. b. Mental Cruelty: a spouse harassing his or her partner mentally for not having proper dowry, or for no reasons are all subjected to mentally making a partner unstable by harassing or showing cruelty. DESERTION Desertion is the means that spouse is leaving his or her partner for a period of two years immediately before the application of decree of divorce without any reasonable cause that can be given in order to leave the spouse. It has been mentioned under Sec. 13 (ib) under HM Act, 1955. In these grounds the burden of proof have been entitled with the petitioner as he or she have been the victim.

#### **CONVERSION**

Conversion is the case which have been mention under Sec. 13 (ii) of H M Act, 1955 where one of the spouses change their religion from one to another then their marriage dissolves under their request or choice for divorce. INSANITY Insanity have been mentioned under Sec. 13 (iii) of H M Act, 1955 where one of the spouse is having mental problems which cannot be incurable for a period of 2 years then the other partner can ask for divorce under reasonable ground.

### **VENERAL DISEASE**

If one of the spouses is having a venereal disease in the communicable form then the partner can ask for divorce if it is not curable which has been mentioned in the Sec. 13(v) of H M Act, 1955.

### **REMEDIES FOR DECREASING DIVORCE**

The remedies are majorly in the hands of the partners. When we are getting married it is a promise to be with each other. It is important to be adjustable and understanding during a marital life so that you both can avoid misunderstandings and forgive your small mistakes and correct them together. Even the family members and near friends can influence the marital life so try the best to pick the good messages from every relationship so that you can work great in your marital life. You need to be more cautious of the world who actually want to bring you down in some way or either by making you weak so being mentally and physically strong to defend everything is the best you can do as a remedy during these days of cheating.

### **CONCLUSION**

Marriage is a sacrament even in any of the religions or castes so it is important to maintain the marriages pure and transparent. Divorce is something that we are coming across in our daily life which we can avoid. These laws are there to support us in our pathetic conditions so it would be better if we can be little bit more bearable than these modern trends in order to make family strong and clean as what we have been taught.

### **Water quality and availability**

- ↳ Floods and extreme precipitation are also increasing in frequency and intensity
- ↳ Fresh water aquifers in all continent are being depleted.
- ↳ Water-related political and public health exists.
- ↳ Climate change strongly affect water-borne disease.

### **Dengue.**

Due to climate change dengue also spread rapidly. The effect of future climate change on the rates of dengue transmission is complex. The rate of dengue transmission may actually increase in regions that are projected to become more prone to drought, because the *Aedes* mosquitoes which carry dengue breeds in containers used for household water storage.

### **Conclusion –**

So we conclude that from this research paper that if human have to survive with less climatic change effects we should accept the ecological strategies which are helpful to ensure the sustainability. We must act now because the rate at which the human environment is changing is alarming and the impact of climate change on human health is getting worrisome. Now we can say that human themselves are responsible for human health because they are not affecting environment directly. Due to which the condition has become very pathetic regarding health and the climate also getting affected by human activities.

### **Recommendations-**

It is recommended that working groups, NGOs, health professionals and all tiers of government should be constituted on protecting health from climate change.

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## Right To Equality

### Introduction

Equality is regarded as the basis of Democracy. The concept of equality is also closely associated with the theory of natural rights. According to **Thomas**

**Jefferson** “All men are born equal and it is the man himself who creates differences between individuals.” Equality implies treatment and opportunities of all people alike. Equality presumes that there must not be any discrimination when it comes to opportunities. Therefore, Right to Equality is essential for all individuals for their development.

### Right to Equality under the Indian Constitution

Right to Equality is one of the six fundamental rights enshrined under Part III of the Constitution of India. Article 14-18 of the Constitution of India provides for Right to Equality. The right to equality provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles

#### Equality before Law (Article 14)

Article 14 of the Indian Constitution declares that - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 14 uses two expressions “**Equality before the law**” and “**Equal protection of laws**”.

The phrase 'Equality before the law' can be found in almost all written Constitutions of the World.

**Equality before the law** is a negative concept implying the absence of any special privilege based on birth, creed, colour, sex, or the like whereas, **Equal protection of laws** is a more positive concept implying the equality of treatment in similar circumstances.

This provision states that all citizens will be treated equally before the law. This provision protects everybody equally, the law will treat people in the same manner.

In **State of West Bengal vs. Anwar Ali Sarkar**, C.J. Patanjali Sastri held that – the second expression is corollary of the first.

#### Prohibition of discrimination (Article 15)

Article 15 of the Indian Constitution prohibits discrimination in any manner.

Article 15 provides that - no citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to - Access to public places, use of wells, ghats, etc. that are maintained by the State or that are meant for the general Public

In **State of Rajasthan vs. Pratap Singh**, the Supreme Court invalidated the notification under Police Act, 1861 which declared certain areas as disturbed and made inhabitants in that area bear the cost of additional police stationed, but exempted all Harijans and Muslims.

In **Joseph Shine vs. Union of India**, the Supreme Court overruled the *Sowmithri Vishnu vs. Union of India* judgement and held Section 497 of I.P.C as violative of Article 14,15(1) and 21 of the Constitution of India

#### Equality of opportunity in matters of public employment (Article 16)

Article 16 of the Indian Constitution guaranteed the equality of opportunity in matters of public employment in State service for all citizens.

Article 16 provides that no citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.

In **Madan Mohan Sharma vs. State of Rajasthan**, an advertisement was issued for the selection of Teacher Grade III. However, the selection criteria was changed during the selection process. The Court held that once the advertisement is made the selection process must continue as per the advertisement.

Article 16(4) is an exception to the general rule provided under Article 16(1) and (2). It empowers the State to make special provisions for reservation of backward classes of citizens in case of appointments of posts.

In **K.C. Vasanth Kumar v. the State of Karnataka**, the Supreme Court held that reservation in favour of backward classes must be based on means test. The means test is the test of economic backwardness ought to be applicable even to SCs and STs. It further suggested that the policy of reservation should be reviewed after every five years and the class reaches a level wherein, they do not require a reservation, its name must be deleted from that list.

#### Abolition of untouchability (Article 17)

Article 17 of the Indian Constitution prohibits the practice of untouchability and forbids its practise in all forms. Any disability arising out of untouchability is made an offence punishable in accordance with the law. Untouchability was an evil practice carried out on members of the lowest rungs of the society such as Dalits.

Parliament is also authorized to make laws prescribing punishment for the same.

In **People's Union for Democratic Rights vs. Union of India**, the Supreme Court held that Article 17 is available against individuals and it is the duty of State to ensure that the Fundamental Rights are not violated

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## CORRUPTION

### INTRODUCTION

Corruption is one of the biggest hindrances in the growth of many countries. It is particularly a big problem in developing countries. It operates at almost every level in our country. There is hardly any industry or sector that is devoid of corruption. People try to take advantage of other people and situations for their personal benefit whenever they get a chance.

### THE GROWTH OF CORRUPTION

In recent years, and especially in the decade of the 1990s, a phenomenon broadly referred to as corruption has attracted a great deal of attention. In developed & developing countries, large or small market oriented or otherwise, because of accusations of Corruption, government have fallen, prominent politicians have lost their official positions and in some cases whole political classes have been replaced.

### PRESENT STATUS OF CORRUPTION

Corruption in India is an issue which affects economy of central, state and local government agencies in many ways. Corruption is blamed for stunting the economy of India. A study conducted by Transparency International in 2005 recorded that more than 62% of Indians had at some point or another paid a bribe to a public official to get a job done. In 2008, another report showed that about 50% of Indians had first hand experience of paying bribes or using contacts to get services performed by public offices. In 2021 their Corruption Perceptions Index ranked the country in 85<sup>th</sup> place out of 180, on a scale where the lowest-ranked countries are perceived to have the most honest public sector. Various factors contribute to corruption, including officials siphoning money from government social welfare schemes. Examples include the Mahatma Gandhi National Rural Employment Guarantee Act and the National Rural Health Mission. Other areas of corruption include India's trucking industry which is forced to pay billions of rupees in bribes annually to numerous regulatory and police stops on interstate highways.

### CAUSES OF CORRUPTION

The causes of corruption in India include excessive regulations, complicated tax and licensing systems, numerous government departments with opaque bureaucracy and discretionary powers, monopoly of government controlled institutions on certain goods and services delivery, and the lack of transparent laws and processes. There are significant variations in the level of corruption and in the government's efforts to reduce corruption across India.

Black money refers to money that is not fully or legitimately the property of the 'owner'. A government white paper on black money in India suggests two possible sources of black money in India; the first includes activities not permitted by the law, such as crime, drug trade, terrorism, and corruption, all of which are illegal in India and secondly, wealth that may have been generated through lawful activity but accumulated by failure to declare income and pay taxes. Some of this black money ends up in illicit financial flows across international borders, such as deposits in tax haven countries.

### WAYS TO ELIMINATE CORRUPTION

#### Proper Laws

Lack of proper law to punish those found guilty of corruption is one of the main reasons for the increasing corrupt practices in our country. The government must put stern laws in place and must also work upon implementing them strictly.

#### Selection of Political Leaders

How do you expect the general public to refrain from using corrupt means to further their interest in a country where the political leaders themselves are involved in numerous scams and scandals? The political leaders must be selected based on their educational qualification and there must be laws to dismiss them immediately in case they are found guilty of any corrupt practice.

#### Sting Operations

Frequent sting operations must be conducted in government offices and other places where the cases of bribery are high. Strict punishment must be given to those who give as well as accept bribe. This will create fear among the general public as well as those in authority and they will think twice before indulging in such an act.

### EFFECTS OF CORRUPTION ON THE ECONOMY—

1. Undermining the Sustainable Development Goals.
2. Economic loss and inefficiency.
3. Poverty and inequality.
4. Personal loss, intimidation and inconvenience.
5. Public and private sector dysfunctionality.
6. Failures in infrastructure.
7. Rigged economic and political systems.
8. Impunity and partial justice.

### CONCLUSION

Corruption is a complex phenomenon that is almost never explained by a single cause. If it were caused by a single cause, the solution would be simple of the many factors that influence it, some can be changed more easily than others. Because of the complexity of the phenomenon, the fight against corruption must be pursued on many fronts. It is a fight that can not be won in months or even in a few years. The greatest mistake that can be made is to rely on a strategy that depends excessively on actions in a single area, such as in increasing the salaries of the public sector employees, or increasing penalties, or creating an anti-corruption office, and so on, and expect results quickly.

I have also argued that corruption is closely with the way governments conduct their in modern societies. It is unlikely that corruption can be substantially reduced without modifying the way governments operate. The fight against corruption is, thus, intimately linked with the reform of the state.

**Himani Mishra**

LL.B. (Hons) 5th Semester



## Population control and efforts of legislature

According to statistics, India is currently the second most populated country. It is expected to topple China, the top-ranked, by 2027.

People are means as well as ends of economic development. They are an asset to any country, but as we all know, anything in excess is harmful. So is the case with population. Population outburst in India has proved to be a significant hindrance to economic planning and development progress. Population control in India is a dire need of the time because of the following points:

Capital formation

Unemployment Maternity

welfare Etc.

The Population Regulation Bill, 2019 introduced by Member of Parliament Shri Rakesh Sinha in the Rajya Sabha on July 12, 2019, calls for penal action against people with more than two living children, including debarment from being an elected representative, dismissal of financial benefits and decrease in benefits under the public distribution system.

Will a population control bill be under the ambit of fundamental rights or ultra vires

A few years back, the Prime Minister expressed concern over the prospect of a 'population explosion' in India in his address to the nation on Independence Day and said that keeping small families was patriotic. It has since sparked a keen interest and debate on population control policies. The two-child policy has been presented in the Parliament over 35 times since 1947

Alternative measures to control the population in India

Legal marriage age

Health care system

Literacy

A population control policy is not only a coarse violation of fundamental human rights; most of its bearing will be on the people at the bottom-most level of socio-economic strata. It could have devastating, longterm, irreversible outcomes. In China, the population control policy failed

Countries that have population control laws

People's Republic of China

Indonesia

The ever-growing population is a severe issue at hand which needs to be resolved. Coercion and manipulation of people to keep the family size bare minimum are repugnant and a breach of fundamental human rights. High birth rates create large numbers of children relative to the number of working adults, savings that might otherwise be invested in the country's infrastructure and development instead must be diverted to meeting the immediate food, health care, housing and education needs of growing numbers of children and adolescents. This prevents countries and families from making the longer-term investments needed to help lift them out of poverty. India needs sensitized ways of population control like awareness on family planning, contraceptives, awareness on health adversities due to less gap between children and economic and social pressures of a large family.

## The Legal Avenues For The Implementation Of CEDAW

Ratification imposes an obligation on member States to "take appropriate measures" to implement the ratified convention. International law permits each state to determine how it will implement its treaty obligations. The constitutional legal arrangements of some states provide that treaties ratified by the state automatically become the law of that state (self-executing). This approach, also referred to as monism, takes the view that the international law system and the domestic law system constitute a single system of law. The constitutional legal arrangements of other states provide that treaties have no domestic effect without implementing legislation. This approach, also referred to as dualism, is premised on the idea that international law, including the application of treaties, is distinct from domestic law. Still others have hybrid systems, in which some treaties are self-executing while others require implementing legislation.

In countries where CEDAW is self-executing, the courts can interpret the Convention directly, in line with their judicial responsibilities and duties. In those countries where CEDAW is not self-executing, member States are obliged to introduce its principles into their national legal systems either by enacting domestic legislation or by introducing sex equality provisions into their national constitutions. Most member States in the Asia Pacific region have implemented, amended or repealed domestic legislation to incorporate some or all of the provisions and principles of CEDAW. However, to fully satisfy the obligation imposed by CEDAW (that member States seek to achieve substantive equality rather than just formal equality), it is the introduction of anti-discrimination legislation rather than the mere introduction of non-discriminatory gender-neutral provisions into existing law or the repeal of discriminatory provisions, that is required. Australia, for example, recognizes its obligations in relation to CEDAW predominantly in the Sex Discrimination Act (1984) as well as a number of other domestic Acts, at both federal and state levels, which contain anti-discrimination clauses. Some member States have recognised their obligations in relation to CEDAW by incorporating anti-discrimination clauses into their constitutions, which protect against discrimination on the basis of sex. The incorporation of CEDAW provisions into national constitutions in this manner entrenches these provisions such that they are at less risk than provisions incorporated into domestic legislation which can be removed or modified by the legislature. The entrenched nature of most constitutions affords greater protection to incorporated provisions as they can usually only be amended or removed by referendum. A number of countries in the Asia Pacific region have utilised this avenue for the implementation of CEDAW, including India, Korea, Fiji, Nepal, Vietnam, and New Zealand and have introduced anti-discrimination clauses preventing discrimination on the grounds of sex in their national constitutions.

## Sexual Harassment and Rape Law

Sexual harassment and rape are two sides of the same coin. Both showcase the power of man to dominate that of women. Both have one victim- women. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed. Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object- to undermine the integrity of the victim, physically as well as mentally.

As observed by **Justice Arjit Pasayat**:

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."

THERE CAN NEVER BE ANY REASON TO RAPE.

**IPC a man is said to commit the offence of rape with a woman under the following six circumstances:**

1. Sexual intercourse against the victim's will,
2. Without the victim's consent,
3. With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
4. With her consent, when the man knows that he is not her husband,
5. With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
6. With or without her consent when she is under sixteen years of age.

Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape, whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age.

**Section. 375 therefore requires:**

- a) Sexual intercourse by a man with a woman;
- b) The sexual intercourse must be under any of the six circumstances given in the section.

Criminal Law Amendment Act, 1983:

The Criminal Law Amendment Act has substantially changed Sections 375 and 376 of the IPC. Several new sections have been introduced therein- viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.

Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.

Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.

Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,

Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.

These new sections have been introduced with a view to stop sexual abuse of women

in custody, care and control by various persons- which though not amounting to rape were nevertheless considered highly reprehensible.

"Rape is not just women's issue. It's about men who stop behaving like human beings and start behaving like animals"

There are several laws on rape and harassment in India but the procedure of its trial is very slow and in many cases the accused get bail or acquittal in lack of evidence whereas in some cases judiciary also shows some weakness with their decision-

**In State of Uttar Pradesh vs. Pappu<sup>1</sup>**

the Supreme Court ruled that the finding that the prosecutrix was not having a good character and was a girl of easy virtue was not a ground for acquittal of accused.

**Narendra Kumar vs. State ( N.C.T. of Delhi ) .**

The appellant allegedly raped the prosecutrix by the side of a road which was well electrified. The Supreme Court thus observed that her version that nobody responded to her shouts was belied by other witness. Her evidence as to place of injuries was displaced by medical evidence. The report of the forensic science laboratory also did not inspire confidence. The conviction was thus set aside

**CONCLUSION**

The courts and the legislature have to make many changes if the laws of rape are to be any deterrent. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential- may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.]

However, if they truly have realized their mistake and wish to return to society, the Court and jail authorities may leave such men on parole; but only after they have served a minimum of half the sentence imposed on them.

It is outright clear that sexual offences are to be excoriated, but if death sentence is given to such convicts- so as to deter the rest, then no doubt that the graph of rape cases will come down considerably- but it may also happen that those who commit such offences- simply to leave no witnesses or evidence, may even kill their victims and dispose off their bodies (whereas it is observed that in most cases- it is the victim who is the only source of evidence in most cases), thereby frustrating the main object of the Indian Penal Code and the legislature.

Studying the laws, the process, the application of those laws, one thing is certain- the entire structure of justice needs an overhaul, otherwise the victim shall no longer be the woman, but humanity.

***Himani Mishra***

*LL.B. (Hons) 5th Semester*

## Sexual Harassment and Rape Law

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*LL.B. (Hons) 5th Semester*

## COMPATIBILITY BETWEEN FAIR USE DOCTRINE AND ENHANCED PROTECTION OF TRADITIONAL KNOWLEDGE

### Fair use Doctrine is not contrary to Support for Enhanced protection of Traditional Knowledge

Fair Use Doctrine presupposes that the owner of the copyright content has a monopolistic dominant position in the market, which is protected under the legal framework of the Copyright law. It operates wherein the asymmetry between the user and the owner is such that the owner occupies a dominant position and the user is relegated to a subservient position. Fair Use Doctrine addresses and mitigates this asymmetry in certain spheres of usage so as to balance the rights of the owner of the copyright content with the limited, justified and fair use of such copyright content by other people.

Meanwhile the call for Enhanced Protection of Traditional Knowledge operates in a reverse scenario wherein the owners of the traditional knowledge are in a vulnerable position and users of such traditional knowledge occupy a dominant position, often to an extent where they can aggressively exploit the traditional knowledge of the owners without paying them their due share in the profit. In such a socio-economic setting, the law must favor the party which because of socio-economic reasons has been relegated to the subservient position. The Enhanced Protection regime of Traditional knowledge in such a setting, has the same objective as to mitigate this asymmetry which leads to exploitation and bring together the parties to negotiate on equal footing.

The question as to whether Doctrine of Fair Use and Doctrine of Enhanced Protection of Traditional Knowledge are in conflict implies that they must operate in same setting. Yet we can see from the above-mentioned elaborations, that this cannot happen as both Doctrines target completely opposite set asymmetries.

The main objective of the copyright law is two-fold:

1. To provide legal protection to creative work to encourage the creators to create more such work. This is done by granting them monopolistic rights to control their commercial use and protecting them against any unauthorized and non-sanctioned usage of their work.
2. To promote ethical use of the copyright work as well as advancement and development of new works of creative and scientific nature. This is done by allowing limited usage of copyright work for certain purpose which do not hamper the commercial rights of the owner of the copyright.

We can find an inherent conflict between the above-mentioned objectives of the copyright law. Such tussle is premised between the rights of the owner of the copyright work and the users of such work. Copyright law essentially seeks to regulate this tussle so as to reach an equitable solution wherein the rights of owner are well protected and the public is allowed enough room to use the copyright work to benefit by its limited usage and develop improvements or new works. Preferring any one of the objectives to extremity at the cost of other will result into injustice and severe dent to creative and scientific progress.

Both Fair Use Doctrine and a demand for Enhanced Protection of Traditional Knowledge aim to secure a balance between these objectives.

### Enhanced Protection of Traditional Rights seeks to pursue the same objectives as the Copyright Law

It must be noted that Copyright law does not recognize the collective rights of the indigenous or local community over their Traditional knowledge. Moreover, under certain jurisdictions, if the copyright law does extend such protection to traditional knowledge, it fails to take into account the peculiar and special relationship between Indigenous communities and their traditional knowledge, which often happen to be manifested as a part of their culture and identity. Indigenous groups in developing countries are economically and socially disadvantaged. Thus, Copyright law happens to be inadequate for the protection of the rights of such vulnerable communities. Such communities often lack resources to mitigate their condition. Traditional knowledge is one of the very few resources they have at their

disposal, which they can capitalize upon to sustain themselves. If economically strong entities such as Big Corporations are allowed to exploit their Traditional knowledge for their own profits, that is effectively depriving these vulnerable indigenous groups of the only resource at their disposal. At the same time Copyright law effectively bars these communities from commercially exploiting the copyright work or knowledge of such big corporations for their own benefit. In the absence of any legal intervention by the State, Copyright law in effect shall operate as an instrument of exploitation in the hands of financial giants against the already vulnerable communities. We have seen many such examples such as that of the South Africa's Council for Scientific and Industrial Research which used the traditional knowledge of the San people about the appetite-suppressing power of Hoodia plant to make huge profits without paying any share to the indigenous community. While the South Africa's Council of Scientific and Industrial Research was entitled protection of intellectual property laws, the same were denied to the San people which consequentially led to their exploitation. Thus, in absence of strong protection legal frameworks for protection of traditional knowledge of indigenous communities, copyright laws instead of mitigating the asymmetry, shall be widening the gulf between the rich and the poor. No wonder, Copyright law has often been criticized in developing countries to be a law of the rich and contrary to the principles of Distributive justice. Thus, we find that in such adverse settings, copyright law can operate contrary to its stipulated objectives.

In such adversely premised settings, most common in developing countries, to achieve objectives of equal bargaining power, common good and distributive justice, State authorities and authors stress for Enhanced protection for the Traditional knowledge. Legal sanctions are necessary to coerce Corporate entities into paying due share to the indigenous communities for utilizing and profiteering from their traditional knowledge. Even within such regimes of Enhanced protection, limited use of traditional knowledge for the purpose of research is sometimes allowed provided it does not hamper with the commercial rights of the indigenous community. Convention on Biological Diversity (CBD) and Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation, Convention on Biological Diversity (Nagoya Protocol) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) are some multilateral treaties which recognize the rights of indigenous communities over their Traditional knowledge.

Both Copyright law and Enhanced Protection of Traditional Knowledge aim to secure commercial usage rights for their respective owners in accordance to the principle of fairness and equity. The demand for Enhanced Protection laws for traditional knowledge is made only in such jurisdictions where the copyright laws are incapable to secure the same monopolistic and commercial rights to their indigenous communities, thus we can say that the lacunae of copyright law is fulfilled by domestically modelled Enhanced Restrictions placed by the State instead.

*Shivani Chauhan*  
*Assistant Professor, Law*

## Copyright and Sports 'Hyperlinks'

We live in the information age, in which more and more people get their information from online sources and social media, especially relating to sporting matters. It is a common occurrence to see posts on 'Facebook' or 'Twitter' or on 'blogs' that contain hyperlinks to pictures, videos or information posted on other websites. Sports fans are more active in this respect, setting up 'webpages' or 'blogs' in which they follow every titbit of news about their favourite teams and/or athletes.

The recent European Court of Justice landmark case of *GS Media BV v Sanoma Media Netherlands (C-160/15)* addressed, at least as far as the European Union is concerned, the following questions: when is it permissible to post hyperlinks; and when would posting of hyperlinks amount to an infringement of copyright?

Professor Dr. Steve Cornelius posted the following report and comments on this case on 26 September 2016 on the 'Global Sports Law and Taxation Reports' (GSLTR) website:

In this case, a website, called GeenStijl (literally “no style”), published hyperlinks to certain photographs. The photographs concerned were taken for Playboy magazine and were intended for publication in its December 2011 issue. But in November 2011, these photographs were placed on the Filefactory website without the consent of the photographer or publishers of Playboy. Despite requests to remove the hyperlinks, GeenStijl persisted and reposted more hyperlinks to the photographs.

The European Court of Justice (ECJ) made a distinction, firstly, between the situation where the material was published with and the situation where the material was published without the consent of the copyright holder. In the former instance, the work is freely available to the public and the posting of hyperlinks to that material would not constitute a new 'communication' to the public and would, therefore, also not infringe the copyright.

In the latter instance, the ECJ, secondly, distinguished between the situation where hyperlinks are posted in the pursuit of financial gain (as in the case of GeenStijl) and those situations where hyperlinks are posted without the pursuit of financial gain. Where someone has a website or Facebook page which is not operated for financial gain, and posts a hyperlink to material published without the consent of the copyright holder, it is assumed that such a person did not or ought not to have known that the material was published unlawfully. In such a case, the hyperlink would not constitute a 'communication' to the public and, therefore, would not amount to an infringement of copyright.

This will not apply if the hyperlink bypasses the security features of the hosting website which are designed to restrict access to the material. The holder of the copyright can also redress this by informing the person who posted the hyperlink that the material was posted unlawfully.

However, where someone operates a website or webpage for financial gain, and posts a hyperlink to material published without the consent of the copyright holder, it can be expected that such person would have conducted the necessary checks to ensure that the material was posted lawfully. It must, therefore, be

assumed that the person, who posted the hyperlink, did so with full knowledge that the consent of the copyright holder was not obtained, unless the person, who posted the hyperlink, can rebut this presumption. If the presumption is not rebutted, the hyperlink would indeed constitute a 'communication' to the public and, therefore, would constitute an infringement of copyright.

So as far as sports news and blogs are concerned, the implications are clear. If a sports fan or fans have a page or blog, where they share information on their favourite teams or athletes, but none of the fans profit from the page or blog, they can generally publish hyperlinks, as long as they do not bypass the security measures of the hosting website or the holder of the copyright does not complain.

On the other hand, if it is a commercial sports website, or if someone operates the website or webpage for financial gain, for instance, by hosting advertisements from which the person derives a benefit, hyperlinks should only be posted if it is clear that the material has been made available to the general public with the consent of the copyright holder.

Otherwise, there will be an infringement of copyright, with the usual legal consequences.

***Shivani Chauhan***  
*Assistant Professor, Law*

## Criminal Rape Laws Negatively Affect Female Agency

One common feminist concern over the feminist-police power alliance is that a nearly exclusive focus on the criminal system as the remedy for sexual assault detrimentally affects women's agency. Some theorists object that rape reform's myopic focus on women as victims runs counter to a thick view of female autonomy. The agency critique manifests in conservative and progressive forms. The more conservative strain of the agency argument is often espoused by essayists and men opposed to dominance feminism. It criticizes rape law for rendering women unable to understand their own behavior and lifestyle choices as preconditioning sexual abuse and for failing to equip women to engage in self-contained sex crime prevention. Conservative critics maintain that affirmative consent law stands at the pinnacle of paternalism because it assumes women are incapable of expressing their true desires. This “pull yourself up by the bootstraps” argument essentially posits that minorities and society are harmed by minorities' self-perception as perpetual objects of oppression. It seems somewhat inappropriate, however, to call this conservative agency argument “feminist” because the argument seeks to downplay the pervasiveness of subordination and encourage women to work within the status quo.

There is another, more progressive, feminist agency argument that criticizes reforms that install the criminal law as “a coercive entity” in women's lives. Like the conservative agency argument, it criticizes discourse that characterizes female rape victims, not simply as individuals to whom something bad has happened, but as perpetually “ruined” women who must forever bear witness to their victimhood. Moreover, critics point out that women's general self-perception as constant potential victims of rape effectively limits the range of their autonomous actions. A socially constructed but deeply internalized fear of sexual crime victimhood has served to constrain women's movement through the world—what we do, what we say, where we go, how we live—arguably to the benefit of men's interests. This is what some scholars term the “disciplinary” function of male abuse of women.

It is unlikely, however, that individual instances of sexual abuse are enough to cause women to modify their behavior out of fear of rape. There must be a medium that translates individual cases of rape to women's general understanding of abuse as part of their existence and affecting their behavioral choices. The focus on criminalization and victimhood provides this medium. The characterization of sexual abuse as a problem of crime victimhood rather than one of gender norms has created a world in which “behind gated fences, bolted doors, and barred windows,” women voraciously consume magazines that “lure us with images of women's bodies as fungible, fragmented things to be taken and used at will.”

There is, however, a real dilemma between vindicating female agency and recognizing conditions of subordination. On one hand, portraying women as incapable of communicating sexual choice or battered spouses as eternally damaged is not empowering to women. On the other hand, the discourse of victimhood publicizes that gendered crimes are wrongs the government has an obligation to address. To solve this objectversus-agent dilemma, some modern feminists embrace a theory of constrained agency. They note that women must constantly navigate the space between idealized autonomous liberality and

the oppressive conditions of subordination. Law must therefore simultaneously treat women as agents capable of making meaningful decisions but also seek to address the context of gender subordination in which women's choices are made.

Despite these autonomy concerns, feminists continue to pursue criminalization as the preferred remedy to sexual violence. One reason may be that the conservative strain of the agency argument has been most visible, making left feminists wary of anti-victimhood arguments generally. Alternatively, some feminists may believe that the benefits from rape and abuse criminalization outweigh any negative effects on agency. Regarding constrained agency, some feminists remain hopeful that the criminal law might punish rape and abuse without relegating women survivors to the status of objectified child-like victims. Thus, even feminists persuaded by autonomy arguments might still opt for criminal law solutions in the hope that the criminal law can be changed from within. Unfortunately, a critical analysis of the current American criminal system, undertaken in the next Part, will reveal that the benefits of rape reform do not necessarily outweigh the costs to agency, and the current criminal system necessarily condemns women to the status of either passive, damaged victim or autonomous agent responsible for rape.

**Manjari Singh**  
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## The Discussion on Polygamy during the UPR

The question of polygamy has been raised in the case of 18 states during the first 2 cycles of the UPR. A total of 22 recommendations were formulated on that topic, 10 were adopted, 12 were noted by the states under review. It is interesting to note that despite the fact that 14 of the 18 states were African, there was not one recommendation from the region. It clearly indicates the importance of regional solidarity on a highly sensitive issue, which is closely related to traditional practices and cultures deeply rooted in many African societies. Patel in her research differentiated 4 types of recommendations on that topic during the first two cycles of the UPR. The first one is declaring polygamy as a harmful traditional practice, the second one is asking reforms to the domestic legislation on polygamy, the third type of recommendation asks the state under review to ensure the compliance of their domestic laws on polygamy with international human rights standards and the fourth one is asking for the elimination of polygamy. In case of the first one the responses by states under review were usually subdued and states did not commit themselves to reform their current practice.

The second type of recommendation was only accepted by Kyrgyzstan during the first cycle among the four states who received it. Burkina Faso's explanation was an interesting one as they said that “polygamous marriage was optional whereas monogamy was the rule” and that polygamy was “one of the secular aspects of the culture of Burkina Faso”. Tanzania could not accept the recommendation on the basis of the enjoyment of cultural and religious rights. In the second cycle Equatorial Guinea – the only country receiving that type of recommendation – accepted it and noted that laws prohibiting polygamy were already in place.

Three countries received this type of recommendation during the first and one during the second cycle. During the first cycle it was only Israel which accepted it, saying that it reinstructed the Quaddi's of the sharia courts to refer every suspected case of polygamy to the police. In contrast, Ghana and Libya both noted this type of recommendation. Ghana was explaining that marriages that were customary or faith based “were in conformity with the customs and traditions of Ghana”. Libya was explaining that the suggested reforms were “in conflict with the Islamic religion and the customs”. Consequently both delegations prioritized their cultural and traditional particularities above the compliance with international human rights norms. In the second cycle Morocco received only that type of recommendation. It was noted without further explanation.

The fourth type of recommendation, suggesting the elimination of polygamy without referring to domestic legislation or international human rights norms was accepted by two states under review and noted by one. Kyrgyzstan and Mauritania accepted the recommendation without further explanation, while Senegal noted it and insisted that the observer state “should take into account the particularities of the Muslim religion which explains the existence of polygamy. In the second cycle The DRC and Russia accepted the recommendation, while Burkina Faso noted it and explained that “those recommendations which were not accepted did not adapt easily to the present cultural and socioeconomic realities of

Burkina Faso”. It is worth mentioning that Burkina Faso used the same argument in the second cycle than during the first one and it was the only state in the second cycle using cultural justification not to accept a recommendation.

Patel found on the basis of her research that regardless of the recommendations, the states under review decided to stick to their selected position on polygamy and therefore the responses were predetermined and prescribed. She underlined that because of the strange character of the UPR system – only focusing on the implementation of accepted recommendations – none of the states which noted the recommendations on polygamy were held accountable during the second cycle. It is clear from her research that most of the observer states using the relationship between polygamy and culture, took a strict radical universalist position, by suggesting the abolition of this traditional practice, whereas states under review who did not accept the recommendations on polygamy, justified their position from a strict cultural relativist perspective. Consequently there was meaningful discussion on the topic as the possible reform of cultural norms supporting polygamy was not even discussed. As it was wisely pointed out by Patel, the UPR discussion by being oversimplified, and lacking a culturally legitimate angle did not generate the political momentum to encourage an internal discussion on the issue aiming at cultural changes.

**Manjari Singh**  
*Assistant Professor, Law*

## The Discussion on Polygamy during the UPR

### FOOD SECURITY

#### **INTRODUCTION**

Food security refers to the ensuring of food for all. It is the most important step to eradicate absolute mass poverty and lay a foundation for growth and development of a society. The goal of food security becomes difficult to achieve in a country like India where poverty is vast and population is still growing. But there is no alternative to ensure food security for the entire population. Food security demands adequate food production and distribution. This needs political will that will prioritize human development and create a favorable environment that will enhance sustainable development. The unpalatable fact here is that while on the one hand, such environment aids mass production of food, on the other hand, ruthless exploitation of land wherein topsoil gets eroded, water gets exhausted and soil loses its fertility, such an environment, subsequently, loses its productive capacity.

The environment is further damaged, degraded, and destroyed by unplanned vast industrialization and massive use of industrial products like automobiles and industrial machinery, both calling for a very high intensity of energy and other resource use. All these point out to the need for a balance among population, food needs and environment.

Food security must be consistent with and conducive to such a balance. India is yet to achieve this as its mass population and poverty keep large sections so poor as to be unable to buy food at the prevailing market rates. If India is to achieve its goal of development with equity, social inclusion, and social justice, food security must be ensured for its population at all costs.

#### **FOOD SECURITY AND ITS SIGNIFICANCE**

“God who is unnamable and unfathomable by human understanding and it means God of the poor, God appearing in the hearts of the poor....For the poor the economic is the spiritual. You cannot make any other appeal to those starving millions. It will fall flat on them. But you take food to them and they will regard you as their God. They are incapable of any other thought....According to me the economic constitution of India and, for the matter of that, the world should be such that no one under it should suffer from want of food and clothing. In other words, everybody should be able to get sufficient work to enable him to make two ends meet.” **Mahatma Gandhi**

Food security refers to access for people, especially poor who are below poverty line, to adequate food necessary for a normal life. Food security is a social concept dealing with community needs. Adequate food means sufficient quantity of nourishment that a person in normal circumstances is required to consume according to food science experts.

According to the Planning Commission, a person needs a minimum of a daily calorie intake of 2400 in rural areas and 2100 in urban areas. According to the Food and Agricultural Organization (FAO), a person needs a minimum of 2000 calories per day. In terms of quality the food must be reasonably nutritious that enables a person sustain and develop his physical and mental faculties and personality. Therefore the food must include pulses, edible oils, milk products, egg, meat, and some fruits and vegetables. These together will give the required nutrients like carbohydrates, proteins, fats, mineral and vitamins necessary for healthy growth. If people do not get the required diet they are deprived of nourishment which may adversely affect their capabilities affecting their growth and development.

Food security also means that people, especially poor, have the ability to pay in terms of purchasing power needed for purchasing the required quantity and quality of food in terms of nutrients. This ensures that the human resource in the society get what is needed for a normal life and can be expected to contribute towards promoting economic growth and development of the society. Food security ensures that in the society everyone gets the minimum required food and nutrients for a productive life and therefore can

Burkina Faso”. It is worth mentioning that Burkina Faso used the same argument in the second cycle than during the first one and it was the only state in the second cycle using cultural justification not to accept a recommendation.

Patel found on the basis of her research that regardless of the recommendations, the states under review decided to stick to their selected position on polygamy and therefore the responses were predetermined and prescribed. She underlined that because of the strange character of the UPR system – only focusing on the implementation of accepted recommendations – none of the states which noted the recommendations on polygamy were held accountable during the second cycle. It is clear from her research that most of the observer states using the relationship between polygamy and culture, took a strict radical universalist position, by suggesting the abolition of this traditional practice, whereas states under review who did not accept the recommendations on polygamy, justified their position from a strict cultural relativist perspective. Consequently there was meaningful discussion on the topic as the possible reform of cultural norms supporting polygamy was not even discussed. As it was wisely pointed out by Patel, the UPR discussion by being oversimplified, and lacking a culturally legitimate angle did not generate the political momentum to encourage an internal discussion on the issue aiming at cultural changes.

***Manjari Singh***  
*Assistant Professor, Law*



## Is Increase in Population a boon for Global Warming

One quarter people's population is added to the current world population of 7.91 billion. By the end of the 2022 or by the stating of 2023 the population is expected to reach the mark of 8 billion. But the question arises:

We have only one Earth. Today, the 7.9 billion people on it are using more of its resources than it can provide. Every new person is a new consumer, adding to that demand. Some of us take far more than others and there are many steps those of us who do must take to make our consumption sustainable. Fewer new consumers everywhere are one of them.

“Anyone who believes in indefinite growth of anything physical on a physically finite planet is either a madman or an economist.” Kenneth Boulding, economist.

Every person present on this earth is aware of the fact that the resources of the earth are finite. We are currently completely contingent on fossil fuels, iron and other metals, minerals and even such basic commodities as sand to keep the modern world ticking over. With the add in the population or ore consumers will make those resources to be over at a faster rate and in less time.

The Earth also provides for our needs with renewable resources, such as timber, clean water and air, healthy soils and wild fish consumed for food. However, our demand is so great that according to the Global Footprint Network, we are now using those resources at almost twice the rate that the Earth can renew them. That rate has increased continually since the 1970s and, unless thing change, we will require three Earth to supply our needs by 2050.

Some people believe that greater efficiencies in the use of resources mean we will use less of them. There is no evidence to support that however, a study by the Massachusetts Institutes of Technology in 2017 evaluated the use of raw materials such as crude oils and silicon, and found that greater efficiencies led to price reductions, making commodities more affordable and, increasing their demand and usage. They investigated more than 60 materials, and found that only in six was consumption decreasing.

The UN's International Resources Panel has projected that Resources use per person will be 71 percent higher than today in 2050.

More than 800 million people currently do not get enough food to meet their nutritional needs every day. Meanwhile, 650 million are stout. People go hungry today not because there is insufficient food but because our global economic system distributes it unfairly. In fact, the number of people suffering from hunger has actually increased in recent years- due in part to development progress not keeping up with rapid population growth.

Every extra mouth to feed puts more population pressure on our food supply. That is already under threat from multiple factors, including shortage of fresh water, soil depletion, decimated populations of insect pollinators and climate change. The UN currently projects that we will need 70% more food by 2050. Increasing agricultural production comes at a cost to nature, however. Habitat loss and exploitation are the two most significant threats to biodiversity- currently 80% of extinction threats to mammals and birds are due to agriculture.

A landmark report on diet and sustainability by the EAT- Lancet Commission in 2019 concluded that it is possible to feed a population of 10<sup>th</sup> sustainably if radical action is taken to revolutionize dietary habits and food production. It went on to say, however:

“Global population is expected to exceed 11 billion people by 2100 unless action are taken to stabilize population growth. Healthy diets from sustainable food systems are possible for up to 10 billion people but become increasingly unlikely past this population threshold.”

Action to address population is essential if we are to meet the most basic human right of all- ensuring people have enough to eat.

Water is an absolute basic human necessity, and each person adds to demand threats to fresh water are even more critical. An MIT study concluded that nearly five billion people will live in water – stressed

region by 2050. The United Nations has calculated that water shortages as a result of climate change could displace hundreds of millions of people by 2030. Regional variations in water availability are extreme but many of the world's poorest regions, and those which have high population growth, are among those with the shortest supply. Developed countries also suffer from the effects of population pressure on water supply. The densely – populated south east of England is ranked in bottom 10% of global regions for ability to supply water to its inhabitants.

As with every environmental problem, while there are many solutions to pollution, adding more people to the population adds more polluters and makes those solutions less effective. While rich countries produce more plastic waste per person, for instance, poor regions where population growth outstrips the infrastructure to dispose of waste may contribute more plastic overall.

Material footprint per capita in high-income countries is 60% higher than in upper-middleincome countries and more than 13 times the level of low-income countries.

In the developing world, fewer people means less competition for natural resources, especially local resources such as land and fresh water. In the longer term, fewer people being born means that as countries move out of poverty, their level of consumption will be lower. In a 2021 “World Scientists' Warning” study, a review of 212 climate mitigation policy commentaries found that population and social justice appeared less frequently than other solutions like energy, food and the economy. A 2022 Center study showed that gender equity solutions are missing from municipal climate plans, despite the fact that women and gender diverse people are disproportionately affected by climate change.

The pressure of population growth makes it harder to meet emissions-reduction targets while magnifying climate change's detrimental consequences on humans and other species. While addressing population growth is a long-term mitigation strategy, there are also short-term adaptation benefits, including improved health care, empowerment and other positive social outcomes.

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## ANALYZING THE GLOBAL IMPACT OF PLASTIC WASTE

### PREFACE:

The use of plastics is deeply bedded in our diurnal lives, in everything from grocery bags and chopsticks to water bottles etc. But the hunt for convenience has gone too far and we're failing to use plastics efficiently, wasting precious coffers and harming the terrain.

Plastics have become such a necessary part of our diurnal lives that roughly 90% of products which we use in our lives are made up of plastic and when these products no longer remain of any use, we simply throw them out causing the plastic waste to accumulate and thereby posing serious pitfalls to our terrain.

### PART OF PLASTICS IN OUR DAILY LIVES :

Plastic has come an integral part of our daily lives. We begin our day using mugs and pails made of plastic for bathing. Further, as we trace back our conditioning throughout the day, we use plastic in the form of water bottles, combs, food packaging, milk sacks, straws, disposable chopstick, carry bags, gift wrappers, toys etc. The wide use of plastic has rebounded in a large quantum of waste generated. Plastic has been so much used that plastic pollution has become one of the environmental problems that the world is facing at this moment. It has impacted the terrain, our health and everything around us.

Plastic overconsumption and mismanagement of plastic waste is a growing imminence, causing tips to overflow, choking gutters, and hanging marine ecosystems. Not only does this plastic waste affect our health injuriously but also affects a variety of other sectors, for illustration tourism.

And yet again, COVID- 19 hasn't left this sphere untouched. The adding use of masks, sanitizer bottles, injections and other medical equipment has contributed on a massive scale to plastic waste generation.

### WHAT IS PLASTIC WASTE?

Plastic is a common term for a wide range of synthetic or semi synthetic organic unformed solid accouterments deduced from oil painting and natural gas. The word ' Plastic' is deduced from the Greek word ' Plastikos' meaning fit for molding.

Plastic waste, or plastic pollution, is ' the accumulation of plastic objects in the Earth's terrain that negatively affects wildlife, wildlife niche, and humans.

It also refers to the significant quantum of plastic that isn't reclaimed and ends up in tip or, in the developing world, thrown into limited dump spots.

### CAUSES OF PLASTIC WASTE GENERATION:

There are some main factors which lead to plastic waste generation, they can be added up as follows:

Over-utilisation of plastic- made papers in diurnal ménage as well as in artificial uses. The largely protean nature of plastic, yet being cost effective makes it a boon for those who want to save plutocrat, but this cost-effective boon is turning out to be a huge bane for all of us.

Indecorous disposal of plastics without following the proper strategy and recycling adds on to the problem. We frequently witness a spot in our locality where everyone throws down all the waste which includes, majorly, plastic waste.

Not following the proper medium for the disposal of similar waste is yet another cause for the plastic waste generation.

Lack of mindfulness among the millions and their careless conduct towards the waste generated from their house is another cause which has created this global problem. People are indifferent towards the waste which they produce, rather than contributing to the plastic waste operation, they are creating a plethora of plastic waste.

Lack of strict government conduct with regard to the use of plastic is yet another cause of growing plastic waste.

### EFFECTS OF PLASTIC POLLUTION:

The over application of plastics has led to generation of huge plastic waste and at the moment, it is a matter of huge concern, not only in our country but across the globe.

Plastic has been a really big trouble to soil and water pollution. This thing will remain the same for decades when you throw this on land or water. It'll waste the soil. There are numerous countries trying to ban plastic bags and other stuff. But it's a really tough thing to do. Some of them wanted to start reusing this thing. But it's a grueling thing. A huge quantum of plastic bags and other stuff has been thrown into the ocean every time. They're really dangerous to ocean life. Lots of ocean fishes and other creatures might eat it as food. But they won't be able to digest that for their entire life. That could be the reason for their death.

So, it can be well assumed that it's a trouble to biodiversity. Indeed it poses serious problems regarding global warming.

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### *Introduction*

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### *Renewable Resources*

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Every extra mouth to feed puts more population pressure on our food supply. That is already under threat from multiple factors, including shortage of fresh water, soil depletion, decimated populations of insect pollinators and climate change. The UN currently projects that we will need 70% more food by 2050. Increasing agricultural production comes at a cost to nature, however. Habitat loss and exploitation are the two most significant threats to biodiversity- currently 80% of extinction threats to mammals and birds are due to agriculture.

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### *POLLUTION*

As with every environmental problem, while there are many solutions to pollution, adding more people to the population adds more polluters and makes those solutions less effective. While rich countries produce more plastic waste per person, for instance, poor regions where population growth outstrips the infrastructure to dispose of waste may contribute more plastic overall.

### *GREED, NEED AND INJUSTICE*

Material footprint per capita in high-income countries is 60% higher than in upper-middleincome countries and more than 13 times the level of low-income countries.

In the developing world, fewer people means less competition for natural resources, especially local resources such as land and fresh water. In the longer term, fewer people being born means that as countries move out of poverty, their level of consumption will be lower.

### *CONCLUSION*

In a 2021 “World Scientists' Warning” study, a review of 212 climate mitigation policy commentaries found that population and social justice appeared less frequently than other solutions like energy, food and the economy. A 2022 Center study showed that gender equity solutions are missing from municipal climate plans, despite the fact that women and genderdiverse people are disproportionately affected by climate change.

The pressure of population growth makes it harder to meet emissions-reduction targets while magnifying climate change's detrimental consequences on humans and other species. While addressing population growth is a long-term mitigation strategy, there are also short-term adaptation benefits, including improved health care, empowerment and other positive social outcomes.

By

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## A comparative study of legal status of live-in relationship in India and other countries.

### INTRODUCTION

Is it important that all immoral societal norms are always illegal?

Society is dynamic and the Indian customs and practices have always been influenced by western culture which led to an independent life. The relationships among people and the change in their living patterns have been drastically modernized over the past few years.

Live-in relationships are a typical example of growing Indian society. But this concept still faces a lot of criticism and is considered unethical or immoral as it lacks legality.

A man and a woman living together and instead of choosing to get married and instead of choosing to get married they adopted a non-formal approach to live-in relationships is their personal choice. Is it a crime to choose to live with a man or woman without marrying?

Gradually after numerous judgments now live-in relationships are legal in India but it is still not well rooted in Indian soil where marriage is considered a "sacred" institution.

Live-in relationships are nowhere defined in any legislation or enactments and the concept is still ambiguous to an extent of proper rights and obligations to the parties in a live-in relationship. In layman's terms, the live-in relationship may be defined as "continuous cohabitation for a significant period, between partners who are not married to each other in a legally acceptable way and are sharing a common household."

The Supreme Court had tried to elaborate on the concept of live-in relationships and issued various guidelines for purpose of dealing with such relationships.

This legal article tries to figure out what are live-in relationships and the legal position of live-in relationships in India and as well as in other countries.

### LEGAL STATUS OF LIVE-IN RELATIONSHIP IN INDIA

Indian judiciary has always rendered justice to people and it has tried to do the same in the case of live-in relationships. They intend to make the rules for the partners in a live-in relationship and not promote or prohibit this concept. There have been many cases of abuse arising out of these relationships and it is the duty of the court to look after these kinds of matters which affect our society at large and no miscarriage of justice takes place.

In the year 2001 in the case of Payal Sharma Vs NariNiketan, the bench observed that a man and a woman even without getting married can live together if they wish to. This may be regarded as immoral by society, but is it not illegal. There is a difference between law and morality. Further live-in relationships have also been considered within the ambit of the right to life under article 21 of the constitution of India and the act of two major living together is considered lawful and legal in the landmark case of S. Khushboo vs kanniammal 2010. The legal status regarding live-in relationships has been continuously developing as it faced social aversion based on the conservative mindsets of Indian society. The landmark case of IndraSarma vs V.K.V Sarma 2013 has extensively deliberated the concept of live-in relationships and is considered a basic framework. Supreme Court observed that these relationships are neither a crime nor a sin though socially unacceptable in this country. The matter to marry or not to marry or have a heterosexual relationship is extremely personal.

### PRESUMPTION OF MARRIAGE IN LIVE-IN RELATIONSHIP

When the courts were trying to recognize this concept and clarify the essential factors that rise out of live-in relationships, there arises a concept of presumption of marriage. The Court said that it may be presumed that the partners are in a marital relationship if they were living together for a longer period. This concept of treating a live-in relationship as a marriage if continued for a long term was inferred in the case of Madan Singh vs Rajni Kant 2010. In this case, the court held live-in relationship can't be termed a "walk-in and walk-out" relationship and that there is a presumption of marriage.

### APPLICATION OF VARIOUS LEGISLATIVE STATUTES

There are mainly two laws that expanded and recognized the concept of a live-in relationship:

1:- Protection from Domestic Violence Act, 2005:-

This Act was legislated as an attempt to protect women from abusive partners and family. The Act defines a domestic relationship as "a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship like marriage, adoption or are family members living together as a joint family." [Section 2(f)] In the words 'relationship in nature of marriage' encompasses within itself live-in relationships and a woman under this Act is entitled to claim remedy in case of physical, mental, verbal, or economic abuse. This act seems to have widened the scope of legally recognizing domestic relations between men and women.

This provision merely denounces domestic violence in any quarter. In the case of Velusamy Vs D. Patchaiammal 2010 certain prerequisites or tests were developed for a live-in relationship to be considered valid as this provision does not cover all live-in relationships.

2:- Section 125 of the Code of Criminal Procedure Code, 1973:-

This right pertains to the right of maintenance.

In the case of Chanmuniya Vs VirendraKushwaha the Supreme Court upheld the right of a woman in a live-in relationship to claim maintenance under section 125 of the Criminal Procedure Code.

This right is given to a woman in a live-in relationship because it will restrain a man from taking advantage of legal loopholes by enjoying the benefits and avoiding the responsibilities. The children born out of live-in relationships also have legal status and will be considered legitimate as held in various judgments.

So from all the above-mentioned judgments, it is clearly visible that it is recognized but it needs social acceptance and also proper legislative enactments.

### AN INTERNATIONAL SCENARIO OF LIVE-IN RELATIONSHIP

The status of live-in relationships in other countries is further explained.

UNITED STATES OF AMERICA: - Before the 1970's unmarried living together was uncommon but since the 1980's it is legalized and several states have passed laws allowing unmarried couples both heterosexual and homosexual to register as domestic partners. It led to the establishment of domestic partners. Registry to grant legal recognition and few rights to the live-in couple are given to married partners.

CANADA:- Live-in relationships are legalized under common law in Canada. If a couple lived together for 12 months without a break then they get a legal sanctity from a common law relationship. They have some rights as married couples.

AUSTRALIA:- The Family Act of Australia states that a de facto relationship can exist between two people of different or of same-sex.

SCOTLAND:- The Family Law (Scotland) Act, 2006 under section 25(2) provides legal sanctity to live in a relationship if 3 factors are fulfilled provided therein.

UNITED KINGDOM: - In the UK a woman and man living together in a sexual relationship stably are considered Common Law Spouses and this relationship is governed by the Separate Act. The requirements are that they should be above 16 years of age and should be in civil partnership or marriage or within prohibited degrees of relationships.

Live-in partners are not obliged to support each other financially and if a child is born to them then the unmarried mother or father has the responsibility by entering into an agreement. The rights and obligations of unmarried parties can be outlined by drawing up together agreement and homosexual partners can enter into a civil partnership.

*Saurabh Tripathy* (BA. LLB. (Hons.))

## LGBTQ+ LAWS

Shakespeare through one of his characters in a play says-“What's in a name? If we call a rose by any other name, then also it would smell the same”. This phrase conveys that what really matters is the essential qualities of the substance and the fundamental characteristics of an entity but not the name by which 'it' or 'a person' is called. Similarly, people cannot be differentiated or discriminated or denied basic Human Rights, just on the basis of their sexual preferences. The idea of human rights rests on the central premises that all humans are equal. It follows that all humans have dignity and all humans should be treated as equal. Anything which undermines that dignity is a violation as it violates the principle of equality and paves the way for discrimination.

The term “LGBTQ+” is used to denote the following sects of people

- Lesbian: A lesbian means, a woman is sexually attracted to a woman.
- Gay: A gay means, a man who is sexually attracted to the man.
- Bisexual: A bisexual person is someone who is sexually attracted to people of the both sex.
- Transgender: It is a term used to define people whose gender identity and gender expression, differs from that usually associated with their birth sex.

Queer: Queer is a term used to refer to sexual and gender identities who are neither heterosexual nor cisgender(opposite of transgender). The term “Queer” in itself is a community as they generally go for using pronouns instead of being restricted to He, She etc.

The “+” in “LGBTQ+” signifies that the above list is not exhaustive it includes other categories as well like Pansexual, asexual, Intersex etc.

In today's world, almost every person is know about the LGBTQ+ community. In fact, many of the person seem to deny the fact that a community of other than straight people even exist!

Especially in a country like India, where there has been a recent change in laws regarding the LGBTQ+ community, it seems like a war between people rather than a step towards a better future. But we have also to see positive aspects of it. Without the first step, there cannot be a start of a journey. Even if that journey is filled with obstacles, we cannot give up just because there might be a negative response to it.

Section 377 of the Indian Penal Code categorised consensual sexual intercourse between same sex people as an 'unnatural offences' which is 'against the order of nature'. It prescribe a punishment of 10 years imprisonment. The provision is a Victorian-era law, which survived into the 21st century. Interestingly, about 123 countries around the World have never penalized or decriminalized homosexuality. Currently, 57 countries actively criminalize same-sex relations. Naz Foundation (India) Trust challenged the constitutionality of Article 377 under Article 14, 15, 19 and 21 before the Delhi High Court. The Foundation contended that Section 377 reflects an antiquated understanding of the purpose of sex, namely as means of procreation, and has no place in a modern society. Further, the police had weaponized the provision, which impeded efforts aimed at preventing the spread of HIV/AIDS. The Naz Foundation also argued that the provision was being misused to punish consensual sex acts that are not peno-vaginal.

The Delhi High Court ruled in 2009 that Section 377 cannot be used to punish sex between two consenting adults – this violates the right to privacy and personal liberty under Article 21 of the Constitution. The Court held that classifying and targeting homosexuals violates the equal protection guarantee under Article 14 of the Constitution. Section 377 thus violated human dignity which forms the core of the Indian Constitution.

The Supreme Court reversed the Delhi High Court verdict in 2013 in Suresh Koushal and held that the decision of decriminalizing homosexuality can only be done by the Parliament and not the Court. It also held that Section 377 criminalises certain acts and not any particular class of people. It also alluded to the minuscule number of people who were members of the LGBTI community and the fact that only a

fraction amongst them had been prosecuted under Section 377.

On September 6<sup>th</sup>, 2018 the five Judge Bench partially struck down Section 377 of the Indian Penal Code, in the case of Navtej Singh Johar v Union of India. Decriminalising same-sex relations between consenting adults. LGBT individuals are now legally allowed to engage in consensual intercourse. The Court has upheld provisions in Section 377 that criminalise non-consensual acts or sexual acts performed on animals.

The four judgments unanimously cited fundamental rights violations in reading down Section 377. They found that Section 377 discriminates against individuals on the basis of their sexual orientation and/or gender identity, violating Articles 14 and 15 of the Constitution. Further, they ruled that Section 377 violates the rights to life, dignity and autonomy of personal choice under Article 21. Finally, they found that it inhibits an LGBT individual's ability to fully realize their identity, by violating the right to freedom of expression under Article 19(1)(a).

NALSA vs. Union of India judgement of 2014 was path breaking reform to give equal rights to the transgender community. It talked about the self determination of gender prevention of discrimination in all spheres of life and spoke about affirmative action for the community.

The Transgender Persons Protection of Rights Act was enacted and its Rule were notified. The National Council for Transgender Persons was formed. The Ministry of Social Justice and Empowerment which is the nodal ministry for the welfare of transgender persons came up the social measures like a National Portal for application for Transgender ID cards, the SMILE scheme, GarimaGreh, scholarships and very recently, the Ayushman Bharat TG Plus card that provides health insurances for transgender persons including gender affirming care, while all this may sound like phenomenal progress as India celebrated 75 years of its Independence, there is a lot left to be done.

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