

ANALYSIS OF 'BOIS LOCKER ROOM' CASE WITH REFERENCE TO REPERCUSSIONS OF MEDIA TRIAL

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ABSTRACT

Media trial has become very prominent since the last few decades. While it does provide a medium to women to voice out their sufferings who otherwise find it very difficult to reach out, it also has certain ill repercussions. It gives undue advantage to women who might accuse innocent men who then go through a mental turmoil as they watch their social reputation getting tarnished. This calls for a need to have a fair trial before reaching to any conclusions.

The recent case of "Bois Locker Room" witnessed a group of school going boys objectifying and having lurid discussions about women of their age and also some underage women. The screenshots of the group revealed that they even circulated morphed images of the girls. The group discussed methods of sexually exploiting them and rated the girls based on their body parts. This conversation was outrageous in nature and did question the modesty and integrity of the women concerned and therefore the act did violate their rights on the face of it. However, media houses, by disclosing the names of the accused members violated the rights of accused persons of a fair trial and non-disclosure until proven guilty. This case is a fair example of the pros and cons of media trial and its effect on both the parties.

FACTS OF THE CASE

Social media platforms have given stalkers a new weapon to victimize women and harass them online. The realization of stalking as an offence was a sluggish and gradual process which finally got introduced in the statute after the Criminal Law Amendment Act, 2013. These platforms have also helped women as few women have picked up the courage and are now articulating their experiences of sexual harassment under the label of #MeToo movement which is giving rise to media trial.

In the case of “Bois Locker-Room”, members of a group chat of age group 16 to 18 years discussed methods of sexual assault against minor girls and circulated their pictures without their consent and a series of screenshots which were posted on social media platforms, exposed the group’s chat on Instagram. The screenshots reveal chats between a group of boys sharing photos of underage women and teenage girls, making others guess their age, followed by lurid discussions on their bodies and objectification of their classmates and other women, some as young as 14-year-old. The group also allegedly used to share nude/morphed photographs of the women and their personal information.

Later, when the screenshots went viral, most of the members deactivated their accounts and they threatened to leak explicit photos and hack the accounts of the women who have exposed the group chat. One of the post states that, "Let's post nude photos of all girls who posted stories about us. I have photos of some of them. Now they will know the result of their shenanigans. They will shut their mouths and they will not be able to show their faces in public". Later an Instagram page with the name of “bois locker room 2.0” was created to carry on with the lurid discussions.

The “Delhi Commission for Women” had taken cognizance of the case and had issued a notice for immediate arrest of the members of Bois Locker Room, registration of FIR against them and the directions for investigation into the matter.

VIOLATION OF RIGHTS OF THE WOMEN

Violation of Fundamental Rights

The SC in *UOI v. Association for Democratic Reforms*ⁱ held that:

“Even a declaration of Fundamental Rights on the basis of the judgment rendered by the court would qualify for a Fundamental Rights included in chapter III. It is established that fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than 18 half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.”

Art.32 of the Constitution can be invoked even when there is a threat of violation of Fundamental Rights and the petitioner need not wait till the actual violation takes placeⁱⁱ. The Fundamental Right should either be violated or imminently threatened; the violation can be actual or potential and this may arise in a variety of ways and it is not possible to give an exhaustive classification.ⁱⁱⁱ

Violation of Article 21

Such an act is in violation of article 21 of the constitution which provides for right to life and personal liberty. In *Kharak Singh v State of UP*^{iv}, it was held that the expression ‘life’ is not limited to bodily restraint or confinement to prison only but something more than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. Thus right to life means the right to live with human dignity^v. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development^{vi}. The word “life” includes the right to

livelihood.^{vii} Therefore, if women are objectified and treated in a way which threatens their dignity then it is a clear violation of right to life.

Violation of Article 19

Article 19 provides for the protection of freedom of speech and expression under (1)(a). The term ‘expression’ includes the expression of one’s ideas through any communicable medium or visible representation, such as gestures, signs and the like.^{viii} However, there are certain reasonable restrictions to the freedom of speech and expression which include decency or morality and this outrageous act can’t be protected under this article. The test of obscenity was laid down in *R v Hicklin*^{ix} which is “whether the tendency of matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences” and into whose hands the publication of this sort is likely to fall. In *Ranjit D Udeshi v State of Maharashtra*^x the SC accepted this test.

INTERNATIONAL OBLIGATIONS

Article 51 (c) of the constitution stresses on “Pacta Sunt Servanda” principle^{xi}. According to this principle, given in Article 26 of the VCLT, every treaty signed by a country is binding on it and the obligations imposed by treaties must be performed by the country in good faith^{xii}. Any Article under Part IV (Directive Principles of State Policy) of the Constitution of India must be read with Article 37 of Constitution of India.^{xiii}

India is a signatory to UDHR, ICCPR, ICERSCR, CRC and CEDAW. According to UDHR, childhood is entitled to special care and assistance.^{xiv} ICCPR and ICESCR made provisions for the care of child under article 23 and 10 respectively. A number of rights have been stipulated in CRC: right to benefit from social security^{xv}, right to standard of living adequate for child’s physical, mental, spiritual and social development^{xvi}, right to protection of the law against arbitrary or unlawful with his or her privacy, family, home or correspondence.^{xvii} The preamble of UN Charter sets a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The state parties to CEDAW condemned discrimination against women in all forms.^{xviii}

OFFENCES UNDER IPC, 1860

With a rapid growth in the use of computer and internet, new forms of crimes have surfaced. These include publishing sexually explicit materials in electronic form, voyeurism and breach of confidentiality, offensive messages through communication services and many more. So, penal provisions are required to be included in the Information Technology Act, 2000 (hereinafter referred to as IT ACT, 2000), the Indian Penal Code, 1860 (hereinafter referred to as IPC 1860), etc. to prevent such acts.^{xix}

Offence Under S. 354 Of the IPC,1860

The accused are liable under S. 354 and 354 A of IPC, 1860 that has been enacted with a view to protect a woman against indecent assault as well as to safeguard public morality and decent behaviour.^{xx}The essence of a woman's modesty is her sex.^{xxi}Here the indecent/assault can be both battery and a psychic assault, without touching.^{xxii} This section punishes any act done with intention and knowledge that a woman's modesty will be outraged.^{xxiii}

What constitutes an outrage to woman's modesty is nowhere defined. This depends on the facts and circumstances of each case.^{xxiv}The acts of the accused of sharing pictures of underage girls and woman and having lewd discussions on the same is sexual harassment and has outraged their modesty and sense of dignity which can't be excused.

Further, if any recording or observation has been made during a period where a person was expected to have a reasonable sense of privacy and the observation or recording is done for a sexual purpose, the person has committed an offence of voyeurism.^{xxv} The group "Bois Locker room" was being used by the members to share nude/morphed photos of underage girls and women. This is a gross invasion to the privacy of the women.

Social media platforms have given a new weapon to stalkers to agonize women. Monitoring the use of the internet by a woman, emails or any other form of electronic communication comes within the purview of stalking^{xxvi} as stated in S. 354D of IPC, 1860. The accused have been monitoring the use of internet by women over platforms to collect and disseminate their photos over the group along with their private information. They have committed the offence of stalking for which they must be held liable.

In the present matter the Bois locker room members have not only outraged the modesty of the women but have also made a mockery out of it. Sharing photos of underage women and having

various lurid and sexually laden conversations about the same highlights' mindset and mental capabilities of the young boys involved. This act is highly derogatory to the young women who are the victims and also the whole class of women in general.

Offences Under S. 509 of the IPC, 1860

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment up to 3 years and fine.^{xxvii} Sexual harassment involves moral turpitude^{xxviii} The question as to what constitutes an insult to female modesty requires no description. If the intention of the accused is made out, the court can hold the accused liable under this section.^{xxix}

Offences related to modesty of a woman are not trivial in nature.^{xxx} In cases involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of the case.⁴¹

The members of Bois Locker room have been passing on obscene and sexually coloured remarks on the pictures of the women involved. They have also used to group to share nude / morphed photos of the women along with their personal information. The act of the accused has not only inflicted trauma on those women but has also invaded their dignity and privacy, thus they are liable for commission of sexual harassment against them.

Offence Under S. 506 of the IPC, 1860

Whoever threatens another with any injury to a person's reputation or property, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or vice versa, commits criminal intimidation^{xxxii} and shall be punished accordingly.^{xxxii}

In order to attract the provisions of S. 506 of IPC, the court must determine whether there was an act threatening the reputation and property of the victim in order to cause alarm or make him do an act which he is not legally bound to do or vice versa^{xxxiii}

An offence of criminal intimidation can be made out by establishing that the accused had an intention to cause an alarm to the complainant.^{xxxiv} Threat must be communicated, for the purpose of influencing his/her mind.^{xxxv} The court must look into the facts and circumstances

of the case and determine that the natural consequence of such intimidation will be influencing the mind of the victim.

In the present case the members of the group have threatened to leak explicit photos and hack the accounts of the women who have exposed the group chat.⁴⁷ Also the new group titled ‘Bois Locker Room 2.0’ was being used to pass on derogatory and offensive abuses and openly giving death threats to the women. This was done to influence and deter the women from taking any action against the accused and also to cause harm to their reputation and their mental and physical wellbeing.

Offence Under S. 500 of the IPC, 1860

The actions of the members were defamatory in nature. The main ingredients of defamation^{xxxvi} state that – there must be an imputation whether through words, signs or visual representation that has been made or published concerning a person with an intention to harm and having knowledge that it will harm the reputation of such person or defame him.^{xxxvii}

The accused must also have the intention and knowledge that the act is defamatory to the person concerned and will harm their reputation.^{xxxviii} The term harm here means to harm the reputation of the party.^{xxxix} Any imputation on a person’s character made and expressed to others so as to lower him in their estimation is what is intended by the “harm to reputation”.^{xl}

The acts of the members were defamatory in nature. Their actions have resulted in questioning of their character and virtue of the women involved. The Bois Locker Room members intended to cause harm to the reputation of the women involved and thus are liable to be punished for the same.

Offence Under S. 469 of the IPC, 1860

Whoever commits forgery, intending that the document or electronic record forged, shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term^{xli}

Forgery can be established by inferences from proved facts.^{xlii} In the present case the accused have created morphed photos to harm the reputation of the women involved.

OFFENCES UNDER PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The future of our country depends upon the character and destiny of a child and state has a duty to protect it.^{xliii} It is imperative that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.^{xliv} Child abuse damages a person for life and that damage is in no way diminished by ignorance of the perpetrator. It is only with the uncovering of the complete truth as it affects all those involved that genuinely viable solution can be found to the danger of child abuse.^{xlv}

Offence Under S.12 of POCSO Act, 2012

The members are liable for punishment for a term of three years and fine^{xlvi} for committing the offence of sexual harassment^{xlvii}. The substantive offence clearly indicates that the precondition for the section to be attracted is that an act, as enumerated therein, is done with sexual intent.^{xlviii} The members of the group were passing on photos and commenting on the same of minor girls. A child under this is any person below the age of 18.^{xlix} The girls involved in the matter were underage women and teenage girls, some as young as 14 years old. Sexually harassing them by passing sexually explicit comments on their photos and also threatening to leak their explicit photos is unacceptable and thus are liable for punishment under this section.

Offence Under S. 14 of POCSO Act, 2012

Child pornography^l is punishable with imprisonment of either description which may extend to 5 years and shall also be liable to fine and in second or subsequent conviction with imprisonment of either description for a term which may extend to 7 years and also shall be liable for fine.^{li}

Child pornography refers to use of a child in any form of media whether for personal use or for distribution, for the purposes of sexual gratification by representation of the sexual organs of a child; usage of a child engaged in real or simulated sexual acts (with or without penetration); the indecent or obscene representation of a child.⁶⁵

In the present case the members used the group to share nude/ morphed photos of underage girls along with their personal information. They have committed the offence of child pornography and must be punished for the same.

OFFENCES UNDER IT ACT, 2000

With various developments in technology, a plethora of new challenges have emerged. The IT Act, 2000 has been enacted to deal with these newly emerged challenges. The accused are liable under S.66^{lii} r/w S. 43 (b)^{liii}, S. 66E⁶⁸, S. 67^{liv}, S. 67A^{lv}, S.67B^{lvi} and S. 72^{lvii} of the IT Act, 2000. The privacy rights of the women have been infringed. The accused have shared photos of women involved without their consent and sexually objectifying them by passing on lascivious and explicit comments on the same. The group was also being used to share naked photos of women and personal information of young girls. This is a breach of privacy and the accused must be punished accordingly.

The accused have grossly violated the modesty and sense of dignity of the women involved. The acts of the accused show their tendencies for paedophilia and toxic misogynistic behaviour which is a great matter of concern.

VIOLATION OF PRIVACY RIGHTS

India is not a signatory to Budapest Convention on Cybercrime^{lviii} but it can have a persuasive effect. It recognizes the need to pursue a common criminal policy to deter action directed against the confidentiality, integrity and availability of computer systems, networks and computer data as well as the misuse of such systems, networks and data by providing for the criminalization of such conduct.^{lix}

CONSTITUTIONAL SAFEGUARD

Everyone is entitled to their right to privacy. Art 21^{lx} ensures the right to life and liberty to all the citizens of the country. Its ambit is wider than what appears at first reading and includes the right to privacy^{lxi} etc. It comes within the purview of fundamental right to life that is guaranteed to each and every person of our country. The acts of the accused have violated the right to privacy of the victims that is their fundamental right.

IT Act, 2000

The advancement of technology and the social networking sites the problem of intrusion of privacy is becoming a growing concern. The IT ACT, 2000 has been enacted to deal with electronic and computer related offences.

The accused have downloaded and extracted photos and videos of the women involved and morphed them therefore are liable u/s S.66^{lxii} r/w S. 43 (b)^{lxiii}

Electronically sent visual image with the intention to be viewed by a person or persons of an image videotape, photograph, film or record by any means the naked or undergarment clad genitals, pubic area, buttocks or female breast would be deemed as violation of privacy and be punished⁸⁵ under S. 66E⁸⁶ of the IT Act, 2000. According to S. 67^{lxiv} of the IT Act, 2000, an offence is committed by a person who publishes or transmits any material which is lascivious or appeals to the prurient interest.^{lxv} S. 67 clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with S. 67A and 67B is a complete code relating to the offences that are covered under the IT Act, 2000.^{lxvii} The accused are also liable under S. 67A⁹⁰ and 67B⁹¹ also for transmitting naked and morphed photos of underage girls and young women. Whether a matter is obscene or not depends on its tendency to deprave and deprave the minds of those that are open to immoral influence.^{lxviii} ^{lxix}

Therefore, the acts of the accused are derogatory and lecherous. This is extremely belittling to the women involved as it has not only attacked their sense of privacy but also endangered their emotional and physical well-being. The accused are also liable under Sec 72⁹³ of the IT Act, 2000. There is no question as to whether the privacy rights of the women have been interfered with or not. The members have intentionally taken and transmitted photos of women involved without their consent and have been passing derogatory comments on the same which is a gross invasion of their privacy.

VIOLATION OF RIGHTS OF THE ARRESTED PERSONS

There could have been a possibility that the group created on Instagram consisted of fake identities created on the same to foster malicious intention of framing the arrested persons into a criminal proceeding.

Violation of Fundamental Rights

Article 14 of the constitution provides for equality before law and an equal protection of law and therefore the accused persons are entitled to a fair trial and an expeditious disposal of the same as was held by the Hon'ble SC in *Hussainara Khatoon case*.

There is a clear violation of Article 21 as the disclosure of identities of the accused persons by the state authorities has tarnished their social reputation and has impaired their dignity. Article 21 protects the right to life and personal liberty of citizens not only from the executive action but from legislative action also and that it was held by the apex court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just.^{lxx} In *Kharak Singh v State of UP*^{lxxi}, it was held that the expression 'life' is not limited to bodily restraint or confinement to prison only but something more than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. Thus, right to life means the right to live with human dignity^{lxxii}. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every person is entitled to elimination of obstacles and discrimination based on gender for human development^{lxxiii}. 'Life' includes employment opportunities, health facilities, educational opportunities, cultural rights, linguistic rights and many more. The word "life" includes the right to livelihood.^{lxxiv} A respondent is a public man and he has a right to reputation until he has been heard^{lxxv}. Also, in the view of Article 21, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrongdoer is accountable and the state is responsible if a person in custody of the police is deprived of his

life except in accordance with the procedure established by law^{lxxvi}. Their right to privacy has been infringed as guaranteed to them in Art 21 of the Constitution of India.^{lxxvii}

Moreover, the state has an obligation to protect the social order and welfare^{lxxviii} and to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.^{lxxix} Directive principles have been regarded as soul of the constitution.^{lxxx} Article 37 makes them binding on the state.

INTERNATIONAL OBLIGATIONS

Article 51(c) of the constitution stresses on “Pacta Sunt Servanda” principle^{lxxxii}. According to this principle, given in Article 26 of the VCLT, every treaty signed by a country is binding on it and the obligations imposed by treaties must be performed by the country in good faith^{lxxxii}. Any Article under Part IV (Directive Principles of State Policy) of the Constitution of India must be read with Article 37 of Constitution of India.^{lxxxiii} India is a signatory to UDHR, ICCPR, ICESCR, and CRC. According to UDHR, childhood is entitled to special care and assistance^{lxxxiv} and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.^{lxxxv} ICCPR and ICESCR made provisions for the care of a child under article 23 and 10 respectively. A number of rights have been stipulated in CRC: right to benefit from social security^{lxxxvi}, right to standard of living adequate for child’s physical, mental, spiritual and social development^{lxxxvii}, right to protection of the law against arbitrary or unlawful with his or her privacy, family, home or correspondence^{lxxxviii} and also their right to privacy during pendency of trial.^{lxxxix} India is a signatory to the United Nations Convention on the Rights of the Child, 1989 which makes it obligatory upon the signatory States to take all necessary steps to protect the rights of the children as set out in the Convention.^{xc} Beijing rules also emphasis the rights that must be ensured to all juveniles that include-Right to privacy^{xcii}, and also states that the aim of juvenile justice system should is that it shall emphasize the well-being of the juvenile^{xcii} and protection of legal status of the juvenile, avoid harm to her or him, with due regard to the circumstances of the case.^{xciii} Moreover the juveniles are to be given the benefit of presumption of innocence until proven guilty^{xciv}. Moreover, Beijing rule mandates confidentiality of records^{xcv} & need for professionalism &

training while dealing with juveniles.^{xcvi} The preamble of UN Charter also sets a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions e.g. Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional guarantee^{xcvii}

VIOLATION OF CRIMINAL PROCEDURE

It was held by the SC that a fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated^{xcviii}. Absence of a fair trial would be a violation of fundamental principles of judicial procedure on the account of breach of mandatory provisions of section 304 of Cr.P.C.

Moreover, in terms of section 10 of the Juvenile Justice act, a child cannot be arrested and since he is only apprehended and placed in the charge of the Special Juvenile police unit or the designated Child Welfare Police officer for production before the concerned Juvenile Board within 24 hours of such apprehension, the jurisdiction of the court under section 438 of CrPC is not liable to be invoked^{xcix}. Also, according to Beijing Rules, detention of juveniles pending trial should be used as the last resort^c.

DEFAMATION AS AGAINST THE ARRESTED PERSONS

The criminal justice system of 'India' considers an accused person innocent until proven guilty. The principle of innocent until proven guilty is nowhere mentioned in our constitution but is a potent background to conception of justice.^{ci} *Our Criminal Justice system provides for safeguards for fair trial and innocent until proven guilty so as to make sure no innocent man is punished for something he didn't do.*^{cii} However, the media houses by publishing the names of the members of Bro's locker room have already declared them guilty which has tarnished their reputation.

According to section 499 of IPC, whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said to defame that person.

Protection of reputation is a fundamental right and is also a human right. Every man is entitled to dignity of person and of reputation^{ciii}. Although the freedom of speech and right to expression are fundamental rights but these rights aren't absolute^{civ} and hence defamation isn't protected under Article 19(1)^{cv}. The first exception to section 499 stipulates that it isn't defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published and in order to fall within this exception it is to be established that what has been imputed concerning the arrested persons is true and for public good^{cv}. In *Punjab National Bank v Surendra Prasad Sinha*,^{cvi} it has been held that judicial process should not be an instrument of oppression or needless harassment. In the matter of defamation, the position of a newspaper is in no way different from that of a member of the public in general and that the responsibility in either case is the same^{cvi}. There must be an intention to harm the reputation of the complainant or the knowledge that the imputation will harm the reputation of such person^{cix}. It is not necessary that actual harm should result^{cx}.

INTERNATIONAL COVENANTS

Various international covenants have stressed on the significance of reputation and honour in a person's life. According to UDHR, no one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks^{cx}.

The ICCPR contains similar provisions. Article 19 of the covenant expressly subjects the right of expression to the rights and reputation of others. It reads thus-

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless

of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

In *Apparel Export Promotion Council v. A.K. Chopra*, it was pointed out that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law.

Interestingly, the court, in cases such as *G Sundararajan v Union of India, 2013*, and in the *Transgender* case has even resorted to those international treaties consistent with domestic law that India has not signed.^{cxii} Therefore, the international instruments of which India is not a signatory to can also be referred as such instruments too have, if not a binding, but a persuasive effect. The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) provides for right to respect for private and family life^{cxiii} and freedom of expression subject to reasonable restrictions.^{cxiv} India isn't a signatory to the convention however it can have a persuasive effect.

VIOLATION OF SECTION 74 OF JJ ACT, 2015

The main contention of JJ Act, 2015 was enacted with a view to consolidate and amend the law relating to juveniles, inter alia, providing for proper care, protection and treatment by catering to the development needs of the children and adopting a child-friendly approach in the matter.^{cxv}

It mandates that all cases involving apprehension, detention, prosecution, penalty /imprisonment, rehabilitation and social re-integration involving juveniles shall be governed by the Juvenile Justice Act.^{cxvi} A "juvenile" or "child" means a person who has not completed eighteenth year of age.^{cxvii} A "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.^{cxviii}

Further, no publication is to be made in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, disclosing the name and other personal information, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter. Any person contravening the provision shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.^{cxix}

Disclosure of names leads to generation of public sentiments.^{cxx} The mandate of the provision requires no further clarification. Suffice it to say that neither for a child in conflict with law, or a child in need of care and protection, or a child victim, or witness of a crime involved in matter, the name, address, school or other particulars which could lead to the child being tracked, found and identified shall be disclosed, unless for the reasons given in the proviso extracted hereinbefore. The Police and Media as well as the Judiciary are required to be equally sensitive in such matters and to ensure that the mandate of law is complied with to the letter.^{cxxi} A person who contravenes the provision of S. 74 of JJ Act, 2015 is liable to get punished under the same.^{cxxii} It is further said that media is a body performing public functions so they must act responsibly.^{cxxiii}

S. 29 of the Police Act, 1861 speaks about penalties being imposed for neglect of duty on every police officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both.^{cxxiv}

It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by an competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance^{cxxv}It is

the duty of the police authority under S. 23 of the Police Act 1861 to carry out the order passed lawfully by the authority concerned^{cxxvi}

In *Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr.*⁶³, where in it was observed by the learned judge that:“

..... When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings. To this general rule of fair trial, one may add a further rule and that is that none shall, by misrepresentation or otherwise, bring unfair pressure to bear on one of the parties to a cause so as to force him to drop his complaint or defense. It is always regarded as of the first importance that the law which we have just stated should be maintained in its full integrity. But in so stating the law we must bear in mind that there must appear to be ‘a real and substantial danger of prejudice.’”

The law relating to contempt of Court is well settled. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court.^{cxxvii}

It is thus concluded that the principle of innocent until proven guilty plays a very important role in the conception of justice^{cxxviii}. The juveniles were arrested during the investigation making them look guilty is against the principles of natural justice.

ENDNOTES

- ⁱ UOI v. Association for Democratic Reforms 2002 (5) SCC 294.
- ⁱⁱ D.A.V. College V. State of Punjab 1971 (2) SCC 261
- ⁱⁱⁱ Andhra Industrial Work V. Chief Controller, Eand I 1974 (2) SCC 348
- ^{iv} Kharak Singh v State of UP, AIR 1963 SC 1295
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