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ISSUE – I (Jan – Mar 2022)



QUEST

**A Quarterly Journal of the Students published
by the Indian Institute of Legal Studies**



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QUEST

THE STUDENT JOURNAL
(2022)

A Quarterly Journal of the Students published by the
Indian Institute of Legal Studies



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MESSAGE

FROM PRINCIPAL'S DESK



Big thanks to the Quest Editorial Board and its contributors for giving their valuable time. I believe this edition will enrich the reader's knowledge. I would also like to thank the students who, through various mediums, have presented their ideas, views, emotions and expressions. I believe they are going to be the flag bearers of the legal fraternity in India. I would also like to thank and congratulate to all the editors and the contributors of this edition. I am sure, that the readers will be enhancing their knowledge base with this edition of Quest.

Thank You

Prof. (Dr.) Ganesh Ji Tiwari
Principal,
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MESSAGE

FROM REGISTRAR'S DESK



“No thief, however skillful, can rob one of knowledge, and that is why knowledge is the best and safest treasure to acquire.”

L. Frank Baum

I am grateful to the Quest Editorial Board and its contributors for encouraging us to complete the journal which will help the readers in many ways. Every edition brings new challenges as well as new opportunities for the contributors.

I believe this journey of Quest has been a cause of reflection, full of unlearning old habits and adopting new ones. The journey was challenging but it was worth it. I hope this opportunity not only helped the students to sharpen their minds but also to represent the principles of Indian Institute of Legal Studies.

I would also like to thank and congratulate the entire Board who helped in putting together this journal.

This journal will positively help us to rekindle the inner student in us.
We assure to give our best efforts in making this journal a grand success.

Thank You




Shri Sanjay Bhattacharjee
Registrar,
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EDITORIAL MESSAGE
FROM EDITOR-IN-CHIEF

Dear readers,

We hope you are doing well!

As Albert Szent-Gyorgyi rightly said “*Research is seeing what everybody else has seen and thinking what nobody else has thought*”.

It gives us immense joy and satisfaction to introduce our very own student journal ‘QUEST’.

The objective of this journal is to promote, develop and enhance the research skills of creative minds. We are proud of our contributors who present you with write-ups dealing with various legal issues, and engage other disciplines with law. Further, this journal gives a platform to showcase talent, and also it stokes curiosity and improves the way one expresses.

A lot of effort has gone into the making of this issue. Amidst the hectic schedule of semesters, examinations, assignments, and internships, we tend to lose track of all the simple things we are capable of. Often, we tend to procrastinate and lose grip over things that could make a proud moment for us and give a sense of satisfaction.

We hope you enjoy reading this issue as much as we have enjoyed making it!

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LONG ARTICLES



PORNOGRAPHY AND LEGALITY WITH SPECIAL REFERENCE TO CHILD PORNOGRAPHY

Ratnadeep Bose¹

ABSTRACT

Pornography is not only a morally problematic issue in India, but also in every corner of the world. It is such a reality that even after knowing it's adverse effects on the youths and in grown-ups, we tend to sit back and just watch how things take over the society. Various kinds of laws have been enforced to curb this problem, but are these laws enough? How can porn make us a criminal? Is it offensive to watch porn, especially for children? What can be its causes and impacts? Is making and distributing pornography, okay? Is it safe for us to gain knowledge about our sexual health through porn? Will our society ever be open on talking about sex? Will we ever have proper education about sex and sexual health? It is the need of the hour to fetch answers to all these issues, for which this article becomes pivotal.

KEYWORDS: Pornography, Child Pornography, Sex Education, Pandemic, Obscenity.

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1. INTRODUCTION

Life has always been a complex web, and to be brutally honest, with every rolling year, it evolves and upgrades its complexity to its maximum potential. Life, in the recent years has changed a lot, most of the changes have already been brought about by the introduction of internet in the human society, but, the recent pandemic situation, that has come up, and to which we are all chained to, has also significantly brought about a lot of changes in our lifestyle.

The health pandemic, to which we all have surrendered to, has significantly changed many of our routines and consumption habits. 10 years back from where we stand in the present reality, talking or even thinking about working from home or graduating or attending schools or college lectures was almost like a dream of unrealistic desire and fantasy. However, this is the reality we all are living in. It's almost like some Genie broke out of some magical lamp just to grant our unrealistic wish of working with ease and comfort from home.

However, these situations of working with ease and comfort from home, which is truly universal in nature, did not quite completely turn out to be a bed of roses. During the severe lockdowns, in different countries all around the world, devices such as smart phones, computers, etc., became the only source of interacting and socializing with our peers and for meeting our entertainment needs. In the case of students, these devices also served as learning tools.

As we are all aware of the truth of the internet, *it is as unsafe of a place,*

as safe of a place it is. Anything and almost everything is available for us to search about or to get information about, depending upon what exactly we are looking for. And devices such as smart phones and computers and similar are no strangers to internet access. The whole pandemic situation somewhat made us all so much dependent upon these devices that it has made us a slave to its might. It has become a necessity for us to survive now.

2. ORIGIN AND HISTORICAL BACKGROUND OF PORNOGRAPHY

Now when we are talking about pornography, we need to understand the fact that we are talking about non-relational sexual intercourse, which requires absolutely no relational intimacy. Not all sex is porn, but all porn is sex. It has appeared in all cultures and civilizations over the centuries, but how did it all originate? What exactly is the origin of Pornography?

Well, the word '*pornography*' takes its origin from the Greek word '*porni*' which meant '*prostitute*' and '*graphein*', which meant '*to write*'. It was originally defined as any work of art or literature depicting the life of prostitutes.² Pornography has been first recorded in ancient Greece, but it was not until the 15th century that Pietro Aretino developed writings and drawings specifically intended to arouse. The word '*pornography*' first appeared in English in about 1850, but was primarily limited to use among classical scholars until the growth of commercial publishing in the 20th

²BRITANNICA, <https://www.britannica.com/topic/pornography> (last visited Feb. 10, 2022).

century.

The current view of pornography gained currency in the 19th century. Prior to that it was not a separate and distinct genre created to arouse sexual feelings. Rather it was a vehicle through which to criticize political and religious authorities through the shock of sex. It was linked not only with free thinking and hearsay but also with the animating ideas behind the Renaissance, the Scientific Revolution and the Enlightenment. Political pornography proliferated in the period prior to the French Revolution as a medium through which to criticize the aristocracy as debauched.³

3. NATURE AND CONCEPT OF PORNOGRAPHY

Life never takes a pause; it just keeps on moving, no matter what the situation may be. Amidst all these confusion and chaos, education and a student's will to learn could not be stopped under any circumstances. Smart phones and computers and similar, having smooth internet access became a major tool for a student's academic life. Most of these gadgets and services are easily available to almost everybody in this generation and it also ensured the safety of the students and children's health during these hard times. However, these facilities brought along a lot of risks simultaneously.

Among students, to be specific, underage children are being extremely vulnerable to this new method of education system, recently adopted due to the circumstantial pandemic situation. Children are being constantly

³UIA, <https://encyclopedia.uia.org/en/problem/136823> (May 15, 2019).

exposed to this dangerous world of internet, and with the adoption of this new method the boundary for handling a smart phone and monitoring the age of an individual surfing internet materials has almost lost its track, children of all ages are being exposed to the more harmful and dangerous side of the internet which are far beyond than just surfing about porn or pornography, such as the dark web. They are just a click away from getting indulged into some serious situations or to be a victim of gruesome happening.

Pornography is now just an internet search away, and in this pandemic situation, it is becoming even more immersive in nature. There are just a handful of things present in the world which are considered to be truly universal in nature. While people across the world speak different languages, eat different foods and feel different emotions, millions of people across the world watch porn may or may not be on a regular basis.⁴ The very first thing that clicks in our minds whenever we come across terms like “*pornography*”, and “*porn*” is a depiction of an obscene, sexually explicit or erotic act or behavior which is intended to cause or arise sexual excitement, which is exactly what it means. However, to think that pornography is available only in audio visual form spread all over the internet is also not completely correct. Pornography can be in various other forms such as it can be in the form of photograph(s) and/or in written forms

⁴Jessica Brown, *Is porn harmful? The evidence, the myths and the unknowns*, BBC, (Sep. 26, 2017, 10:04 AM), <https://www.bbc.com/future/article/20170926-is-porn-harmful-the-evidence-the-myths-and-the-unknowns>.

as well.

The mature individuals of the society are much familiar to this world of pornography but underage children, who get accidental exposure into this explicit world, for the first time, are not expected to react positively to it. It not just affects them mentally but also their social relationships and studies. Long term exposure to such explicit contents can evoke emotions or feelings of unrealistic sexual fantasies and it can also turn brilliant brains into pure addicts resulting in further degradation of their livelihood.

4. CHILD PORNOGRAPHY

4.1. Meaning and concept of child

Whenever we talk about children and pornography, it is very important for us to understand the fact as to who we refer to as a child. In general, we refer to any individual who has not yet attained the age of adolescence, or to be specific, a person below 18 years of age is to be considered a child. The legal system of our country, time and again, has tried its level best to define ‘*child*’ through various Acts. The laws of our country make provisions for children in different aspects. So, it is extremely important to define ‘child’ so that the laws can be made applicable to the ones that fall under such a category. However, there is not just one single definition of child which is valid for all the Acts.⁵

⁵Ritika Sharma, *Who is a Child? Why is it difficult to define a Child?*, LAW TIMES JOURNAL (Dec. 27, 2019, 2:18 PM), <https://lawtimesjournal.in/who-is-a-child-why-is-it-difficult-to-define-a-child/>.

According to Article 1 of the Convention on the Rights of the Child, 1989,⁶ “child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”. Therefore, international law gives the status of child to the persons who are below eighteen years of age.

Section 2(ii) of the Child Labour (Protection and Regulation) Act, 1986,⁷ states that “child means a person who has not completed his fourteenth year of age”. However, this act mostly aims at prohibiting the engagement of children in the workplace.

According to Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015,⁸ “child refers to a person who has not completed eighteen years of age”. The Juvenile Justice Act makes provisions for the welfare and developmental needs of the juveniles. Therefore, any person who has not completed eighteen years of age is given the status of child under this Act.

Section 2(d) of the Protection of Children from Sexual Offences Act, 2012,⁹ also states that, “child means any person below the age of eighteen years”. This act simply aims to protect children from sexual offences and harassment. Every law is formed with different

⁶Convention on the Rights of the Child, 1989, art. 1, Acts of Parliament, 1989 (India).

⁷Child Labour (Protection and Regulation) Act, 1986, §. 2(ii), No. 61, Acts of Parliament, 1986 (India).

⁸Juvenile Justice (Care and Protection of Children) Act, 2015, §. 2(12), No. 2, Acts of Parliament, 2015 (India).

⁹Protection of Children from Sexual Offences Act, 2012, §. 2(d), No. 32, Acts of Parliament, 2012 (India).

objectives and therefore, in order to solve the purpose of their establishment, ‘child’ has been defined differently in different acts.¹⁰

4.2. Meaning and concept of child pornography

Whenever the subject matter of “child” and “pornography” touches one another, it is always a two-way situation in context. In the first instance, where we see these young children, who get exposed to explicit contents at a young age are becoming a problem in the society, in the other instance, we see young children who gets trapped into bigger problems, which is child pornography.

Child pornography doesn’t necessarily involve a child having knowledge about porn or pornographic contents. It can happen to any child, who, with or without any knowledge can become a prey to a pedophile. And when the topic comes down to child or children pornography, it’s further disgusting.

Child pornography¹¹ is a sub-branch of Pornography which is mostly focused on showcasing children as a medium to arouse the sexual desires of the viewers. Child pornography often shows violent pictorial representation of children and adolescents who are in constant pain.

¹⁰LAW TIMES JOURNAL, *supra* note 5.

¹¹Tarannum Vashisht, Child Pornography: *Reasons, Impact and Regulation*, IPLEADERS (Feb. 17, 2022, 9:29 PM), <https://www.google.com/amp/s/blog.ipleaders.in/child-pornography-reasons-impact-and-regulation/%3famp=1>.

Child pornography includes photographs of children in bare minimum or no clothes at all. It also includes audio recordings of children making sexual sounds and/or most importantly involves audio visual recordings of children getting involved in sexual activities or, the worst, full-fledged sex.

4.3. Causes and impacts of child pornography

A major cause of porn addiction in children is peer pressure. No influence in a teenager's life is as powerful as that of a peer. Peer pressure can impair good judgment and fuel risk taking behavior, drawing a child away from the family and positive influences and luring them into dangerous activities.

Pornography can have various adverse impacts on a kid's mind. Knowing about sex through pornography can damage a young mind and also gives them an unhealthy idea about sex. When they grow up, they expect their sex life to be similar to the porn that they used to watch, which often includes unrealistic, possibly dangerous, unhealthy and hazardous sexual practices.

4.4. Case study on child pornography

A recent survey says that an alarming number of children aged 12-13 are addicted to online porn. Pornography addiction in children usually starts when kids spend too much time in front of computers or cell phones, unmonitored. Other circumstances such as separation in

parents, neglect and abuse also leads to kids turning to pornography.¹² It all starts off as a curiosity which later on goes on to become a habit. From a personal experience of mine, I first got an exposure to this explicit world of pornography when I was in my early teen days, busy playing some online games over the internet being all alone at home. A sudden pop-up notification came on the screen which showed certain explicit pictures. Out of curiosity when I click on the pop-up notification it redirected me to a website which was full of such erotic pictures and videos.

This experience of mine happens to tell me about a lot of things; It's not just me who stumbled across such a website or pop-up notification, there must have been others as well. And if we consider the present scenario, it may be possible that many other young children who are also playing similar games when their parents are not around, in the name of attending online classes. Meanwhile, they might have come across such pop-ups and visited the websites, like I did out of curiosity, and might have shared about such experiences with friends at school or tuition or just in the neighborhood.

¹²DAILY SUN, <https://www.daily-sun.com/post/85556/heres-how-kids-become-addicted-to-porn> (Oct. 23, 2015).

5. PORNOGRAPHY AND THE PROBLEMS ASSOCIATED WITH IT

Pornography is the definition of a portrayal of sexual subject matter for the sole purpose of sexual arousal using various means that include books, magazines, drawings and also video games. Hence, it is safe to say it is a depiction of an act rather than the act itself.

In the absence of proper sex education information, pornography can turn out to be the main source of a young person's sex education. Pornography can influence a young person's expectations about sex. It is also associated with unsafe sexual health practices such as not using condoms and unsafe anal or vaginal sex. The gaps between expectations and reality can produce 'sexual uncertainty' about sexual beliefs and values and may also be related to sexual dissatisfaction, anxiety and fear.

Both male and female consumers of pornography have increased levels of self-objectification and body surveillance. Adolescent pornography use is associated with strong beliefs in gender stereotypes. Male viewers who view pornography frequently are more likely to view women as sex objects and they are also likely to hold sexist attitude. Pornography may strengthen attitudes supportive of sexual violence and violence against women.¹³

¹³Antonia Quadara, *Alissar El-Murr and Joe Latham, Online pornography: Effects on children & young people*, 1, 4-5 (2017), <https://aifs.gov.au/publications/effects-pornography-children-and-young-people-snapshot>.

6. THE LEGALITY OF PORN IN INDIA

Pornography and sex have always been looked upon as a forbidden subject in the social fabrics of India. The legal system of India, over the years, has upheld the social ‘morality’ and has made an endless number of provisions in this particular regard. However, there is no specific provision in any statute that directly deals with pornography. It has been brought within the purview of Section 292 of the Indian Penal Code, 1860¹⁴, which deals with obscenity and it imposes criminal liability for the sale or distribution of obscene materials.

Pornography has also been prohibited under Section 67 of the Information Technology Act, 2000,¹⁵ and the Indecent Representation of Women (Prohibition) Act, 1986. The word obscene has not been defined in Indian Penal Code, 1860 as the concept of obscenity differs from society to society and from time to time. The test for obscenity has been given in Section 292(1) of Indian Penal Code, 1860,¹⁶ which is based on an English Decision, in the Hicklin’s Case.¹⁷ Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986,¹⁸ defines ‘indecent representation of women’ as the depiction of the figure of women as to have the effect of corrupting public morality.

¹⁴Indian Penal Code, 1860, §. 292, No. 45, Acts of Parliament, 1860 (India).

¹⁵Information Technology Act, 2000, §. 67, No. 21, Acts of Parliament, 2000 (India).

¹⁶Indian Penal Code, 1860, §. 292, No. 45, Acts of Parliament, 1860 (India).

¹⁷Regina v. Hicklin, (1868) 3 QB 360.

¹⁸Indecent Representation of Women (Prohibition) Act, 1986, §. 2(c), No. 60, Acts of Parliament, 1986 (India).

The legislations in India dealing with the ‘*obscenity*’ subject has been held valid under Article 19(2) of the Indian Constitution¹⁹ which allows the state to impose certain and reasonable restrictions on the right to freedom of speech and expression on grounds of *inter alia* public order, decency and morality. In India, the Constitutional framework doesn’t contain any specific provisions as to privacy but the right to privacy has been spelt out by the Supreme Court from the provisions of Article 19(1)(a), which deals with freedom of speech and expression, Article 19(1)(d), which deals with the right to freedom of movement and from Article 21 of the Constitution,²⁰ which deals with the right to life and liberty.

In the case of *Naz Foundation v. Government of NCT of Delhi*,²¹ the Court held that privacy recognizes a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The way in which one gives expression to one’s sexuality is at the core of this area of private intimacy. If in expressing one’s sexuality, one acts consensually and without harming the other, invasion of that precinct will be a breach of privacy. Now, since manufacturing and viewing of pornography are medium of expression of one’s sexuality, it must fall within the ambit of right to privacy, provided it is manufactured and viewed privately by

¹⁹INDIA CONST. art. 19, cl. 2.

²⁰INDIA CONST. art. 21.

²¹*Naz Foundation v. Government of NCT of Delhi*, 160 Delhi Law Times 277.

consenting adults and thereby not causing any harm to others.²²

However, watching porn or pornography is not illegal in any country across the world; the curbs are there on its creation, publication and distribution. Any obscene material that includes children is completely illegal. In India, the manufacture, publication and distribution of pornography is illegal, but watching or having such contents on a personal device is not illegal.

According to Section 292 of Indian Penal Code, 1860,²³ content is deemed as obscene if it is “lascivious or appeals to the prurient interest”. The Section says, whoever takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation shall be punished. Section 293 of the Indian Penal Code, 1860,²⁴ deals with the age of customers or audience as it bars distribution or sale of such content to anyone below 20 years of age.²⁵

²²Vallishree Chandra & Gayathri Ramachandran, *The right to pornography in India: An analysis in light of individual liberty and public morality*, 4 NUJS L. Rev. 323, 5 (2011), <http://nujlawreview.org/2016/12/05/the-right-to-pornography-in-india-an-analysis-in-light-of-individual-liberty-and-public-morality/>.

²³Indian Penal Code, 1860, §. 292, No. 45, Acts of Parliament, 1860 (India).

²⁴Indian Penal Code, 1860, §. 293, No. 45, Acts of Parliament, 1860 (India).

²⁵HINDUSTAN TIMES, <https://www.hindustantimes.com/india-news/raj-kundra-arrest-what-laws-say-about-making-porn-in-india-101626852316164.html> (last visited Feb. 20, 2022).

In the very recent case of *Raj Kundra*,²⁶ who happens to be a renowned celebrity's husband and a businessman, was arrested, and the basis that leads to his arrest focuses on the country's laws that governs pornographic contents in India. Raj Kundra was arrested following multiple complaints by aspiring actors who accused him of filming nude and circulating the videos online.²⁷

The main laws that deal with pornography in India are Sections 292, 293 and 294 of Indian Penal Code, 1860,²⁸ and section 67-A of the Information Technology Act, 2000.²⁹ In cases of children, the Protection of Children against Sexual Offences Act, 2012,³⁰ is invoked and Section 14 of the Act makes it crystal clear that the use of children for pornographic purposes in any form is a crime and when it comes to women, the Indecent Representation of Women (Prohibition) Act, 1986 makes it clear that the advertisement and publication of content showing women in indecent manner is a crime.

7. CONCLUSION

Pornography can be found in books, magazines, films, television and increasingly in live-shows. Since what is considered, pornography reflects

²⁶Ryan John Michael Thorpe v. The State of Maharashtra, Criminal Writ Petition No. 2611 of 2021.

²⁷INDIA TODAY, <https://www.indiatoday.in/amp/india/story/explained-indian-and-uk-laws-on-pornography-as-kundra-case-has-a-london-link-1830918-2021-07-21> (last visited Feb. 20, 2022).

²⁸Indian Penal Code, 1860, §. 293, 293 & 294, No. 45, Acts of Parliament, 1860 (India).

²⁹Information Technology Act, 2000, §. 67-A, No. 21, Acts of Parliament, 2000 (India).

³⁰The Protection of Children against Sexual Offences Act, 2012, §. 14, No. 32, Acts of Parliament, 2012 (India).

a society and individual's degree of permissiveness in sexual matters, from one country to another and from one individual to another. Nude pin-ups, sexual intercourse on stage, sexual suggestions in advertisements, or blue jokes, may be regarded as enticement to sexual depravity, as a display of eroticism, or as completely innocuous. The impact of the various laws which are based on the subject of obscenity in India can be seen in the unfettered discretion exercised by the government to ban films, books and other materials on the pretext of immoral or objectionable content. However, even after the establishment of various kinds of laws to prevent the making and distribution of pornography in the country, it still prevails in a well camouflaged manner. However, the making and distribution of explicit contents are made strictly illegal in the country but watching them and keeping them in private is legal.

Proper sex education should be promoted in the country, and should be taught to each and every individual. Sexual desires of any individual are something beyond anybody's hold or control, so it is important to educate ourselves about the realistic, safe and healthy practices of sexual intercourse. It should not be a taboo to talk about sex, which is still considered as one. Children, women and also men should not become a victim to the dangers lurking with pornography. Child pornography is a hilarious crime which should not be tolerated by any means. Young people and children below the age of 18 should be a bit careful when coming across explicit and erotic materials. It's the most vulnerable age or time

period where one can lose their track or focus from important things and get lost into the murky waters of self-deterioration.

COUNTERFEITING OF FASHION IN IP LAWS AFFECTING THE GLOBAL SUSTAINABILITY

Rumpi Ghosh Alam¹

ABSTRACT

In this research endeavour shall be made to examine the concept of unexplored problem of piracy of fashion designs which gives rise to the process called 'fast fashion' where mass counterfeit products are being produced with harmful chemicals at cheaper prices and ultimately poses a threat to the environment and human life. Furthermore, counterfeit products create a huge challenge to the original designs facing major loss since the customers switch over to the 1st copy of apparels. However, these malpractices can be avoided only when there is a proper administration and enforcement of Intellectual property laws for the protection of fashion brands whose designs are being copied immensely. When the fashion brands are protected and recognition of innovation is given, it leads to the growth of an economy. Now, the major question here arises whether lack of awareness in the IP rights causes a negative impact on the environment. The answer is Yes, since with the rise in piracy of designs, a high rate of production is done and a major portion of waste transferred directly into the landfills which

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results in water pollution. The UN Alliance for sustainable fashion (2019) reports that fast fashion causes about 8% of carbon emission. So, in order to reach global sustainability, every designer should protect their designs and must have a clear vision on how one can protect their brands from counterfeiting. This paper aims at discussing to what extent IP laws give protection to the designers and the effect to the environment caused by counterfeiting.

KEYWORDS: Fashion Law, Counterfeit, Fast Fashion, Environmental Impact, Sustainability.

1. INTRODUCTION

The word 'Fashion' is something we all are very much inclined upon; the contribution of fashion in our everyday life is immense. We always have a tendency to follow the new fashion trend after it gets released in New York Fashion Week. Fashion is a form of art that leads to new creations and ideas for designers to design. In India, fashion industry is growing rapidly, and we can see a growth in domestic designers with the increase in number of fashion events in India. India being diverse in nature, we tend to adopt different fashion styles ranging from traditional fashion to western fashion which leads to a major boost in the economy. This is only one side of the fashion industry and the other is copying of the original designs due to which owners of the brand suffers a huge loss in the fashion designing.² In India, the act of copying designs from original designs is thriving and as we see Indian celebrities are more into wearing luxurious designer Indian attires which creates a desire among the consumers to buy this specific attire but due to high cost, they opt to the first and second-hand copies available in the market and are easily accessible to the consumers from every section of the society. Not only clothes but also fake making of bags of luxurious fashion designs are being sold in different market areas of the cities.³ These practices cause inferiority among the designers to create their own unique designs and make a question from

²Ayushi Verma, *fashion and IPR laws in India*, *Fashion & law journal* (2021).

³Shubham Borkar & Gursimran Narula, *Fashion Law in India*, KHURANA & KHURANA (Feb. 1, 5:34 PM), <https://www.khuranaandkhurana.com/2018/12/14/fashion-law-in-india/>.

where they can get protection. So, in India, fashion industry is protected under the Intellectual Property Law such as Designs Act, 2000, Patent Act, 1970, Copyright Act, 1957 and Geographical Indication of Goods Act, 1999. This protects the designs and curbs down the losses faced by the designers. Further, it is very important that designs should protect the designs with the law given under IP Rights, which will decline the process of fast fashion and ultimately will protect the environment at large.⁴

2. RELEVANCE OF IPR IN FASHION LAW

The fashion industry can be subject to a wide range of intellectual property rights in relation to clothing, footwear, accessories, jewelry, and so on. Fashion law is rapidly expanding in today's society, and it includes Copyright, Design, Trademark, Patents, and Licensing, and many designers have successfully protected their fashion designs and trademarks. The Intellectual Property provides protection to the fashion designs into two forms, specifically copyright and design. The Copyright Act presents safety to innovative paintings which can be in a literary, artistic, instructional or musical form. Artistic work in general includes paintings, photographs, ornaments, designs etc. However, Designs Act 2000 protects the registered designs of any persons who claim to be the owner of any new or original design. Designs defined under the Designs Act is regarded as an outermost characteristic such as the shape, configuration, pattern, ornament etc. and has been applied to any article

⁴*Id.*

via industrial process that can be seen on any article via industrial process that can be seen on any article which shall be determined only by the eye.⁵ There is a very fine line of disparity between the protection granted by copyright and design law. Copyright protection is given to an article i.e., the ‘artistic work’ the moment it came into existence and offers limited protection to the commercial exploitation of the same. Whereas the design act is the chief tool to protect industrial application of the design, however the design always need not be original. Designs need to be original and expressed in an article form to gain protection. Big fashion houses face problems due to the existence of plagiarism in the fashion industry. Rohit Bal was the first designer to copyright his complete collection in 2017, and several other well-known designers followed suit.⁶ If we use the right term to describe plagiarism, it would be termed as ‘fashion piracy’ where an illegal reproduction or copying of design which are already made. However, piracy has been categorized in two parts i.e., knockoff and counterfeit which is basically a close copy of original design and is sold under different labels from the original design. Whereas a counterfeit is a copying or imitation of an authentic unique design of any registered design and also copying of label or logo of that particular design. So, as to protect the designs from knockoffs and counterfeit, the designers claim their right

⁵LEGAL SERVICES INDIA, <http://www.legalservicesindia.com/law/article/2000/7/fashion-industry-copyright-and-design-protection>, (last visited Feb. 2, 2022).

⁶Zoya Mehta, *Limitation of copyright law to protect fashion designs*, *IPLADERS*, (last visited on Feb. 5, 2022, 11:34 PM), <https://blog.iplayers.in/limitation-copyright-law-protect-fashion-designs/?amp=1>.

under Intellectual Protection laws.

3. LAWS PROTECTING THE FASHION INDUSTRY: ROLE OF LEGISLATION

Broad discussion of the two main acts which serves and protects different purposes in the fashion industry-

3.1. Protection under the Design Act

The Design Act protects only registered designs, not unregistered designs. As a result, fashion designers who have not precisely registered their designs cannot benefit from the Act. It is important to note that a fashion design, even if it is a trademark, cannot be protected under the Designs Act. Furthermore, the Designs Act of 2000 is written to allow protection of non-functional aspects of an object that have visual appeal, such as form configuration, pattern, ornament, or composition of lines or colors applied to any two-dimensional or three-dimensional or on any form. Such designs remain operative for an amount of ten years, extendible subject to conditions, for a complete period of fifteen years. Section 22 of the Design Act states that within the case of piracy of a registered design, the infringer shall be made to pay the registered owner of the design an amount which shall not exceed Rs25000 (\$451) retrievable as a contract debt. Now, if the owner or the proprietor elects to bring a suit for the recovery of damages for any dispute of the rights presented him and for an injunction against repetition of

it, damages might be awarded, and therefore the person may be restrained by injunction. The design registration system is certain and the quickest of all IP registration procedures. Moreover, with regard to the resources invested for a creation of a new design, the registration process is inexpensive and cost-effective. Once registered, the owner obtains monopoly and exclusive rights not only against copies of the protected design, but also against significantly similar products.

3.2. Protection under Copyright Act

The Copyright Act and designs act however overlap with one another on the issue of protection. A fashion design may get protection in the following ways:

A fashion design which can be registered as 'design' under the Design Act 2000 and registered as per the provisions of the Act can get copyright protection solely under the Design Act and nowhere else. In context to this, copyright in registered fashion design will exist for a maximum period of fifteen years.

Moreover, a fashion design that qualifies as a "design" under the Design Act 2000 and is registered in conformity with the Act's provisions can only get copyright protection under the Design Act and nowhere else. Registered fashion design copyright will be valid for a maximum of fifteen years in this context.

Fashion design which is an inspired creative work (artistic) and therefore cannot be registered as 'design' under the Designs Act,

2000 can get copyright protection within the purview of original artistic work under the Copyrights Act, 1957 and once the artistic work comes into existence it can be protected during the lifetime of the author plus sixty years, once revealed during the lifetime of the author.⁷

Section 15 of the Copyright Act provides for special provisions, mentioning that copyright shall not subsist in any design that is registered or capable of being registered under the Design Act. Another necessary parameter of this provision is that copyright in the particular design shall stop as soon as the design has been applied over fifty times to an article by an industrial process by the owner of the copyright or together with his /her license by the other person.

In most scenarios, designers refrain from registering their fashion designs because of the extraordinary nature of the industry. A registered design is protected under the Design Act for a minimum period of ten years and the overall visual look of the article is protected. The act however prevents anyone other than the creator of the design to make any similar designs to the registered design but cannot be protected under the Copyrights Act. So, it is prominent that a design registration and copyright over an article cannot be together. This gives rise to the issue of proper

⁷CHADHA & CHADHA IP, <https://www.candcip.com/fashion--ip> (last visited Feb. 13,2022, 4.15 PM).

functioning of the laws. Neither the Copyright Regulation nor the Designs Act affords whole safety to the designers within the fashion industry.⁸

4. SETBACK OF EXISTING PROTECTION OFFERED

Fashion industry is dynamic in nature and considered to be an important characteristic. To stay updated, it is essential to keep up with continuous changing trends. Hence, to achieve success, fashion house releases various lines of articles in a year. Keeping that in mind, the necessity of registration under the present Acts might cause an obstacle due to the time-consuming process. The registration process takes minimum up to one month or more and ultimately exceeds the shelf-life of an article and in the absence of the registration no protection is obtainable and later on the danger of the designer's work being exploited by the locals gets worse and the creator of the designs loses to take advantage of his own creativity. When it comes to fashion disputes the pecuniary damages are usually upto Rs 50000. So, few changes in the legislation need to be altered instantly as it loses the values of fashion articles, especially the luxury fashion articles which are the mostly subject matter of the litigation. Further, the problem in the fashion business emerges when the basic design is copied while the other aspects employed, such as the shape,

⁸Ms. Radhika Dubey, *Need for Fashion law in India*, RGNUL STUDENT RESEARCH REVIEW (Feb. 13, 2022, 5:00 PM), <http://rsrr.in/2021/01/28/need-for-fashion-law-in-india/>.

fabric, pattern, and so on, are left to assume that the work is not being duplicated or reproduced, making it impossible to seek piracy remedies under current legislation.⁹

5. THE KNOCKOFF STATUS

The constant urge of counterfeit creative designs and selling them for a cheaper price has become a major issue in India solely due to insufficient and proper mechanism to protect the designers and causes an adverse effect on the sustainability since mass counterfeit goods are being reproduced. Consumer belonging to middle class has an intention of adopting the luxury culture by way of practicing and buying piracy and knock off goods. However not the consumers but it is prevalent within the fashion designers which demotivates the fashion designers to create original works¹⁰. In India few famous shopping streets such Sarojni Nagar, Linking Road, Commercial Street, Chickpet are highly popular for cheap and affordable clothes where every alternative street knockoff items are sold at cheaper prices and not even one fourth of the product is original. Moreover, online stores have adopted the practice of selling knock off luxury products at throwaway prices.

For example, the Kanchipuram sarees represent the original and unique designs of the local handloom artisans which are also being copied by the fashion designers and sold at a large scale. Local creators often lack the

⁹*Id.*

¹⁰RGNUL STUDENT RESEARCH REVIEW, *supra* note 8.

facility of getting IP protection. These local artisans provide so much to the fashion industry, where an urgent need for an improved legislation and affordable protection is required to protect them from being exploited against piracy. Now, if we see broadly either big luxury designs or local handloom designs, all are being counterfeited at a cheaper price or at a high price to exploit the sustainability. However, protection against knock off is very difficult since mass production of the close copy is being produced and becomes impossible to proceed litigation at every knock off¹¹.

6. RISE IN UNSUSTAINABLE FAST FASHION

Previously, designers predicted the consumer's style and preferences before the big fashion houses used to launch their designs and those designs were released in the stores. But if we talk about the 21st century, the fashion designers are in cut-to-cut competition as to whose products will launch first and who will trend in the market. In the past few decades, the fashion preferences were totally different as compared to today's fashion. As time changes, fashion also changes because of the trends that exists in the industry resulting in mass production of cheaper quality garments at a less expensive price¹². It is seen that the workers are immensely pressurized for quicker production

¹¹RGNUL STUDENT RESEARCH REVIEW, *supra* note 8.

¹²Ishani Chaudhai, *Copyright in fashion industry*, 2021, ALL INDIA LEGAL FORUM (last visited Feb. 15, 1:24 PM) <https://allindialegalforum.in/2020/11/07/copyright-in-fashion-industry/amp/>.

since the trends last for less than few months and again new clothing patterns are set to meet consumers need and the clothes which do not meet the expectations or the leftover clothes from the previous production are thrown into the landfills thereby harming the environment. According to research, it has been seen that youths are more attracted towards the latest trendy fashion as soon as it is out for sale. The fast fashion takes place once the high-end fashion designers showcase their designs at the fashion week and after the designs are everywhere, the retailers with the help of recent technology copy those designs and manufactures it with low quality material, at a less expensive worth and this is how fast fashion is practiced everywhere round the business.¹³ These fast fashion retailers earn huge profits by counterfeiting the design of luxury brands as it is evitable that consumers are attracted towards adapting luxury lifestyle but after they can't afford the high-end fashion, they tend to buy the counterfeit garments. Some fast fashion players within the industry follow the tendency of producing trendy clothes and the same vicious cycle continues by producing at large and discarding the unsold in the environment. Due to these practices ultimately the sufferers are the labourers who work at very low wage for hours and hours just to produce garments to meet the trends in the industry without any care for their health caused by the cheap qualities of the raw materials followed by

¹³Alex Crumbie, *what is fast fashion and why is it a problem?* ETHICAL CONSUMER (Feb. 16, 2022, 2:30 PM), <https://www.ethicalconsumer.org/fashion-clothing/what-fast-fashion-why-it-problem>.

the violation of their basic human rights, the fashion brands exploit them in the name of money, not only this but few girls are also being trafficked from the villages for mass production of garments.¹⁴ So, a proper implementation of laws is required to curb down the practice of fast fashion in the fashion industry.

7. IMPACT ON ENVIRONMENT

The era of fast fashion may have caused happiness among the individuals to remain up-to-date with the trend, but it comes with massive cost to the environment. To give an example, the two most widely used fibers within the producing industry are cotton and polyester, so production of cotton requires huge land masses and water for irrigation which gives rise to water, air and land pollution and manufacturing T-shirts and jeans requires five gallons of water. Moreover, because of the upward push of production in the fashion industry, the call for synthetic fibers inclusive of polyesters has doubled in the past few decades and the production of the same is extraordinarily energy-extensive and involves huge amounts of crude oil. The source of this production process-risky emissions, volatile monomers and organic compounds, and acidic gases are then emitted into the wastewater involving polyester producing facilities and the chemicals and the dyes used in the production process further adds to the water pollution problem due to the result of fast fashion. These harmful substances are

¹⁴Redesell Private Limited, *Is India on its way towards fast fashion?* LINKEDIN (last visited on Feb. 17, 12:30 PM), <https://www.linkedin.com/pulse/india-its-way-towards-fast-fashion-redesell>.

dumped into the water, leading to harmful implications. Additionally, the harms discussed formerly about the use of the chemical substances in the fabrics and dyes used by fast fashion companies contain cancer inflicting toxins. The culture behind the fast fashion movement is additionally harmful due to the massive amount of waste every year. Buying from lower retail stores are usually discarded when solely being worn once or twice because of the poor quality of craftsmanship in producing the cheap garment, and eventually the discarded items are disposed of in the overcrowded landfills across the country. With the new changing trends, the fast fashion retailers are freely copying the designs to fulfil the consumer's needs. Hence, it is evident that the inadequacy of IP rights and the outcome of the fast fashion development aren't contributory to sustaining global resources. Therefore, changes in the copyright law specific to the fashion industry would considerably curb down the environmental impact of the industry.

8. CONCLUSION

My whole research is based on the Intellectual Property laws, the protection granted, the breaching and insufficient of laws which results in unsustainable practice of fashion and the environment at large and by addressing these issues in the fashion industry, awareness of such practices is revealed and a better way of the concerned solution is decided. The Copyright Act should also extend to the laws to protect global sustainability and human rights. Since inadequate implementation of laws give a chance to the fast fashion retailers to reproduce or copy the styles

seen on runways and due to the high demand of such counterfeit garments among the youngsters, the urge among the retailers to produce the garments increases with cheaper raw materials and at cheaper prices. So lastly, if we the consumers understand the dangerous algorithm of the fast fashion and how this can affect the society at large we can make our environment a healthy place to breathe fresh air and live sustainably and it can only be done when we start supporting more of the home grown brands and a habit of reusing the clothes, these small practices can curb down the effect of unsustainable practice prevailing in the environment and can also help in to protect the rights of the fashion designers are secured.

PENETRATING THE SPACE OF SUBSTANDARD CHILD LABOUR IN INDIA: AN ATTEMPT TO ANALYSE THE CAUSE

Akash Dey¹

ABSTRACT

The existence of child labour in a nation like India is like a tradition. Child labour is a form of practice where the children who were quintessentially supposed to enjoy childhood in the kindergarten are reluctantly seen serving food on the plates of some wealthy individuals.

This paper makes an attempt to define the concept of child labour and discusses the worse forms of child labour, on what is the contribution of the prostitution world in scandalizing the lives of the minors, and an analysis of the laws to conclude on when does laboring a minor is not child labour in India.

This paper fundamentally is an attempt to analyze the issue of child labour in India by cross-referring to some of the crucial legislations legislated to curb the issue. The paper proposes certain moralistic and legal suggestions that would help to achieve a better step towards success. There are many laws in the nation made by lawmakers but is it the issue of child labour that needs to be dealt with

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at first or the factors supporting this cause? Are we losing this fight against child labour?

KEYWORDS: Child Labour, Prostitution, Minor, Childhood, Legislation, Fight.

1. INTRODUCTION

It's said that the experiences that children develop in their childhood shape their brain and health for the rest of their life. Childhood in simple terms can be referred to as the stage that comes in between the infancy and adulthood of ordinary human life. Like flower buds', childhood is that stage of the human life cycle where special care is supposed to be invested for nurturing the bud, to ensure a better and wider bloom of the flower. Children deserve to be handled delicately as they are considered to be very sensitive. And if the required care isn't imparted, the flower may not get the shape it was meant to! This special care is often snatched away from a child in the form of child labor. Child Labour is a form of practice where the children who were quintessentially supposed to enjoy childhood in the kindergarten are reluctantly seen serving food on the plates of some wealthy individuals. In the theory of child labour, children are expected to act like adults and participate in activities that are primarily reserved for the adult class of society. Relying on the latest report of ILO the highest number of child labor is seen in India, where 5.8 million children are employed as labourer between the age group of 5-17 despite being directly and very vocally prohibited by certain central and state legislations.² The scenario is heartbreaking when child labor is seen in its worse forms. Here, the gradual questions that arises in a prudent mind are; Are we losing this

²International Labour Organization 'Child Labour in South Asia' https://www.ilo.org/newdelhi/areasofwork/child-labour/WCMS_300805/lang--en/index.htm (last visited Oct. 31, 2021).

fight against child labour? why is child labor still not controlled in India? And Which are the worst forms of child labor in India that need to be uprooted immediately?

2. RIGHT TO CHILDHOOD

Children are mostly targeted from the marginalized class of society and tricked into this hell. This class of the society is targeted easily because:

- They are powerless,
- They are penniless, and
- They are vulnerable.

Every day around 8 children get missing, who are later found to get trapped into this world. Most child labour occurs when some middleman defrauds the poor innocent minors in the pretext of employment or marriage. There is no such Central Placement Agency Act in India but several states and the UTs are empowered to enact and implement as per the needs. But the ratio of fake Agencies is not less, especially in metropolitan cities. The Ministry of Labour and Employment issued guidelines in the year 2003 to the States/ UT administrations for regulating their Placement Agencies.³

Keeping such agencies aside, reasons like poverty, the practice of caste/class-based untouchability, and ignorance in the family of the victims are some of the prima facie reasons behind such atrocities. Article

³Government of India Ministry of Labour and Employment, (Oct. 31, 2021, 4:30 PM), <https://labour.gov.in/nes>.

24 very vividly prohibits the employment of children in any hazardous employment. Now, what falls under such hazardous employment are not defined under the very constitution, but on the other hand, in The Factories Act, 1948, the interpretation clause (CB) defines hazardous process as any process that generates wastes or effluent thereof which would cause material impairment to the health of the persons engaged in the process or that process amounts to environmental pollution to the general environment.⁴ Simultaneously, Child Labour Prohibition and Regulation Act 1986 listed out 65 processes and 18 occupations(both non-industrial and industrial activities) as hazardous to the children's lives and health which includes activities like; cinder picking, working in railway stations, garages, domestic workers, at any recreational centers like dhaba, tea shops, restaurants, spa shops, etc. working in a circus or certain industrial activities like beedi making, soap manufacture, incense stick making or such activities which challenge the safety of the child.⁵

2.1. The flesh trade industries

But surprisingly one industry that is not enlisted in this particular schedule is the industry of flesh trade or prostitution. Minor girls are in high demand in this industry of flesh trade, especially the age group of 5-16 mainly because they are virgins and are less prone to have sexually transmitted diseases. This is the only reason why young girls who have no idea about prostitution are tricked and forced into this

⁴The Factories Act, 1948, s. 2(cb), No. 63, Acts of Parliament, 1948 (India).

⁵The Child Labour (Prohibition and Regulation) Amendment Act, 1986, Schedule A, Schedule B.

world to make easy money out of them. And for meeting such illicit demands of the clients, often rackets are implanted in various parts of the nation, who further defraud or tricks such minor girls into this living hell of prostitution by snatching away their childhood. POCSO has certain provisions to curb this issue of child prostitution but even in the act of POCSO, there is no proper strategic level planning on how the mandate of law is to criminalize the sex offenders who sexually exploit children through prostitution – is to be implemented.⁶ Child prostitution also attracts the practice of Child Trafficking, here the children are deceitfully taken away from their parents and forced to work and therefore exploited. But why children are targeted for such labour?

Minors are the prime target of trafficking because the virtue of being a child per se is the reason for them getting highly exploited. Children are innocent, they are the just born of society. Hence, they have fewer experiences in dealing with people who come with such mala fide intentions. Hence, unlike a strong adult, a child falls under the vulnerable category of society. And this is what leads to a dark childhood, without the sweetness of childhood innocence. What all does fall under this category of a worse form of child labour?

⁶Qrius, 'Impunity of 'customers' of Child Prostitution' (Nov. 9, 2021), <https://qrius.com/impunity-of-customers-of-child-prostitution/>.

3. FORMS OF CHILD LABOUR

According to convention number 182 of ILO, it lists out certain categories of labour which leads to the worse form of child labour. Article 2 first clarifies that the term child applies to all persons under the age of 18. Further Article 3 tries to define the worse form of child labour, the worse forms of child labour comprises of any form of slavery or practices similar to slavery (issue of Bandhua workers in India), children in armed conflicts (the issue of child soldiers), Children in prostitution or pornography (this is a burning issue in India), Child trafficking for illicit activities, Or to employ them in works that is harmful to their health and safety [this kind of works shall be defined by national laws by its competent authorities, e.g. Factories Act 1948, S.2(CB)].⁷ Hence, India has ratified convention 183, thereby, the definition under Article 3 is now applicable in defining the worse forms of child labour in India. Is there any legal protection available for these children in India?

4. STATUTORY PROVISIONS TO ERADICATE CHILD LABOUR

Such issues of child labour and child trafficking are extensively massive in a nation like India. India being a republic and having the largest democracy has framed numerous such legislations, Yojanas (schemes), and adopted/ approved various international policies to combat this evil

⁷International Labour Organization, The worse forms of child labour convention 1999, art. 2, art. 3.

practice of child labour. Some of the pivotal such legal steps taken to eliminate child labour and child trafficking are:

4.1. The Constitution of India 1950

Article 24 and 23 talk a great deal about the Rights against Exploitation. These two Articles very profoundly discards or prohibits the practice of traffic in human beings and forced labour on one edge and employment of children in factories and hazardous employment on the other edge. These rights are reserved for children (minors) below the age of 14.⁸ Constitution having an equitably binding effect overall, ensured that the children are not getting exempted to come under its shadow. Hence, also came up with the 86th amendment 2002 and introduced the Right to Education as a crucial Fundamental Right under A.21A.⁹ It is a compulsory obligation over the state to provide education to all children of the age of six to fourteen. Particularly constitution lays down a duty over the State and directs it to create policies towards securing the health and strength of workers and that the tender age children do not get overexploited in the course of their employment.¹⁰

4.2. The Indian Penal Code 1860

In this traditional law, under the sections like S.363A, S. 366A, S.369, S.370, S.370A., S.371, S.372, and S.373 an attempt has been made to criminalize certain acts that concern a child and his life. The acts which

⁸INDIA CONST. art. 23, art. 24.

⁹INDIA CONST. art 21, *amended by* The Constitution (Eighty-Sixth Amendment) Act, 2002.

¹⁰INDIA CONST. art 42.

are dealt with under the aforementioned sections are the acts of kidnapping or maiming a minor for purposes of begging (363), procuring of minor girls below the age of eighteen for any kind of illicit work (366A), kidnapping or abducting children under the age of ten years (369), trafficking of persons by any means: induced or forced (370), Exploitation of a trafficked person (370A), habitual dealing in slaves (371), selling minor for prostitution (372), buying minor for prostitution (373). under these sections, a clear prohibition of certain acts has been held as illegal and any contravention to these provisions will amount to the committing of a criminal offense, whereby it is made punishable under its relevant sections.¹¹

4.3. The Child Labour (Prohibition and Regulation) Amendment Act 2016

This act completely aims at prohibiting the employment of children below the age bar of 14 years in any kind of employment, be it hazardous or non-hazardous. And it prohibits the employment of children in the age group of 14 to 18 years in any hazardous occupation. To bring stringent effect to this provision, the act has even prescribed penalties for those violating the provisions. Anyone in violation of the provisions in concern will have to get through court proceedings and the punishment will be cognizable.¹²

¹¹The Indian Penal Code, 1860, §363 A, 366A, 369, 370, 370A, 37, 372, 373, No. 45, Acts of Parliament, 1860 (India).

¹²The Child Labour (Prohibition and regulation) Amendment Act,2016, §14, No. 35, Acts of Parliament, 2016 (India).

4.4. The Child and Adolescent Labour (Prohibition and Regulation) Act 1986

This act was created to assure that child labour does not take place in India at any cost or excuse, Section 3 prohibits the employment of children in any kind of work or process, this act also tried to define some important terms like an adolescent, child, and occupier, under this act the employment of children is prohibited whereas employing adolescents was made forbidden in hazardous industries (3A).¹³ Once employed the employer has to assure the health and safety of the adolescent employee, a cross-reference can be made to S. 23 of the factories act 1948, here for the maintenance of the safety of a young person the guidelines have been laid for the employment of young persons on a dangerous machine.¹⁴

4.5. The Bonded Labour System (Abolition) Act 1976

This act puts a complete veto on the abolition of bonded labour in India. India had this tradition of the practice of bonded labour or Bandhwa, where laborer was sealed under a bond to lend their labour, this practice is highly exploitative and toxic as it was a form of slavery in India. This practice involved children in it, as it was easy to exploit their parents it was even easier to exploit the children. Under this system, the debtor or his descendants /dependents have to work for the creditor without reasonable or no wage. But a dire need to completely abolish this evil practice in the

¹³The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, § 3, 3(A)

¹⁴The Factories Act, 1948, s 23, No. 63, Acts of Parliament, 1948 (India).

labour world was felt in independent India. In 1976 the very Bonded Labour System (Abolition) Act was passed by the Parliament which abolished this practice and made it illegal and punishable under law. Under Section 16 it proposes the penalty of three years imprisonment and a fine of up to 2000 rupees in case of violation of the said act.¹⁵ A cross-reference to the infamous *Bandhua Mukti Morcha v. Union of India* case.¹⁶ Here, SC moved by the pathetic conditions of the poor and helpless workers, issued several directions to the Central Government, State Governments and the concerned authorities to take a strict view on the labour laws of India and take necessary steps for the utter abolition of the system. This historic released uncountable poor children from bearing the leash of a Bandhua slavery.

Along with these important laws, several schemes and guidelines are also present to combat this evil act, making it a severe illegal offense in the country. But the laws in the paper are a mere showpiece unless it is implemented at the grass-root level.

5. EXCEPTIONS TO CHILD LABOUR

In this regard, the age factor of what should be the actual age bar of children being capable to be employed in any kind of employment raises a sense of obscurity. As per the Indian Majority Act, 1875, it sets the day on which a person completes the age of 18 years is the day when he/she

¹⁵The Bonded Labour System (Abolition) Act, 1976, § 16, No. 19, Acts of Parliament, 1976 (India).

¹⁶5 *Bandhua Mukti Morcha v. Union of India*, AIR 1997 SC 2218.

becomes legally mature to be called as a major (in general cases), thereafter, he can work in any sector of employment as an adult.¹⁷ Gradually, one below 18 years is a minor. But the confusion that pops up is that, why does our Constitution allow the employment of minors i.e., 15-18 years in non-hazardous employment (reference; A.24). Also, to cite The Factories Act, this act draws a clean line of distinction between an adult and a young person. Adults are regarded as those who have completed the age of 18 years, whereas a Young Person means who is either a child or an adolescent.¹⁸ From this, we get the term, adolescent. An adolescent is a juvenile person in the eyes of law. Who has not attained the age of 18 but is above the age of 14? The factories act allows the employment of an adolescent worker in the factories.

The ILO or International Labour Organization creates an international labour standard in the form of conventions and recommendations, hereby if any member country of ILO ratifies any of its conventions, it creates a legally binding obligation of implementation on such member nations who ratifies the same.¹⁹ Now, the ILO Convention No. 138 concerning the minimum age has set the age bar of 18 years as the minimum age to employ any person in any kind of industry (which is subjected to certain exceptions per se),²⁰ and it is delightful to know that India did ratify this convention

¹⁷the Majority Act 1875, § 3(2), No. 9, Acts of Parliament, 1875 (India).

¹⁸The Factories Act, 1948, § 2 (a), 2(d), No.63, Acts of Parliament, 1948 (India).

¹⁹Government of India ministry of labour and employment 'India and ILO', <https://labour.gov.in/lcandilasdivision/india-ilo> (last visited Nov. 10, 2021).

²⁰International Labour Organization, C 138 – Minimum Age Convention 1973, art. 3, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C

on 13th June 2017 (Status Quo: in force).²¹

Thereby, in India, no minor is allowed to work in any employment sector below the age of 14 but a minor above 14 but below 18 is allowed to work in non – hazardous employments as they are considered adolescents, whereas above the age of 18, a person turns major and he may work in a hazardous industry as well. Hence, we can say employing a minor of 15-18 does not fall under the ambit of child labour as per the Indian legislative framework.

6. CONCLUSION

By the end, now we can define the concept of child labour, i.e., a practice where children are pushed to the employment sector to earn monetary profit at the cost of their childhood. Child labour is a broader terminology that includes every work that leads to the exploitation of a child, steals away his childhood, uses him as a tool of income, which may include from the act of making them work in a factory, to hiring them as a domestic helper, appoint them as a child soldier, use them in terrorist acts or trick them into the world of prostitution, all falls under the scope of child labour. India has 10.1 million child workers spread across the nation (census 2011);²² it is bliss to see that there is a slow growth out of the struggle

138 (last visited Nov. 10, 2021).

²¹International Labour Organization, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_557295/lang--ja/index.htm (last visited Nov. 10, 2021).

²²International Labour Organization 'Fact Sheet: Child Labour in India', https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm (Nov. 8, 2021).

against child employment in India. Answer to the question that was rose in the prelude: Are we losing this fight against child labour? We, Will, be; seeing through the lens of optimism that we are not losing the fight, but there is no lucid sign of victory either, we are at a very slow pace of development and there is no good justification for this slow pace, at least in the 21st century. But the fighting spirit of the nation has not been lost yet, it has passed several legislations, schemes, orders, judgments, guidelines, provided rights, ratified conventions, and a lot more to achieve a victory against this **#nochildlabourmovement**. This holds up the next question which was rose that: why is child labor still not controlled in India? As per the annual ranking of the Global Child Rights Index released by The Kids rights Foundation (A renowned International NGO), India has moved up four positions, now it ranks 113 among 182 countries (2020). Though it may sound less, it is not. Despite the rights and protections made by the intellectuals of the society the child labour is not yet utterly eradicated in India, the dream of complete eradication continues to be a dream! Years after The Child Labour (Prohibition and Regulation) Amendment Act 2016, The Bonded Labour System (Abolition) Act 1976: Article 23 and 24 of the Constitution or schemes like the National Child Labour Project (NCLP), the child labour is still very much prevalent. Because this fight is not only against child labour alone this fight is against the factors, the factors that support child labour in India. This fight is against poverty, unemployment, gender discrimination, illiteracy, casteism, and lack of empathy. Ironically and historically, India has a

considerable record in all of these factors. Hence, to fight child labour, India first has to fight and win against these very factors, which will automatically reduce the requirement of child labour. Also, laws in the paper are a mere showpiece unless it is implemented at the grassroots level, hence a strict and immediate implementation should be started from the grassroots level itself.

7. SUGGESTIONS

The foremost suggestions to deal with this evil practice and achieve a better step towards success would be: That it is the primary need of the nation to deal with the factors behind child labour effectively at the core level.

- 7.1. Consolidated uniform legislation to protect the forced underprivileged minors in prostitution and penalize their abuser is needed.
- 7.2. The executive has to take the responsibility to implement the laws and rules which are already in force and there is a need for a good number of human rights advocates who would forward their helping hand to the rescued victims, simplify the laws to them and provide legal aid so that they can access justice.
- 7.3. We as an individual hold a certain role in society and have certain powers, it must be taken as a duty to fight this evil together at least by not participating in the offender side of the scenario.



SHORT ARTICLE



THE PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021: A HOLLOW STEP TOWARDS NOTHING BUT THE SAME

*Madhushree Chakraborty*¹

ABSTRACT

The Parliament has brought an amendment which aims to raise the legal marriage of girls from 18 to 21. The bill was named as Prohibition of Child Marriage (Amendment) Bill 2021. As argued by the lawmakers in favor of the amendment, the fundamental cause behind proposing this bill was to put an end to the patriarchal practice of child marriage in India, which despite being banned in the country is still an open secret of our society. Additionally, they argue that the bill would clinch the enforcement of the Constitutional mandate of gender equality as the legal age of marriage for male in India is also 21. Beyond the shadow of doubt, if this bill is implemented appositely, it will have a positive effect in the society, which is praiseworthy. However, the afore-mentioned bill has loopholes as well which shall be addressed in this study. The paper would include a detailed analysis of the said bill, its effect on different personal laws, its applicability, the constitutional aspect related to the bill and also its positive and negative facets.

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The facts, data and materials referred in this article, are taken from various reputed law journals, articles, books, newspapers and other bona-fide sources. Principally through this article, the author would aim at putting in picture the stumbling block of this bill and suggest remedies for the same.

KEYWORDS: Child Marriage, Live-in Relation, Prohibition, Majority, Personal Laws.

1. INTRODUCTION

“Going to school was what I desired but it remained unfulfilled. I was only 12 years old when my widowed mother got me married to a 35 years old man. I was told that the man would take care of me and my family since we were very poor. I felt like crying and was filled with fear because I was too young to get married and didn’t understand what marriage actually meant”- interviewed a girl from rural Zambia to Campaign for Female Education (Camfed).²

Child marriage has always been a living reality in India and a critical issue which must be addressed. So, looking at its momentousness, Smriti Irani, the present union minister for women and child development, government of India, put forward the *Prohibition of Child Marriage (Amendment) Bill 2021*. The bill states that the *“highly pernicious practice of child marriage continues despite the Prohibition of Child Marriage Act 2006”*.³ Therefore there is *“an urgent need to tackle this societal issue and bring in forms”*.⁴ Additionally, it mentions that the age for marriage for girls and boys are not same in different personal laws, which is violative of Article 14 which mentions that the state cannot deny equality before law and provide equal protection of laws to any citizen of our country. It also claims that women

²Imogen Calderwood, *In Her Own Words: 3 Powerful Stories from Former Child Brides*, Global Citizen (Feb. 19, 2022, 5:30 PM), <https://www.globalcitizen.org/en/content/girl-bridges-share-stories-child-marriage-survivor/>.

³Naveli, *The Prohibition of Child Marriage Amendment Bill, 2021: A Critical Analysis*, (Feb. 21, 2022, 5:55 PM), <https://www.legalservicesindia.com/legal/article-7496-the-prohibition-of-child-marriage-amendment-bill-2021-a-critical-analysis.html>.

⁴*Id.*

were put at “*a disadvantageous position with regard to education, vocational education, and attainment of psychological security and skill sets*”.⁵ Some other important grounds for raising the age of marriage to 21 years was to reduce the teenage pregnancies which is the root cause for serious health related issues among the adolescent mothers and their child, cutting down still birth, miscarriages and most importantly for better parental care which a teen or minor mother often fails to provide her child due to lack of maturity and experience and herself being a child.

It is worth mentioning that living in this newfangled generation, the aforementioned objective of the bill is commendable. Nowadays, boys and girls with progressive thoughts mostly do not accept the custom of child marriage. The rationale behind this forward thinking is living in mainstream India and their education. But it is the grim reality that most parts of our country are capped with poverty and are not privileged to be educated. They live in the backward India where people are mostly illiterate and lack progressive thought. People in these backward areas still follow the customary concept of child marriage. Due to the absence of awareness and education among people girls are still considered as a liability and therefore are married at a very early age.

To add to this, even the rich landowners marry their daughters at a very young age. So, this is evident from the fact that poverty is not the only factor which adds to the evil practice of child marriage. People with such

⁵*Id.*

mental makeup do not take a step back on spending money on their daughter's marriage and giving dowry. But they definitely think several times before spending on their education and empowering their girl child. So, it is a noticeable factor that in a country where we fail to wait till 18 years as a legal age to marry of our daughters, how will we wait till 21?

2. MINIMUM AGE FOR MARRIAGE – CONCEPT AND EVOLUTION

If we look into the history of marriage laws and the age of consent to marry in India, it can be seen that it evolved from the colonial era. There was no specific law and minimum age to give consent to marriage before the British colonization. Therefore, the marriage was performed according to the customs of persons.

The first move to set an age for consent in marriage was seen in The Indian Penal Code (IPC) which stated that sexual intercourse between the husband and wife, less than the age of 10 years was an offence.⁶ But later in 1891, the age for consent was increased to 12 through the Age of Consent Act.⁷ Further, in 1929, the Child Marriage Restrain Act (also known as the 'Sharda' Act) was introduced which set the minimum age for getting married for girls to 14 and boys to 18.⁸ This act was later amended and the age was increased to 18 in terms of girls and 21 in terms of boys.

Not only in criminal laws, the minimum age of marriage is included in

⁶The Indian Penal Code, 1860, No. 45, (India).

⁷The Age of Consent Act, 1891, Act X of 1891, (British India).

⁸The Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament (India).

personal laws as well. Initially the legal age for marriage under Hindu Marriage Act was 15 in case of women and 18 in case of men. Later on, through the 1978 amendment, the valid age for solemnization of marriage was made to 18 and 21 for women and men respectively (under Section 5 of the Hindu Marriage Act 1955).

Under the Muslim Personal Law (Shariat) Application Act, 1937 the minimum age of marriage is after attaining puberty, for both boys and girls. But in case of inter caste or inter religion marriage, the Special Marriage Act 1954 is followed where the legal age for marriage is 18 and 21 for women and men respectively.

3. UTILITY OF THE AMENDMENT

After the detailed research of the provisions of this amendment, it can be said that there is not much benefit which this particular amendment aspires to achieve. To begin with, there is no amendment done in the implementation mechanism of the bill. So, when the same implementation mechanism fails to enforce 18 years as the minimum legal age for marriage, it has less hope to be implemented when it is raised to 21 years. Furthermore, The Prohibition of Child Marriage Amendment Act, 2021 does not make any amendment to make the child marriage void. Under section 3(1), child marriage continues to be 'voidable' at the option of the minor. Even if the bill is passed, the position of the child marriage will remain the same. That is, it will remain voidable at the option of either party. The only difference is that, the time period for filing a petition for annulment of child marriage, has been increased from 2 years to 5 years

under section 3(3). After this amendment a child can only file the petition after 5 years of attaining majority. It is the lacuna on the part of the government to give more focus solely on the age of legal marriage and raising it accordingly, and not giving a thought to the other socio-economic issues that adds largely to the practice of child marriage in India. It would have been more advantageous if more focus was given on education of the youngsters and conjointly conducting effective legal aid programs for inculcating progressive thoughts among backward people which would encourage them to not marry their child at a young age.

4. CONSTITUTIONAL VALIDITY OF THE BILL

4.1. Marriage as a fundamental right

The constitution of India does not expressly recognize the right to marry as a fundamental right. However, through various judicial pronouncements our judicial system has declared that the right to marry comes within the ambit of Article 21 and is a fundamental right of every citizen.⁹

It was held by the Supreme Court in *Lata Singh vs. State of Uttar Pradesh*¹⁰ that after attaining the age of majority, which is 18 in accordance with the Majority Act of 1875, a person has the right to marry whomever she chooses and it is a facet of article 21 itself. But, if this bill is passed, a girl will not have the option to get married even

⁹The Constitution of India, 1950, Article 21.

¹⁰*Lata Singh v. State of U.P.*, (2006) 5 SCC 475.

when she reaches majority age.

In 2014, the Supreme Court took *suo moto* cognizance of newspaper reports of the gang rape of 20 years old Indian women on the orders of a village court. The panchayat ordered such punishment because the women had a relationship with a man of a different community. The Supreme Court in this case held that an implied part of Article 21 is the freedom of choice of marriage. Article 21 is a comprehensive provision. It not only defines the right to life and personal liberty but also includes the natural right to marry someone of one's own choice, in addition to the right to life and personal liberty.

Further, the judiciary opined in *Ashok Kumar Todi vs. Kishwar Jahan*,¹¹ that the law enforcement authority could not interfere when two major persons above 18 years married willingly with their consent.

Right to make decisions is our natural right. And this decision making right also extends to the concept of marriage. One has the right to decide when to get married after completing the age of majority. But it is really debatable that if this bill becomes an Act, women will have access to these rights or not.

4.1.1. Violation of the right to live together

The Prohibition of Child Marriage (Amendment) Bill 2021 defines males and females below the age of 21 as child. It

¹¹Ashok Kumar Todi v. Kishwar Jahan, (2011) 3 SCC 758.

bars male and females below the age of 21 years from getting married. After a proper analysis of this provision, it can be inferred that live-in relationships are also affected due to this bill.

The definition of live-in relation is not given explicitly. However, this concept is impliedly given under Section 2(f) of Protection of Women from Domestic Violence Act, 2005. It defines 'domestic relations' as a relationship where two persons lived or have lived at a point of time in a shared household. This relationship is based on consanguinity marriage or relationship like marriage. It can be based on adoption or family members as a joint family. In the landmark case of *S. Khushboo v. Kanniammal*,¹² the Supreme Court held that if two unmarried persons as a couple, who have attained majority age, live together with their consent then it cannot be held illegal or unlawful. It was further stated that the right to live together falls within the ambit of Article 21 of the Indian Constitution.

In *Velusamy vs. D. Patchaiammal*,¹³ the apex court provided some essentials to prove the live-in relationship valid. The principal requirement was that the couples must be of legal age to marry or competent to fulfill all the

¹²S. Khushboo v. Kanniammal, (2010) 5 SCC 600.

¹³Velusamy v. D. Patchaiammal, (2010) 10 SCC 469.

grounds of getting married. It was also mentioned that either the parties or the couple has voluntarily consented to live together.

After construing the above case, it could be argued that since the Prohibition of Child Marriage (Amendment) Bill 2021 makes 21 years the legal age of marriage for both men and women, so, the live-in relationship of couples below the 21 years of age will be considered illegal. Couples will not have the option to live together without getting legally married even after completing the age of majority.

So, after referring to the above-mentioned judicial pronouncements it can be observed that raising the age of marriage to 21 years would be unconstitutional. It would violate article 21 of our constitution, where the citizens (as well as the non-citizens) have the right to make decisions which extends to the right to marry, right to live together after attaining the age of majority, right to choose one's partner in marriage.

5. COMPARATIVE ANALYSIS WITH OTHER LAWS

It is a shocking factor that in a country where a person falls within the definition of majority after attaining 18 years of age, according to Section 3 of the Majority Act of 1875,¹⁴ and have various rights such as right to vote

¹⁴The Majority act, 1875, Section 3, No. 9, Act of Parliament (India).

(according to 61st Constitutional Amendment Act 1988), right to form contracts, right to enter into a live in relationship and even have the capacity to give consent to sexual intercourse at the age of 18, in the same country a girl cannot marry until she completes her 21 years of age.

As mentioned earlier, the bill has an overriding property. So, this will nullify the various personal and marriage related laws. For example, the legal age for marriage under Hindu Marriage Act 1955 is 18 years for girls and 21 years for boys. But after the amendment the legal age for marriage for both boys and girls will become 21 years. Same goes with the Muslim Personal Law. According to Muslim law the legal age of getting married is after attaining the puberty, which is usually 15 years of age. Since the Prohibition of Child Marriage (Amendment) Bill violates our personal laws, it in a way violates our right to profess, practice and propagate any religion of our choice. Further, the Protection of Children from Sexual Offences (POCSO) Act,¹⁵ acknowledges a child as someone who is below the age of 18 years. But according to section 2 of the new amendment, a child will be referred to any male or female who is below the age of 21 years. This bill additionally contradicts the Right of Children to free and compulsory education Act, 2009, wherein a child is referred to someone who is between the age of 6 to 14 years. Moreover, Section 2 of the Child Labor (Prohibition and Regulation) Amendment Act, 2016 defines the child as a person who has not completed fourteen years of age, or the age mentioned in the Right of Children to free

¹⁵The Protection of Children from Sexual Offences Act, 2012, No. 32, Act of Parliament (India).

and compulsory education Act 2009, whichever will be more. In addition, the term adolescent has been defined as a person who has completed his fourteen years of age but has not completed his eighteen years.¹⁶ So, from the above discussion it can be said that that the bill contradicts many other laws currently prevailing in our country.

6. WHIP HAND OF THE BILL

Beyond the shadow of a doubt, it can be affirmed that whenever a new bill is proposed, it comes with both negative and positive facets. Same holds true for the Prohibition of Child Marriage (Amendment) Act, 2021 as well. There are some bright sides of this bill which works for the welfare of women and children. In a child marriage when a girl gets married at a young age, she faces a lot of health issues. It is a key drive of adolescent pregnancies which possess a serious danger to health and can have long term impact on the health of the child, as well as the mother.¹⁷ Early childbearing also many times causes the death of the adolescent mother. To add to this the child marriage hampers the mental wellbeing of the child bride as well. So, if this bill comes into force and proper implementation takes place, then it will scale down such mental stress and physical issues among the young brides. Moreover, the Bill will also advocate women empowerment and equal rights of all the sexes. As

¹⁶The Child Labor (Prohibition and Regulation) Amendment Act, 2016, section 2, No. 35, Act of Parliament (India).

¹⁷Vageshwari Deswal, *Prohibition of Child Marriage (Amendment) Bill, 2021: A critique*, (Feb 28, 2022, 8:45 PM), https://timesofindia.indiatimes.com/blogs/legally-speaking/prohibition-of-child-marriage-amendment-bill-2021-a-critique/?fmap=yes#aoh=16461361060705&referrer=https%3A2F%2Fwww.google.com&_tf=From%20%251%24s .

a consequence of early marriages, the girls are bound to drop out of their school which creates an obstruction in their education level and their growth as an individual. And lack of education leads to lack of awareness and further leads to exploitations of various rights. So, it can be said that, there are also some advantages of the bill, which will bring positive effect to the society and reduce the disparity among men and women.

7. CONCLUSION

Upon considering the above-mentioned facts and taking into account the judicial pronouncements, it can be said that passing the Prohibition of Child Marriage (Amendment) Bill, 2021 will have a lot of difficulty in its implementation since it violates our personal laws and constitutional right mentioned in article 21. In my view, the main objective proposed by this bill, which is to eradicate the evil practice of child marriage and empowerment of women, will not be achieved just by raising the minimum age of marriage from 18 to 21. Instead of increasing the legal age for getting married, the government should focus more on making laws which will provide free or easy access to education to girls especially in rural areas. In addition to this, the customary practice of child marriage is still 'voidable'. The bill does not make child marriages 'void'. Hence raising the age of marriage alone will not bring any changes to the society. More emphasis should be given on awareness programs. People should be made aware of the importance of educating their child. Further the government should organize campaigns, especially in areas where child marriages still prevail, and educate people about the consequences of child marriages. Yet if the Prohibition of Child

Marriage (Amendment) Bill, 2021 is passed and becomes an Act, then the government must keep tabs to its implementation by making strict laws and raising awareness and educating people about this bill and its effect.

DOMESTIC VIOLENCE – A PANDEMIC AMID PANDEMIC

*Binita Minda*¹

ABSTRACT

Domestic violence is a disease in society that has not been cured despite several efforts in the form of laws providing protection from domestic violence. This Article mainly focuses on the meaning of domestic violence in detail, the various types and causes of domestic violence and its effects on different sections of the society particularly women. This Article is specifically concerned about the rise of domestic violence with the surge of covid-19 pandemic which has engulfed the whole world into its trap. This Article also provides the readers with the statistic meaning, the date in regard to the rate of increase and the percentage of people who are the victims of the evil practice of domestic violence. The Article provides with the different existing laws to prevent domestic violence and provide its victims with statutory protection. It also talks about the steps taken during the Covid 19 Pandemic to prevent domestic violence. After analyzing the scenario, the author has also provided some suggestions to solve this global issue.

KEYWORDS: Domestic Violence, Abuse, Covid-19, Women, Implementation.

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1. INTRODUCTION

Domestic violence is also called Intimate partner violence and both the terms are often used interchangeably.

Domestic violence in simple terms means a tendency or a pattern of behavior that is used to control or dominate an intimate partner. Violence includes any behavior that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure or wound someone.

It mostly occurs within a range of close relationships particularly couples, either married or dating or from their family if married.

Domestic violence can happen to anyone regardless of age, race gender sexual orientation, faith or does. Domestic violence is a wide term which includes following types of abuses:

1.1. Emotional Abuse

It includes undermining a person's sense of self respect and self-worth by constantly criticizing their abilities and work efficiency. It can be through damaging their relation with other people or not allowing a partner to meet their friends or family. It also includes humiliation and doubt for one's character.

1.2. Psychological Abuse

It involves causing fear. Threatening to harm physically either to self or their loved ones or causing harm to their assets.

1.3. Economic Abuse

It includes controlling a person's finances and making him/her financially dependent on others or not letting a person to work in order to get financial independence.

1.4. Physical Abuse

It involves physical torture like hitting, burning, slapping, denying medical care and using any others kind of physical force.²

1.5. Sexual Abuse

It involves forcing sexual act without the consent of others person.

1.6. Stalking

It involves repeatedly trying to be in contact through messages or calls in order to harm or annoy the order person.

2. INDIAN SOCIETY AND DOMESTIC VIOLENCE

Domestic violence is an evil in our Indian Society which has been in practice since decades. It is mostly against women, children, aged and disabled because they are considered vulnerable and, in a position, to be exploited. Moreover, India having a patriarchal society is always dominative towards women. Men are desirous of gaining supremacy over women leading to domestic violence.

According to the United Nation Population Fund Reports, around two-third of married Indian women are victim of domestic violence and as many as 70% percent of married women in India between the age 15 and

²Covid-19 Responses, <https://www.un.org/en/coronavirus/what-is-domestic-abuse>.

49 are victims of beating, rape or forced sex. In India more than 55 % of the women suffer from domestic violence, especially in the states of Bihar, U.P., M.P., and other northern states.³

2.1. Causes of domestic violence

One of the important causes of domestic violence is the mindset that women are weaker in all aspects than men.

The most common cause of the issue is the dissatisfaction with the dowry that a bride's family offers to the groom, this leads to exploitation of women which sometimes leads to her death.

Other factory cause of domestic violence is as follows: -

- 2.1.1. Negligent attitude towards her in-Laws.
- 2.1.2. Extra marital affairs.
- 2.1.3. Negligence towards children.
- 2.1.4. Desire for the male child.
- 2.1.5. Alcoholism.
- 2.1.6. Income disparity.
- 2.1.7. Active social participation of women.⁴

2.2. Consequences of domestic violence

There are various consequences of Domestic violence especially to the victim and her family members.

³Ankur Kumar, *Domestic Violence in India: Causes, Consequences and remedies*, (Feb. 28, 2022, 9:25 PM), <https://www.youthkiawaaz.com/2010/02/domestic-vvviolence-in-india-causes-consequences-and-remedies-2/>.

⁴*Id.*

- 2.2.1. Domestic violence has a physiological set back on women as it causes trauma which affects her overall performance in her day-to-day life.
- 2.2.2. Many women attempt suicide as they cannot tolerate the tauter.
- 2.2.3. Working financially independent women may leave her job due to pressure and torture from her family members.
- 2.2.4. Many times, women are abandoned by their family members and circumstances forced to indulge in immoral activities to earn their livelihood.
- 2.2.5. Violence towards mother may also affect her concentration towards her child which ultimately affects the child up bring.

Domestic violence not just effects the victim but it affects the society at large because the children who are raised in such circumstances will learn and assume that the torture women receive are the way they are to be treated. It will send a wrong message regarding the treatment towards the women and their status at home and society.⁵

3. STATISTICAL ANALYSIS OF DOMESTIC VIOLENCE

Since the year 2019, the corona virus has had a large negative impact on mankind as not just a state or a nation but the entire world has been suffering from it till date and no cure has been discovered till date to get

⁵*Id.*

rid of this deadly virus. As the virus increased all over the world, the only solution to it was found to be lockdown. Due to lockdown, factories stopped their work, all the institutions were closed down, people lost their livelihood and were made to sit at home. No section of the society has been left unaffected in all manners i.e., socially and economically. Among all, the most affected section is the women at home (homemakers) who became the victim of the frustration of their men as due to no work and no source of income, rise in the cases of domestic violence has been witnessed.

Another reason for their rise could be the inaccessibility to help as violence was caused inside the closed doors.

Domestic violence has sometimes been referred to as the “Shadow Pandemic” as it came along with COVID 19 pandemic which affected the world at large. Globally, even before the COVID 19 pandemic, one in three women were the victim of domestic violence mostly by an intimate partner.

The National Commission for Women has said it has seen a 30% rise in complaints of crimes against women in 2021 as compared to 2020.

Nearly 31,000 complaints of crimes against women were received by the commission in the year 2021 and it was the highest since 2014. Out of 31,000 complaints, over 6,000 were related to domestic violence and over 4,000 were related to dowry harassment.

In the year 2020, the commission received a record high number of complaints, one quarter of them were related to domestic violence. Just in

the month of April and May of the year 2020, during the nation- wide lockdown, 47.2% cases were of domestic violence.⁶

4. STATUTORY REGULATIONS PROHIBITING DOMESTIC VIOLENCE

India is a country that has been witnessing domestic violence since time immemorial and has been increasing at a rapid pace. Therefore, in order to provide protection to women against domestic violence legislature has framed various laws. Some of which are as follows-

4.1. Indian Penal Code, 1860

Section 304 B and 498 A provides protection to women against cruelty by her husband or her in-laws but the code does not specifically deal with domestic violence. Hence Domestic Violence Act of 2005 was enacted.

4.2. Domestic Violence Act, 2005

It is a laudable piece of legislation to tackle this issue. It provides protection in the domestic setup. The act provides protection against all kinds of abuses discussed priorly.

The Act was passed in furtherance of the recommendations of the United Nation Committee on the CEDAW. The Act was passed

⁶Zubeda Hamid, *Why Domestic Violence rose amidst pandemic*, (Feb. 28, 2022, 9:55 PM), <https://www.thehindu.com/podcast/domestic-violence-amid-the-pandemic-in-focus-podcast/article38360613.ece>.

keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21 of the Indian Constitution.

In the case of *Francis Coralie Mullin V. Union Territory Delhi, Administrator*⁷-The Supreme Court stated that any act which damages or injuries or interferes with the views of any limb or faculty of a person, either permanently or either temporarily would be within the inhibition of Article 21.

Other than protection of women from Domestic Violence Act, 2005 an aggrieved women may seek remedy under civil law and also under matrimonial laws like the Hindu Marriage Act, 1955, the Special Marriage Act 1954, the Dissolution of Muslim Marriage Act, 1939 and all enactments that recognizes cruelty as valid ground for divorce.⁸

5. MEASURES ADOPTED BY THE GOVERNMENT AMID PANDEMIC

5.1. Expansion of helplines and information sharing

Information is shared widely through guides, resources and advocacy targeting friends and family members. Help lines and online support platforms are being expanded.

⁷Francis Coralie Mullin v. The Administrator, UT of Delhi & Others, (1981) AIR 746.

⁸Deblina Chatterjee, *Laws Relating to Domestic Violence in India: Legal Issues and Challenges*, (Feb. 28, 2022, 9:40 PM), <https://www.legalbites.in/laws-relating-domestic-violence-india-legal-issues-challenges>.

5.2. Funding shelters and other safe accommodations

Numerous countries have acknowledged that additional safe housing is needed during times of quarantine. Safe accommodation allows survivors to temporarily escape abusers.

5.3. Expansion of access to services for survivors:

As due to lockdown there is less freedom of movement, some countries are finding ways to expand access to violence related services.

5.4. UN women focuses on six areas in combating the issues

5.4.1. Prevention and awareness raising,

5.4.2. Access to essential services,

5.4.3. Online and ICT facilitated violence against women and girls,

5.4.4. Support for rapid assessment.

5.4.5. The duty of care of the private sector to support employees.⁹

6. CONCLUSION

Analyzing the article in detail, it can be inferred that the status and condition of women in Indian Society has not improved even in the modern era. Women, even today are victims of domestic violence and

⁹Alessandra Guedes, Amber Peterman, Dina Deligiorgis, *Five Ways Government Are Responding to Violence Against Women and Children During Covid-19*, (Feb. 28, 2022, 10 PM), <https://blog.unicef.org/evidence-foraction/five-ways-governments-are-responding-to-violence-against-women-and-children-during-covid-19>.

abusers are mostly within the domestic circle. With the outbreak of COVID 19, the plight of women has worsened from bad as they lost access to help from outside sources due to the norms of the lockdown. It can be seen that despite several losses and efforts from the non- governmental organizations, the positive outcome isn't positive in reality.

One drawback in the laws of domestic violence is that it is women centric whereas today even the male members of the society are the victims of domestic violence. The law has neglected the need for protection towards men.

7. SUGGESTIONS

The different causes and effects of domestic violence have been discussed at length. Few suggestions to solve the global issue are as follows:

7.1 Raising awareness regarding the negative impact of domestic violence

It is very crucial to make people aware that if they practice domestic violence in continuity, it can affect the mental, emotional and psychological state of a victim which will ultimately affect her activities.

7.2 Educating Children

It is very important to educate children on this global issue as children are the future of the nation and for the development of the nation, it is crucial that the pillars are well adapted with the broad-minded thoughts which will sense their responsibilities towards the society.

7.3 Need for Stringent laws

Despite existing laws against domestic violence, increase in the cases of domestic violence can be witnessed. Therefore, there is a need to make more strict laws to solve the issue.

7.4 Implementation of laws

Along with the formulations of laws its proper implementation is equally important because the result can be obtained only through its effective implementation.¹⁰

“Statistically, it is safer to be on the streets after dark with a stranger than at home in the bosom of one’s family, for it is there that accident, murder and violence are like to occur”.

– Sidney Brandon.¹¹

From the above statement it can be clearly understood that the gravity or the seriousness of the issue of domestic violence shall be given importance to solve the issue.

¹⁰*The Shadow Pandemic: Violence against Women During Covid-19* (Feb. 28, 2020, 10:30 PM), <https://www.unwomen.org/en/news/in-focus-gender-equality-in-covid-19-responses/violence-against-women-during-covid-19>.

¹¹*Id.*



POEM



BUT WHO BAKES FOR THE BAKER?

Prachi Gupta¹

While their cookies comfort you.

Who bakes for them while their heart is aching?

It's not obligatory that only cookies comfort you.

You can make chai, with elaichi and lots of love.

That will just do fine.

They say fall in love with a writer and you will never die.

But who writes for the writer?

Instead, you can pull her closer and whisper her name in her ear because that sounds exactly like poetry from your mouth

Or read her a paragraph from her favourite book and tell her your point of view.

Who sings for the singer?

When they can't sing because of the hoarse voice they have from crying all night

Don't you sigh

You're not a singer but

Can you just hold their hand and sit there in silence?

Till your heart beat entwines with the singers to create a melody

A melody so mellow that makes her forget the pain of last night.

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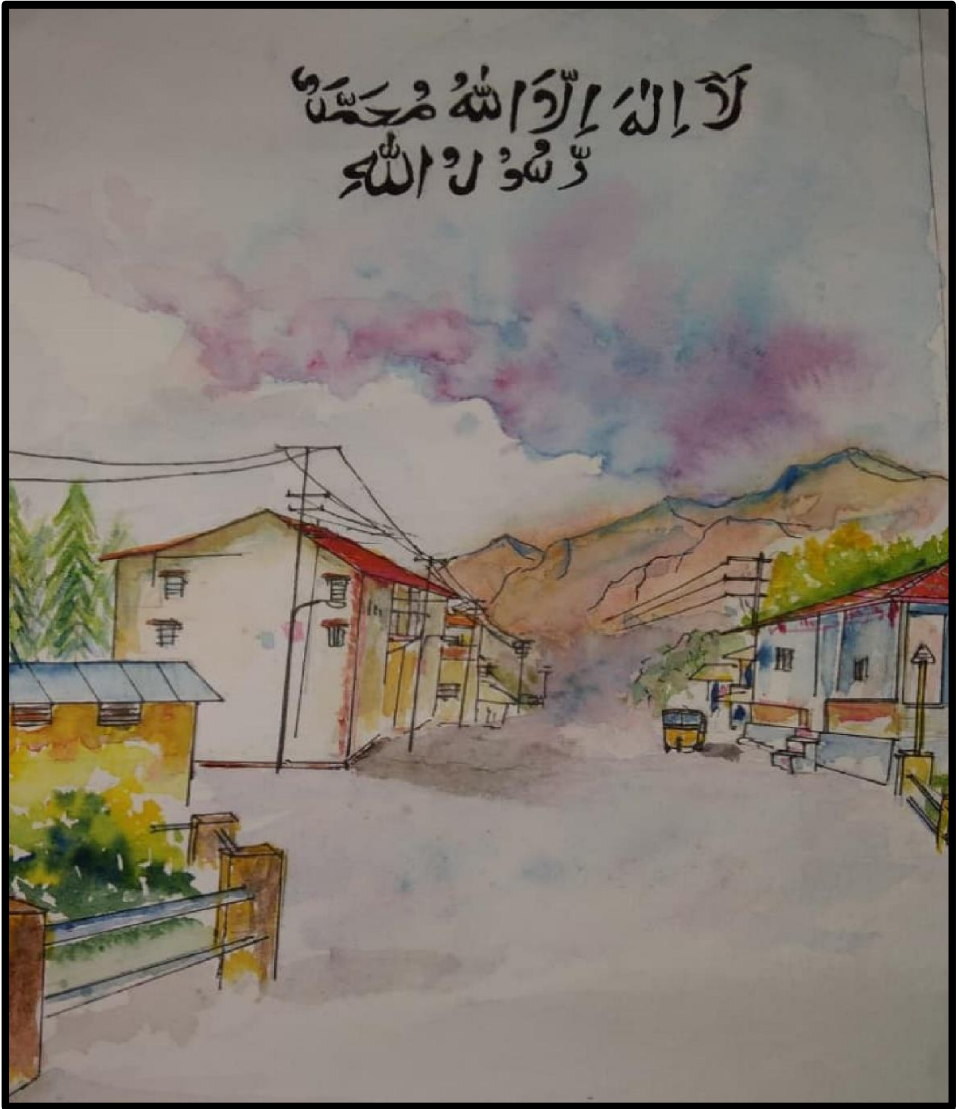


ARTWORK





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