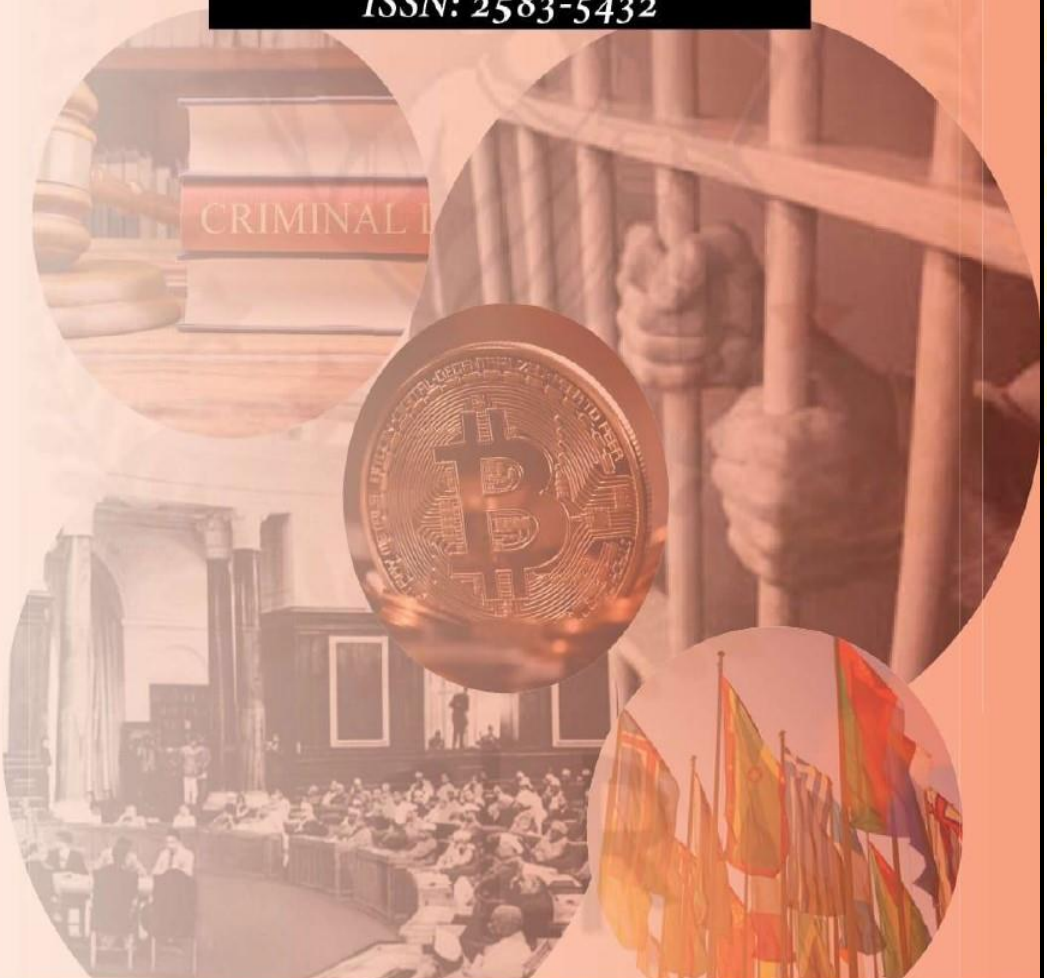




PRAYAGRAJ LAW REVIEW

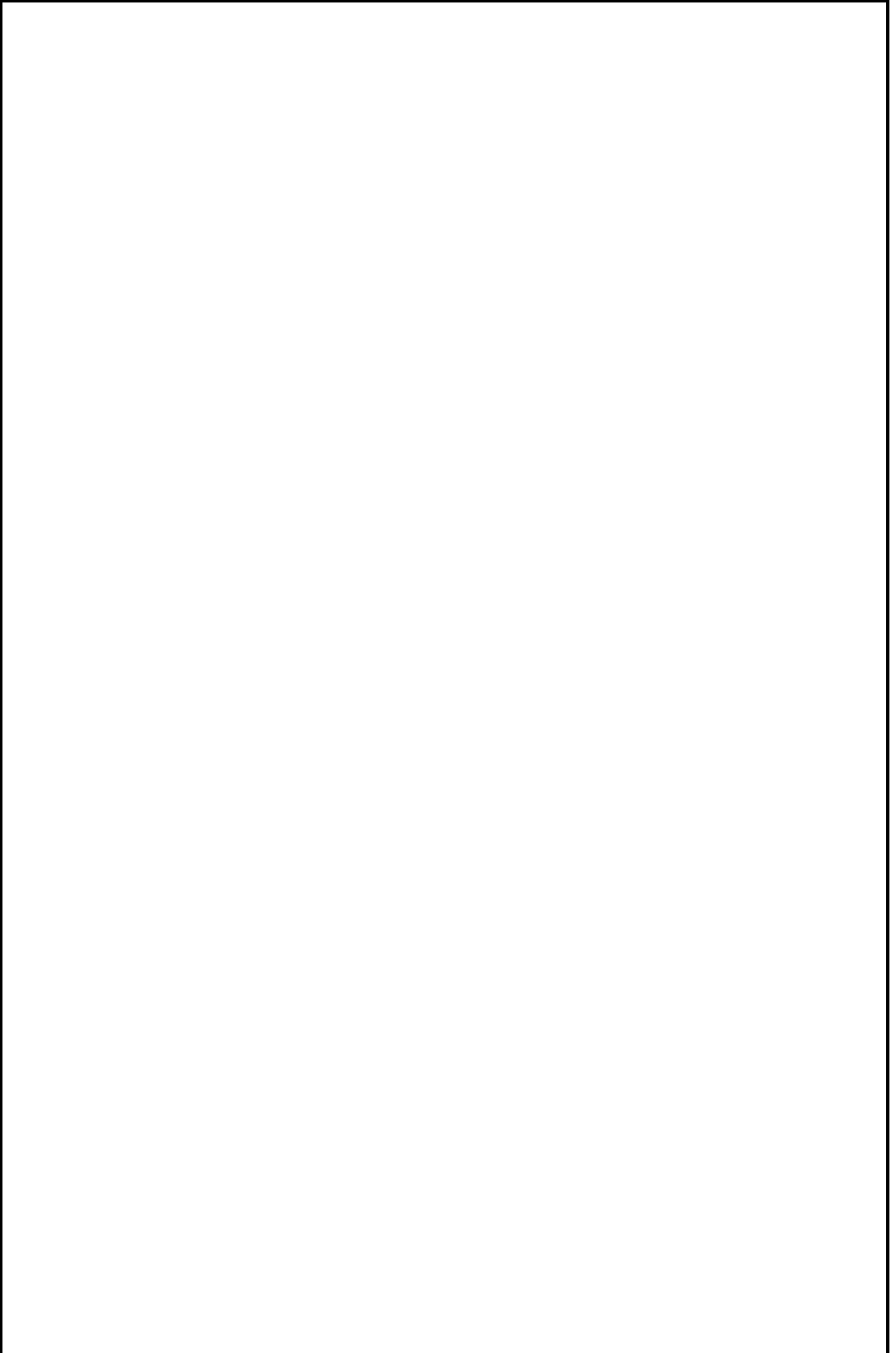
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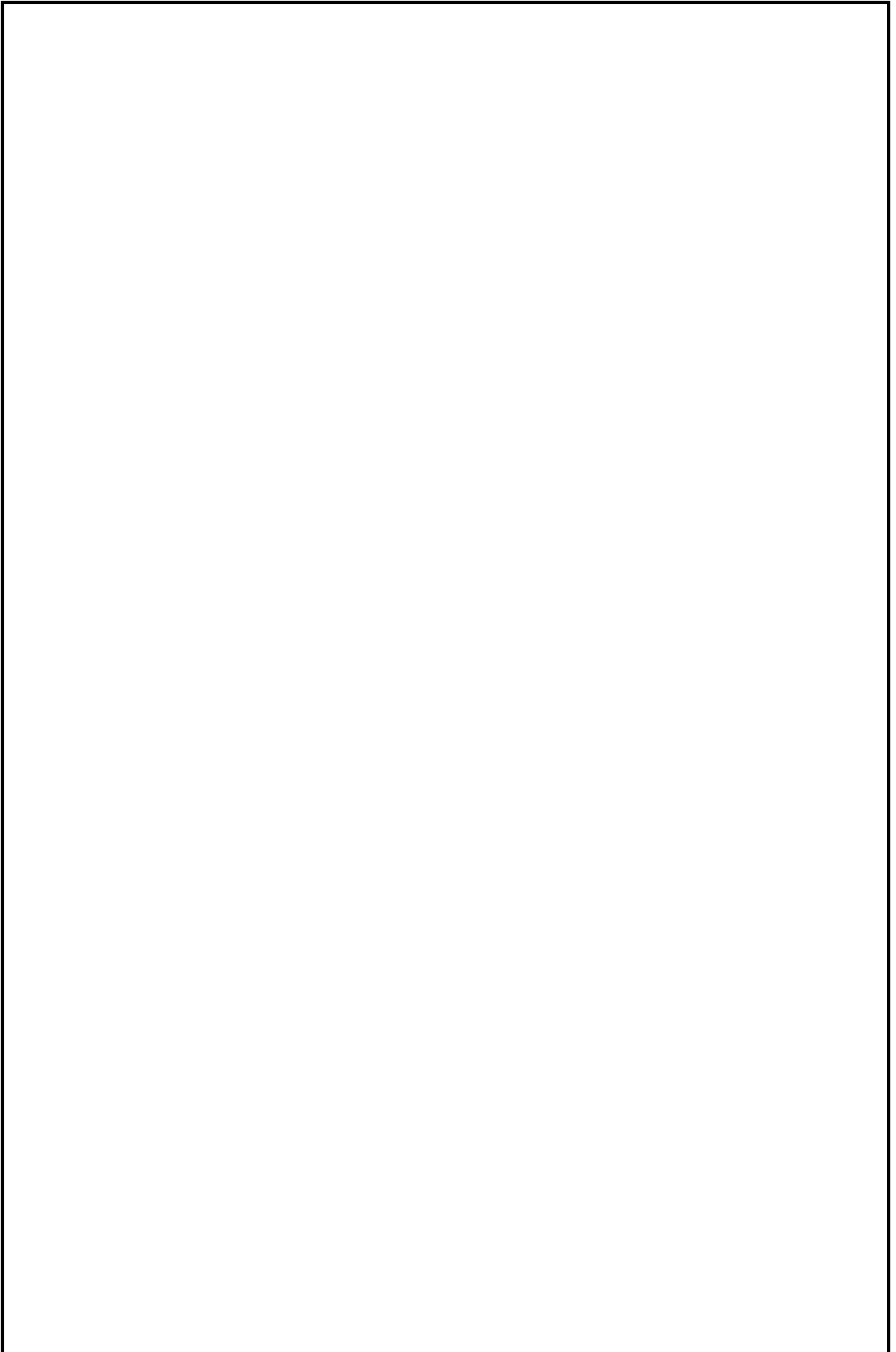
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About the Journal

Prayagraj Law Review (PLR) is an open-themed, double-blind peer reviewed open access journal. It is solely dedicated to expressing opinions on the current perception of law while keeping a tab on the modern jurisprudence and socio-political thinking. It strives to give a proper platform to detailed analytical and research works on topical issues and how they will be shaping a society of liberal and responsible individuals.

PLR brings together prestigious Academicians, Lawyers, Scholars, and Law Students while focusing on the single goal of encouraging research and empirical studies on the new dimensions of law along with a fresh perspective on the classic legal and political dictums. Our team believes in providing opportunities to diverse intellectual pursuits from all the corners of the society to disperse such exchange of knowledge, assessment, and interpretations.

Our ambition is to provide an amiable and accessible platform for legal research and analysis to encourage, guide, and lead our younger generation in the field of legal research and modern analytical approach towards its understanding.



About this Issue

With the aim of encouraging research temperament among young minds and promoting quality research in the field of law, Prayagraj Law Review was established. Today we proudly and gladly publish this Second Issue titled Summer Issue : VOL 2 ISSUE 1 (2023).

After extensive and rigorous review process followed by our esteemed reviewers through double blind peer review process, out of huge quantity of submissions, five submissions were able to make their way to final publication categorised under Articles and Short Articles.

First Article titled INTIMATE PARTNER VIOLENCE AND THE GENDER authored by Dr. Ajai Singh is a guest contribution by our honourable Patron, associate professor at University of Allahabad. This article focuses on the forms of domestic violence faced by the Third gender within 4 walls by their partners. The lesbian, gay, and bisexual (LGB) population faces more difficult outcomes compared to the heterosexual population “across different life domains, including mental and physical health, subjective wellbeing, employment, poverty, homelessness, and social exclusion.

Second Article titled INTRICACIES OF REVENGE PORN: AN ANALYSIS OF LEGAL PROVISIONS authored by Dr. Sandeep Mishra, assistant professor at Amity Law School discusses how revenge Porn is a crime which is less known and very less discussed. The victim doesn't even know that she is becoming a victim of revenge porn. These days it has become very common. Reason being that, with no law in specific to deal with it, the committers of this crime have no fear in their heart and mind. The saddest part of this crime is that it can't be eliminated completely. But, its effect can be minimized at a great extent

Third Article titled ROLE AND IMPORTANCE OF JUDICIARY IN PROTECTING CHILDREN FROM SEXUAL OFFENCES authored by Dr. Sandeep Kumar, assistant professor at Motherhood University Roorkee and Prayag Kumar Paswan, research scholar at Motherhood University, examines the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which was passed by the Indian government in 2012. The purpose of this Act, which was passed on November 14, 2012, was to protect adolescents from sexual assaults and to make the judicial system a friendly place for them. Every day, there is an increase in child-related crime in India

Fourth Article titled Harmonizing Dharma and Democracy: Exploring the Principles of the Bhagavad

Gita in the Framework of Indian Constitution authored by Miss Nivedita, assistant professor at Shambhunath Institute of Law, talks about the basic principles which Gita proposes, one among them is 'Nishkamkarmyog' or the principle of 'Sthitpragya' individual who doesn't get affected by the everyday incidents of sorrow, pleasure or pain, but focuses on his/her goal understanding the true meaning of life which uplifts one from materialistic approach to a higher approach. How relevant these principles are to the legal fraternity, to the other dimensions of human lives, what principles our Constitution embodies?

In the category of Short Articles, First Short Article titled INDIA'S CYBERCRIME PROBLEM AND THE NEED FOR LEGAL SYSTEM REFORM authored by Vivek Kumar Singh, research scholar at National Forensic Science University, Gandhinagar To address crimes that are constantly evolving with the times, it is occasionally necessary to make adjustments to institutions and regulations. One such instance is cybercrime, which is currently a major issue for the nation. Currently, changes are an imperative necessity

.

Contribution from Patron

Dr. Ajai Singh

Associate Professor, University of Allahabad



INTIMATE PARTNER VIOLENCE AND THE THIRD GENDER

Dr. Ajai Singh

Associate Professor, University of Allahabad

Patron, Prayagraj Law Review

Abstract

LGBTQIA+ community across the world has been fighting tooth and nail for their rights and establishing their legal identity across the globe. From fighting for rights of equal opportunity to equal recognition of their capabilities, this community has seen it all. From one but huge victory by decriminalizing of Section 377 of IPC, to claiming recognition to same- sex marriage in India, we have come a long way.

Supreme Court in the petition for Same-Sex Marriage rights, it was well observed that it would hurdle the whole fraternity of Personal Laws. But what was completely out of picture during the debate of this petition was the Intimate Partner Violence (IPV). The lesbian, gay, and bisexual (LGB) population faces more difficult outcomes compared to the heterosexual population “across different life domains, including mental and physical health, subjective wellbeing, employment, poverty, homelessness, and social exclusion. IPV in the LGBTQ population has not been studied as frequently as in the heterosexual population.

Keywords: *LGBTQ, Third Gender, Domestic Violence, Intimate Partner Violence, Same-Sex Relationship*

PART I: INTRODUCTION

Our community is made up of individuals who are xenophobic—a fear or hate of strangers or foreigners—and who discriminate against LGBTQ persons as well as anyone who does not come from a particularly dominating society or culture. Lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals in particular struggle with homophobia, biphobia, transphobia, and heterosexism, which makes it difficult for them to talk about or confront the violence they experience and the support or assistance they require. The main issue with this is that these people are either unable or do not have the chance to discuss the violence that has occurred to them throughout their lives. It merely strengthens the stereotype that same-sex partnerships are abnormal or ill.

According to one of the most recent and representative study reports, almost one-third of sexual minority males and one-half of sexual minority women in the United States affirmed they were victims of physical or psychological abuse in a romantic relationship. In addition, over 50% of gay men and almost 75% of lesbian women reported that they were victims of psychological IPV. There is a lack of studies that address LGB individuals involved in IPV; this is mostly due to the silence that has historically existed around violence in the LGB community, a silence built on fears and myths that have obstructed a public discussion on the phenomenon¹. A qualitative study using in-depth interviews with men who were attracted to people of the same gender found that emotional and verbal abuse was the most common type of abuse described by IPV survivors, again more often than physical violence. According to research, the most prevalent type of intimate partner violence (IPV) in relationships involving sexual minorities is stalking, not dating. According to a survey,

¹ Front. Psychol., 21 August 2018 Sec. Gender, Sex and Sexualities Volume 9 - 2018 | <https://doi.org/10.3389/fpsyg.2018.01506>

60.27% of gay men and 60.38% of bisexual men said they had been the victims of IPV, or intimate partner violence.¹² This type of aggressiveness was reported by almost half of heterosexual women (47.5%), seven out of ten bisexual women (76.2%), and six out of ten lesbians (63.0%).^{2, 3} However, a number of systematic reviews and research have found that, in same-sex relationships, sexual violence is the least severe type of IPV, and heterosexism can influence these partnerships.

PART II: GENESIS OF DOMESTIC VIOLENCE

Early exposure to domestic abuse and the understanding that using aggressiveness and violence to get what one wants increases the likelihood that an individual will use violence against their partner later in life and contributes to the intergenerational transfer of violence.¹⁷ IPV also acts in the LGB population through syndemics or synergistic epidemics, in which a population's health problems cluster together due to biological interactions, intensifying the illness's total impact. As a result, problems with physical, mental, and behavioural health make vulnerable populations worse.¹⁸ Multiple mental health issues, including depression, posttraumatic stress disorder, and drug use disorder, are linked to intimate partner violence (IPV).

PART III: TYPES OF VIOLENCE FACED

There are various ways that heterosexual and LGBTQ partner violence are similar:

² Dickerson-Amaya, Natasha, and Bethany M. Coston. "Invisibility is not invincibility: The impact of intimate partner violence on gay, bisexual, and straight men's mental health." *American journal of men's health* 13.3 (2019): 1557988319849734.

³ Canan, Sasha N., et al. "Validation of the sexual experience survey-short form revised using lesbian, bisexual, and heterosexual women's narratives of sexual violence." *Archives of sexual behavior* 49 (2020): 1067-1083.

1. **Physical Violence:** Any aggressive behavior inflicted on the victim, such as striking, biting, slapping, beating, shoving, punching, pulling hair, burning, cutting, pinching, etc., will be considered physical abuse. Physical abuse also includes pressuring someone to consume drugs or alcohol and refusing them medical attention.
2. **Emotional Violence:** A victim of emotional abuse may have their sense of self-worth and/or shallowness diminished. Constant criticizing, calling names, destroying the victim's relationship with their children, or meddling with their skills are all common manifestations of emotional abuse.
3. **Economic Violence:** Once the perpetrator attempts to make the victim financially reliant, economic abuse occurs. Economic abusers typically succeed in retaining complete control over financial resources, preventing the victim from accessing money, or preventing the victim from attending employment or education.
4. **Sexual Violence:** Sexual abuse happens when someone tries to force or squeeze the victim into engaging in sexual activity or contact without that person's consent. The most common forms of this include rape based on marital status, aggressive sexual body parts, physical abuse that is followed by forced sex, sexually humiliating the victim, making crude jokes about sex, raping someone with a weapon or object, and/or making derogatory sexual remarks. This kind of aggression may potentially be fatal.
5. **Psychological Violence:** When someone abuses someone psychologically, they may threaten to harm themselves, the victim, their children, their family, friends, or their pets; they may destroy property; harm their pets; keep the victim away from loved ones; or prevent them

from attending school or working. Threats involving physical harm, injury, or the use of a weapon also qualify as psychological abuse.

PART IV: CONSEQUENCE OF IPV

1. Health Consequence:

Serious illnesses like HIV and AIDS, which are stigmatized in society, have a significant effect on gay and bisexual males. It is one of the prevalent illnesses observed in guys who have sex with men. It has been shown that it can result in abuse aspects for the individual experiencing it. Additionally, those who lack other sources of financial support when they become ill sometimes have no choice but to stay in violent situations. Additionally, it was revealed that 60% of HIV-positive homosexual men made decisions to remain in violent relationships mostly because they feared becoming ill and dying.

2. INTOXICATION:

While it has been shown that drugs and alcohol do not promote domestic violence, they can be considered as a coping mechanism. One study found that men living with HIV/AIDS who were gay reported higher rates of violence, which was associated with their use of crystal methamphetamine, which heightened the degree of physical violence.

3. PSYCHOLOGICAL CONSEQUENCE:

Intimate partner violence frequently results in psychological problems such as anxiety disorders, depression disorders, bipolar disorder, and any type of trauma-related illness. LGBT people are known to experience significant anxiety since they must come out to their family and friends as members of the LGBTQ community. It is also evident that these individuals encounter a great deal of prejudice and discrimination, which makes it common for them to encounter

homophobia and harassment anywhere, thus impacting their mental health.

PART V: CONCLUSION

Comparing the LGBTQ community to heterosexuals, we can conclude that they experience intimate partner violence on par with or even higher. Because of their distinct gender identity or sexual orientation, these persons have difficulty accessing assistance. The general public is ignorant of the various forms of violence that the LGBT community is subjected to, which, in a heteronormative society, typically goes unnoticed or is ignored, making these people feel powerless to report acts of violence against them. It was discovered that police and law enforcement have no interest in helping the LGBTQ community or resolving intimate partner violence. IPV is seen as innocuous in the case of lesbian women, yet there is a perceived stigma against gay males that they are less manly than heterosexual men.

In addition, a lot of victim-survivors have a nonchalant attitude about violence because of homophobia and the LGBTQ community's lack of awareness of it. Ideologies about masculinity and femininity that are ingrained in culture prevent LGBTQ victims of intimate partner violence from speaking out about or disclosing their experiences. In terms of the future, prejudice against LGB persons need to end completely, or at the very least be reduced to the point that it doesn't negatively impact their mental health. Physicians and other medical personnel should receive appropriate training so they can provide the LGBTQ community's IPV victims with the care they need. Reforms, initiatives, and support groups for LGBTQ individuals who have experienced intimate partner violence are imperative. A number of programs, forums, reforms, and workshops must be implemented in order for victims and offenders of violence to have positive relationships.

INTRICACIES OF REVENGE PORN: AN ANALYSIS OF LEGAL PROVISIONS

Dr. Sandeep Mishra

Assistant Professor, Amity Law School, Amity University, Lucknow

ABSTRACT

Now a days it is very well-known fact that online platforms like YouTube, WhatsApp and Google are used by people to share contents of sexual nature. These sexually explicit contents are used to influence, manipulate and shame a person. Here, people are more interested in knowing what is going in other person's life. People, with utmost interest, look into the intimate relationship of others. This is the dark truth of the society that videos of sexual harassment and other intimate clips are intensely browsed by people. It is a source of great pleasure for them. There is even a very big market for these kinds of images and videos. Quite often, girls of even tender age fall in traps of these bad guys whose only aim is to satisfy their sexual desires. Also nowadays, it has become essential to share nudes to prove love and affection to the partner. Often, the victim is not able to raise her voice against this injustice happening to them.

Today's time when internet has become lifeline for every human, this act has drastically increase ed. This has also resulted in a sudden rise of Revenge pornography. Revenge Pornography is rapidly growing in India. Battling against internet disgracing is anything but something straightforward maybe a solid fight. The casualty faces disgrace deeply and it is a reasonable and careful issue to manage.

KEYWORDS: *Porn, Revenge, Online, Harassment, Sexual-Harassment.*

PART I: INTRODUCTION

“Sexually explicit images of a person posted online without that person’s consent especially as a form of revenge or harassment is Revenge Porn.”²

Revenge pornography is the appropriation of explicitly seen sexual pictures or recordings of people without their consent. The sexually explicit pictures or video might be made by an accomplice in a close connection with the information and assent of the subject at that point, or it very well might be made without their insight. Not inconsistently the person in question (male or female) has been exposed to sexual brutality, frequently encouraged by opiates (rape drugs) which likewise cause a decreased feeling of agony, inclusion in the devolved sexual demonstration, dissociative impacts and amnesia. The ownership of the material might be utilized by the culprits to extort the subjects into performing other sex acts, to force them into proceeding with the relationship or to rebuff them for cutting off the association (in the event of relationship), to quiet them, to annihilate their standing, and additionally for monetary benefit.

The expression "Revenge Pornography" for the most part alludes to the transferring of this explicitly sexual material to embarrass and scare the subject, who has severed the relationship. The pictures are generally joined by adequate data to identify the imagined individual, normally names and areas, and can incorporate racy declarations, connections to web-based media profiles, street numbers and workplaces. Victims, whose pictures open them to work environment separation, digital following or actual assault, can have their lives destroyed subsequently. Given the training by certain organizations of looking for possible wellsprings of terrible exposure, numerous survivors of revenge pornography have lost their positions and got themselves viably unhirable. Some

scholastics contend that the expression "revenge pornography" ought not to be utilized, and rather that it ought to be alluded to as "picture based sexual abuse."

Many a times, sexual images or video clips without displaying any kind of revenge can be seen. This is different from revenge porn. The most important component for revenge porn is the motive to take revenge. Also, distributing these images and clips not just means to circulate them among a few people, but involves posting it on web. Just uncovering one's semi-nudes or a swimming outfit picture doesn't cover this region. The printed picture or the online flowed pictures should contain the victim's privates, anus or whatever other private organ which isn't intended to be appeared at any expense to anybody.

The main reason behind the videos and images of revenge porn is to take revenge. A person may make use of the method for various reasons like to coerce the victim to get involved in more sexual activities, to punish them for breaking out of relationship, or to force them to continue the love affair, to demand monetary benefits, to shame or take revenge from them for leaving the relationship. Or it may be just for fun that a person uploads the images and videos of his ex-lover.

In recent times, with the covid-19 virus and continuous lockdowns across the world, various new problems and challenges are arising with the passing days. When looking specifically at the condition of women, they are facing extreme hardship. Their conditions are getting bad every day. They are facing trouble in every aspect be it economically, physically, mentally or emotionally. The working women are now burdened with the dual responsibility of managing children as well as performing their office work at home. Many women are facing domestic violence. They are being beaten, sexually molested or forced to certain tasks which they may not want to. In certain cases, they are being treated as animals. They are even being trafficked as sex slaves or for their organs.

Apart from all this, a very less known issue is that of 'Revenge Porn'⁵. During lockdowns, it was not possible for lovers to meet each other. This gave rise of various new practices, which were considered as a test of love. It was seen a way to prove love and affection toward one's partner. This practice was of sharing nudes across net. Earlier, it was common mostly across celebrities. But now most of the young women and girls are struggling from this issue.

Revenge porn, as earlier said, is the uploading of nudes in the form of image or video without the consent of the victim. The motive behind doing this is to take revenge. In covid-19, because of prolonged distance, there was a spike in breakups. Not just because of distance, but also because of long time couples were spending together, they are not able to adjust, and result is breakups or divorce.

But the focus is on long distance relations. To fulfil their wants and desires, couples engage in sharing their nudes. These nudes get saved in their devices. But if the relationship doesn't work and breaking up seems to be the last resort, these images and videos become a means to punish the partner for breaking up, or for money, or to shame the person or for just fun. Mostly the women become victim of this crime i.e. Revenge Porn. Their videos and images get uploaded by their partner in porn sites with their name and some other basic information through which they could be found. This is purely done to take revenge.

This crime was present from a long time but due to this pandemic the intensity of it has increased. The crime has just become more apparent and people have become easy predators this sexual abuse and exploitation. It is very important to address this issue as it has long lasting impacts on the lives of the victim.

PART II: REVENGE PORN: TRACING HISTORY

During the 1980s, Hustler magazine started a month to month highlight of peruses submitted pictures of exposed ladies called "Beaver Hunt". Beaver Hunt photos were frequently joined by insights concerning the lady, similar to her side interests, her sexual dreams, and now and then her name. Not the entirety of the ladies included in Beaver Hunt presented their own pictures and a few ladies sued the magazine for distributing their photos without their authorization, or without checking data on manufactured assent forms.

After twenty years, Italian scientist Sergio Messina distinguished "realcore sexual entertainment", another class comprising of pictures and recordings of exes disseminated through Usenet groups. In 2008, novice pornography aggregator XTube started accepting grievances that obscene substance had been posted without subjects' assent. A few destinations started arranging consensual porn to take after vindicates pornography, just as facilitating "real" client submitted content.

Retribution pornography started gathering global media consideration when Hunter Moore dispatched the site Is Anyone Up in 2010. The site highlighted client submitted pornography, and was one of the primary destinations to embrace the model started by Beaver Hunt: Is Anyone Up regularly included recognizing data, like the subjects' names, bosses, delivers and connections to long range informal communication profiles. Activist Charlotte Laws was the principal individual to stand up against Moore and one of the main individuals to openly uphold vengeance pornography casualties.

Not much incidents could be seen relating to revenge pornography in the 20th century. Its craze was very low in the beginning of 2000s. But in the millennium year, revenge porn took a completely new form. The YouTube, Red Tube and other pornographic websites only became popular after 2005. It was only in the next decade that people got unlimited access to internet and data services. There

was a drastic increase in the level of porn viewers in the 2016 when internet became free.

PART III: PORNOGRAPHY AND REVENGE PORNOGRAPHY: A DIFFERENT APPROACH

It is many a times seen that people consider porn videos and revenge porn videos the same. But this is not so. Both, revenge pornography and pornography differ a lot. Now the question arises what actually is the difference between the two.

The main difference between the two is the purpose of the video.⁴ The videos oriented specifically towards pornography are specially made to upload on internet. While in the case of revenge pornography, the motive to take revenge is the driving force behind uploading these videos.

Next, the objective behind uploading these videos and pictures differ. The motto behind uploading porn videos is to build the position of the pornography stars, to make profits, to set up a name and popularity in the pornography business and so forth. Revenge pornography is transferred for the reasons like offending the person in question, making the video viral, for retribution and some even do this with no assumptions except for the sake of entertainment.

Consent may or may not have been given by the victim in the case of revenge pornography, but in pornography, the subject gives his/her consent wholeheartedly. Mostly, revenge porn involves stalking. Hidden cameras may have been placed in bathrooms, bedrooms or trail room to record intimate content. But in pornography, the whole content is recorded by using high revolution cameras with the permission of the subject matter.

Videos of revenge porn seem very realistic as they are very personal and there is no story line in it. It is the leaked clips of an individual. On the other hand, porn films overstate. They have a story line which is specially made for the public. It

has no individuality. Pornography gives them benefit and gains, yet revenge pornography gives them disgrace and despondency. The normal

age time of the victims of revenge porn is around 11-25. By and large, youngsters and grown-ups are the ones who fall into this sinkhole. Pornography has neither age bar nor limitations. The pornography universe has an assortment of individuals in their particular age category.

PART IV: LAW AND LEGAL PROVISIONS: A COMPERATIVE STUDY

Laws against 'revenge porn' are emerging slowly. With the sudden increase in the cases of 'Revenge Pornography', there has been felt a need for a proper law against it. Many nations of the world have come up with laws dealing specifically with this issue. Recent nations include South Africa and Singapore, who passed laws against it in 2019. The Films and Publications Amendment Act⁶, 2019 of South Africa, it is a crime to proliferate the sexual photographs or films of the hidden parts of an individual, which is shared without their consent and with the sole aim of harming them. The punishment for the same is Rs. 150000 with or without imprisonment up to 2 years; and this punishment gets doubled up with the victims is identified in the image or video. The court even asks the state government to treat the victim as a rape survivor and provide adequate compensation and care.

Similarly, in Singapore, the Criminal Law Reform Act⁷ was passed on 6 May, 2019 and took effect on 1 January 2020. The Act criminalizes Revenge Porn, with a punishment of jail term of maximum 5 years with fines and caning as a sentencing option. And if the person has committed a crime against the victims who is less than 14 years, jail term is mandatory in that case.

Now looking at the case of our country, no such law has been passed. There are no laws in our country which specifically criminalizes 'Revenge Porn'. In any

case, different sections of Indian Penal Code, 1860 (IPC) and Information Technology Act, 2000 (IT) are made in use to punish the culprit for the crime. In IT Act, Section 66E, 67 and 67A deal with it. On the other hand, in IPC, the accused is punishable under Sections of 292, 499, 500, 504, 506, 509, 354, 354A, 354C and 354D. Imprisonment and fine may vary according to the intensity of the crime. Usually, the imprisonment may not increase more than 3 years but there are exceptions when it increased up to 5 years. A good thing about filing complaint in case of Revenge Porn is that, it is not

mandatory for the victim to be present at the police station to file the complaint. Anyone can file it on her behalf. Even the victim can ask for a female constable to register the complaint, though there are no official provisions relating to this.

The culprit is punishable under Indian Penal Code 1860 under the following sections:

- Section 292: “Distribution or circulation of obscene material”⁴.
- Section 499: “Act done by a person intending to harm or having a reason to believe the same would harm an individual’s reputation or character”⁵.
- Section 500: “Defaming the concerned persons”⁶.
- Section 504: “Intentional insult with intent to provoke breach of the peace.”⁷
- Section 506: “Punishment for criminal intimidation”⁸.
- Section 509: “Word, gesture or act intended to insult the modesty of a woman”⁹.

⁴ S 292, Indian Penal Code 1860

⁵ S 499, *Id.*

⁶ S 500, *Id.*

⁷ S 504, *Id.*

⁸ S 506, *Id.*

- Section 354: “Outraging the modesty of a woman”¹⁰.
- Section 354A: “Sexual harassment and punishment for sexual harassment”¹¹.
- Section 354C: “Voyeurism (Capturing or dissemination of pictures of a woman engaged in a private act without her consent)”¹².
- Section 354D: “Stalking”¹³

The Culprit, under the Information Technology Act is punished under the following Sections:

- Section 66E: “Intentionally capturing and publishing the private area of a person or violating the privacy of a person.”
- Section 67: “Transmitting the private media in the electronic form, any material which is lascivious or appeals to the prurient interest or tends to deprave and corrupt.”
- Section 67A: “Stipulated punishment for publishing and transmitting of material containing sexually explicit acts etc., in electronic form.”

Apart from these laws, there are debates over providing the Right to be forgotten to the victim of ‘Revenge Pornography’. It was the very first time that this topic came up in the constitutional court. It talked about the right of social media users to be forgotten, and also showed concern over the silence of law on the remedy for victims whose sexually explicit videos or photos get viral on internet just because of their ex-lover’s motive to take revenge.

⁹ S 509, *Id.*

¹⁰ S 354, *Id.*

¹¹ S 354A, *Id.*

¹² S 354C, *Id.*

¹³ S 354D, *Id.*

The ‘Right to be Forgotten’ deals with erasing the data when it is no longer of any use or in revocation of the consent of the victim, which is recognized under the General Data Protection Regulation (GDPR)⁸, the digital privacy law of Europe. Sadly, this concept is not yet recognized in our country.

Justice Panigrahi raised the concern that even though this Right to be Forgotten is in sync with Right to Privacy, which Supreme Court ruled in the K.S. Puttaswamy case¹⁴ to be core to the Right to life given by our Constitution under Article 21.

“Allowing such objectionable photos or videos to remain on social media platform, without the consent of a woman, is a direct affront on woman’s modesty and, more importantly, on her right to privacy. In such cases, either the victim herself or the prosecution may, if so advised, seek appropriate orders to protect the victim’s fundamental right to privacy, by seeking appropriate orders to have such offensive posts erased from the public platform, irrespective of the ongoing criminal process,”⁹ said the Orissa High Court during a recent case which for the first time gave punishment to a person for the crime of revenge porn.

Despite the way that none of the laws entirely address revenge pornography, the current laws additionally experience the ill effects of different other significant downsides. One primary issue seen in the recently executed Section 354C of the IPC is that it is gendered in its application and limits its degree to a male guilty party and female casualty. A similar drawback is depicted by Section 509 of the IPC and Section 4 and 6 of the IRWA¹⁵. Though the IT Act¹⁶ doesn’t give the issue of gender specificity, it experiences a lot graver issue that lies

¹⁴ Justice K S Puttaswamy (Retd) vs Union of India (2018) 1 1 (SCC)

¹⁵ Indecent Representation of Women Act, 1986

¹⁶ Information Technology Act, 2000

demonstration of inalienable logical inconsistency predominant in the current overall set of laws intended to vindicate pornography. As can be induced prima facie, certain sections, such as Section 67 of the IT Act¹⁷, can be used even against the victim. It can be used to prosecute the victim by giving the point that she voluntarily took the image or video and sent it to the accused.

PART V: REVENGE PORN: JUDICIAL RESPONSE

These days people used to search the web for much more real and natural sex content. But have we ever thought what that person must have felt like whose private parts have become public to the entire world. How it would have felt when a person's naked body is all over the

internet? The most personal and intimate affairs of an individual are revenged just to satisfy ego! A young lady falls into profound mental injury, despondency and anguish when she comes to realize that she had been disgraced and tormented on the web. She gets embarrassed, humiliated and nervousness hits her significantly harder.

The victim suffers from Post-Traumatic Stress Disorder (PTSD). With our country being extremely judgmental and secular in nature, the victim suffers from extreme depression if she doesn't receive proper guidance. She takes a very long time to come back to her normal life and gather courage to fight back. A very sad part is that not only the society but also her loved ones, her family and friends, treat her as outcast. They don't let her to justify herself and keep doing her character assassination. She feels ashamed and treated like a slut.

Even if she wishes or tries to stand up again and fight for her, every possible force pulls her back and shames her for the incident. Many teenage girls, because of this, drop out of school and college and confine themselves in the four walls as

¹⁷ *Id.*

they are afraid of meeting and trusting new people. Neither it is easy nor is it enough for the victim to get back her dignity, respect, freedom and self-esteem back. The society needs to change its views towards the victim. She experiences a life of pain and suffers until she pulls out her strengths back to stand for herself and start her life back again. There are just a few cases which are actually registered to the police or approached to some women organization for help. In almost all the time, victim can't gather the courage to speak out against it and suffers silently. In the case of *State of West Bengal V Animesh Boxi*¹⁸ is of great historical importance as it was the first case ever in India when the culprit was convicted for 'Revenge Porn'. It took place in March 2018. The harsh punishment which was given, displays strong message to committers of 'Revenge Pornography'. In this situation, the culprit subsequent to extorting the casualty transferred her offensive pictures on pornography locales. He was charged under Sec 354, 453C, 500, 509 and 44 of the IPC and under Sec 66E, 67, 67A of the IT Act separately. The Court held the accused, 23-year-old, blameworthy for each one of the offenses as charged and condemned him to five years detainment alongside a fine of Rs. 9,000. It additionally requested that the victim be paid remuneration under the state's Victim Compensation Scheme.

PART VI: REVENGE PORN IN THE AGE OF SOCIAL MEDIA: A RELTIVE STUDY

The fastest means to share information these days is through social media. Information spreads like wild fire through social networking sites. This information can either be positive or negative. Thus, it is through these sites that the revenge porn content becomes viral. Directly or indirectly, social media is the first source for these intimate contents. If social media is kept under check, then revenge porn can be eliminated greatly. Now days there are so many social

¹⁸C.R.M. No. 11806 of 2017, Decided on 3 January 2018, CLHC

networking sites available like Facebook, Twitter, Instagram, WhatsApp, Telegram, etc.

Facebook's founder Mark Zuckerberg solved this problem and made certain solutions for emerging problems.¹³ He identified the profiles of those who shared or promoted or encouraged these types of content and ended this issue. Though the problem didn't end completely, but was greatly reduced. He even warned them that they would face legal issue. Twitter too did the same thing. These two are the only networking sites which have reduced the issue of Revenge Porn to a large extent. YouTube doesn't allow access to adult content if the view is under the age of 18. Adult content is also only upto some extent. If it is too sensitive, the owner of that channel is warred and asked to remove the video. Social Networking sites are more misused than used properly. Twitter and Facebook restrict such content to some extent; hence people look out for other platforms to share their information. WhatsApp allows just somewhat. A definitive exchange instrument for recordings under the branch of Revenge erotic entertainment is Telegram. Telegram is a late discovered application which is utilized as an option for WhatsApp. It nearly has each and every fundamental element from WhatsApp and added some additional highlights which in WhatsApp don't exist like downloading documents regardless of the record size and so on. A vast majority of the Telegram users use it for downloading films from pilfered sources and for peeping into the video contents of the vengeance erotic entertainment victims. No matter how large is the file; one can download it from here. Also, telegram is highly encrypted. Not even the developers will know what two people are chatting and sharing in Telegram. This makes the sharing of revenge porn content extremely easy and safe here. Telegram on its own doesn't support such kind of content, but it is misused by its users. To stop this, detectives came up with the solution. A group of 433 detectives got added into certain groups which they found suspicious. They spent a few months in it and

identified and dragged some culprits. According to sources, they were 12 in all, who were arrested and sentenced.¹⁴

With regards to Instagram, one can't straightforwardly transfer the video/photograph in personal Instagram accounts if the substance is excessively touchy. Whenever transferred thus, the video, yet in addition the current ID will become inaccessible for all time.

So, social networking sites can play both positive and negative role in this crime. The developers must be aware about these issues and problems which can arise and should be ready with solutions to combat them.

PART VII: CONCLUSION

Revenge Porn is such a crime which can never be completely eliminated. Even if it gets removed from the web, how can it be removed from the memories and thinking of the all those people who saw the videos and pictures of the victim. Hence for that, there should be change in mentality of the people. A supportive environment must be established which would encourage the victim to fight against such situations. There is a direct connection between the number of views and the quantity of content posted on web. If the views are kept low, the culprits won't be encouraged to post such contents.

Revenge Porn is such a crime which is less known and very less discussed. The victim doesn't even know that she is becoming a victim of revenge porn. These days it has become very common. Reason being that, with no law in specific to deal with it, the committers of this crime have no fear in their heart and mind. The saddest part of this crime is that it can't be eliminated completely. But, its effect can be minimized at a great extent. It breaks heart just by thinking that a big market is present in our society which encourages these revenge porn videos and images. People even search the web for the same. They don't even think

about what the person in that video or image may feel like. Unless the society doesn't start thinking from their point of view and act against revenge pornography content, this crime can't be controlled.

The very first step towards the elimination or controlling revenge porn is the absence of revenge porn content. This is possible when the victim understands whom to trust and whom not to. Trust is the basis because of which a victim sends the images of her/his private parts. The best part is not to share one's intimate images and photos to anyone.

The law specialists should be simple for the victim to approach and ought not to humiliate her with judgmental contemplations. Numerous victims face where disgracing particularly in the police headquarters which causes her to feel crushed. The punishment provided to the culprits must be extreme in nature and no kind of delay should be done while dealing with the matter.

the porn web sites having videos and images of the victim of revenge porn should act immediately by removing the content. They should delete all such sexual content which were added in their site without the consent of the person concerned.

Hence, if the watchers begin showing some kindness towards the people in question, the creator will decrease his activities due to low support and no consideration. A definitive control of retribution pornography flow is in the possession of pornography watchers.

ROLE AND IMPORTANCE OF JUDICIARY IN PROTECTING CHILDREN FROM SEXUAL OFFENCES

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ABSTRACT

This article examines the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which was passed by the Indian government in 2012. The purpose of this Act, which was passed on November 14, 2012, was to protect adolescents from sexual assaults and to make the judicial system a friendly place for them. Every day, there is an increase in child-related crime in India. The establishment of this Act was essential to ensure a swift and secure legal process in situations involving sexual offenses, since children need not to bear painful memories of wrongdoing perpetrated against them. The youngster should also be protected from the upsetting consequences of the arduous legal process. This article provides a thorough overview of the POCSO Act's, significant court decisions, and a number of case studies that illustrate its key features.

KEY WORDS: *Child, Sexual harassment, Sexual abuse, Pornography, Special Court, Judgment, Penetrative sexual assault, Judicial case study.*

PART I: INTRODUCTION

There is a strong sense of urgency to provide victims of child sexual assault justice as soon as possible, notwithstanding the depressing rise in cases in India. In our country, the law governing sexual offenses committed with child

is the POCSO Act, which carries harsh consequences for violators. A government estimate states that more than 23% of Indian women are sexually abused or harassed before they become eighteen. Usually, the parents choose not to disclose the occurrence because they are aware of the abuser. India didn't pass any laws to address crimes against children until 2012, even though the UN adopted the Convention on the Rights of the Child in 1989. The Protection of Children from Sexual Offenses Act was passed in 2012 to protect children from all forms of sexual abuse. It prescribed harsh punishments for crimes against minors, including a minimum of 20 years in prison and the death penalty in situations of aggravated penetrative sexual assault. This article will address the POCSO Act, 2012, its provisions, the 2019 revision, the historic ruling, and case studies.

PART II: PROMINENT CASES & JUDGEMENTS BEFORE POCSO

A summary of key cases and the decisions made in them that laid the legal groundwork for the 2012 Protection of Children from Sexual Offenses Act and a victim-and child-friendly legal system.

1. Ghanashyam Misra vs The State (1956)¹

Ghanashyam Misra was a teacher who had sexually abused a 10-year-old girl on school property. The Orissa High Court extended Misra's sentence in 1956 after learning that the child's attacker was someone in a position of trust or authority. The verdict says, "The circumstances are all of an aggravating nature." The victim is a ten-year-old girl, and the perpetrator is an adult who is 39 years old. He took advantage of his position to make her go into the classroom and do this horrible thing, which may have ended up ruining the girl's entire career.

¹ AIR 1957 ORI 78.

2. Mathura Rape Case (Tuka Ram And Anr vs State Of Maharashtra on 15 September, 1978)²

Mathura, a tribal girl who was underage at the time, is accused of being sexually abused by two police officials on the premises of the Desai Ganj Police Station in the Chandrapur district of Maharashtra on March 26, 1972. After the accused was found not guilty by the Supreme Court, the public outcry and protests led to The Criminal Law (Second Amendment) Act 1983, which amended the rape laws in India.

3. Harpal Singh & Anr. V/S State Of Himachal Pradesh on 14 November, 1980³

The Supreme Court granted an excuse for the 16-year-old girl's rape and the delay in submitting the initial information report. The court said that because the issue concerns the family's honor, it is usual for members to consider the situation carefully before determining whether or not to proceed with legal action. The court determined that the child was under 16 years old, thus it did not matter if she consented to sexual conduct. The court further determined that a delay in reporting the issue will not affect the case if a reasonable explanation can be given.

4. Delhi Domestic Working Women's Forum vs UOI and Others on 14 December, 1989⁴

Six teenage domestic servants were brutally raped, beaten, and tormented by army soldiers on a train traveling from Ranchi to Delhi. This decision recognized the challenges that the victims faced throughout the court case and set forth a number of guidelines that needed to be followed when dealing with cases involving sexual offenses:-

² 1979 AIR 185.

³ AIR 1981 SC 361.

⁴ 1995 SCC (1) 14.

- The complainants of sexual assault cases should be provided with adequate legal representation
- Legal assistance will have to be provided at the police station
- The police should be under a duty to inform the victim of her right to representation before any questions were asked of her.
- A list of advocates willing to act in these cases should be kept at the police station for victims.
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment.
- In all rape trials anonymity of the victim must be maintained, as far as necessary.
- Rape victims need to be given adequate and fair financial compensation.
- Compensation for victims shall be awarded by the court whether or not a conviction has taken place.

PART III: SECTION WISE JUDGMENT: AFTER POCSO

1. Lokesh vs. State (07.06.2019 - DELHC)⁵

- **Subject Matter:** Penetrative sexual assault & Aggravated penetrative sexual assault (Section-3 & 5)
- **Issue:** Whether the act of penetrative sexual assault has been committed on the prosecutrix?
- **Facts:** The prosecutrix, the daughter of the complainant, Guddi, appeared at the police station in 2013 when she was about 4 years old. The prosecution against the current appellant was based on Guddi's statement, which claimed that she, the prosecutrix, and her 9-year-old son had gone to Munirka's Rama

⁵ MANU/DE/2004/2019.

Market to meet the appellant, who worked at a cycle store, for the occasion of “Bhai Duj.” After the ceremony, the appellant told her that his mother had asked them to come to his house, and that Guddi and her child had gone to the appellant's house in Kakrola Vihar, where he resided with his mother. Nevertheless, it was after 10 p.m. when the appellant and the prosecutrix arrived at his residence. She noticed that the prosecutrix appeared upset, so she asked what the circumstances were. She was informed that the appellant had taken her to a bush, stripped off, and inserted something she referred to as her “susu” a term that, in this context, may be taken as a code word for “genitals” in her vagina. And he put his susu in her anus then. The prosecutrix also informed her mother that she started crying after the conduct caused her to experience extreme pain. When she told her mother what had happened, the appellant hit her and threatened to kill her. When the prosecutrix removed her underpants, she revealed edema and bloodstains in her genital region. She continued by saying that she was scared to inform anyone about what had happened, so she sought private treatment for her daughter, the prosecutrix. She notified her family however, and they encouraged her to call the police when the pain continued and she did not get better. In accordance with Sections 3, 4, 5, and 6 of the POCSO Act and Section 376 of the IPC, the Sessions Court declared the accused guilty. Hence, the present inquiry.

- **Held:** In cases involving child sexual abuse, the child prosecutor’s statement is always the first and most important piece of evidence. First of all, it should be mentioned that there isn’t much of a debate in this specific instance regarding the

child prosecutrix's age—four years old, based on records from the Registrar of Births and Deaths office. Guddi testified throughout the trial that she had observed cut marks in the bathroom surrounding her daughter's anal area. Upon questioning the prosecutrix, she was informed that the appellant had undressed in the forest, used a cloth to gag herself, and then “put her (penis) private organ in her anus as well as on her urinating part.” PW-6 went on to state that in addition to injury indications on her body, additional examination revealed two or three incision marks on her daughter's anus. I believe that this testimony, taken as a whole, proves beyond a reasonable doubt that the appellant launched a vicious anal assault on the prosecutrix. In this case, the prosecutrix had barely smelled infancy, much less puberty, therefore the appellant mercilessly pillaged her innocence. The fact that he chose to sodomize her added to the deviance of his conduct. There is no question that the prosecutrix will suffer for the rest of her life due to the appellant. Consequently, the conviction is upheld but the sentence remains unchanged.

2. Mondi Murali Krishna vs. Dumpa Hanisha Naga Lakshmi and Ors.
(07.05.2020 - APHC)⁶

- **Subject Matter:** Sexual assault & Aggravated sexual assault (Section 7 & 9)
- **Issues:** a. Whether the offences committed by the accused amount to sexual harassment or sexual assault? b. Whether the facts of the case constitute any offence punishable under the provisions of the POCSO Act?

⁶ MANU/AP/0033/2020

- **Facts:** The investigation' findings demonstrated that the defendants were the deceased's elders. They frequently made sexual approaches to her, even though she refused. One of the accused followed her all the way back to her hometown. They used to bother her by calling her without permission, loitering around the college campus, and having inappropriate conversations. She kept a daily journal in which she described each of these activities. Her father was also informed about it by her, and he followed up with the Principal and the HOD. But it was all for naught. The accused's rude and lewd actions during the fresher's party award ceremony, where they touched the dead inappropriately on stage and made her seem awful in front of everyone, were the last straw in the deceased's case. The intense psychological ramifications of this led her to commit suicide in her dorm room. The case fulfills the requirements for the accused to have committed offenses against the deceased that are punishable by Sections 7, 8, 9, 11, and 12 of the POCSO Act, including sexual assault and harassment, according to the investigating officer. Furthermore, a case under the POCSO Act is established because the deceased was a minor at the time of the aforementioned crimes. Because the deceased was not a child when they committed suicide, the sessions court decided that the POCSO Act does not apply. Hence, the present appeal.
- **Held:** a) The sexual assault and harassment committed by the accused in question clearly fall under the purview of Sections 8 and 12 of the applicable Act. Catching her hands and waist with the intention of satisfying their desire, as well as following her around and making sexual offers to her, are acts that clearly constitute an offense punishable under Sections 7 and 11 of the

Act. The phrase “doing any other act with sexual intent” in the second section is used in a way that is sufficiently general to cover a wide range of additional offenses that criminals do against minors with a sexual motive. Because of this, this Court thinks that the second part of the previously mentioned Section relates to the current facts of the case.

b) It is evident that the first part of the Section defines a sexual assault offense as touching a child's vagina, penis, anus, or breast. The second part of the Section defines a sexual assault offense as any other act done with the intent to commit a sexual act that involves physical contact but does not involve penetration. Thus, these acts against the deceased, committed on April 18, 2015, when she was a child and not a major, by accused 2 and 3, about which evidence was acquired throughout the investigation, prima facie amount to a sexual assault offense under Section 7 of the Act. According to Clause (iv) of Section 11, a person who follows, watches, or interacts with a child repeatedly or continuously, whether in person or through digital, electronic, or other means, is considered to have committed the sexual harassment offense as defined by Section 11 of the Act. It is clear that these actions of persistently following her both in person and via a mobile device will result in the penalty specified in this section.

3. Satish vs. The State of Maharashtra (19.01.2021 - BOMHC)⁷

- **Subject Matter:** Distinction between Sexual Assault under POCSO Act and IPC. (Section 7)

⁷ MANU/MH/0064/2021

- **Issue:** Whether the act committed by the accused is sexual assault under POCSO Act?
- **Fact:** On December 14, 2016, the informant, who is the mother of the prosecutrix, made a report at the Gittikhadan police station in Nagpur. She said that the appellant had brought her daughter, who was about 12 years old, to his house while pretending to give her some guava. The prosecutrix pushed her breast there and tried to take off her salwar kameez. When the informant got there, she was able to save her daughter. She immediately filed a First Information Report. Based on the above described FIR, a crime was reported against the appellant/accused.
- **Held:** Since there is no specific information about whether the top was removed or whether he reached inside and touched the 12-year-old girl's breast, the act of pressing her breast would not be considered "sexual assault." If someone touches a lady or girl's breasts with the intention of offending her modesty, that person may be charged with criminal force. We are unable to accept this contribution for the reasons mentioned above. Granted, the prosecution does not assert that the appellant's removal of her top revealed her breasts. As a result, there isn't any direct physical touch, or skin-to-skin contact intended for non-piercing sex. After considering the aforementioned points, this Court concludes that the appellant was found guilty of a minor misdemeanor under Section 354 of the IPC and not guilty under Section 8 of the POCSO Act. Along with a year of rehabilitation and a 500 rupee fine, the appellant was also sentenced to one month of rehabilitation in the event that the fine went unpaid. The offence that is punished under Section

342 of the Indian Penal Code is upheld. If the offence is not finished, the punishment involves a one-month prison sentence, a fine of Rs. 500, and six months of incarceration.

4. Vanita Vasant Patil and Ors. vs. The State of Maharashtra and Ors.
(02.11.2018 - BOMHC)⁸

- **Subject Matter:** Use of a child for pornographic purposes (Section 13)
- **Issue:** Whether the act of the accused is covered under the provision of using a child for pornographic purposes?
- **Facts:** In the village of Mothi Jui, Taluka Uran, the informant/victim girl resides with her parents, brother, and sisters. She attended the Z.P. Primary School in the Mothi Jui village, where she was enrolled in the fifth grade. Accused No. 1 worked as a teacher and Accused No. 2 as the headmistress at the aforementioned institution. Two months prior to the filing of the report, the girl who was the informant and victim was playing on school property with other children. After calling the informant and two or three other females, Accused No. 1 sent the other girls to their own classroom and brought the informant alone to the 6th-A classroom. Then the first accused allegedly wanted to take a picture of the informant, so he broke out of the assigned classroom, gave her some chocolate, and put her on a bench. Then the first accused put the informant on the bench, undressed her, and used his cellphone to take images of her chest and private parts while claiming to be the one making the payments. The informant kept what transpired a secret from others. The informant went to the Uran Police Station with her

⁸ MANU/MH/3022/2018

parents on January 20, 2013, to make a report regarding the aforementioned incident. Dr. Jaya Shrinivasan saw the informant after PI Patil referred him, and he suspected that there may be proof of sexual assault. After placing the accused under arrest, PI Patil sent Accused No. 1 for an examination. The accused was charged under various laws, including sections 13 and 14. The trial court determined that the accused was guilty of the specified offense. Hence, the present appeal.

- **Held:** We have determined that the testimony of victim Y, the medical officer (PW-14), and other prosecution witnesses is inadmissible and cannot be used as the basis for a conviction after re-examining all the material that is now accessible. Moreover, the information in the file does not establish the veracity of the alleged sexual assault incident. It is not possible to prove the accused person's guilt beyond a reasonable doubt with the evidence at hand. The accused cannot be found guilty of the allegations made against them due to a lack of substantial evidence. It is decided that the trial court's reasoning and conclusions were inaccurate, unsupported by the law, and based on a faulty assessment of the facts in the file. In our opinion, the prosecution has not established the guilt of the two accused defendants beyond a reasonable doubt. Therefore, the accused persons should be given the benefit of the doubt.

PART IV: LANDMARK JUDGMENT

A. SUPREME COURT

1. Jarnail Singh v. State of Haryana (2013)⁹

⁹ AIR 2013 SC 3467

The appellant is accused of kidnapping Savitri Devi's daughter and sexually abusing her while she slept. The Juvenile Justice (Care and Protection of Children) Rules, 2007 system for ascertaining the age of a child in conflict with the law can also be applied to cases under the POCSO Act, 2012, the Supreme Court of India stated in this order. The Court determined that Jarnail Singh, the appellant, was guilty based on these standards.

2. State of Karnataka v. Shivanna (2014)¹⁰

The POCSO Act of 2012 states that not all statements made in compliance with Section 164 of the CrPC has to be documented. A Judicial Magistrate shall record a victim's statement under Sections 354, 354-A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E, or 509 of the IPC, according to Section 164(5-A)(a) of the Criminal Law (Amendment) Act, 2013. The statement must be recorded as soon as the commission is brought to the attention of the police. It was also determined that the victim needed to appear before the Judicial Magistrate, preferably a Lady Magistrate, within 24 hours of the rape in order for the statement to be recorded under Section 164(5A)(a) CrPC.

3. Attorney General for India v. Satish and another (2021)¹¹

The Nagpur Bench of the Bombay High Court ruled in Satish Ragde v. the State of Maharashtra (2021) that grabbing a child's breasts without making "skin-to-skin contact" was considered molestation under the POCSO Act, 2021. There was a lot of hostility for Judge Pushpa Ganediwala's decision. The Attorney General of India, the State of Maharashtra, and the National Commission for Women filed appeals against this High Court's decision in the ongoing case of Attorney

¹⁰ AIRONLINE 2014 SC 233

¹¹ 2021 SCC OnLine SC 42.

General for India versus Satish and another (2021) before a bench composed of Justices Uday Umesh Lalit, S. Ravindra Bhat, and Bela M. Trivedi.

The Bombay High Court's decision was overturned by the Supreme Court, which stated that the current case would be appropriate for using the "mischief rule" of statutory construction. It emphasized that in order to avert injury and progress the remedy, courts must consistently interpret the law.

4. Nipun Saxena v. Union of India (2019)¹²

The Supreme Court stated that in this instance, when an employee violates Section 23 of the POCSO conduct, the publisher or owner of the media, studio, or photography facility is held jointly and severally accountable for the conduct or omission of his employee. Regarding the clause, the Apex Court released the following rules, which are listed below:

- No one is allowed to openly reveal the victim's identity in print, electronic, or social media, or even to subtly divulge any details that would lead one to believe they are the victim.
- In situations when the victim is deceased or mentally ill, even with the approval of the victim's next of kin, the victim's name or identity shall not be revealed unless the circumstances justify it. In this scenario, the Sessions Judge should make that determination.
- For violations under POCSO or for offenses under IPC Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, or 376-E, public FIRs are not allowed. When a victim files an appeal under Section 372 CrPC, they are

¹² (2019) 2 SCC 703.

not needed to provide their identity; the appeal will be handled legally.

- Any documents that include the victim's identity should be kept behind a sealed cover as much as feasible. The victim's identity must be removed from any records that could be viewed in the public domain, and these documents must be replaced with identical ones.
- The report, which must be sent in a sealed envelope to the investigating agency or the court, must contain the victim's name and identify, which must be kept confidential and never revealed to any authorities save those to whom the investigating agency or the court provide it.
- Unless the Government takes action under Section 228-A(1)(c) and establishes standards in accordance with our directives, only the Sessions Judge in question should receive an application from the next of kin seeking permission under Section 228-A(2)(c) IPC to reveal the identity of a deceased victim or victim of unsound mind.
- The POCSO Act of 2012 states that the Special Court may only permit the identification of minor victims if doing so will be advantageous to the child.
- All States and Union Territories were required to set up at least one "One-Stop Center" in each district within a year following the decision in the current case.

B. HIGH COURT

1. Libnus v. the State of Maharashtra (2021)¹³

¹³ 2021 SCC Online Bom 66.

The primary question the High Court addressed in this case was “Would holding hands with a child and taking penis out in front of her fall within the definition of sexual assault under Section 7 of the POCSO Act?” Gripping a minor's hand and undoing the zip code of their pants do not meet the criteria for sexual assault under the POCSO Act, 2012; rather, they fall under the category of sexual harassment, the Nagpur bench ruled. According to Sections 10, 12 of the POCSO Act and other provisions of the IPC, the appellant was not found guilty of aggravated sexual assault. As such, this decision proved to be controversial, much like the skin-to-skin verdict.

2. Hari Dev Acharya @ Pranavanand and Ors V. State (2021)¹⁴

The Delhi High Court held that since the POCSO Act, 2012 is mute on the issue of whether two separate events can be combined into a single First Information Report (FIR), the Code of Criminal Procedure, 1973 (CrPC) would be relevant.

PART V: LATEST CASE STUDY & JUDGMENT

1. Bachpan Bachao Andolan v. Union of India¹⁵

The Protection of Children from Sexual Offences Rules, 2020, while a progressive step, have not fully fulfilled the role of a "support person" or are only partially or ad hoc implemented, which limits the role's potential to positively support victims and their families, according to the bench of S. Ravindra Bhat and Aravind Kumar, J. “From the point of registering a FIR/complaint under the POCSO Act, the victim and their family are required to interact with the police apparatus, medical officers and hospitals, the magistrate, Special Court and/or Juvenile Justice Board (JJB), the concerned Child Welfare Committee (CWC), and other stakeholders.” Beyond the already terrible experience of the

¹⁴ 2021 SCC Online Del 4955.

¹⁵ 2023 SCC OnLine SC 1031

crime itself, this can be intimidating and overpowering in and of itself, frequently discouraging them from pursuing the case completely, the Court observed.

PART VI: CONCLUSION

The decisions discussed above show how the jurisprudence surrounding the POCSO Act of 2012 is evolving. These decisions have had an impact on how the Act is read, implemented, and used, protecting children's rights and dignity in the process. The courts has played a pivotal role in ensuring the best possible application of the Act, providing compensation to the impacted parties, and setting precedent for future court cases. Regarding criminal law and child protection in India, the judiciary's continuous endeavors to construe and implement the stipulations of the POCSO Act, 2012, bear great significance. Sexual offenses harm a child's mental health and can cause depression, emotional distress, and cognitive decline. The POCSO Act unquestionably includes the protections designed to keep children safe from child pornography and sexual assault. The 2019 amendment increased the severity of the punishment for sexual offenses committed against minors. In India, there is still a long way to go until there are fewer sexual assaults on adolescents.

HARMONIZING DHARMA AND DEMOCRACY: EXPLORING THE PRINCIPLES OF THE BHAGAVAD GITA IN THE FRAMEWORK OF INDIAN CONSTITUTION

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Abstract

We Humans are the finest creation of the ultimate creator and thus the most complex. We have emotions, strength, intellect, ambitions and various other attributes. With Civilizations, came our greed for power, to attain supremacy and gradually the world became an interconnected, interdependent and interdisciplinary whole, where existence is more about the way one has carved their position in the society rather than how he survives. This tendency of human beings has created various nations, various powers and organizations with their rules, principles and procedures. The supreme laws of the countries represent the very principles which the citizens of that nation believe in. Likewise, in India, the Constitution; even though inspired by various other constitutions of world, is embodiment of those fundamental principles which Bharat as a nation has practiced since time immemorial. When we discuss the principles of ancient Bharat, (which ultimately became India of today) Bhagwad Gita stands in the forefront being the soul and spirit of all the prominent scriptures of ancient Bharat which forms the foundation of the ever-living Sanatan Dharma. This paper, therefore, attempts to discuss all such aspects of human life, where the principles of Gita are either applied to or should be applied for upliftment. It deals with the basic principles which Gita proposes, one among them is 'Nishkamkarmyog' or the principle of

‘Sthitpragya’ individual who doesn’t get affected by the everyday incidents of sorrow, pleasure or pain, but focuses on his/her goal understanding the true meaning of life which uplifts one from materialistic approach to a higher approach. How relevant these principles are to the legal fraternity, to the other dimensions of human lives, what principles our Constitution embodies? All such questions have been addressed through this paper.

Keywords: Bhagwad Gita, Constitution, Nishkamkarma, Principles, Dharm, Sthitpragya

PART I: INTRODUCTION

Standing amidst the battle fields of Kurukshetra, when Arjun realized he had to kill his family, friends and even the Guru, he was devastated. He wasn’t ready to fight and wanted to give up, it was then his charioteer, Shri Krishna came to the rescue, with his weapon of wisdom and convinced him to get up and act. Bhagwad Gita is collection of those 700 shlokas, containing the philosophical discourse between Krishna and Arjun. After getting all the queries and dilemma satisfied, Arjun picks up his bow and heads towards the war and wins it!

Knowing this, the question arises as to why and how Gita is relevant to us, in the modern world? We aren’t going to a war; we don’t have a kingdom to fight upon with relatives?

In our lives, everyone faces a dilemma, at one point or another; just like Arjun and thus, we need a guide, just like Krishna. He chose to be the charioteer or Saarathi of Arjun during Mahabharat, because he had a purpose to tell the world that in life, humans need to act themselves, even when God himself is on their side. If they are true to their efforts, on the side of Dharma, they will be guided throughout. ‘Saarathi’ signifies that guide, who makes our way towards success amidst all the chaos, make us fight all our weaknesses and win over them.

The central ideas of Gita can be beautifully expressed in these words of Annie Besant:

“It is meant to lift the aspirant of lower levels of renunciation. Where objects are renounced to the mother heights, where desires are dead and where the to go dwells to the calm and ceaseless contemplation, while his body and mind are actively employed in discharging the duties that falls to his lot in life”.

It teaches, not only individual duties, but goes on a philosophical discourse in regards to every sphere of life, be it governance, individual and community duties, aim of life and how to lead a life free from the sufferings, management principles, leadership lessons, conflict resolution, social responsibility, science connect, and not to forget, the idea of sustainable development. It doesn't preach the path of renunciation, instead gives us a way to live free from attachments.

Likewise, we can find principles of the Bhagwad Gita deeply embedded in the Constitution of India through its adherence to justice, equality and fraternity, the call for sovereignty and integrity of the country, ethical governance and respect for spiritual values of all its citizens. It upholds and safeguards the fundamental rights of every individual and provides us with a mechanism to approach the Judiciary whenever these rights get violated. On the other hand, it distinguishes between ‘citizens’ and ‘person’ based on the interest of the nation. This cohesive fusion of ancient knowledge with contemporary governance ideals is evidence of India's rich history and its continuous efforts to build a society that is equitable, inclusive, and enlightened.

PART II: UNVEILING PATH TO PERSONAL DEVELOPMENT

Article 21¹ of the Constitution of India guarantees ‘Right to Health’² to everyone

¹ Article 21: “Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

and directs the government to work for uplifting the health of its citizens under Directive Principles of State

Policy under Part IV. 'Health' means 'state of mental and physical well-being' and therefore a healthy individual must be fit both mentally and physically.

Gita provides us with a comprehensive guide to living a practical life through which everyone can keep themselves in the best state of mind. It also preaches the importance of a healthy body and outlines the qualities of an ideal person—how they should live, behave, and manage their own affairs. Despite being proclaimed thousands of years ago, these principles—whatever the caste, faith, nationality, gender, or race—remain fundamental to today's society. These include what should be their nature, approach, lifestyle, etc. Let us address each one individually.

- **QUALITIES OF AN IDEAL HUMAN:** In Chapter 14 and 16, Gita contains good and bad qualities or gunas of humans based on satva raja and tama gunas. Patience, forgiveness, kindness, humility and purity of thought are the divine qualities and the one who tries to grow these qualities, without a sense of pride, are the ideal ones. Whereas, those who are blinded by anger, lust, pride, ego, physical strength, desires and try to harm others are the worst of beings. "Trividham narakesyedaṁ dvaaram nashanmatmanah, kaamah krodhsttha lobhastmadetrayam tyajet." This indicates that passion, rage, and greed are the gates to hell; they are bad

² Consumer Education and Research Centre v. Union of India 1995 AIR 922, 1995 SCC (3) 42. "The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood...Therefore, it must be held that the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person."; Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1980) 2 SCR 557.

for humanity, damage our souls, and ultimately bring about our demise, thus they must be absolutely forbidden.

- **HEALTHY LIFESTYLE:** It says whatever we do, should be free from inaction, procrastination and desires. Our routine should have time for interaction with the self and spirituality, devotion towards parents and respect for teachers and elders. It tells us the importance of kind deeds, yoga and balanced diet and guides us to avoid extremism in any of our deeds. There should be balance in whatever we do.
- **NISHKAMKARM:** This is the central theme of Bhagwad Gita; it means to act selflessly, without any thoughts of personal gain or loss in mind. The literal meaning of this term is ‘an action free of desires.’ It is doing action without even the subtle internal hope to be praised, receive thank you, or return. Gita begins with the idea of karma. Krishna asks Arjun to act, to fight and not to run away. He goes on to explain that no one is free from actions, human beings, or for that matter, no living thing can survive without performing some action. Because, even after having made up the mind to give up the actions, one needs to breathe and that is also an action. Similarly, there are basic needs for life which can’t be renounced. So, it is not possible to renounce the action to be free from the sufferings, desires, hope coming out of it. Thus, Gita says, whatever you do, remain unaffected by its results. This could be possible with the knowledge of true self, which is the second idea;

The practioners of this nishkamkarm are called Sthitpragya, those who have controlled their minds, are free from ideas of pleasure and pain, victory or defeat arising out of this body, are unaffected by both, considering them the same. Such sthitpragya individual leads their life calmly; is not plunged into grief, depressed after a loss nor does he/she is lost in the joy, after a gain. This creates a balanced lifestyle.

- **WORK WITHOUT FOCUS ON A DESIRED RESULT:** Gita says; “karmanye vadhikaraste ma faleshu kadachana, ma karmfala heturbhurmate sangotsvakarmani.”³ Which means that we should act because it’s our duty to act but concurrently should not hope for the desired result. All we have is the power to act, but deciding the result of such an act is not in our control.

This lesson is of utmost importance for today’s competitive world where we are all entangled in an endless loop of competition every day; be it school, college, university, workplace or even the family. We need to give our best to be the best, but Gita guides us to give our best and leave the rest to the almighty. If it is meant to be, it will happen for sure. If it doesn’t, we need to work more or change our course of action or maybe he has some other plans for us. Having this principle in mind, we won’t be affected by peer pressure, the shame of failure, the depression, and anxiety of not being able to go through. This will help us to double our efforts and try again till we succeed.

- **BUDDHI YOGA:** From Shlokas 39-53 of Chapter 2, Gita gives us lessons on buddhi yoga that is yoga of contemplative intellect, which helps an individual to become free from dualistic thinking and make him follow the satva gunas.
- **INNER PEACE AND MEDITATION:** Inner peace is essential for human beings especially in today’s scenario where mental health issues are at their peak, it is necessary to know how to attain mental peace. With the three ideas discussed above, we got to know how to be free from desires, to focus on action and to realize the self. But all of this can be possible to attain only when we meditate. Meditation helps us to

³ Shlok 44, Chapter 2, Shrimad Bhagwad Gita.

concentrate, enlightens our mind, and frees us from worldly desires, lust and all kinds of deviations.

- **CHANGE IS PERMANENT:** Gita preaches that nothing is permanent in this world except change. Everything, every living being is bound to change and hence, it should not disturb our mental peace. Instead, change transforms us. By changing our habits, practicing the paths mentioned in Gita, adopting them in daily lives and adapting to the change in our surroundings is the only way to happiness. We should not lament over things we can't change, but we can move ahead and act where it is required.

PART III: THE IDEA OF EQUALITY AND FRATERNITY

The Preamble to the Constitution wants to secure 'Justice, Liberty and Equality'⁴ for all and further under various Articles, provides safeguards to achieve this goal. Bhagwad Gita says, "Samoham sarvabhooteshu n me dveshoasti n priyah"⁵ that is, I am equally present in all the living things. Neither do I love someone more than others nor do I hate anyone.

Gita not only preaches equality, but it also considers every living entity as equal. Not only humans but every big or small creature is equal in the creator's eyes and hence all must be respected. Their rights must be upheld. There should be harmony and co-existence among all.

⁴ "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation..."

⁵ Shlok 29, Chapter 09, Shrimad Bhagwad Gita.

PART IV: LESSONS ON GOOD GOVERNANCE:

Bhagwad Gita contains principles of good governance which are practical and should be followed in a welfare state. Although Shri Krishna has not directly preached Arjun about these principles, they can be inferred from various shlokas.

Similarly, the Constitution contains a whole Part IV, containing various directives for the government addressing each sphere of human lives, so that a welfare state can be achieved. These directives called the Directive Principles of State Policy lay down the foundation of good governance. The following are some aspects of the same which we can find in the ideas of both, Gita and the Articles of Part IV of the Constitution:

- **DHARM:** Righteousness or Dharm has been the supreme principle of all the actions in the ancient Bharat. Every scripture, digest, smriti has a lesson on Dharm. When laws were not codified it was used to do justice just like principles of natural justice. To understand Dharm, we need to read Gita and it should be done without any bias because Gita, even though having origins in a particular religion, is free from religious teachings.

Thus, there must be righteousness in all spheres of governance that can be attained by realization of accountability towards self, family, society and nation. Only the right path leads us to great heights and upholds the nation together.

Likewise, the Preamble to the Constitution contains as one of its objectives to secure 'Justice' in social, economic and political spheres for all individuals.⁶

- **SUSTAINABLE DEVELOPMENT:** Gita has various shlokas explaining that every being has origin in the almighty. Everyone is equal. Therefore,

⁶ Ibid.

considering that everyone has the rights regardless of the status, gender, caste, creed, and race, color, and even the animals, plants, rivers, etc., will help the governments to bring policies which are inclusive and sustainable. This will create a balance between the entities and help coexistence.

- **LOK SANGRAHA:** The government and corporate behaviors must be guided by larger social interest. Transparency must be there in the works of public interest or welfare. Moreover, every action must have a vision of larger social welfare and not of selfish greed.
- **ADAPTABILITY TO CHANGE:** Governance should always be with a vision of adaptability to change. Since change is inevitable policies must be made with a vision keeping in mind the discourse to be followed afterwards in future. They should be flexible to change. Continuous learning and improvement go hand in hand with the continuous change.
- **CORRUPTION FREE:** Gita tells us about three kinds of gunas satva rajas and tamas to get a corruption free governance and society we need to replace the rajas and tamas gunas inside us with the satva gunas. When every official and every individual starts changing themselves, transforming themselves with the satva gunas, all kinds of corruption will be washed out. Improvement in human tendencies is a long process, and hence it may sound preachy and impractical. But, if humans won't change, no amount of sanction can prevent them from corrupt actions.
- **METHODS OF TEACHING:** From Gita, we can carve out an amazing and practical method of imparting education. From chapters 1-18 Krishna guides Arjun through various methods. He conversate, then Arjun raises queries, and he answers, that is question answer method. In chapter 11, when Arjun isn't convinced of his teachings, he demonstrates by showing his virat roop. Furthermore, he follows analytical methods and then asks

Arjun to act and experience whatever he taught, thus moving from theory to practical.

PART V: EMBODIEMENT OF GITA'S PRINCIPLES IN INDIAN CONSTITUTION

In the abovementioned heads, we discussed what individuals can learn from Gita or what principles can we use in governance, now it may be asked that if Gita has such an influence on all these spheres of Indian lives, can we find its principles embedded in the laws and the supreme law of the land, the Constitution too? The answer is in affirmation. There are several principles from Bhagwad Gita, we can find to be deeply embedded in various provisions of Indian Constitution. Gita and its philosophy require a lot of understanding and knowledge and similarly in the case of Constitution, one learns and relearns repetitively, with different interpretations. Some of such principles have been discussed as under:

- **THE IDEA BEHIND PREAMBLE:** The Preamble to the Constitution of India begins with the words; “We the people of India...” which shows the inclusiveness, without any difference, everyone is equal, everyone is included in ‘we’. This is unity in diversity. Moreover, the Constitution is the course of all the laws of the country, it is the supreme law of the nation which gives rise to the various rights and duties of its citizens, which directs the government to act in a certain way, which lays down the basic tenets of the governance, which describes how will a government run, how will the power be distributed and so on, Similarly, Krishna says “yach chapi sarbhootanam beejam tadhamarjuna na tadasti vina yatsyanmaya bhootam characharam”⁷. Meaning thereby, everything has a cause of origin and that is the reason for all the

⁷ Shlok 39, Chapter 10, Shirmad Bhagwad Gita.

creations. The cause of manifestation and the seed of origin is Krishna. Without Krishna (supreme energy) nothing can exist.”

- **THE IDEAL OF JUSTICE:** The Preamble aims to attain; “justice, social economic and political.” In the same way, Krishna tells Arjun in Chapter 4, Shloka 7-8 “yada yada hi dharmasya, glanirbhavti bhārata, abhyutthanam dharmasya tadatmanam srijamyaham”⁸.

Thus, making it very clear that whenever there will be loss of justice, time and again he will come to uphold the Dharm.

He quotes further, “paritranay sadhunam vinashay ch dushkritam, dharm sansthanarthay sambhavami yuge yuge”⁹. That is, whenever society will be burdened by the evil, he will descend on earth to do away with the evil and to establish the Dharm”

Therefore, from the Preamble and these shlokas we can infer that as Krishna is concerned about Dharma, the Constitution also aims to uphold justice in all three spheres and hence the principles are overlapping.

- **EQUALITY OF STATUS AND OPPORTUNITY:** This aim of Preamble also has links with the Gita. In Chapter 6 Shlok 9, it says “suhrinmitrariyudasinmadhyasth dveshbandhushu sadhusvapi ch papeshu sambuddhirvishishyate”¹⁰. That is, an ideal person, or a person with high values is the one who regards all – the honest, friends and enemies, well-wishers, the envious, the pious, the sinner and those who are impartial and indifferent; with an equal mind.

Thus, we can see how Gita directs every person to be able to treat equally not in action of course, for example the convicted person shouldn't be freed because he must be treated equally, and he must serve the result of

⁸ Shlok 7 & 8, Chapter 4, Shrimad Bhagwad Gita.

⁹ Ibid.

¹⁰ Chapter 6, Shlok 9, Shrimad Bhagwad Gita.

his deeds. Nevertheless, his human rights should be upheld. Similarly, the Constitution aims to give everyone equal opportunity and status in the eyes of law.

- TO PROMOTE AMONG THEM ALL FRATERNITY AND ENSURING DIGNITY OF INDIVIDUAL: The Preamble to the Constitution goes on further to ensure fraternity and dignity of individual and for this several provisions in Part III and IV are provided in this regard as rights and duties. Bhagwad Gita in Chapter 12, Shloka 13-14 says; “adveshta sarvabhootanam maitrah karun ev ch nirmamo nirahankarh samduhkhsukhah kshami santushtah satatam yogi yatatma dridnishchayah mayyarpitmanobuddhiryo madbhaktah sa me priyah”¹¹. Meaning: One who is not envious but who is a kind friend to all the living beings, who does not think himself as a proprietor, who is free from false ego and pride, feels equal in both happiness and grief, who is always satisfied and engaged in devotional services with determination and whose mind and intelligence are in arrangement with the supreme energy that is Krishna; is very dear to him.

Thus, we see whoever doesn't discriminate, is dear to Krishna. The one who doesn't bias, gives equal services to all, has no superiority or inferiority complex arising out of social economic or political status and is dutiful, is encouraged by Bhagwad Gita. Likewise, the Constitution gives equal rights and equal protection of laws against any injustice,¹² have fraternity in society and that everyone should respect the dignity of all the fellow individuals.

In a very interesting turn of events, Supreme Court has cited shloks from Bhagwad Geeta at number of occasions. In Aadhar case, nine judge

¹¹ Shlok 13 & 14, Chapter 12, Shrimad Bhagwad Gita.

¹² Article 14, Constitution of India, 1950.

bench established Right to Privacy Justice Sanjay Kishan Kaul authored a separate but a concurring 47-page order raising the question of dharma (justice) and adharma (injustice) He writes: 'It is wrong to consider that the concept of the supervening spirit of justice manifesting in different forms to cure the evils of a new age is unknown to Indian history. 'It is a reflection of this divine 'brooding spirit of the law', 'the collective conscience', 'the intelligence of a future day' that has found mention in the ideals enshrined in inter alia, Article 14 and 21, which together serve as the heart stones of the Constitution'. When the renowned verse from the Bhagavad Gita preceding it is read, the meaning of the verse that Justice Kaul quoted in his order becomes even clearer. Yada Yada hi dharmasya, glanirbhavati bhārata; abhyutthanam adharmasya, tadaatmanam srujamyaham.' The subsequent verse reads: 'Paritranaaya sadunaam, vinashayacha dushkritaam; dharmasansthaapanarthaya sambhavami yuge yuge.' Together they mean: 'Whenever righteousness declines and unrighteousness is rampant, I manifest myself. I manifest myself from age to age to defend the pious, destroy the wicked and strengthen righteousness.'¹³

- **CONCEPT OF FUNDAMENTAL DUTIES:** Article 51A of the Part IV of the Constitution of India provides from the fundamental duties of the citizens. Its beings with; "It shall be duty of every citizen of India...". Krishna says "karmanaiv hi samsidhhimasthita janakadayah loksangrahmevapi sampashyankartumahrsi" and in same chapter, Shloka 16 says "evam pravartitn chakram nanuvartaytih yah aghayurindriyaramo mogham partha sa jeevati"¹⁴.

¹³ Justice K S Puttaswamy (Retd) vs Union of India (2018) 1 1 (SCC)

¹⁴ Shlok 20, Chapter 3, Shrimad Bhagwad Gita.

Meaning: Even the virtuous kings like Janak of Mithila and others attained the perfection stage of being a sage is by performance of personal duties. Therefore, for the sake of people, for the sake of societal norms, you should act and perform your duties. In one of the other shlokas it says, O Parth! Those individuals who don't behave or perform their duties as per the laws of nature, and run away from their duties, their existence is of no use. They are burdens. Thus, both the Constitution and the Bhagwat Gita explain the importance of duties and they must be completed irrespective of one's position or status in society.

- OPEN TO INTERPRETATION: As the Constitution of India is open to interpretation and the Supreme Court and various High Courts have over time interpreted its various provisions giving it a new dimension every time to protect the rights of the citizen of India, similarly, Shrimad Bhagwad Gita has also been interpreted in various ways by many intellectual since ages, to impart the knowledge it has, to the world in the language or the way, they understand.

PART VI: CONCLUSION

In the words of Swami Chidanand,

“The modern man in this present decade of the second half of 20th century is greatly in need of an effective guide to light. He is groping. He sees only problems everywhere and no solutions are to be found anywhere. He doesn't know which way to turn, what course of action to opt and how to move towards a better state of affairs. Therefore, his life is filled with restlessness, unhappiness and complications the Bhagwat Gita contains words of wisdom and practical teachings that contains the answers to the above-mentioned conditions of present-day individual.”

The world is struggling with the change in climate, surroundings, workplace, pandemic, wars and a lot of problems. They need solutions, and Gita has them. To adopt these principles of Bhagwat Gita, leaving the notions and divisions of religion behind, embrace the wisdom it provides and help us to transform into better versions of ourselves, is the need of hour. It will help in reducing the problems of depression, anxiety, suicidal tendencies etc. from the minds of individuals and help them in overcoming tough situations.

Gita has everything. It has a way to mental stability when it talks about sthitpragya individual or nishkam karm. It tells us the power of self-realization and meditation. It tells us the value of being spiritually awakened. It tells us the power of hope and detachment while still performing our actions. It has a guide to physical wellbeing, when it goes on to explain the satvik rajasic and tamasic way of eating and our daily routine based on three gunas.

Gita has a key to good governance with the principles of lok sangraha, dharm, prushartha, perseverance, humility and kindness. And above all, gita has practically possible solutions which are usually missing from the other philosophical ways.

As the last Shlok of Bhagwad Gita says “yatra yogeshwara krishno yatra parth dhanurdharah tatra shrirvijayo bhootirdhruva nitirmatirmam” meaning, where there is Yogeshwar Krishna and Arjun, there is victory; I would say whenever there are problems, we must have faith on the supreme power and with the guidance of Gita, we can overcome it, being victorious.

INDIA'S CYBERCRIME PROBLEM AND THE NEED FOR LEGAL SYSTEM REFORM

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Abstract

Law is necessary to prevent crime; if the law is weak, justice will be unable to serve its purpose; and if the law is just and proper, but the institutions charged with enforcing it are weak, results will not be realized. To address crimes that are constantly evolving with the times, it is occasionally necessary to make adjustments to institutions and regulations. One such instance is cybercrime, which is currently a major issue for the nation. Currently, changes are an imperative necessity.

Keywords: *Cybercrime, computers, internet, cyber laws, cyber law reforms.*

PART I: INTRODUCTION

Around the world, cybercrime is on the rise, and offenders are employing new techniques. India is one example of a developing nation that has become reliant on technology to advance. And using technology has become a necessity in everyday life. Lack of knowledge and a lack of information among the populace have both been linked to an increase in crime. The strategy was developed with the understanding that change was desperately needed because the present environment for cybercriminals is poor in terms of escalating cybercrime and innovative approaches to fight it. The police investigation

system, which was developed for the investigation of traditional crimes, is currently dealing with the challenge of investigating crimes related to cybercrime, which has necessitated the implementation of necessary changes, whether they relate to the law, local jurisdiction, or digital evidence. In the current court system, there are no special cyber courts, similar to how family courts are set up for family-related matters and consumer courts are set up for consumer-related matters. If a solution is not found to the problem of obtaining these problems, the investigation will not be following cybercrime. For the investigation of comparable cybercrime-related offenses, a cyber court should be established. A special judge should be appointed for these cases, and attorneys who handle these cases should receive specialized training. Because new, more dangerous types of cybercrime will emerge in the future, it is imperative that the person's side be presented properly and that the appropriate justice be served. Change has become a need, so he should make it a must to include a subject on cybercrime in order to raise awareness among the general public and students at all educational levels, including high school and college. Through education, people should develop an understanding of cybercrime prevention strategies. This will help prevent cybercrimes.

PART II: CLASSIFICATION OF CYBER-CRIMES

Cybercriminals use a variety of methods to conduct crimes; as a result, new methods are always being developed by criminals. In this situation, the public's lack of knowledge and reliance on studying technology are to blame for the birth of new crimes. Since the majority of labor is now done online, cybercriminals are finding new ways to do it. This is because, over time, people have become more conscious of crime, which has led to an increase in cybercrime. If people know how something happens, they will devise means to

defend it, which prompts cybercriminals to start committing crimes in new ways right away. Financial Fraud, Cyber Terrorism, Cyber Extortion, Cyber War, Cyber Pornography, Online Drug Trafficking, Computer Virus, Hacking, Phishing Using Computer, Identity Theft, Copyright Violation, Cyber Bullying, Cyber Stalking, Online Gambling, etc. are examples of ways that cybercriminals invent new ways to trick people into falling prey to their schemes and becoming victims of cybercrime.¹

PART III: EXISTING LAWS IN INDIA TO PREVENT CYBER-CRIMES

With a focus on the commercial perspective, the International Trade Law Commission of the United Nations Organization in India produced the Cyber Crime connected IT Act 2000, which has sections 1 to 90, of which sections 65 to 78 are connected to cybercrime. There are many sections in the Indian Penal Code that deal with cases involving cybercrime, and sections like 65b of the Evidence Act deal with special references to required digital evidence. These provisions and those like them govern the procedure for the trial of cybercrime-related cases in India.²

PART IV: REFORMS IN THE PRESENT LEGAL SYSTEM

➤ Reform for law-

According to the Trade Law Commission of the United Nations, the IT Act 2000 Global Convention, which was made by India under trade-related issues, was made on the topic of cybercrime and is used to control it. Due to the current emergence of new cybercrimes, it has become necessary to update the law. As a result, a law that exclusively serves to prevent cybercrimes should be created, with the police acting

¹ <https://en.wikipedia.org/wiki/Cybercrime#Classifications>

² Information and Technology Act,2000.

as the investigating authority for such cases. Other required measures should be introduced that will help deal with present and future cybercrimes, and entities should be given jurisdiction and other necessary capabilities to decrease or prevent cybercrimes.³

➤ Reform for court-

A cyber-cell has been established by the police in each state in response to the current cyber crimes in India, however, no separate cyber court has been established in India to hear matters that are only related to cybercrime. Or, even if one is established, that court will hear ordinary cases as well as those involving cybercrime, much like there is a consumer court for issues involving consumers and a family court for those involving families. A cyber court should be established, and judges should be chosen who are knowledgeable about the subject and who receive regular training on it so that there are no issues when hearing such cases. Cybercrime experts should be appointed to the court, and they should provide the judges with the information they need regarding related cases involving the pertinent subject. There should also be periodic training sessions for attorneys on this topic, as cybercrime is a technical issue. It is related that the advocates will know that only then will they be able to give proper justice to victim and put his case before the vote properly. Such necessary changes have become an absolute necessity for the court at present as it has become necessary to go.

➤ Reform for police –

The Police Act, which founded the police force in 1861, said that it was created to uphold law and order. In the modern world, with people

³ Gyanvati Dhakad, *Cyber Law & Cyber-crimes 11* (India Publication Company 2017).

becoming more and more reliant on technology, the police are responsible for investigating crimes, gathering evidence, and presenting that evidence in court. Modernization is also causing an increase in cyber-related crimes. As a result, the police who are tasked with investigating classic crimes as well as current cyber-crime-related concerns are having difficulties conducting their investigations. When someone commits a cybercrime while working from anyplace, it can be challenging to collect and maintain the necessary digital evidence. If this person is working from a different nation, it can also be challenging to apprehend him. Shortcomings As a result, a special cyber cell has been created to look into cases of cybercrime. However, as a result of this, the legislation and the legal system have also changed. Now, doing so is very necessary.⁴

PART V: CONCLUSION AND SUGGESTIONS

Because of people's reliance on technology and the modernity of the globe, cybercrime has become a severe issue not only in India but throughout the entire world. In the current era, the majority of work is completed through online mediums. Due to the need for severe regulations to address this and the use of new Cyber-crime individuals to carry out crimes utilizing a better medium of computer internet, the related structure is also changing. It has become necessary that unless there is a necessary change in the law, it will not be possible to stop the crime properly and according to that law, it has become necessary to make necessary reforms in the whole process till the punishment of the guilty person. Considering the cases' technological nature, the evidence's

⁴ Dejey & Murugan cyber forensics oxford publication 2018.

technical level, and the entity conducting the cybercrime-related investigation's need to raise concerns about collecting the evidence and jurisdictional rights, this conclusion can be drawn. It turns out that in order to fight cybercrime, it is currently imperative to change the way traditional crimes are investigated, as the cyber law that was written while businesses were operating is failing to do so. completely Cyber-crime To stop this, comprehensive cybercrime legislation should be created, and in police investigations—which presently look into traditional crimes—only those individuals with specialized experience in the relevant field should be selected, so it should be changed and Establishment of special courts in the court system, which will hear only and only Cyber-crime related cases, like there is a family court, like there is a consumer court, similar cyber court should be established in all the courts and the judge and advocate on the related subject. Periodically hold training sessions and discussions on topics linked to cybercrime so that people at both the bar level and the bench may learn about these issues and protect their skin. Because justice is delivered slowly and is not justice if it is perceived vaguely, clear justice will be obtained.

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