

VOLUME VI

ISSUE –III (July-Sept 2020)



IILS QUEST

A Quarterly Journal authored by IILS Students
Published in the IILS Website

INDIAN INSTITUTE OF LEGAL STUDIES

Recognised under Section 2(f) & 12B of the UGC Act, 1956

UG 7 Post Graduate Advanced Research Studies in Law

Accredited by NAAC

Affiliated to the University of North Bengal

Approved by the University Grants Commission, New Delhi

Recognized by the Bar Council of India, New Delhi

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THE STUDENT JOURNAL
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MESSAGE

FROM THE PRINCIPAL'S DESK



The ILS Quest is a platform for students to unleash their potential in legal aspects outside the periphery of their course curriculum. It provides a golden opportunity for the students to present their passion on legal aspects by writing and publishing articles.

The ILS Quest is published on quarterly basis, and it showcases the wide horizon of interest of the student fraternity of ILS. The basic fundamentals of ILS Quest is to give the opportunity to the students to involve themselves academically with law, and other socio- economic-political arena; and thereby gradually create a space of interest in the field of writing and expressing their viewpoints. With the passage of

time, ILS Quest has become platform for students to share their perspectives on socio- legal and other relevant issues.

I congratulate and further encourage the students and editorial team for their perseverance. Their dedication has culminated into the publication of this issue of ILS QUEST journal.

A handwritten signature in blue ink, consisting of a vertical line that curves into a horizontal line with a wavy, scribbled end.

Prof. (Dr.) Ganesh Ji Tiwari

Principal,

Indian Institute of Legal Studies

MESSAGE

FROM THE REGISTRAR'S DESK



The creative prowess and astute critical faculty of our dear students at ILS is a force to reckon with. QUEST – the quarterly students’ journal is a wonderful platform wherein their manifold talent is manifested in leaps and bounds. It has come a long way and it continues to reach greater heights with each successive publication.

I congratulate our dear students, and appreciate their painstaking devotion towards this journal even amidst a pandemic which has rendered us all helpless. Their zest and relentless effort is indeed commendable.

A handwritten signature in black ink, appearing to be 'SJB', with a horizontal line underneath.

Shri Sanjay Bhattacharjee

Registrar,

Indian Institute of Legal Studies

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ARTICLES



MEDIA TRIAL VS. FREEDOM OF SPEECH AND EXPRESSION



By Pritam Banik
LL.B Semester III

ABSTRACT

This article briefly discusses the rights and responsibilities of media and its functioning as a fourth pillar in India's democracy. A major part of this article highlights the free run of Media trials and how fatal it is to the freedom of speech and expression.

Further, a few quotes have been extracted from various judgments of the High Courts and the Supreme Court to bring a common intention of criticism for unwarranted media trials. Lastly, there is a recommendation on ways to proceed to strengthen the existing structure of the fourth pillar.

ABOUT FREEDOM OF SPEECH AND EXPRESSION

Our freedom of speech and expression is derived from the Constitution of India. Our right to voice our emotions, opinions, and other forms of expression in a free manner into the open space is what defines India as a democratic country. Mass media plays a major role in our lives on both how we express ourselves and how we influence ourselves.

‘Freedom’ may refer to as being impartial or having any absence of control or lack of inference from any authority sovereign or otherwise. However, no freedom can have meaning when it is totally independent. Therefore, certain ‘reasonable restrictions apply’ in every case.

The right of freedom of speech and expression is incorporated in Article 19 of the Universal Declaration of Human Rights, 1948¹, and Article 19 of the International Covenants on Civil and Political Rights 1976².

In India, Article 19 (1) (a) states that all citizens have the right to freedom of speech and expression in the Constitution of India³. This includes their right to express one’s own convictions and opinions freely by words of mouth, writing, printing, pictures, or any other

¹<https://www.un.org/en/universal-declaration-human-rights/>

²<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx/>

³<https://strictlylegal.in/the-constitution-of-india-wiki-extensive-version/>

mode. It, therefore, includes the expression of one's idea through any communicable medium or visible representation, such as gestures, signs, and etc.

The Supreme Court of India⁴ has said that the words "freedom of speech and expression" must be broadly constructed to include the freedom to circulate one's views by words of mouth or in writing or through audiovisual instrumentalities.

It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television.

However, as stated in Article 19(2) of the Constitution this freedom comes with 'reasonable restrictions' such as the in interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence cannot be protected with freedom of Speech and expression under Article 19(1)(a)

MEDIA'S ROLE IN DEMOCRACY

The words press and media have been used interchangeably in this article. They have been basically meant to indicate the institutions who

⁴<https://strictlylegal.in/supreme-court-of-india-wiki/>

have the primary duty of collecting and distributing news and which includes independent journals.

Media as we know is an integral part of every democracy. It is the duty of the media to report on economic, political, social, and cultural aspects in an impartial manner without any state interference. It is a sine qua non⁵ of a healthy democracy.

Each of our provisions has been decided with great care and it was an intentional effort to not provide any express powers to the media through the Constitution. The people of India have the same powers as that of the biggest media houses in the country.

“The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager is all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression; and in my judgment therefore no special mention is necessary of the freedom of the press at all.”

~Dr. B.R Ambedkar in Constituent Assembly

⁵<https://strictlylegal.in/101-legal-maxims-every-law-students-must-know/>

In **Printers (Mysore) Ltd. v. CTO**⁶ the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression. Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the **fourth chamber of democracy**.

As regards the history of freedom of speech and expression though press/media, it is believed to be an inalienable right just like the right to live. It is a right that pre-exists the constitution and the legal system.

The first reference of media can be traced back to the Mughal era when rulers used to keep informants in the kingdom so that they are informed about the new developments, the grievance of the masses, and the expectations of the people.

This was, however, sort of an in-house circulation. Later in the British era, James Augustus Hickley in 1780 launched a weekly newspaper named “A Weekly Political and Commercial Paper open to All Parties but Influenced by None”. But due to its impartiality, it was shut down by the state in a short while.⁷

With the passage of time, the media is playing a much larger role. Today’s media is no more only about true reporting but reporting first.

⁶**Printers (Mysore) Ltd. v. Asstt. CTO** 1985 59 STC 306

⁷https://en.wikipedia.org/wiki/Hicky%27s_Bengal_Gazette

Trials by media with angry anchors, political spokespersons, Bollywood celebrities, and a religious guru with a conspiracy theory, bumbling lawyers jumping into the debate box, there are thousands of media channels competing to break the news of who is guilty or innocent.

The more sensation that breaking news is...the more TRPs the channel gets and which directly affects the cash flow of the institution.

In the last 10 years itself, we as viewers have witnessed open media trials held by big channels declaring if a person is guilty or not even before the police have completed the investigation. That's so to speak just the downside. We've also applauded the same channels for running a story over a thousand times and pressurizing the authorities to interfere and take constructive action.

However, we have to understand that broadcasting the transparent truth is their responsibility and no licence to run media trials.

WHY IS MEDIA COVERAGE SO IMPORTANT?

Press or media is the voice of the people of the country. Its important that the ruling government aligns its actions as per the mass opinion so that they can occupy their positions for a much longer period of time.

Here's where the problem begins. If media reports can influence the voting choice and decide the fate of the political party, its salient feature ought to be independent and not inclined to any idealistic view as to left, right or center.

“I should rather have a completely free press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press.”

~Pandit Jawaharlal Nehru

Transparent media reporting is a cornerstone of a healthy democracy. But this isn't the case here in India. Often media trials are influenced by political funding and the rush to gain TRP. Running parallel trials with the court is the new norm.

Often the courts have to directly intervene and ban the media from specific coverage. In **Devangana Kalita vs Delhi Police**⁸ the court held that

“Selective disclosure of information calculated to sway the public opinion to believe that an accused is guilty of the alleged offence; to

⁸W.P. (CRL) 898/2020 & CRL. M.A. 7426/2020 and CRL. M.A. 8961/2020 | 27-07-2020

use electronic or other media to run a campaign to besmirch the reputation or credibility of the person concerned; and to make questionable claims of solving cases and apprehending the guilty while the investigations are at a nascent stage, would clearly be impermissible”.

The issue of **Trial by Media** was also dealt with by the Hon’ble Supreme Court in the case of **R.K. Anand Vs. Delhi High Court**⁹, when it observed and I quote as under:

*“..... What is trial by media? The expression “**trial by media**” is defined to mean:*

The impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.....”

Therefore, apart from the loosely held **Contempt of courts Act, 1971** India does not have legislation regarding media trials and fair

⁹2009 (8) SCC 106, at page 198

coverage. A petitioner can move the court and the court may permit such applicants to “... seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including the identity of the victim or the witness or the complainant), and that the court may grant such preventive relief, on a balancing of the right to a fair trial and **Article 19(1)(a)** rights, bearing in mind the above-mentioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for a short duration and should be applied only in cases of a real and substantial risk of prejudice to the proper administration of justice or to the fairness of the trial”.

WHO REGULATES PRESS MEDIA?

The only pieces of legislation that ‘loosely’ hold the media to some extent are the Contempt of court Act, 1971, and the guidelines by the statutory authority regulating these media houses AKA Press Council of India(PCI) and the News Broadcasters Association(NBA).

PCI’s main functions under section 13 of the **Press Council Act, 1978** specifically highlights the body’s mandate to (i) maintain high standards of public taste, (ii) foster “a due sense of both the rights and responsibilities of citizenship” on part of newspapers, news agencies and journalists and

(iii) to “keep under review any development likely to restrict the supply and dissemination of news of public interest and importance”.

The norms of Journalistic Conduct framed by the council for **self-regulation** in reporting in the matter of “paramount national, social or individual interests” which calls for due restraint and caution in presenting any news, comment, or information that might jeopardize, endanger or harm these paramount interests.

However, **PCI** issues only general guidelines and have limited powers to enforce them. **News Broadcasters Association**, on the other hand, is a private self-regulating body that takes care specifically of the **broadcasters**, television journalists, and **news** agencies. It has devised a Code of Ethics¹⁰ to regulate television content. The **News Broadcasting Standards Authority (NBSA)**, a part of the **News Broadcasters Association**, is empowered to warn, admonish, censure, express disapproval, and fine the broadcaster a sum up to Rs. 1 lakh for violation of the Code.

Contempt of courts Act, 1971 however, states that Criminal Contempt under section 2(c) means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

¹⁰http://www.nbanewdelhi.com/pdf/final/NBA_code-of-ethics_english.pdf

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court
(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

Therefore, any coverage by press or media that interferes with the judicial proceedings would amount to contempt and may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

TRIALS BY MEDIA INTERFERES WITH TRIALS BY COURT

One of the ‘torch bearers of trial by media’ cases is the Aarushi Talwar’s case or more famously known as the **Noida double murder case**¹¹. This particular case has seen not only trial but also conviction by media.

Today, ‘Media Studios’ have literally turned to be a courtroom for all purposes. They investigate the case, collect evidence, put witnesses on record, and even bring expert opinions to the screen and come to a conclusion. The same story is then published in all newspapers and

¹¹Nupur Talwar v. Central Bureau of Investigation and Another, AIR 2012 SC 1921

websites seeking for a wide public opinion. This process is a lethal attack on any democracy. One would simply ask, What role is the media playing here?

In parallel trials by media the fundamental rights of the accused in a case pending before the courts are killed, and put to the grave. The '**doctrine of innocence until proven guilty**' is openly flouted and the fundamental right of a fair trial to the accused is snatched away. It is pertinent that the media understands that one's fundamental right should not be used as a tool to transgress upon those of others.

“The Fourth Estate does not seem to realize the irreparable damage inflicted on the victims of crimes and the alleged culprits and those close to them through the sensationalized journalistic adventures. Truth is very often surpassed, exaggerated or distorted to add flavour and spice to the stories. Trial by media can do more harm the good to the society at large.”¹²

THE WAY FORWARD

India needs constructive reforms in press or media functioning, however, necessary measures should be taken so that their freedom of speech and expression are not curtailed. In other words, a legislative

¹²State of Kerala v. Poothala Aboobacker 2006(2) KLD (Cr 1 482)

enactment replacing the Press Council of India Act or strengthening of the same act and strict measures for uncalled media trials that run parallel to the courts should be adopted and monitored. Political fundings or funding by any political party or a member thereof into any media agency also calls for intense debate.

“A responsible media is the handmaiden of effective judicial administration”¹³

¹³Nariman, Fali S., Are Impediments to Free Expression in the Interest of Justice, CIJL Yearbook, Vol 4, 1995.

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION IN INDIA: ITS IMPLICATION IN SOCIETY



By Noor Nowaz
B. A. LL.B Semester IX

ABSTRACT

In our country the discrimination is prevailing from ancient times. Discrimination is often seen on grounds of gender, caste, religion, language, place of birth and even body complexion. Framers of the constitution were well aware of that vicious practice and therefore they introduced right to equality as Fundamental right. But still we could not stop discrimination in complete sense. Discrimination on the basis of sexual orientation and gender identity is very normal in Indian society, it is often seen that families of the LGBTQ community people abandon them. Most of the time they fear to express their sexual orientation. Even after the judgment of the apex court they are not accepted by majority of the population, they are still afraid to express their sexual orientation. Every year a lot of incidents of violation, discrimination

takes place. There are many places in India where people still believe that LGBT people are not allowed to be a part of the family. The judgment of the apex court has been criticized by many religious organizations, a huge number of populations believes that the judgment of the court is against the religious values and social norms.

Though the judgments of the Supreme Court have laid the ground work for protection from discrimination but concrete policies are needed for better protection of LGBT people in India. To ensure protection from violation and discrimination government must frame concrete policies and as well as the individuals of the society needs to educate themselves and come out of orthodoxy.

This article discusses the reason behind the growth of discrimination and problem of LGBTQ community, and the effect of the judgments of the courts.

INTRODUCTION

Discrimination in India is a normal practice; it is prevailing from ancient times. The basis of discrimination has changed time to time, earlier the basis of discrimination was caste, religion, sex, but now some new grounds of discrimination are added in the list such as place of birth, complexion, language, and sexual orientation. The constitution of India expressly prohibited discrimination under article 15, but still the practice of discrimination can be seen in our society.

The constitution of India gives certain rights including right to life and

personal liberty and freedom from discrimination and violence to the citizens, therefore on account of being citizen of the country, these rights also be vested upon people belonging to LGBTQ community, but it is often seen that LGBTQ persons face discrimination. Homosexuality used to be considered as crime in India under section 377 of Indian Penal Code till the year 2018. Though the Supreme court recognized the rights of LGBTQ community, they face discrimination and hatred.

Legal changes are important steps and recent judgments have laid groundwork for better protections from discrimination based on sexual orientation and gender identity, but much more is needed to accept the LGBTQ persons by the society, for the reason that most of the time the LGBTQ persons are not accepted even by their own families.

RELIGIOUS VIEWS ON HOMOSEXUALITY

Almost every religion in India opposes homosexuality, it is believed in Hinduism that romantic love is possible between man and women only, and that sex between two man or two women is due to lust, and lust is wrong. Therefore, homosexuality is considered to be a serious crime. When it comes to Islam, Muslim Shariyat law considered homosexuality as a heinous crime. The penal provision was codified in 1860 (Indian Penal Code) where homosexuality was considered as unnatural offence and punishment prescribed. The issue of

Homosexuality started rising only after 19th century when some magazine articulated the issue in public form.

LEGAL DEVELOPMENTS

Section 377 of Indian penal code was coded 1860 and derived from common law system which basically talks about legislation keeping in mind the rules of nature, therefore homosexuality is was considered as unnatural offence. It can be said that this provision shows injustice to sexual minorities and the reason is that their interest differs from the mainstream.

In a case **National Legal Service Authority v. Union of India**¹, Supreme Court recognized the rights of Transgender people with the aspect of sexual orientation. The Supreme Court concluded that discrimination of the basis of sexual orientation or gender identity violates the right to equality guaranteed under the constitution of India. The issue was whether a person of third gender should be legally recognized or not, the court upheld the right of all persons to self-identify their gender. Article 21 of the constitution of India ensures a person's dignified life and one's gender identity falls within the framework of fundamental right to dignity under Article 21.

In 2009 in the case of **Naz Foundation v. Government of NCT of**

¹ AIR 2014 SC 1863

Delhi², Delhi High court struck down section 377 of Indian Penal Code as it was contrary to constitutional morality and violative of article 14, 15 and 21, however the judgment was over ruled in 2013 in the case of **Suresh Kumar Kaushal and anr v. Naz foundation and ors.**³ and it was held that section 377 does not suffer from any constitutional infirmity in effect to that homosexuality was criminalized again.

In the year 2018 Supreme Court, in the case **Navtej Singh Johar and ors. v. Union of India**⁴ decriminalized parts of section 377 of Indian penal code 1860. The Supreme Court effectively allowed the consensual sexual intercourse between the adult members of the LGBTQ community. The Honorable Supreme court in its judgment mentioned that ‘consensual sex between adults in a private space, which is not harmful to women or children, cannot be denied as it is a matter of individual choice’.

A bill was passed in Indian parliament in 2019 for the protection of rights of the Transgender persons, which prohibits discrimination against Transgender with respect to education, employment and ability to buy or rent property.

DISCRIMINATION

Though the Constitution of India guaranties the right to equality (article

² 2010 CrLJ 94 Delhi

³ AIR 2014 SC 563

⁴ AIR 2018 SC 4321; WP(C) 572/2016

14), right against discrimination (article 15), right to life and personal liberty (article 21), still some people are deprived of these rights just because of their sexual orientation and gender identity.

Despite recent political movements, court judgments and legislations in favor of LGBTQ rights, significant amount of homophobia still present among the Indian population. Most of the LGBTQ persons in India remain closeted, fearing discrimination from their families. There have been many reports of abuse, harassment and violence directed against the LGBTQ people over the years. Homosexual people face many derogatory words, violence and harassment. Often, people make fun of them because of their sexual orientation.

Discrimination is faced by the LGBTQ community at various levels, be it home or outside home. The struggle of the persons from this community starts from the day of their birth: if the new born belongs to Third gender the family does not accept it and displaces it. It is difficult for a person to express their preferences because the family members will not accept. Outside the home, they experience severe conditions: they are ignored, hated, be it at schools, colleges, workplace or any other public place because of their sexual orientation.

PRESENT SCENARIO

Today, in India within the boundaries of family, schools, or any part of the society acceptance of sexuality of LGBTQ community is still a

struggle. The recent Judgment of the Supreme Court recognized the LGBTQ community, but there is still a wide gap in implementing a policy for them and make better environment for them. In present times they are facing many issues which hinder progress. The problem of sexual orientation and gender identity leads to family conflicts because majority of the population rejects LGBTQ persons. LGBTQ people suffer from socio-economic inequalities due to discrimination at workplaces.

The homophobia still exists in the mind of the Indian population and therefore, in some parts secret honor killings are made and in some parts lesbians are subjected to corrective rapes by their own family. In a nutshell people belonging to this community have not accepted and understood as a span of human condition and they are stereotyped.

CONCLUSION

The verdict sends a message of hope not only to LGBTQ community but to everyone fighting for justice and equality. A person's choice of partner should not be restricted for the reason that they have a different sexual orientation. It takes away the right to life with dignity enshrined in the right to life and personal liberty under part III of the Indian constitution. The LGBTQ community should be freed from orthodoxy. It will remain taboo if we do not treat them equally therefore, there is a need of special legislations to protect the interest of the LGBTQ and as

well as there is a need of growing social morality to accept them and remove all the stereotypes. Only the concrete policy by legislator can ensure protection from discrimination and violation to the LGBTQ people.

MARITAL RAPE – A SERIOUS CRIME



By Madhushree Chakraborty
B.B.A. LL.B Semester V

ABSTRACT

Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and need not involve physical violence. Marital rape is considered a form of domestic violence and sexual abuse. While unwilling sexual contact between a husband and a wife is recognized as a criminal offense in almost every country of the world, **India is one of the thirty-six countries that still has not criminalized marital rape.** Exception 2 to Section 375 exempts unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375's definition of "rape" and thus immunizes such acts from prosecution.

MARITAL RAPE AND THE CONSTITUTION

Married women, exactly like men and unmarried women need protection of the law in their private spheres. While the rest of the section 375 of the IPC is interested in protecting the right of a victim from the crime of rape, such a right is withdrawn on marriage and the focus of the law instead shifts to protecting, the perpetrator of the crime of rape. It takes away a woman's right of choice and indeed effectively deprives her of bodily autonomy and her personhood. Thus the classification is unreasonable, unintelligible and violates the mandate of Article 14. Withdrawing the protection of Section 375 of the IPC from the victims of the crime of rape solely on the basis of their marital status is irrelevant for the purposes of legislation and thus violates the test of classification under Article 14. The Criminal Law (Amendment) Act, 2013 increased the age of consent for sexual intercourse by a girl from 16 years to 18 years. By virtue of provisions of Protection of Children from Sexual Offences Act, 2012, Parliament has recognized that a girl less than 18 years is a child and therefore, not in a physical and mental condition to take an informed decision as to sexual relationship. However, Exception 2 to Section 375 IPC still retains the age of consent from a married girl as 15 years. As a result, there is a huge gap of 3 years in the age of consent for a married girl child, vis-a-vis an unmarried girl child. This classification has no rationale nexus with the object sought to be achieved, it submits. The rationale for

increasing the age of consent to 18 years is that a girl below the age of 18 years is considered incapable of realizing the consequences of her consent; she is treated as a minor under law and, therefore, mentally and physically not mature enough to give a valid consent. Therefore, simply because some marriages in India are being performed at an age lower than 18 years, it is not a justification to lower the age of consent to as low as 15 years. Parliament cannot permit the exploitation [in the name of marriage] of a girl child simply because some girls are married at an age less than 18 years.” Article 21 of the Indian constitution enshrines in it the right to life and personal liberty. Article 21 although couched in negative language confers on all persons the fundamental right to life and personal liberty. Post the case of **Maneka Gandhi v Union of India**¹ it has become the source of all forms of right aimed at protection of human life and liberty. The meaning of the term ‘life’ has thus expanded and can be appropriately summed up in the words of Field J. in *Munn v Illinois* where he held that life means ‘something more than a mere animal existence’, which was further in **Bandhua Mukthi Morcha v. Union of India**² where the SC affirmed that right to live with human dignity.

In a series of cases the SC has recognized that a right to privacy is constitutionally protected under Article 21 of the Indian Constitution. **Justice K.S Puttaswamy and Anr. v. Union of India and Ors** is a

¹ Maneka Gandhi v union of India 1978 AIR 597

²1984 AIR 802, 1984 SCR (2) 67

landmark judgment of the Supreme Court of India, which holds that the right to privacy is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India.³

The right to privacy under Article 21 includes a right to be left alone. Any form of forceful sexual intercourse violates the right of privacy. The exemption to marital rape violates a married woman's right to privacy by forcing her to enter into a sexual relation against her wish. The Supreme Court in the case of **State of Maharashtra v. Madhukar Narayan**⁴ has held that every woman was entitled to sexual privacy and it was not open for any person to violate her privacy as and when he wished or pleased. In the case of **Vishaka v State of Rajasthan**⁵, the Supreme Court extended this right to privacy in workplaces. Further, along the same line, there exists a right to privacy to enter into a sexual relationship even within a marriage. By decriminalizing rape within a marriage, the marital rape exemption violates the right to privacy of married women.

³1984 AIR 802 S.C 267

⁴ AIR 1991 S.C 207

⁵ AIR 1997 S.C. 3011

CRIMINAL JURISPRUDENCE BEHIND MARITAL RAPE

Based on sexual assault, marital rape can be categorized into 3 types:

1. Force only Rape: In this kind of rape, husband uses threats and violence

Only to the degree necessary to coerce sex. It usually occurs in a relationship

where violence occurs in sexual intercourse.

2. Battering Rape: Here women experienced both physical and sexual violence

in the relationship. Often the rape occurs as a continuation of physical assault.

And most of the women fall under this category.

3. Obsessive Rape: From the word obsessive one can find that this is sadistic rape. The abuser seems to be obsessed with sex, and the act itself is violent.

STATISTICAL ANALYSIS (SOURCE- THE HINDU)



Illustration: Surajit

HIDDEN TRAUMA

■ The police mostly file cases of marital rape under IPC section 377, when there is forced anal penetration, and in a few instances, under section 498A, if previous cases of cruelty have already been registered.

■ In most cases reported from emergency wards, the police delayed collection of medical evidence from these hospitals and also did not wish to record an FIR.

13%

of women also reported that their spouses withheld sex, which has to be understood as a form of sexual violence.

CONCLUSION

It is a crime not meant to be ignored. Marriage is not an ownership of body rather it's a union of soul. It's high time the judiciary should declare a binding precedent against marital rape.



BLOGS



MY BLACK LADY



By Samira Alam
LL.B Semester III

Envision being explicitly mishandled at eight years old by one's mom's beau. That is the horrendous truth of Maya Angelou's adolescence. Marguerite Annie Johnson was born in St. Louis, Missouri, on April 4, 1928. At the point when she was three and her sibling four, their parents' marriage broke off, and their dad sent them to Stamps, Arkansas, alone via train, to live with their paternal grandmother. After four years, when Angelou was seven and her sibling eight, the young children's father returned them to their mother's consideration at St. Louis. At eight years old, while living with her mother, Maya was explicitly mishandled and assaulted by her mother's beau, a man named Freeman. Freeman was seen as blameworthy and imprisoned uniquely for a day. Four days after his acquittal, he was killed, purportedly by Angelou's uncles. After that occasion, Maya got quiet for very nearly five years, accepting, as she expressed, "I thought, my

voice murdered him; I slaughtered that man, in light of the fact that I told his name. And afterward I figured I could never talk again, in light of the fact that my voice would execute anybody". It was during this time of quietitude when she built up her unprecedented memory, her adoration for books and writing, and her capacity to tune in and watch her general surroundings. Angelou credits an educator, Mrs. Bertha Flowers, with helping her talk once more. With the distribution of her first life account I know why the caged bird sings (1969), Angelou freely examined parts of her own life.

Maya was regarded as a representative for women and individuals of color; her works have been viewed as a guard for coloured culture. She made a deliberate endeavor to challenge the outrages of the general public. Her works focused on subjects, for example, prejudice, personality, family and travel. The development of Maya Angelou was brilliant. She emerged from prostitution and the life of a madam to turn into an incredibly famous writer, memorable producer, and exceptional motivation for Black women's creative faculties. At 16 years of age, Maya chose to turn into a trolley conductor since she enjoyed the outfits, yet was denied an application in view of her race. With her mother's help, she sat in the entryway of the workplace from open to close regularly for about fourteen days until she wore down their segregation. She turned into the main female African-American trolley conductor in San Francisco. She gave birth to her child Clyde Johnson in 1945, who later changed his first name to Guy. Besides waitressing

and retail occupations, Maya turned into a prostitute and inevitably ran a house of ill-repute to help herself and her child. Maya's energy for words would spare her from the ghettos, demonstrating she was a star bound to make the world her stage. All through the 50s, Maya was a Calypso artist in dance clubs in Chicago, New York and San Francisco, which roused her first and last studio collection 'Miss Calypso', which was delivered in 1957. During the 60s she was devoted resources into the social liberties development, keeping cozy associations with coordinators, for example, Martin Luther King Jr. and abstract symbols, for example, James Baldwin who were not reluctant to talk on the imbalances of the Black involvement in America. Her aspiration and vast innovativeness developed from the phase to the page, and soon she vanquished the screen.

Maya Angelou was a lady of unlimited gifts however the most striking component about her was her verse. One of foremost personal choices is her splendid poem "PHENOMENAL WOMAN".

*Now you understand
Just why my head's not bowed.
I don't shout or jump about
Or have to talk real loud.
When you see me passing,
It ought to make you proud.*

These are my favourite lines in the poem. It is an expressive piece that conveys a significant feminist message to the universe of show and stereotype that strengthening originates from being positive and secure about your own female skin, regardless of whether or not one measures up to the magnificence principles set by the majority and there should definitely not be any impulse to cling to any of those "guidelines".

Angelou showed us the best way to live and compose. The vision of her wearing that astonishing coat perusing the inaugural poem for President Bill Clinton is carved in our hearts. She lived well and her adoration for good life taught me how to live my own.

ONLINE CLASS: BOON OR BANE?



By Debarshi Ghosh Dastidar
B.A. LL.B Semester V

In 2020, we are faced with an unprecedented existential crisis with the Covid-19 pandemic raging across the globe. Every sphere of life stands affected by the relentless stride of this ruthless virus. Human life and lifestyle has suffered a drastic transformation; we have had to make space for alteration and adaptation in almost every facet. The dynamics of acquiring and imparting knowledge, teaching-learning process, also experienced sea changes, and the changes were incorporated and made functional almost overnight.

Owing to the pandemic, students and teachers the world over had to resort to online mode of education. However, online education lends itself to interpretation like the two sides of a coin. It has its own pros and cons. The online classes are convenient because it can be accessed from anywhere provided that an individual has proper equipment. It is not only convenient but also flexible because an individual can record lectures and listen to them whenever they want to. Before the pandemic

the students had to get up early, get ready and had to go to their educational institutes. But the situation has changed due to the lockdown, now the right to education has been brought to home. Online courses also help financially. Owing to the online classes the institutes do not have to invest much in real-time classrooms. They do not have to direct their money towards electricity, maintenance, transportation and so on. Lastly, online classes connect an individual to global village. However, there are some distinct disadvantages of this mode, which are unfortunately proving detrimental to a large proportion of students and learning enthusiasts. There are various places and regions in the country where there is no internet service, no electricity service; students who cannot afford the internet service and most importantly, many of them don't have any desktop, laptop, or smart-phone. Therefore, in conclusion it can be said that online classes is the necessity of the hour but there should be proper infrastructure as well to for its smooth run and so that no learner is exempted from this basic right.

DIGITAL STRIKE

#INDIAVSCHINA



By Astha Kumari
B.B.A. LL.B Semester V

The steps taken by Indian government for cyber security and against data mining is admirable. According to USA Research 2015, armed conflict doesn't merely means using bombs, bullets and armed forces. Countries like Iran, Russia, China , USA and North Korea are indulging in another type of armed conflict known as cyber warfare.

Basically, cyber warfare is when one country tries to cause harm to another country through computer based attacks. Cyber warfare is so sedate that it can activate or deactivate defense system or nuclear system of any country.

Looking the graveness of this problem Indian government under sec 69A of IT Act, and after consulting Ministry of electronic &IT, Home Ministry and cyber crime co-ordinator centre banned 59 Chinese apps.

The one thing common in those 59 apps was Data mining. Through these apps user's data, their privacy and National security was compromised. The next step of our government was to consult

Department of Telecom and ask all internet service providers to block IP address and access of these apps.

Among those 59 apps one app whose ban had a great impact on China is Tiktok as it had more than 30% Indian user base.

CAPITAL PUNISHMENT



By Adesh Singhal
B.A. LL.B Semester V

Today over two-third countries in this world have given up on capital punishment as they have construed an unfavourable opinion of this form of punishment from the experience of the past century. It can be clearly observed and be taken as a guide that the main motive or agenda to end the sexual violence (for which capital punishment is generally thought of as an effective deterrent) has also completely failed. The standard by which nations conduct themselves have evolved, but in India we continue to go against the wave: 56 countries have retained it while 106 have abolished for all crimes, 8 in ordinary and other are in abolition practice.

Capital punishment, also known as death sentence, is a government sanctioned practice. In India capital punishment is still in practice but given in rare of the rarest case. The most recent was the conviction of four convicts in the 2012 Delhi gang rape case, and the last was the hanging of terrorist Yakub Memon in 2015 who was convicted in 1993

in Mumbai blast. Capital punishment has always remained a topic of debate not only in our country India but throughout the world. Although two-third of the nation have abolished death penalty but over 60 percent of the world population in countries such as China, India, United States, Japan, Saudi Arabia, etc have retained capital punishment. China is believed to execute more than all other nations combined.

In the system of criminal justice world-wide, and also in India, the element of sentencing Capital punishment in its very essence goes against the spirit of Theory of punishment and extension of Natural Justice. Capital punishment in India has not only been a reason for debate in legislation making but also in judicial decision. The Mithu vs State of Punjab judgment ruled that death penalty is not mandatory and also ruled mandatory death penalty is unconstitutional. In India, capital punishment is given but very few are executed and many are turned to life imprisonment; as, 148 in 2015, 121 in 2017 and 186 in 2018 were given capital punishment but none was executed and many were converted to life imprisonment as "Life imprisonment is the rule to which death penalty is an exemption"

Justice P.N Bhagwate said that "death penalty in its actual operation is discriminatory for it strikes mostly the poor and deprived". In report it has also shown that the manner of capital punishment was wrong. In

U.S. alone 350 people have reportedly been wrongfully sentenced in last century. Hence public emotions cannot be an alternative to reason and logic. There needs to be better enforcement of law in response to valid question on justice but death penalty holds no answer.



POEMS



CAROUSELS OF COURAGE



By Samiksha Singh
B.B.A. LL.B Semester V

Hey you! Learn to stand up for yourself,
Speak up for your rights,
This is ‘kalyug’: these are bad times,
Even the Sun refuses to shine.
You need to put up a fight
For everything: pull the last straw,
There must be some strength that out you can draw.
When you will
Venture into this path, hounds will be on your trail,
But don’t you fall frail;
You need to keep moving –
Feel the mad rush of this world beneath you grooving.
Don’t wait for anyone to
Come and help you –
Oh! You need to stand on your own two feet,
People often desert you in need.



PHOTOGRAPHY







TANUSHREE ROY
LLB SEMESTER III

