

MOOT PROPOSITION

1. Mankind shares common traits and attributes. Legal mechanism of a nation often implements different principles to protect the interests and achieve the goals of masses. As philosopher Jean-Jacques Rousseau has aptly remarked, “Besides the principles that are common to all, every nation has in itself something that gives them a particular application, and makes its legislation peculiarly its own.” Law has to actively consider the rights and privileges of people and ensure that it sufficiently addresses the needs of society. Law is an important mechanism for regulating society and is capable of bringing social change. India is a country of contradictions. High-rise buildings exist alongside slums and even the most advanced cities of our country face problems such as increasing crimes, rising suicide rate, broken marriages etc. In such a situation, law can definitely be an instrument of social change. Landmark legislations worldwide have been effectively implemented to ensure that desired social change becomes a reality.
2. Arshita, a 28 year old girl was very happy that she got a job in E-world International; a reputed U.S based IT outsourcing company in Hyderabad city of country, India. It was a good job with a decent pay package and other perks. She was an eligible bachelorette without any inglorious past in terms of relationships and was desperately waiting for her dream man. A few days into her new job, she came across the Human Resource Manager named Vishwas. Instantly, she knew that it was true love. On 10th March 2016, she tied the nuptial knot with him with their parental consent. Life was bliss until the policy of lay-off hit the jobs in many companies and harsh reality kicked in. Vishwas struggled to retain his job but he finally lost it, whereas Arshita was relocated to another company which was far from their matrimonial home. Initially Vishwas was quiet confident of bagging a job at the drop of a hat but soon the realization dawned on him that talent was not the only requisite for securing an employment and he started getting impatient. Arshita was working harder than ever to earn more and keep the flame burning in the kitchen.
3. On 5th February 2017 when Arshita returned from an official trip, Vishwas was fully dispirited. The next morning, when she was about to leave for office, he started shouting on her at a very high pitch. As Arshita retaliated on his behavior, he gave her two blows on her face. Gradually, the behaviour of Vishwas went on degrading. After two months, he told Arshita in a subdued voice that he has been having an affair with Drishti, their neighbour, since past five months. Arshita was dumbstruck for a few minutes, almost numb. She simply told him that it is fine if it has happened, nothing can be done about it. She was very disturbed the following day. Gradually, the behaviour of her husband worsened towards her. She was forced to spend her salary entirely on all the household expenses with no economic support from Vishwas. Shamelessly, Drishti started visiting their house very frequently,

interfering in the on goings of the household and instigating Vishwas in the smallest of matters. The amount of work that Arshita was expected to do in her household was burdensome and unfair as she was managing a full time job along with it and none of them pitched in to help. Vishwas was abusive and he frequently uttered the choicest of abuses about Arshita's parents and relatives.

4. Although, Arshita was somehow performing her household duties half-heartedly but she was no more ready for any sexual relation with her husband after such a betrayal and maltreatment. Without paying any heed to her refusal, Vishwas kept on forcing his unworthy sexual desires on her. Very often she broke into fragments, felt shattered and remained agonized. On 20th March 2017, Arshita found out that she was pregnant. Being in a delicate state of health in her pregnancy, she wished to hire the services of a driver as she was in a job that involved extensive travel. But she was not allowed to hire one as at that stage her husband controlled the finances and therefore she was incapacitated by the same. The burden of household chores didn't lessen during the period. There have been numerous instances when Drishti came to their place, said really hurtful things about her being unfit to be married to Vishwas and was on a constant fault finding tirade. One day, on 20th April, 2017, agonized Arshita took a drastic step. She went to the nearby Police Station to lodge a complaint against Drishti for adultery and Vishwas for the offence of rape. Thereupon she was told that only a husband can file a criminal case of adultery against another man having illicit intercourse with his wife and there is no such provision for a wife. Moreover, according to Section 375 of Indian Penal Code, 1860 (herein after referred to as I.P.C.), a husband cannot be prosecuted for rape of his wife in these circumstances. It led to the occurrence of sleep deprivation and extreme fatigue in Arshita's health.
5. An Irish girl, Sandra was working as a content developer in E-world International. She had a homosexual orientation and as soon as she got to know about the emotional turmoil faced by Arshita, she started openly expressing her love for Arshita. Love finds a way, though and therefore soon, Arshita started feeling new kind of inclination towards her colleague Sandra. Before Arshita could make up her mind to say no, she found herself strongly attached to Sandra emotionally. They started meeting frequently, developed physical intimacy and cherished every moment together. Every time she felt guilty about developing homosexual orientation but her inclination was beyond her self-control. Her pregnancy used to multiply her guilt but the flow of emotions was overwhelmingly irresistible.
6. On 5th June 2017, Arshita went to her gynecologist and asked her to terminate her pregnancy, whereby she was told that she is already 25 weeks pregnant and it is illegal to terminate a pregnancy at this stage. Section 3 of Medical Termination of Pregnancy Act, 1971 prohibits "a registered medical practitioner to terminate such pregnancy until it would involve a risk to the life of the pregnant woman or of grave injury physical or mental health or there is a

- substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped”.
7. Vishwas took the cake as far as saying the worst things during this period goes. He threatened her by saying that he will conduct DNA test to confirm the paternity of the child if he found the child’s appearance “not matching him”. It was the worst torment that Arshita thought she could bear so she brought it up with his parents to intervene and speak sense. On the contrary, they defended him and put her off rudely.
 8. Realising that she cannot escape such harassment any longer, she decided to leave a suicide note to her parents and her friend Sandra and bid goodbye to this world. In the suicide note, she also disclosed her intimate and illegitimate relationship with Sandra. She attempted to commit suicide by consuming poison in milk. As the good fortune of her parents would have it, she was taken to the hospital in time by her servant and her life was saved. But due to the trauma, the foetus in her womb died. The police initiated proceedings against her under Section 309, Section 312 and Section 377 of I.P.C.
 9. Now, Sandra has approached her close friend Mr Prahald to seek help for Arshita and herself. Mr Prahald is a public spirited person who is running an NGO named ‘JAGRITI’ where women seeking help in legal matters or wanting to know more about judicial procedures could come and seek screening and referrals for violence and counseling services. Apart from these, the NGO also imparts gender sensitization training to various age groups and various sections of the population. In recent years, there has been a realization to engage with men and to sensitize and change their attitude towards gender equality. Mr Prahald is running various campaigns implemented by various organizations to raise awareness on gender equality. He has taken permission from police and hospital authorities to meet Arshita and talk to her. She described to him that how she was forced to abandon every choice she has ever made regarding her own life and live a life ruled by circumstances, social taboos and legal boundations.
 10. Mr Prahald has now approached the Supreme Court of Indiana with a **Public Interest Litigation (PIL)** challenging the Constitutional validity of Section 497, Section 309, Section 375 of IPC and Section 377 of IPC and Section 3 of Medical Termination of Pregnancy Act, 1971.

Note: All the Statutes and Laws of Indiana are in *pari materia* to the Statutes and Laws of India. Special reference shall be taken from:

- 1. THE CONSTITUTION OF INDIA**
- 2. INDIAN PENAL CODE, 1860**
- 3. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971**
- 4. MENTAL HEALTHCARE ACT, 2017**