

PROBLEM STATEMENT – KSHAN-2021

1. India is a quasi-federal, social, secular, Democratic & Republic governed by Constitutional Supremacy following the rule of law. India promotes freedom of speech and expression and thereby the right to access, obtain and impart information as a fundamental freedom recognized and guaranteed by its Constitution.
2. “Picsagram” is a leading Social Media Platform that has garnered much attention in the recent past by the youths especially by the 14 - 25 years age group. This virtual platform allows its users to share stories of their daily lives in the form of photos and videos while also enabling them to seamlessly text message their friends. A feature that is quite often used on the application to communicate to many people at the same time is the ‘Group Chat’ option.
3. Raj, a 16-year-old student, coming from a middle-class family, managed to get admitted into a reputed college in Mumbai, one of the largest metropolitan cities in India to pursue his college education. Since he excelled at his studies and secured good marks, he convinced his parents to buy him a smartphone. Soon thereafter, Raj got himself acquainted with the various features on the device and was always glued to it. He even created a profile/ account on almost all the major social media platforms that were available.
4. In college, Raj had soon garnered a reputation for being a studious person and was often mocked by being called a ‘Nerd’ and ‘Dumb’. Desirous of not being the laughingstock in class, he affirmed he wanted to be associated with the ‘cooler’ students in college. Raj thereafter started mingling with different people. In the usual course of time, he was introduced to Ashish, an 18-year-old senior of his who was well known in college. To disassociate the image of ‘nerd’ that he had been branded with, Raj started hanging out with Ashish and his group of friends more often. He used to mimic all the activities that they indulged in such as consumption of alcohol, cigarettes, and drugs.
5. Raj had also made himself extremely active on his Picsagram page and would regularly post updates of his life with his new friends on the social media platform. One day, while hanging out with Ashish and his friends, he overheard them talking about a Picsagram

group known as ‘The Fiery Boys’. Curious, he enquired about the same with Ashish and was told that it was a boy only group where they discussed activities like sports, movies and other ‘boys talks’. Intrigued by the same and wanting to be a part of the group, he requested Ashish to add him to the group. On March 7th 2021, he had received an invite to join the group and he readily accepted it. Since he was new to the group, he could not view the older messages that were shared by its members. At the time of joining the group, Ashish, who was also the group admin, had specifically instructed him not to disclose the details of the group to anyone outside. He was also asked not to leave the group without the express permission of its members. Raj instantly agreed to the same.

6. For a few days, the group had been dormant and there were no messages being shared by the members. In the meanwhile, Raj had started chatting with a new friend whom he met through the ‘The Fiery Boys’ group. There he gets friendly with a boy named Varun. They were chatting on a regular basis and had soon become close friends. However, Raj found it quite strange that Varun used to avoid all his requests to meet him in person and hang out.
7. On 20th March, 2021, Raj started receiving messages on the ‘The Fiery Boys’ group. Excited, he opened the messages and started reading them. However, upon going through the messages, he was baffled and shocked beyond belief. To his horror, the messages showed members, including his friends Varun & Ashish, sharing photos of underage and young girls morphed onto adult pictures. Several other obscene images and messages were also shared. Further, all the group members were discussing approaching these girls to talk and, in the event that they resisted their advances, they would perform forced sexual intercourse on them. Scared that there might be possible repercussions if the messages got out, Raj immediately left the group.
8. On 22th March, 2021 Raj received a phone call from Ashish who demanded answers as to why he had left the group without taking his permission or permission of the group members. Thereafter, Raj informed him that he had been scared after reading the kind of messages that were being shared on the group. This led to a verbal argument between him and Ashish who eventually threatened Raj with dire consequences.

9. On 25th March, 2021 while Raj was chatting on ‘Picsagram’ with his friend Varun, he received a message from him stating that they should both follow girls and commit forced sexual intercourse on them. Worried, since Varun was an active member of the ‘The Fiery Boys’ group, Raj immediately stopped responding to him. He thereafter deactivated his account and uninstalled Picsagram from his phone.
10. After a few days of the incident, Raj came across news reports on all prominent news channels which displayed screenshots of messages shared on the ‘The Fiery Boys’ group. This resulted in a public outcry demanding action against all members of the group who were actively encouraging sexual violence against women and young girls, as well as representing them in a sexually explicit manner. However, while going through the news channels that were displaying screenshots of the messages, Raj was shocked to find a few screenshots of the ‘The Fiery Boys’ group where his name was shown as being used to send offensive and obscene messages similar to the ones he had come across while he was a member of the group. Further, he also found that the conversation that he had with Varun had also found its way onto the news channels.
11. Unable to handle the constant public criticism, scrutiny, humiliation and fear of being held responsible for the commission of the crimes, Raj committed suicide on the 4th April, 2021 by jumping off the terrace of his apartment complex. The police were immediately notified and all the necessary legal procedures of inquest and evidence collection were completed. Subsequently, the body was sent for post-mortem. The police thereafter registered an FIR for offences punishable under Sec. 306 r/w 34 of the Indian Penal Code, 1860 and began the investigation of the case.
12. During investigation it was discovered that Varun, who had pretended to be Raj’s friend on ‘Picsagram’, was in fact a 16-year-old girl named Disha who had created a fake account to test Raj’s character. Further, she had shared the screenshots of her messages with Raj with a member of the ‘The Fiery Boys’ group.
13. The Police completed their investigation and filed a chargesheet on 17th July, 2021 naming Disha, Ashish and several members of the ‘The Fiery Boys’ responsible for the death of Raj. Based on the findings of the investigation, the police filed a chargesheet against Disha

& Ors. for offences punishable under Section 306, 354-C, 294, r/w 34 Indian Penal Code, 1860 and Section 66C, 67,67A, 67B of the Information Technology Act, 2000.

14. After the preliminary assessment of trial, Considering the actions of Disha, she was mature enough to understand the gravity of the nature of the same and consequences thereof. Thus, an order under Section 19(1) of Juvenile Justice Act came to be passed hence the trial of accused Juvenile Disha was considered adult and along with others the trial commenced.

15. In order to establish the offences, the prosecution examined all the possible witnesses and hence the Hon'ble Judge of Sessions Court passed the judgement that all the accused persons had abetted the suicide committed by Raj. Dissatisfied with their convictions, Disha through her legal guardian along with other accused persons, filed an appeal before the Hon'ble High Court of Bombay against the judgement passed by Hon'ble Session Court.

16. The police while investigation was on, arrested Disha who is Juvenile and other persons in the group and disclosed their name and other details of these juveniles in conflict with law to a reputed News Media named "The Sachhi Baat". The media house has disclosed the name of the arrested juveniles in its exclusive report on TV and following which a newspaper named "The Polo" has also disclosed their details.

17. In the light of above-mentioned situation, Disha, represented by her guardian, filed a Writ Petition against the electronic media houses and print media agencies before the Hon'ble High Court of Bombay alleging violation her Right To Privacy and dignity as enshrined under the Constitution of India and mandatory provisions in other laws for not disclosing the identity of the juveniles in conflict with law.

18. Through this petition, the Petitioner challenge the validity of Section 74(3) of the Juvenile Justice Act, 2015 on the ground that the punishment is inadequate and insufficient and because of which media houses don't abide by the law provided and Disha has become underdog for this irresponsible act. The petition goes on to aver that her arrest is illegal and violates her Right to Life and Personal Liberty. It was also averred that the criminalization of such act is going overboard by forbidding speech that is within an individual's (and maybe even a group's) realm of privacy and it is not at all justifiable to punish the group

members when it is so done by a non-member and none of the members intend to make their own conversations (containing obscene and/or sexually explicit material) public. The petition also stated that no legal implications follow if a person publishes on a public platform (electronic or otherwise) obscene and/or sexually explicit conversations exchanged between two or more persons, privately & consensually and IT Act's criminalization of certain kinds of private communications (in electronic form) is not justified as a reasonable restriction under Article 19(2) of the Constitution in the interests of 'decency' and/or 'morality' and the right to Privacy.

19. Hence this Writ Petition under Article 226 of the Indian Constitution for the violation her Fundamental Right to privacy.
20. The Hon'ble Chief Justice of Bombay High Court is pleased to club **both the matters** for hearing and final disposal.
21. Participants are directed to refer to the following issues in their memorials and oral arguments with an **additional (optional) (1) issue of their choice.**
22. For the purpose of smooth conduct of this moot court competition, and also to reduce the issues, it is admitted that the particular writ petition is maintainable.

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Issues:

1. Is breach of data equivalent to breach of a Person's right to privacy vis a vis Section 354C of Indian Penal Code, 1860.
2. Can decency or morality be a ground for reasonable restriction under Article 19 (2) on freedom of speech and expression?
3. Is the punishment prescribed under Section 74 (3) of Juvenile Justice Act 2015 in contravention of the fundamental rights enshrined in constitution of India & Does it go against the settled canons of jurisprudence?
4. Does the charge under Section 306 of Indian Penal Code, 1860 hold any substance? Does the judgement of conviction given by the Hon'ble sessions court uphold the principles of justice, equity and good conscience?

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