

# **Annual Newsletter Digest**

## **2014**

**Partners for Law in Development**



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- ❖ Supreme Court sets up Social Justice Bench

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- ❖ National Credit Fund scheme for women to be restructured

## RESOURCES

'Witch Hunting in Assam: Individual, Structural and Legal Dimensions'	PLD, AMSS and NEN
Posters on Sexual Harassment at the Workplace	PLD
'Reclaiming and Redefining Rights:ICPD+20 status of Sexual and Reproductive Rights in Middle East and North Africa' - The Egyptian Initiative for Personal Rights	The Egyptian Initiative for Personal Rights
'Engaging with Empowerment- An Intellectual and Experiential Journey'	SrilathaBatliwala
'Born Equal and free: Sexual Orientation and Gender Identity in International Human Rights Law'	UNHRC
'Not Gonna Take it Lying Down- Experiences of violence and discrimination as told by LBT persons in Sri Lanka'	Women's Support Group
'Women Count: Security Council Resolution 1325'	Civil Society Monitoring Report 2013
'Using CEDAW to Secure Women's Land and Property Rights- A practical Guide'	The Global Initiative for Social, Cultural and Economic Rights
'Due Diligence Framework- State Accountability Framework for Eliminating Violence against Women'	The Due Diligence Project
'Fighting Inequality From The Basics: The Social Protection Floor And Gender Equality'	UN Women
'The Business of Women's Human Rights: A Primer on the CEDAW & the UN Guiding Principles on Business & Human Rights'	IWRAW-AP
'Speak! The Truth is Still Alive: Land, Caste and Sexual Violence against Dalit Girls and Women in Haryana'	Women against Sexual Violence and State Repression
'Socio Economic Status of Women Manual Scavengers'	Jan Sahas Social Development Society
'Situation Analysis of Acid Violence in Eastern India'	Acid Survivors Foundation India
' Using Law to Address Sexual Harassment against Women in the Workplace in India'	North East Network
'PWDVA: Maharashtra State Handbook on Protocols, Best Practices and Reporting Formats'	MOHIM
Human Rights Council Resolution Portal	Universal Rights Group
'Rabat Plan of Action- Balancing Free Speech and Incitement to Hatred and Discrimination'	OHCHR
'On their Watch- Mass Violence and State Apathy in India- Examining the Record'	Ed. Surabhi Chopra and Prita Jha
'Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions'	UNFPA, UNHCR and Danish Institute for Human Rights

## UPDATES FROM THE UN

### UN Human Rights Council passes resolution on protection of families

The United Nations Human Rights Council, in its 26<sup>th</sup> session, passed a [resolution](#) on the protection of families. Through the resolution, the Council decided to convene a panel discussion on the protection of the family at its 27<sup>th</sup> session. It also called upon the High Commissioner for Human Rights to draft a report on the status of the family, and to 'liaise with States and stakeholders to ensure their participation in the panel discussion'.

While the resolution does not provide a definition of family, it re-affirms that 'the family is the fundamental group unit of society, entitled to protection of the state'. However, the resolution does not acknowledge that in all societies, there are diverse forms of families and intimacies, including non-heteronormative families. The resolution, in its text, does not accommodate this diversity of family forms. The resolution also fails to acknowledge that within families, human rights violations of individuals, especially in the form of sexual violence gets concealed, and is often outside the ambit of state protection.

India is among the 26 nations, which includes Russia, UAE, Indonesia and Pakistan among others, to vote on favour of the resolution.

[Source: http://www.article19.org/resources.php/resource/37605/en/un-hrc:-%E2%80%9Cprotection-of-the-family%E2%80%9D-a-thin-veil-for-censorship](http://www.article19.org/resources.php/resource/37605/en/un-hrc:-%E2%80%9Cprotection-of-the-family%E2%80%9D-a-thin-veil-for-censorship)

### UN High Commission for Human Rights Navi Pillay concludes term, succeeded by Zeid Ra'ad Al Hussein

After a six year tenure as the United Nations High Commissioner for Human Rights, Navi Pillay retired. Pillay was a member of a non-white minority in apartheid South Africa, and a front-line, grassroots lawyer who acted as a defence attorney for many anti-apartheid activists.

In 1995, Navi Pillay was elected by the UN General Assembly to be a judge on the International Criminal Tribunal for Rwanda. She later went on to become the President of the Tribunal. She played a critical role in the Tribunal's ground-breaking jurisprudence on rape as war crime, as well as on issues of freedom of speech and hate propaganda. She then went on to serve as a judge on the International Criminal Court in The Hague before taking on her role as the UN High Commissioner for Human Rights. During her tenure, Pillay has been very vocal and active on issues relating to children, detainees, victims of torture and of domestic violence, and a range of economic, social and cultural rights.

Pillayis succeeded by Zeid Ra'ad Zeid al-Hussein of Jordan as the new High Commissioner for Human Rights. Zeid, who is Jordan's Permanent Representative to the UN is the first Arab and Muslim to become the UN High Commissioner for Human Rights. As president of the governing body of the International Criminal Court (ICC) from 2002 to 2005 Zeid was closely associated with establishing the ICC. In 2002, he helped usher into being the International Criminal Court. In 2004, he wrote a [report](#) on alleged sexual abuse by peacekeeping forces in Congo.

Source: [http://www.nytimes.com/2014/08/14/world/europe/for-un-leader-on-human-rights-finish-line-looks-blurry.html?\\_r=2](http://www.nytimes.com/2014/08/14/world/europe/for-un-leader-on-human-rights-finish-line-looks-blurry.html?_r=2)  
<http://www.un.org/apps/news/newsmakers.asp?NewsID=110>  
<http://www.un.org/apps/news/story.asp?NewsID=48064#.VAIMRMWSw0Y>

### UN Human Rights Council adopts landmark resolution on sexual orientation and gender identity

The United Nations Human Rights Council, in its twenty-seventh session, adopted a landmark resolution on human rights, sexual orientation and gender identity. Though the resolution endorses a limited mandate, the vote was highly divisive, with 25 in favour, 14 against and 7 abstentions. India was one of the seven nations that abstained from voting, effectively not voicing its opinion on the resolution.

The Resolution (A/HRC/RES/27/32) takes note of the rampant violence and discrimination against individuals globally based on their sexual orientation and gender identity, and calls for a report from the High Commissioner on Human Rights on practices to promote their human rights. This is only the second time in the history of the United Nations that discrimination against LGBTQ has been acknowledged as a human rights violation.

The text of the Resolution can be accessed [here](#).

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15109&LangID=E>

### OHCHR releases report on the right of persons to birth registration

The Office of the UN High Commissioner for Human Rights (OHCHR) submitted its report on birth registration and the right of everyone to recognition everywhere as a person before the law to the Human Rights Council. The report underlines its relevance as a human right in and of itself to achieve full personhood and citizenship, and its relationship to the realization of other human rights such as the right to health, to education etc. It states that non-registration of birth has life-long consequences upon an individual, and disproportionately so upon children, contributing to child labour, trafficking and early and forced marriages. The report further



analyses the existing barriers to birth registration, and recommends evolving practices relevant to the specific social, cultural, legal and governance structures of a country.

The Report can be accessed [here](#).

Source: <http://www.wunrn.com>

### UN General Assembly adopts draft resolution calling for a moratorium on the death penalty

The draft resolution approved by the General Assembly Third Committee on ‘Moratorium on the use of death penalty’ was put to vote in the General Assembly at its 65<sup>th</sup> session, where it received 117 votes in favour, 37 against and 34 abstentions (in the GA Third Committee, the draft resolution received 114 votes in favour, 36 against and 34 abstentions). India was one of the countries which voted against the moratorium. The explanation to the vote stated that the moratorium was motivated with the view to completely abolishing the death penalty.

Source: <http://www.amnesty.org/en/news/un-vote-boosts-support-global-moratorium-death-penalty-2014-11-21>;  
<http://www.rediff.com/news/report/india-votes-against-unga-resolution-on-death-penalty/20141125.htm>

### UN member states in Asia-Pacific adopt declaration on gender equality and women’s empowerment at the Beijing +20 conference

The Asian and Pacific Conference on Gender Equality and Women’s Empowerment: Beijing +20, to review the progress made since the Beijing Declaration in 1995, map current challenges and future course of action, was held in Bangkok by UN Economic and Social Commission for Asia and the Pacific. and UN Women. The Conference was attended by 52 UN member states and 1888 civil society organizations. The Conference also passed the ‘Asian and Pacific Ministerial Declaration on Advancing Gender Equality and Women’s Empowerment’, which will contribute to the global review of the Beijing Declaration in 2015.

While the Ministerial Declaration was passed unanimously, the final draft was a diluted version of the norms initially set out. Refusing to name specific intersecting vulnerabilities that exacerbate gender discrimination in the region, India objected to the use of the words ‘caste’, ‘sexual orientation and gender identity’ and ‘conflict’ in the draft, restoring instead to terms such as ‘social origin’, ‘men and women in their diversity’ and ‘armed conflict’. Furthermore, the initial proposal to protect sexual rights of women was diluted to protect only their reproductive rights.

Read the full text of the Report here: <http://www.unescap.org/resources/report-asian-and-pacific-conference-gender-equality-and-womens-empowerment-beijing20>

Sources: <http://www.unescap.org/events/asian-and-pacific-conference-gender-equality-and-womens-empowerment-beijing20-review>;  
<http://m.thehindu.com/news/national/india-denies-caste-as-factor-of-gender-inequality/article6612210.ece/>;  
<http://www.thehindu.com/todays-paper/tp-national/asiapacific-declaration-ignores-sexual-rights-of-women/article6619779.ece>

## UN General Assembly adopts historic resolution against child, early and forced marriages

The United Nations General Assembly at its 69<sup>th</sup> Session adopted a landmark resolution to ban child/forced/early marriages. The Resolution was led by Zambia and Canada and was supported by 116 member states. This is the first time that the United Nations has accepted substantive recommendations on the issue of child marriages, which severely impact the health, education and security rights of 15 million girls globally every year. This comes in the aftermath of the Resolutions of the General Assembly and the Human Rights Council in 2013, which were procedural in nature calling for more information and consideration of the issue.

Even though India has more than one-third of all child brides in the world, India did not vote in favour of the Resolution. It had also not voted in favour of the Resolution in 2013.

Source: <http://iwhc.org/2014/11/united-nations-adopts-progressive-resolution-child-marriage/>

Read the full text of the Resolution here:

[http://www.who.int/pmnch/media/events/2014/child\\_marriage.pdf?ua=1](http://www.who.int/pmnch/media/events/2014/child_marriage.pdf?ua=1)

## **INDEPENDENT MECHANISMS AND REPORTS**

### UN Special Rapporteur on violence against women calls for stronger laws to promote gender equality

The United Nations Special Rapporteur on violence against women and its causes and consequences (SR VAW), Rashida Manjoo, while reporting to the UN Human Rights Council, stated that efforts to promote and protect women's rights and gender equality are facing hurdles due to the absence of legal binding agreement to address violence against women at the international level.

Lack of a holistic approach addressing individual, institutional and structural factors was also argued as a major cause behind violence against women. The report calls for adoption of

different norms and measures to fight violence against women and highlights the importance of poverty reduction measures, employment opportunities and benefit schemes in achieving gender equality and ending violence against women.

Later, in October, the SR VAW addressed the UN General Assembly and reiterated that violence against women is a pervasive human rights issue and needs to be dealt with accordingly. The SR also pointed out that apart from violence against women, another issue that needs to be addressed is that economic measures being implemented in countries riddled with financial crises tend to affect women disproportionately, for instance poverty reduction measures, employment opportunities and benefit schemes.

You can access the report of the Special Rapporteur [here](#).

Source: [http://www.wunrn.com/news/2014/06\\_02/06\\_16/061614\\_un.htm](http://www.wunrn.com/news/2014/06_02/06_16/061614_un.htm)  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15211&LangID=E>

### Working Group on discrimination against women in law and practice reports to the United Nations

The Working Group on discrimination against women in law and practice submitted its report to the United Nations addressing discrimination against women in economic and social life. The report states that discrimination legislation in a number of countries has led to a subordinate status for women. Though there are anti-discriminatory measures taken by some states, gender equality has not been fully achieved. Women do not have equal opportunities for participation in business sectors and exploitation of women in jobs has added to the crisis faced by women.

The Working Group asked for a gender responsive and accountable system at the international, regional and national levels to eliminate all forms of discrimination against women.

Source: [http://www.wunrn.com/news/2014/05\\_14/05\\_19/051914\\_working.htm](http://www.wunrn.com/news/2014/05_14/05_19/051914_working.htm)

### UN Human rights experts urge Sri Lanka to stop the promotion of hatred and faith based violence

Three independent UN experts called on Sri Lanka to adopt urgent measures to stop the promotion of racial and faith-based hatred, and violence against Muslim and Christian communities by Buddhist groups with extremist views, and bring perpetrators of this violence to justice. The Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, stressed upon the inadequate responses from the police and the judicial authorities leading to an atmosphere of impunity, while the Special Rapporteur on minority issues, Rita Izsák, urged the government to put in place protective measures to ensure the personal security of all individuals belonging to religious minority communities.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, called on the government to take urgent measures to bring the perpetrators of killings to justice, and to adopt effective protective measures.

In the years of 2013 and 2014, more than 350 violent attacks against Muslims and over 150 attacks against Christians have been reported in Sri Lanka. Muslim and Christian communities are reportedly subjected to hate speech, discrimination, attacks and acts of violence throughout Sri Lanka frequently. The statements of the human rights experts, in this context of fear and violence, are of significance for the cause of protecting human rights of minorities in Sri Lanka.

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14812&LangID=E>

### UN General Assembly's Open Working Group on Sustainable Development Goals submits proposal

UN General Assembly's Open Working Group on Sustainable Development Goals completed its mandate and submitted a report with a proposal for sustainable development goals at the 68th session of the UN General Assembly. The Open Working Group is the outcome of the mandate set out during Rio+20 in its document '[The future we want](#)'. The Open Working Group also provided the basis for their conceptualization.

The proposal contains 17 goals with 169 targets covering a broad range of sustainable development issues, including ending poverty and hunger, improving health and education, making cities more sustainable, combating climate change, and protecting oceans and forests.

Though welcome, the proposal fails to address certain issues such as ensuring women's full participation in peacekeeping, peace building, and reconstruction, protection of human rights for all and respect, protection, and fulfilment of sexual and reproductive health and rights for all.

Source: <http://sustainabledevelopment.un.org/content/documents/4538pressowg13.pdf>  
<http://www.womenmajorgroup.org/womens-8-red-flags-following-the-conclusion-of-the-open-working-group-on-sustainable-development-goals-sdgs/>

### UN SR on VAW reports on Afghanistan

The Special Rapporteur on VAW concluded her 9 day mission to Afghanistan. Her mandate was to gather information on violence against women in the country, its causes and consequences, and to make recommendations on measures to combat it. In her concluding statement, the SR VAW noted the positive legislative and institutional changes after the fall of the Taliban government, but observed that '*violence against woman continues to be a source of deep concern*' in the country, both within the public and private realms.

Violence within the private sphere includes the violence perpetrated by husbands and other relatives, 'honour' crimes, incest, practices such as *baad* (where girls are exchanged to resolve disputes) and *baadal* (exchange marriages), and self-inflicted harm due to domestic violence. She also took note of violence within the public realm through rape, sexual harassment at the workplace and targeted killings of women.

Her statement reiterated Afghanistan's commitment to international human rights instruments that enshrine gender equality, such as CEDAW, and emphasized increased accountability of institutions to redress VAW.

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15289&LangID=E>

Read the full statement here:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15284&LangID=E>

## **CEDAW RELATED NEWS**

### **CEDAW responds to ICPD 2014 Review and emphasizes the need for ensuring reproductive rights of women**

The Committee on the Elimination of Discrimination against Women issued a statement on sexual and reproductive health and rights, which is its contribution to the International Conference on Population and Development (ICPD) @20 review process. The Committee stated that the failure of a state party to extend services and particularly criminalising women specific health services is a violation of women's reproductive rights. The provisions for safe abortion and post abortion care, maternity care, timely diagnosis and treatment of sexually transmitted diseases, breast and reproductive cancer, infertility and accurate and comprehensive information about sexuality and reproduction are all part of the right to sexual and reproductive health. The committee also urged the states to ensure full respect and protection of sexual and reproductive rights of women as per the human rights obligations of the states.

You can read the statement [here](#).

### **India's 4<sup>th</sup> and 5<sup>th</sup> periodic report reviewed at the 58<sup>th</sup> session of the CEDAW, concluding observations released as well**

The Indian government's 4<sup>th</sup> and 5<sup>th</sup> periodic report, presented by a delegation led by the Secretary of the Ministry of Women and Child Development, was considered by the CEDAW

Committee at its 58<sup>th</sup> session. The Committee asked incisive questions about budgetary allocations to women's empowerment, protection against intersectional discrimination, steps taken to combat human trafficking without harassment to sex workers, approaches to combating sex selection, and measures to ensure parity of participation of women in public life, including in the legislature and the judiciary. Further, concern was expressed about statements by leaders on victim blaming, accountability for police inaction in implementing the law; questions regarding steps taken to rein in sexual violence against women by armed forces in conflict areas, and during communal violence were asked by the Committee.

Pursuant to the periodic reports, the CEDAW Committee released its concluding observations on the Indian government's reports. The observations, while acknowledging and welcoming the several legislative reforms undertaken by the government since the previous periodic report in 2007, also flagged some areas of concerns and recommendations. The committee expressed its concern on the lack of a comprehensive anti discrimination legislation addressing all forms of discrimination against women. It also expressed concern about the rising number of cases of violence against women, including sexual violence, acid attacks and violence in conflict areas and border zones.

The committee expressed its concern at the lack of financial and operational autonomy of the National Commission for Women and its state commissions, and encouraged the government to strengthen the autonomy, capacities and resources of the NCW.

You can access the report submitted by the Indian government [here](#).

You can read the concluding observations [here](#).

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14813&LangID=E>

### [CEDAW releases GR No.32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women](#)

The CEDAW released its General Recommendation No.32 to address the rights of women seeking asylum/refugee status. General Recommendations are a means by which the Committee invites more attention of States to specific issues affecting women.

This Recommendation analyses Art.14, Universal Declaration on Human Rights, on the gender dimensions of the right to asylum, building on its earlier General Recommendations, including No.19 (on violence against women), No.26 (on women migrant workers), No.28 (on the core obligations of States parties under Art.2 of the CEDAW) and No.30 (on women in conflict prevention, conflict and post-conflict situations). It comments that gender must be factored at every stage in the asylum-seeking process.

The Committee maintained the application of the CEDAW to read other human rights documents such as the UDHR, since the mandate of the CEDAW is to promote equality and non-

discrimination between men and women, even in rights that are not explicitly covered therein. Therefore, it recommended States to add a sixth ground for persecution entitling refugee status beyond the five in the 1951 Refugee Convention, of sex and/or gender, and to further read the other five grounds in a gender-sensitive manner. This includes not only policies and practices that directly discriminate against women, but also those that have a disproportionate impact on women. FGM, forced/early marriage, trafficking, ‘honour’ crimes, acid attacks, sexual violence, domestic violence, political/religious persecution for holding feminist views are expressly mentioned as practices that might entitle a woman to asylum. It also specified that women should be granted a derivative refugee status in case they are fleeing to prevent persecution of their children, such as in the case of FGM. Pertinently, the CEDAW re-iterated the obligation of due-diligence of States, such that persecution by non-state actors is also accounted for in asylum/refugee status.

Read the full text of the General Recommendation here:

<http://www.equalrightstrust.org/ertdocumentbank/CEDAW%20GR%2032.pdf>

## **REGIONAL HUMAN RIGHTS SYSTEMS**

### **African Commission on Human and People’s Rights adopts resolution condemning discrimination based on sexual orientation**

The African Commission on Human and People’s Rights adopted the Resolution 275 condemning acts of violence, discrimination and other human rights violations against persons on the basis of their sexual orientation and/or gender identity. This move by the principle human rights body in Africa is an important step towards the equal recognition of the rights for all persons regardless of sexual orientation or gender identity.

This landmark resolution confirms that acts of violence, discrimination and other human rights abuses affecting LGBTI persons and human rights defenders in Africa violate State obligations under the African Charter on Human and People’s Rights. It is all the more pertinent in light of the draconian anti-homosexuality laws passed by the nations of Uganda and Nigeria.

Source: <http://www.ijrcenter.org/2014/06/10/african-commission-on-human-and-peoples-rights-adopts-resolution-condemning-violence-and-discrimination-against-lgbti-persons/>

<http://www.achpr.org/sessions/55th/resolutions/275/>

### **ECHR upholds France’s ban on burqa to encourage citizens to ‘live together’**

The European Court of Human Rights (ECHR), accepting the argument that France’s ban on wearing a burqa encourages citizens to ‘live together’, upheld the 2011 law banning burqas in public.

The case was brought by a 24-year-old French woman, who argued that the ban on wearing the veil in public violated her freedom of religion and expression. The ECHR held that the law did not violate Article 8 (right to respect for private and family life), Article 9 (right to respect for freedom of thought, conscience and religion) and Article 14 (prohibition of discrimination) of the European Human Rights Convention.

What is striking about this judgment is that the Court observed that the French Government had not shown that the ban introduced in 2011 falls under the context where there is a general threat to public safety. It went on to observe that the ban forced women to give up completely an element of their identity that they consider important, together with their chosen manner of manifesting their religion or beliefs, whereas the objective alluded to by the Government could be attained by a mere obligation to show their face and to identify themselves where a risk for the safety of persons and property. Despite this, the ECHR went on to accept the argument by the Government on the ban encouraging citizens to 'live together', which in fact is not part of the rights guaranteed by the Convention.

The judgment can be accessed [here](#).

Source: <http://www.bbc.com/news/world-europe-28106900>  
<http://www.theguardian.com/world/2014/jul/01/france-burqa-ban-upheld-human-rights-court>

## **INTERNATIONAL LEGAL DEVELOPMENTS**

### *Asia*

#### *Afghan President withholds bill banning relatives from testifying against rape accused*

The controversial bill amending the Afghanistan criminal prosecution code was withheld by the President. Section 26 of the proposed amendment bill would effectively have banned relatives of the accused person from testifying as witnesses. The President has ordered the bill to be revised by the Cabinet.

The Bill, in the manner in which it is currently worded, if passed, would have made prosecution in cases of domestic violence, forced marriage and child abuse nearly impossible. In a country like Afghanistan, where forensic evidence is relatively undeveloped, as law such as this would halt prosecution in most cases of violence against women.

The Bill was passed by the Afghanistan Parliament. The Parliament has, on previous occasions, expressed apprehension and resisted efforts on amending Section 26. The revised law will now



go back to the Parliament. The Bill also does not define relatives, which in some villages in Afghanistan could potentially include dozens of people linked by blood or marriage.

Source: <http://www.trust.org/item/20140218052310-x9oge/>

### Philippine Supreme Court upholds historic Reproductive Health Law

After more than a year of deliberation, the Philippines Supreme Court upheld the constitutionality of the country's historic Reproductive Health Law passed in 2012

The Responsible Parenthood and Reproductive Health Act is a groundbreaking law that guarantees universal and free access to nearly all modern contraceptives for all citizens, including impoverished communities, at government health centers. The law also mandates reproductive health education in government schools and recognizes a woman's right to post-abortion care as part of the right to reproductive healthcare.

The Court's ruling, however, has not been a complete victory for women's rights. It has struck down a number of provisions, thereby allowing health care providers to deny reproductive health services to patients in non-emergency situations based on the providers' personal or religious beliefs. Spousal consent is required for married women seeking reproductive health care in non life threatening situations. Also, parental consent will be required for minors seeking medical attention who have been pregnant or had a miscarriage.

Source: <http://reproductiverights.org/en/press-room/Philippine-Supreme-Court-Upholds-Historic-Reproductive-Health-Law%20http://www.reuters.com/article/2014/04/08/us-philippines-contraceptives/idUSBREA370HY20140408>

### Malaysian politician Anwar Ibrahim sentenced to 5 years imprisonment on sodomy charge

A Malaysian court sentenced opposition leader Anwar Ibrahim to five years' jail, overturning his acquittal on a sodomy charge. It was ruled that the trial judge erred in rejecting the DNA evidence adduced. 'Carnal intercourse against the order of nature' as described in the criminal code, is punishable by 20 years in prison in Malaysia. The conviction has been described by critics as an attempt to block the opposition's ascendancy at a time when the governing party's popularity is waning.

He was found guilty of the 2008 charge but after a long series of delays the High Court in January 2012 acquitted him after a judge found that crucial DNA evidence submitted by the prosecution may have been compromised. This was the fourth time Anwar had been charged under the 1938 sodomy law that the United Nations Human Rights Commissioner has ruled as an anachronistic colonial era law which violates right to privacy and non-discrimination.

Source: <http://www.smh.com.au/world/anwar-ibrahim-sodomy-acquittal-overtuned-20140307-34cxi.html#ixzz30AFampWr>  
[http://www.nytimes.com/2014/03/08/world/asia/malaysia-opposition-leader-sentenced-in-sodomy-case.html?\\_r=0](http://www.nytimes.com/2014/03/08/world/asia/malaysia-opposition-leader-sentenced-in-sodomy-case.html?_r=0)

## Courts in Lebanon and Malaysia deliver landmark judgments advancing transgender rights

A court in Lebanon delivered a landmark judgment ruling that same-sex relations are not "contradicting the laws of nature" and cannot therefore be considered a crime. Judge Naji al-Dahdah cleared a transsexual woman of having a same-sex relationship with a man. The court noted that consensual homosexual relations were not against nature and could therefore not be prosecuted under Article 534 which states that sexual acts which "contradict the laws of nature" are punishable by up to a year in prison. The ruling is the latest in a string of recent triumphs for LGBT community in Lebanon. Last year the Lebanese Psychiatric Society had affirmed that homosexuality is not a mental disorder and does not need to be treated.

The judgment finds resonance in other jurisdictions as well, including India, Australia and Malaysia. The Indian Supreme Court delivering an iconic judgment on the constitutional rights of transgendered persons soon after the judgment of the Lebanese court. In Australia, the High Court delivered a landmark judgment recognizing the rights of individuals with 'non specific sex', identifying neither as male or female.

In Malaysia, in a landmark decision the Malaysian Court of Appeal gave transgender Muslims the right to cross dress overturning an Islamic law banning cross-dressing. The decision came after a suit was filed by transgender women in Malaysia who challenged section 66 of the Sharia law in Negeri Sembilan state, which prohibits "any male person who in any public place wears a woman's attire or poses as a woman." The Court of Appeal said the law against cross dressing by Muslim men contravened the country's constitution and deprives them of the right to live with dignity. It ruled that the law has the effect of denying the appellants and other sufferers of GID [Gender Identity Disorder] to move freely in public places and is degrading, oppressive and inhuman. Despite use of problematic terms like GID that pathologise rather than affirm gender variance, the ruling is a significant victory for human rights in Malaysia since transgender people are subjected to constant harassment and sexual abuse by the authorities under the aegis of the law.

Source: <http://www.bbc.com/news/world-asia-29947393>  
<http://www.hrw.org/news/2014/11/07/malaysia-court-victory-transgender-rights>  
<http://www.dailystar.com.lb/News/Lebanon-News/2014/Mar-05/249261-landmarkruling-rubbishes-anti-gay-law-in-lebanon.ashx#ixzz2vLENqyqK>  
[http://www.huffingtonpost.co.uk/dan-littauer/lebanon-gay-rights\\_b\\_4896786.html](http://www.huffingtonpost.co.uk/dan-littauer/lebanon-gay-rights_b_4896786.html)

## Kyrgyzstan Parliament approves bill against gay propaganda

The human rights committee of the Kyrgyzstan parliament approved a discriminatory anti-propaganda bill that is closely modelled on Russia's ban on "gay propaganda," enacted in 2013. The Kyrgyz bill proposes to eliminate freedom of assembly for LGBTI organizations by criminalizing "the organization of and participation in peaceful gatherings that aim to make available to society any information regarding positions on any form of non-traditional sexual relations." The bill would amend the Criminal Code, the Code of Administrative Responsibility, the Law on Peaceful Assembly, and the Law on Mass Media, and would introduce a range of criminal and administrative sanctions on those who speak or act in a way that creates 'a positive attitude toward non-traditional sexual orientation.' It defines 'non-traditional sexual relations' as 'sodomy, lesbianism and other forms of non-traditional sexual behavior', and claim that the law is needed 'to safeguard and protect the traditional family, human, moral, and historical values of Kyrgyz society'.

Earlier in 2013, Russian president Vladimir Putin signed into law an 'anti gay propaganda bill', passed by both houses of the Russian parliament. The law criminalized propaganda of 'non traditional sexual relations' to minors through the internet or any other media.

<http://www.humanrightsfirst.org/press-release/kyrgyzstan-parliament-approves-russian-style-anti-propaganda-bill>

## Burma proposes law regulating inter-religious conversions and marriages

The Burmese government proposed a bill that would encourage further repression against Muslims and other religious minorities. The bill would aim to protect the country's majority Buddhist identity by regulating religious conversions and marriages between people of different faiths. It would require those seeking to change their religion to obtain permission from panels of government officials. The proposed law would also violate the [right of women](#) to freely choose a spouse and to enter into marriage, under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Burma is a party. Also, if enacted, the bill would violate Burma's obligations to uphold the rights to freedom of religion, conscience, and expression under international law. The proposed restrictions on conversion, proselytizing, and speech contravene the Universal Declaration of Human Rights, which states that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom;" and that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom ... to seek, receive and impart information and ideas."

The proposed law has been opposed and criticized by women's organizations in Burma, as it prohibits Buddhist women from choosing to marry men from other religions, and is based on the premise that Buddhist women have to be protected from men of other religions.

Source: <http://america.aljazeera.com/articles/2014/5/28/women-rights-groupdecriesmyanmarbidtocurbconversions.html>

<http://www.religionnews.com/2014/12/18/myanmar-women-object-proposed-restrictions-interfaith-marriage/>

### Five persons convicted of gangrape executed in Afghanistan

In a gang rape case with high public and media visibility, five men convicted of gangrape by an Afghan primary court were executed. The accused had all been found guilty of kidnapping, robbing and gang raping four women who were returning from a wedding.

The trial had been at the centre of a lot of public attention, and President Hamid Karzai had himself met a delegation of women activists and assured them that the accused would be executed if convicted. Under Afghan law, the President must ratify an execution before it can be carried out.

The gangrape, the trial and the public attention are reminiscent of the heinous gangrape in Delhi, in December 16, 2012. However, instead of focusing on and implementing the retributive aspect of penal law, one can only hope that such cases will lead to far reaching changes in policy as well as attitudes to cases of sexual violence in a country where a climate of patriarchy, poverty and a lack of rule of law causes violence against women to be rife.

Human rights activist Mohammad Ali Danish from Afghanistan has translated a report on the gangrape as well as President Karzai's assurances to civil society groups. You can read the report [here](#).

Source: <http://www.independent.co.uk/news/world/middle-east/death-sentence-handed-down-after-afghan-gangrape-9717805.html>

### Sri Lanka, Bangladesh implement measures restricting freedom of civil society groups

Both the Sri Lankan and Bangladesh governments passed measures restricting the freedom of civil society organizations and NGOs. The Sri Lankan National Secretariat for NGOs, under the Ministry of Defence and Urban Development issued a circular to all NGOs preventing them from 'conducting press conferences, workshops, journalism training and dissemination of press releases'. The authority claimed such activities to be beyond the mandate of NGOs. The decision undermines the important role NGOs and the media play in the development of a nation by barring them from having legitimate dialogue and engagements with media outlets and journalists, is violates their freedom of expression.

This move by the Sri Lankan government came despite increasing pressure from the international community to improve its human rights situation. Earlier, three human rights experts of the UN had [urged](#) Sri Lanka to stop the promotion of hatred and faith based violence.

In February, the former UN Human Rights Commissioner Navi Pillai had visited Sri Lanka and called for an international probe to be set up to investigate war crimes by Sri Lanka.

In Bangladesh, the cabinet gave its final approval to the draft “Foreign Donations (Voluntary Activities) Regulation Bill, 2014” that would impose draconian restrictions on non-governmental organizations. The law mandates compulsory registration with the NGO Affairs Bureau for all NGOs receiving foreign funds. It establishes a set of harsh restrictions for NGOs, which would go far beyond what is permissible under international law regulating the right to freedom of association. The right of NGOs to freedom of association is a fundamental and universal right enshrined in numerous international treaties and standards, especially Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh has ratified. According to the law, NGOs will have to maintain a separate bank account for receiving foreign donations and will have to inform the NGO Affairs Bureau about the source of funds and its purpose to get approval of the bureau. Also, NGOs will be registered for a period of 10 years instead of five years and registration can be cancelled anytime for violation of the regulation.

The silencing of NGOs in the South Asian context is indeed alarming as it is set in the backdrop of increasing human rights violations in the countries. Civil society organizations play an important role both within the framework of national policy-advocacy and in international human rights mechanisms, such as by submitting alternative reports during national periodic reporting processes. Curtailing their freedom can only lead to aggravating the atmosphere of impunity with which human rights of the marginalized are violated by both state as well as non state actors.

It is pertinent to note that later in the year, the Human Rights Committee at the OHCHR considered and reviewed Sri Lanka’s fifth periodic [report](#) under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) of which Sri Lanka is a ratified party. Several civil society organizations also submitted their shadow reports to the OHCHR. The Sri Lankan status report, along with the concluding observations and the government’s list of replies can be accessed [here](#).

Source: <http://www.aljazeera.com/news/asia-pacific/2014/07/sri-lanka-bans-ngo-news-conferences-20147911164236904.html>

### Singapore Supreme Court dismisses petition seeking de-criminalization of homosexuality

The Supreme Court in Singapore rejected two separate Constitutional challenges to Section 377A of the Penal Code, which criminalises sexual intimacy between men, maintaining that the law does not contravene Singapore’s Constitution. The court held that Section 377A did not violate Article 9 of the Constitution as the phrase “life and liberty” referred only to the personal liberty of a person from unlawful incarceration, not their right of privacy and personal autonomy. The court also ruled that Section 377A fell outside the scope of Article 12, which forbids discrimination of citizens on grounds of religion, race and place of birth, but with no mention of “gender”, “sex” and “sexual orientation”, which related to Section 377A.

In dismissing their challenges, the court emphasised that the finding would not impact the freedom of individuals and groups to practise their values within the boundaries of the law. This freedom, however, “cannot ... extend to an insistence by a particular group or individual that its/his values be imposed on other groups or other individuals”.

Singapore’s law against homosexual conduct is contrary to the rights to non-discrimination, privacy, and freedom of expression recognized by the Universal Declaration of Human Rights, whose provisions are considered reflective of customary international law. This is a major setback for human rights in Singapore as the ruling undermines basic rights to privacy, equality, and non-discrimination.

Source: <http://www.channelnewsasia.com/news/singapore/supreme-court-rejects/1441378.html>  
<http://www.hrw.org/node/130278>

### Bangladesh High Court issues show cause notice to Government on discriminatory marriage contract forms

The Bangladeshi High Court issued a show cause notice to several government authorities to explain why an entry in the official marriage contract forms (Kabinnama) should not be declared to be unlawful for discriminating against women on grounds of sex in violation of the Constitution of Bangladesh.

The forms, in their impugned format required only the brides to make a statement about her marital status, specifically stating whether she is a virgin/divorced/widowed.

The notice was issued by the Court pursuant to a writ petition filed by the Bangladesh Legal Aid and Services Trust (BLAST), Naripokkho, and Bangladesh Mahila Parishad. In the petition it was submitted that the entry in the form was violative of Articles 27, 28, 31 and 32 of the Bangladesh Constitution

Source: <http://thinklegalbangladesh.com/home/news.php>  
<http://us6.campaign-archive1.com/?u=835a0e57f7ac5f9d6fd42b18c&id=c95d2532a3&e=6728b8ff9c>

## *Beyond Asia*

### Nigeria and Uganda enact draconian anti same-sex laws

**Nigeria:** The President of Nigeria signed into law the Same Sex Marriage (Prohibition) Act, a law that provides for 14 years imprisonment for same sex contract or civil unions. The Act, which was passed by the House of Representatives in May last year, also prohibits the operation of any organisation or society for homosexual rights and public show of same-sex relationships directly or indirectly.

Consensual same sex relationship was already illegal in Nigeria – violating rights to privacy and to freedom from discrimination – both of which are protected by the Nigerian Constitution and the International Covenant on Civil and Political Rights. The new law has already started affecting the lives of sexual minorities, with dozens of men being arrested and tortured by the police for being part of organisations for homosexual rights.

**Uganda:** After the Ugandan Constitutional Court held the previously drafted anti same-sex law to be unconstitutional, another anti same-sex legislation, on the same lines, was drawn up to be introduced in the Parliament.

The Bill, known as the Prohibition of Promotion of Unnatural Sexual Practices Bill, focuses on outlawing the ‘promotion’ of homosexuality, with a proposed sentence of up to 7 years. This bill, unlike the previous Act, would have a more repressing and wide-reaching impact. In case the bill is passed, it is anticipated that funding for LGBTIQ rights groups in Uganda might be affected. The Bill further criminalises any person who ‘leases or subleases, uses or allows to be used any premises for the purpose of engaging in unnatural sexual practices’. In essence, this allows for the possibility that many homosexuals in Uganda be banished to homelessness because landlords will be reluctant to rent out their houses to people who they suspect are gay.

Earlier, the Ugandan president, Yoweri Museveni had signed the controversial anti-same-sex sex bill into law. The law, which was passed by both the Houses imposed harsh penalties on same-sex sexual relationships. This law, similar to the Nigerian law, criminalised ‘promotion or recognition of homosexual relations through or with the support of any government entity in Uganda or any other non-governmental organization inside or outside the country’. It prescribed a term of 14 years in prison for first conviction, and for repeat convictions, termed ‘aggravated homosexuality’, the punishment is life imprisonment.

However, the law was struck down by the Ugandan Constitutional Court after it was challenged by 10 petitioners which included academics, journalists, MPs, human rights activists and rights groups on the ground that it violated the constitutional right to privacy and dignity, as well as the right to be free from discrimination and cruel, inhuman and degrading treatment. The Court, however, nullified the Anti Homosexuality Act because it was passed by the Parliament without the requisite quorum as required by law. This led to the Ugandan Parliament passing the new bill criminalizing ‘unnatural sexual practices’.

Source: [http://www.nytimes.com/2014/01/14/world/africa/nigerian-president-signs-ban-on-same-sex-relationships.html?\\_r=0](http://www.nytimes.com/2014/01/14/world/africa/nigerian-president-signs-ban-on-same-sex-relationships.html?_r=0)  
<http://america.aljazeera.com/articles/2014/2/24/uganda-s-presidentsignsanti-gaybill.html>

Op-ed: <http://www.gaystarnews.com/article/18-horrors-ugandans-now-face-under-anti-gay-law270214>

Op-ed: [http://www.huffingtonpost.com/udoka-okafor/the-new-anti-gay-bill-prop\\_b\\_6236390.html?ir=India](http://www.huffingtonpost.com/udoka-okafor/the-new-anti-gay-bill-prop_b_6236390.html?ir=India)

Scotland legalizes same sex marriage; Croatia and Estonia pass laws legalizing same sex civil unions

**Scotland:** Scotland became the 17th country in the world to legalize same-sex marriage, after the Scottish Parliament passed the Marriage and Civil Partnership (Scotland) Bill.

The Bill was opposed by the Scottish Catholic Church and the Presbyterian Church of Scotland but the law will not compel religious institutions to hold ceremonies on their premises. LGBT Rights campaigners in Scotland welcomed the bill calling it a milestone for lesbian, gay, bisexual and transgender equality in Scotland. Before this legislation came into force, same sex couples in Scotland were allowed to enter into civil partnerships.

**Croatia:** In a progressive step, the Croatian Parliament passed the Life Partnership Act which grants same-sex couples many of the same rights as that of an opposite sex marriage, with the exception of adoption. The law grants more legal rights to same-sex couples than they currently have, such as equal inheritance rights, social benefits and tax deductions. However, the unions will not have the status of a marriage.

Though Croatia has recognised the unregistered cohabitations of same-sex couples since 2003, and agreeably the Life Partnership Act does not give civil unions the same status as that of marriage, however, in a conservative country like Croatia, this move is a step forward.

**Estonia:** In a historic move, Estonia became the first nation from the erstwhile Soviet Union to legalise same sex partnerships. The Partnership Act, which was approved by the lawmakers with an astounding majority, recognises civil unions of all couples regardless of gender. The law gives same sex couples the same rights as heterosexual couples which includes financial, social and health benefits provided by the government and legal protection for children. Though the law does not give adoption rights to same sex couples, it does allow one partner to adopt the biological child of the other partner.

Source: <http://www.reuters.com/article/2014/02/04/us-britain-scotland-marriage-idUSBREA131N320140204>  
<http://www.pinknews.co.uk/2014/07/15/croatia-passes-civil-partnerships-law/>  
<http://www.bbc.com/news/world-europe-29559012>



<http://humanrights.ee/en/2014/10/estonia-became-the-first-ex-soviet-country-to-legalize-same-sex-partnerships/>

### Tunisia adopts gender equality, while Malta recognizes protection of gender identity in respective constitutions

**Tunisia:** In a progressive move, after detailed debates with the elected assembly of Islamists, leftists and liberals, Tunisia adopted its new constitution which enshrines gender equality within its text. Article 20 of the new constitution states that, ‘all male and female citizens have the same rights and duties. They are equal before the law without discrimination’. This move comes after Tunisia, in 2012, unveiled a draft constitution which referred to women as [‘complementary to men’](#).

Rights groups though, have expressed certain reservations about Article 20. The Article merely prohibits non-discrimination on the ground of gender and is extended to citizens. Article 20 should specify that discrimination, direct and indirect, is prohibited on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**Malta:** Malta became the first country in Europe to include protection of gender identity in its constitution by unanimously in favour of the amendment. The parliament also introduced civil unions giving same-sex and different-sex couples nearly the same rights as married couples. Transgender persons who have changed their legal gender, through this amendment, will now be able to enter into a marriage.

Source: <http://www.france24.com/en/20140106-tunisia-enshrines-gender-equality-constitution-women-rights/>

<http://www.theguardian.com/world/2014/jan/27/tunisia-signs-new-constitution-progressive>  
[http://www.huffingtonpost.com/2014/01/07/tunisia-gender-equality\\_n\\_4547963.html](http://www.huffingtonpost.com/2014/01/07/tunisia-gender-equality_n_4547963.html)  
[http://tgeu.org/Malta\\_Douze\\_Points\\_First\\_Constituion\\_to\\_include\\_gender\\_identity](http://tgeu.org/Malta_Douze_Points_First_Constituion_to_include_gender_identity)

### UK Law Society issues disturbing ‘sharia-compliant’ wills guidance, withdraws it subsequently after widespread criticism

The Law Society which represents solicitors in England and Wales had issued guidance for ‘sharia-compliant’ wills, allowing solicitors to be able to write Islamic wills which could effectively deny Muslim women an equal share to inheritances and exclude divorced Muslim women altogether. This compliance could also prevent children born out of wedlock – and even those who have been adopted – from being counted as legitimate heirs.

Currently, Sharia principles are not formally addressed by or included in Britain's laws. The guidance would have legitimised rules which are highly contested by many Muslims themselves and which discriminates against Muslim women, non-Muslims, and 'illegitimate' and adopted children. The guidance came under heavy criticism from several local as well as international civil society groups, primarily on the grounds that the guidance undermined the Equality Act, citizenship rights and the secularity of laws. One more ground of criticism was that there is no 'Sharia law' since the law in itself is not codified. Sharia law is based on an interpretation of the Qur'an, Hadith and centuries of debate and thus is different in different countries. The guidance was subsequently withdrawn by the Law Society after reviewing it in light of the surrounding criticism.

Source: <http://www.telegraph.co.uk/news/religion/10716844/Islamic-law-is-adopted-by-British-legal-chiefs.html>  
<http://www.theguardian.com/law/2014/nov/24/law-society-withdraws-guidance-sharia-wills>

### Australian High Court recognises non-specific sex in landmark ruling

In a case expected to redefine the binary definitions of gender, the High Court of Australia recognised non-specific sex, i.e. individuals who identify neither as females nor males. The High Court went on to hold that individuals could register under Births, Deaths and Marriages Registration Act 1995, as non-specific sex.

This decision comes after the male to female (MTF) respondent applied for a name change and to be registered as being of non-specific sex. The Registrar, though agreeing to the application at first, however later argued that it was beyond the power of the law to recognise options other than male or female. The decision was challenged in the New South Wales Court of Appeal, which overturned the finding of the Registrar. The Registrar went on to file the appeal in the High Court.

Though progressive, apprehension has been expressed about the judgment being limited only to individuals who have undergone sex reassignment surgery and are single. It could still be difficult for individuals who have not undergone surgery to formally identify as a non-specific sex.

The judgment can be accessed [here](#).

Source: <http://www.abc.net.au/news/2014-04-02/high-court-recognises-gender-neutral/5361362>  
<http://www.theaustralian.com.au/business/legal-affairs/neither-male-nor-female-high-court-rules-in-favour-of-norrie/story-e6frg97x-1226872155992#>

## Canada introduces law criminalising buying sex – putting sex workers in further danger

The Canadian federal government has passed into law the Bill C36, a new legislation on sex work, targeting people who 'exploit' sex workers. The Bill, also known as the 'Protection of Communities and Exploited Persons Act', amends the Criminal Code to prohibit purchasing sexual services or communicating in any place for that purpose, receiving a material benefit that derived from the commission of an offence of prostitution, and advertising of sexual services offered for sale. The law is being introduced pursuant to the Supreme Court [judgment](#) in 2013 which struck down three provisions in the Canadian Criminal Code, 1985 regarding sex work. These provisions pertained to the prohibition on keeping a brothel, living on the avails of sex work and communicating in public for the purpose of sex work. Under the new bill the purchase of, as well as financially benefitting from sex work shall be a criminal offence.

With the introduction of this bill, which effectively bans the sale of sex in public places, sex workers will be forced to pass over the process of screening of clients which is vital for their safety. The new law would, instead of 'protecting' sex workers, may in fact put them in a more vulnerable position.

Source: <http://www.ctvnews.ca/politics/government-tables-new-prostitution-legislation-1.1852364>  
<http://womensenews.org/story/prostitution-and-trafficking/140621/canadas-prostitution-bill-opposed-both-sides#.U7ENHJSSxDK>

## Papua New Guinea passes law making registration of marriage compulsory

Papua New Guinea passed a legislation outlawing polygamy, attributing it to the high rates of domestic violence, gender inequality and the spread of AIDS. The Civil Registration Amendment Bill makes it compulsory to register all marriages, including customary ones. Marriages involving more than one spouse, however, will not be recognised.

Traditionally, customary marriages (including polygamous ones), in Papua New Guinea are common in rural areas and were not officially recorded. The reason behind polygamous marriages (which is prevalent in mountainous highlands regions) was to increase agricultural productivity and better manage domestic responsibilities. It is unclear how registering marriages in itself will curb the spread of AIDs, or be an assurance against domestic violence.

Source: <http://www.ipsnews.net/2014/07/outlawing-polygamy-to-combat-gender-inequalities-domestic-violence-in-papua-new-guinea/>

## Palau revises penal code to decriminalise homosexuality

The Pacific Republic of Palau revised its penal code to decriminalise homosexuality. Previously, sexual relationship between men was punishable in Palau with up to 10 years imprisonment. Sexual relationship between women, however, was not a crime.

It is interesting to note that in 2011, at its Universal Periodic Review (UPR) at the UN Human Rights Council, Palau accepted the recommendations to repeal all provisions in domestic legislation criminalising consensual sexual activity between same sex adults and to combat discrimination against LGBT people through political, legislative and administrative measures.

Source: <http://www.pinknews.co.uk/2014/10/15/palau-gay-sex-decriminalised-in-penal-code-revision/>  
<http://www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=300>

## US Federal Court overturns lower court's decision, upholds ban on same-sex marriage

The 6th Circuit Court of Appeals, Ohio, upheld the right of four states- Kentucky, Michigan, Ohio and Tennessee to ban same-sex marriage and overturned the lower court ruling. This decision, in fact, contradicts rulings by four similar courts.

Earlier, in 2013, the Supreme Court in [United States v. Windsor](#), had ruled that the Defense of Marriage Act violated the constitutional rights to due process and protection under the law of the LGBTI. Since then, federal districts courts and appellate judges have interpreted the same to mean that it would be unconstitutional for states to deny same-sex couples the right to marry.

The 6<sup>th</sup> Circuit Court's judgment, ruling by a majority of 2 to 1, insisted that gay marriage remains a strikingly new concept for American society and, as such, it deserves more debate and discussion by the public. With this one sweeping decision, the Sixth Circuit has given all of the states in its geographic region a victory for their bans on both initial marriages of same-sex couples and official recognition of such marriages performed outside of the couples' home states.

With this decision of the federal court, it is being anticipated that the Supreme Court will take up the issue sooner rather than later for clarification.

Source: [http://www.nytimes.com/2014/11/07/us/appeals-court-upholds-same-sex-marriage-ban.html?\\_r=1](http://www.nytimes.com/2014/11/07/us/appeals-court-upholds-same-sex-marriage-ban.html?_r=1)  
<http://america.aljazeera.com/articles/2014/11/6/federal-appeals-courtupholdsgaymarriagebans.html>  
<http://www.theguardian.com/us-news/2014/nov/06/us-appeals-court-gay-marriage-bans-ohio-michigan-kentucky-tennessee>

## European Court of Justice bans tests to 'prove' homosexuality when applying for asylum

The European Court of Justice, in a much awaited judgement, banned tests, of any kind, being conducted for people claiming refugee status in EU countries on the ground of sexuality. The ruling was made after the case was brought in the European Court of Justice by the Council of State of the Netherlands which wanted to know whether there are any limits imposed by EU law as regards the verification of the sexual orientation of applicants for asylum. Earlier, the Dutch government rejected three bids of asylum saying they were not proved though one of the claimants provided a film confirming his statements. Later, their appeal was granted.

The Court observed that authorities must follow the EU law and respect the fundamental human rights. The Court further observed that even if proposed by the asylum applicant, evidence of homosexual acts obtained through tests infringed human dignity. Allowing such evidence could result in it becoming a requirement. The ruling stresses that while interviewing an asylum seeker to find out about their sexual orientation, questions could not be asked about their sexual practice.

The number of claims for asylum in European countries have increased, especially since several countries have recently passed laws criminalizing homosexuality

You can read the judgment [here](#).

Source: <http://rt.com/news/210875-eu-court-asylum-gay/>  
<http://www.soginews.com/eu-ruling-gets-applaus-lgbti-rights-activists/>

## National

### *New Law/Amendments*

#### HIV/AIDS Bill tabled in Rajya Sabha

The long awaited HIV/AIDS Bill was tabled before the Rajya Sabha 8 years after it was first drafted, in 2006. The draft bill was drafted after nationwide consultations with various stake holders' including people affected by HIV, high risk communities, health care workers, children's organizations, women's groups, and State AIDS Control Societies. The Bill prohibits discrimination 'in any form by the State or any other person in relation to any sphere of public activity' against any person affected by HIV. It also prohibits any form of victimization as well spreading of hate and discriminatory propaganda against an affected person. It also provides for

access to testing, treatment and counselling to be provided by the state to persons affected by HIV.

The Bill is now being considered by the Parliamentary Standing Committee on Health and Family Welfare for their recommendations, after which it will be reintroduced in the Parliament to be passed.

You can access the 2006 draft bill [here](#).

Source:<http://www.livemint.com/Politics/bWfH8nmMkMCfyP6zvPJEKL/Pending-since-2006-HIVAIDS-Bill-tabled-in-Parliament.html>

### Parliament passes the Whistleblower's Protection Bill

The RajaySabha passed the Whistleblower's Protection Bill, two years after it was passed by the LokSabha. The Bill, which seeks to ensure the safety of those exposing corruption in the government was passed without any amendments. The Bill provides for confidentiality of any person making a disclosure relating to an act of corruption, misuse of power and any criminal offence committed by a public servant. The disclosure shall be made to the Central or State Vigilance Commission and the Vigilance Commission shall not disclose the identity of the complainant except to the head of the department if s/he deems it necessary

However, the Bill in its present form has been criticized for being inadequate and ambiguous. The Bill does not define what constitutes 'victimization'. The Bill also doesn't allow anonymous complaints, making it a necessary condition for the complainant to disclose his or her name to the Vigilance Commission. Such a measure might prove counter productive since it makes it difficult for people who don't want to disclose their identity at all from making complaints.

As of yet, the Bill has not come into force, even after receiving the President's assent/

You can access the Bill [here](#).

Source:<http://timesofindia.indiatimes.com/india/Parliament-passes-bill-to-protect-whistleblowers/articleshow/30800579.cms>

Op Ed:<http://www.firstpost.com/blogs/dont-believe-rahul-heres-why-the-whistleblower-bill-wont-matter-1400249.html>

### SC/ST Prevention of Atrocities Amendment Ordinance cleared by Cabinet, replaced subsequently by Amendment Bill

The Union Cabinet cleared the SC/ST Prevention of Atrocities Amendment Ordinance, introduced before the LokSabha on December 2013. The ordinance amends certain existing categories of offences under the Act, and adds new categories of actions to be treated as offences.

Assaulting or sexual exploiting an SC or ST woman is an offence under the Act. The ordinance adds that: (a) intentionally touching an SC or ST woman in a sexual manner without her consent, or (b) using words, acts or gestures of a sexual nature, or (c) dedicating an SC or ST women as a devadasi to a temple, or any similar practice will also be considered an offence. Consent is defined as a voluntary agreement through verbal or non-verbal communication.

The ordinance also adds new offences, like garlanding with footwear, abusing by caste name in public, compelling to dispose of carcasses or performing manual scavenging, causing physical harm on allegations of witchcraft, and imposing a social or economic boycott, among others. The ordinance also provides for the setting up of 'Exclusive Special Courts' at the district level to try offences under the Act. The court shall be obliged to conceal the names of witnesses and take immediate action in respect of any complaint relating to harassment of a victim, informant or witness, etc.

The ordinance, however, has been replaced by the SC/ST (Prevention of Atrocities) Amendment Bill which was introduced by the Minister of Social Justice and Empowerment in the Lok Sabha. The Bill does not change any of the provisions in the Ordinance.

Source:<http://www.indiatvnews.com/news/india/cabinet-clears-sc-st-prevention-of-atrocities-amendment-ordinanc-34124.html>

Op-Ed:<http://www.prsindia.org/billtrack/the-scheduled-castes-and-the-scheduled-tribes-prevention-of-atrocities-amendment-bill-2013-3045/>

## *Judgments/Orders*

Supreme Court commutes death sentence of 15 prisoners, frames guidelines to safeguard the rights of death row convicts

In a landmark judgement (*Shatrughan Chauhan & Anr vs UoI*), the Supreme Court commuted the death sentences of 15 prisoners on the grounds of delay in the disposal of their mercy petitions by the President. The Apex Court held that the fundamental right to life and liberty, guaranteed under Article 21 of the Indian Constitution inheres even in a death row convict till his last breath, and the gravity of the crime cannot be an excuse for the agonizing delay caused to the convict. The Court recognized that 'keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death.'

With this judgement, the Supreme Court ruled as bad law a previous judgement of the court (*Devinder Pal Singh Bhullar vs State of N.C.T of Delhi*) wherein the same court, while dismissing the petition of death row convict Devinder Pal Singh Bhullar, held that prisoners convicted of terrorism-related offences could not appeal for commutation on grounds of inordinate delay.

In the present judgement, the Supreme Court also held that the execution of convicts suffering from mental illness would be unconstitutional, and commuted the execution of 2 of the 15 convicts on the same grounds. The Supreme Court also laid down guidelines for the treatment of death row convicts. The guidelines include the right of the convict to receive legal aid, be informed about the rejection of their mercy petitions in writing and have their medical and physical health regularly checked. The Court emphasized that solitary confinement of a death row convict was unconstitutional; and that the convict's family members should be allowed to meet the convict before execution, which is critical, in light of the secretive manner in which Afzal Guru was executed.

The centre subsequently filed a review petition, arguing that the President's decision in disposing of a mercy petition is beyond judicial review.

Though the judgement is a welcome one as it establishes the importance of due process of law as well as the centrality of fundamental rights in dealing with death row prisoners, one hopes that it is also a step in the direction of bringing into judicial and legislative discourse, the fundamental illegality of the death sentence in a democratic society.

You can read the judgement [here](#).

Source: [http://zeenews.india.com/news/nation/supreme-court-commutes-death-sentence-of-15-on-grounds-of-delays\\_905630.html](http://zeenews.india.com/news/nation/supreme-court-commutes-death-sentence-of-15-on-grounds-of-delays_905630.html)

### Supreme Court upholds Delhi High Court decision quashing the appointment of NCPCR member

Hearing a case challenging the Delhi High Court's judgment quashing selection of Dr. Yogesh Dube as member of National Commission for Protection of Child Rights (NCPCR) the Supreme Court stalled ongoing selection process for membership of NCPCR till guidelines for selections are notified by Union Government and public advertisements are made for calling applications against existing vacancies in NCPCR. Upholding the High Court's decision to quash the appointment of NCPCR member Yogesh Dube, the Supreme Court took serious note of the process of receiving applications and nominations from Ministers, MPs and other functionaries who have no role to play in the process of selection. With this order, the current selection process by which 5 names have been shortlisted pursuant to the Delhi High Court decision is stalled, and a fresh process has to be started after notification of guidelines and putting out advertisements for vacancies.

Earlier in 2013, the Delhi High Court quashed the appointment of Mr Yogesh Dube as a member of the NCPCR as he had no eligibility for the position. The Court had also expressed concern at the lack of any objective guidelines for selection to NCPCR, and took strong exception to how appointments to the Commission were made without adopting any ranking or an evaluation system. Despite this, the Ministry of Women and Child Development immediately shortlisted 5 new candidates for the post of member without putting out any advertisements or framing guidelines as recommended by the High Court.



The opacity of the selection and appointment process however this is not restricted to the NCPCR by any means, but afflicts the appointment procedures in other commissions like the NCW and the other thematic statutory bodies, most of which do not stand the test of autonomy as set out in the Paris Principles of 1993 which provides the framework for the composition of such national human rights institutions.

The judgment can be accessed [here](#).

### Supreme Court recognizes 'self identified gender', declares discrimination against transgenders unconstitutional

In a landmark judgement (*NALSA vsUoI*), the Supreme Court declared that Article 14, 15, 16, 19 and 21 of the Constitution do not exclude hijras and transgenders from its ambit, and therefore any discrimination against trans genders would be unconstitutional. The Supreme Court acknowledged the discrimination resulting from the legal regime based on the binary of male and female, determined biologically. The Court declared that a person's gender identity 'forms the core of one's personal self', and is based on self identification, and not on surgical or medical procedures.

The Court observed that the non-recognition of hijras as third gender resulted in discrimination, including in education and employment. The Court declared that transgendered persons must have the option of identifying as a 'third gender,' declaring also that transgender persons be considered as Other Backward Classes for the purpose of reservations in education and employment, directing the States and the Centre to devise social welfare schemes and public awareness to erase discrimination and stigma against the transgender community.

The Court acknowledged the historical and cultural presence of the 'third gender' in the South Asian region, and considered the decisions of Pakistan's and Nepal's Supreme Courts, in 2011 and 2007 respectively, affirming the constitutional rights of transgendered person.

Coming right after the judgement in *KoushalvsNaz Foundation* which re-criminalized sec 377 of the IPC (on carnal acts 'against the order of nature'), this judgement is a welcome one, as it expands the ambit of human rights. Although a significant step forward, the judgement is perceived as not having recognised caste and class differences that stratify the 'third gender', and for neglecting concerns of trans men, even as it focussed on MTF/ or trans women.

You can access the entire judgement [here](#).

Source: <http://in.reuters.com/article/2014/04/15/india-transgenders-idINKBN0D10A320140415>

Op:Ed:

[http://roundtableindia.co.in/index.php?option=com\\_content&view=article&id=7377%3Abecause-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120&Itemid=133](http://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377%3Abecause-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120&Itemid=133)

## Chhattisgarh High Court upholds draconian Special Public Security Act

The Chhattisgarh High Court dismissed a PIL filed by the PUCL challenging the validity of the Chhattisgarh Special Public Security Act (CSPSA) of 2005. The Court justified the legislation, stating that the state had the right to enact it as it fell within the ambit of 'public security'.

The PUCL, in its petition had argued that the Unlawful Activities Prevention Act of 1967 was enough to deal with insurgency in the state, and the Special Public Security Act was being misused by the state to violate human rights.

The CSPSA has already been used to persecute scores of activists and tribals who have protested against the policies of the state. Activist Binayak Sen was one of the prominent persons to be persecuted under this Act. The Act denies legal recourse to relief to the victimized persons, and provides for two to seven years of imprisonment without proof of intent or definite act to commit certain acts. There have been calls by several organizations to repeal this 'Black Act', to no avail.

Source: [http://zeenews.india.com/news/chhattisgarh/chhattisgarh-hc-upholds-special-public-security-act\\_927571.html](http://zeenews.india.com/news/chhattisgarh/chhattisgarh-hc-upholds-special-public-security-act_927571.html)

Op:Ed : <http://www.pucl.org/Topics/Human-rights/2006/black-laws.html>

## Supreme Court upholds Juvenile Justice Act in response to petition challenging its validity

Dismissing a writ filed by Subramaniam Swamy and others asking for a reading down of the Juvenile Justice Act to allow juveniles to be prosecuted under the Indian Penal Code for 'grave and heinous offences', the Supreme Court upheld the validity of the impugned legislation. Holding that 'there is no ambiguity, much less any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them', the Court declared that if at all there had to be any reading down of the Act, it was the task of the legislature to do so.

The petition was filed pursuant to the Delhi gang rape of December 16<sup>th</sup>, 2012, wherein the worst and most heinous parts of the offence were allegedly committed by a juvenile. The Apex Court, for once, strictly interpreted a statute to serve the purpose of social welfare in general, and rights of juveniles in particular, in accordance with international child rights treaties like the Convention on the Rights of Child, which India has ratified.

You can access the judgement [here](#).

Source: <http://barandbench.com/content/212/supreme-court-refuses-subramanian-swamy-pil-jj-act-sees-no-need-interfere-age-juvility#.U1o8pVWSyjs>

## Supreme Court rules bodily injuries are not necessary to prove a charge of rape

The Supreme Court, deciding an appeal in the case of *Krishanvs State of Haryana* (Crl. Appeal No.1342/2012), observed that a charge of rape will sustain even when there are no visible injuries on the body of the victim. The Court upheld the conviction of the accused by the Trial Court and the High Court of Chandigarh.

Rejecting the appellant's counsel's argument that the victim was habituated to sex, and there were no injury marks on her body, the Supreme Court held that 'it is not expected that every rape victim should have injuries on her body to prove her case'. The Court further emphasized that one cannot expect every rape victim to go and lodge a complaint at the police station immediately after being raped.

The Supreme Court's judgement indicates, to some extent, the shift in the understanding of rape in judicial discourse, from notions of victimhood which required the victim to prove that she did not consent, by showing injuries on her body. However, it still remains to be seen if this shift has percolated to the lowest rungs of the judiciary, where the fate of countless rape cases are decided on such questions of evidence, decided by judges with little or no training or sensitization to deal with cases of sexual violence.

You can access the judgement [here](#).

Source: <http://www.livelaw.in/expected-every-rape-victim-injuries-body-prove-case-sc-read-judgment/>

## Supreme Court makes observations on the nature and legality of fatwas

While disposing a petition seeking all fatwas to be declared illegal and void, the Supreme Court made some observations on the nature and legality of fatwas or edicts by Shariat Courts, also known as Dar-ul-Qazas. The Court observed that while the decisions of the Dar-ul-Qaza have no legal sanction and are not backed by the law of the land, the practice of issuing fatwas in itself is not illegal. The Court made it clear that a fatwa is 'only an opinion, not a decree binding on the court or the state or the individual', and that it is within the discretion of the persons concerned to accept, ignore or reject it.

The Apex Court also gave its advisory opinion to the Dar-ul-Qaza, asking it to not issue any fatwa on rights, status and obligations of individuals, unless asked by the person involved or directly interested. The Court also held that any person trying to illegally enforce a fatwa would have to be dealt with in accordance with the law.

While the judgement does not infringe upon the rights of religious minorities protected under Article 25 of the Constitution, it however leaves out edicts and diktats of a similar nature made by other bodies such as caste panchayats, which affect the rights and status of women in matters of autonomy and choice.

You can access the entire judgement [here](#).

Source: <http://indianexpress.com/article/india/india-others/shariat-courts-not-legal-cant-issue-diktat-to-impinge-individuals-rights-sc-on-fatwa/>

Op-Ed: <http://indianexpress.com/article/opinion/columns/faith-and-fatwa/>

### Kupwara Sessions Court dismisses revision petition by Indian Army in KunanPoshpora rape investigations

A Sessions Court in Kupwara in Northern Kashmir dismissed the first legal challenge by the Indian Army seeking to end further investigations in the case in June 2013 by a Judicial Magistrate in Kupwara.

The KunanPoshporaincident occurred on February 23, 1991, when units of the Indian army launched a search and interrogation operation in the village of KunanPoshpora, located in the district of Kupwara. At least 53 women were allegedly gang raped by soldiers that night.

The Sessions Court, while dismissing the army petition, held that a delay in investigation does not debar the investigative agencies from unraveling the truth.

Earlier, the Jammu and Kashmir High Court had directed the state government to explore the possibility of compensating the affected women.

Source: <http://www.kashmirilife.net/court-dismisses-revision-petition-by-army-in-kunan-poshpora-63520/>

<http://www.dnaindia.com/india/report-after-23-years-justice-in-sight-for-kunan-poshpora-victims-1998954>

### Supreme Court orders implementation of Section 436 A of the CrPC for release of undertrial prisoners

While hearing a writ petition (Bhim Singh v. UoI), the Supreme Court ordered the implementation of Section 436 A of the CrPC which sets a ceiling on the maximum period for which an undertrial prisoner can be detained. Under this provision, an undertrial prisoner who has undergone up to half the maximum period specified for the offence committed by him has to be released on personal bond with or without sureties. The provision was introduced by an amendment in 2005 with a view to reduce over population of prisons and expedite criminal justice in the country.

In its order the Court directed jurisdictional magistrates, Chief Judicial Magistrates and Sessions Judges to hold one sitting a week for a period of two months in each of the prisons within their jurisdiction, identify undertrial prisoners who have been incarcerated for up to half their maximum punishment and pass appropriate orders for their release in compliance with Section 436 A of the CrPC.

The Apex Court's order brings hope to thousands of indigent undertrial prisoners languishing in prisons without means to provide surety for their bail. However, it is also germane to note that the Court, through its order is only putting in effect a legal provision which was in any case meant to be implemented by the government.

You can read the order [here](#).

Source: <http://www.dnaindia.com/india/report-advocate-bhim-singh-welcomes-supreme-court-verdict-on-release-of-undertrials-2016822>

Op-Ed: <http://www.indiaresists.com/caged-justice-supreme-courts-latest-order-on-undertrials-and-its-impact-in-chhattisgarh/>

### Delhi High Court issues directions for trial courts for cases with vulnerable witnesses

The Delhi High Court, in a significant judgment, issued directions to trial courts for conducting trials of cases involving grave offences punishable with more than seven years imprisonment.

While commuting the death sentence awarded by the trial court to a sentence of 8 years RI in the case of State vs Surender @ Sonu Punabi, the High Court observed that the prosecution and the trial court had failed to ensure that the vulnerable prosecution witnesses were examined within a proper timeframe and provided with personal safety and security, leading to their resiling from their earlier statements.

The directions to the trial courts mandate that the examination of public witnesses be concluded within 3 months of commencement of witness examination, and if the same is not possible then the reasons be recorded in the order. The trial court judges are also directed to ensure that if required, the vulnerable witnesses be provided with police protection .

The directions of the High Court assume further significance in light of recent initiatives of the judiciary to establish 'witness friendly' complexes, or Vulnerable Witness Deposition Complexes in Karkardooma and Saket District Courts for vulnerable witnesses in cases against children, or sexual violence against women.

You can read the judgment [here](#).

### Delhi Court holds that sex work does not undermine the right of a woman to bodily integrity, while convicting for gang rape

A Special Court in Delhi awarded 10 years RI to four persons for the gang-rape of a Rwandan national allegedly engaged in sex-work. The Court emphasized that the nature of the survivor's work does not confer to the accused the right to violate her in any manner.

While invoking S.114A, Indian Evidence Act, the Court correctly placed the burden of proving consent upon the accused, instead of putting the ordeal of proving non-consent upon the

survivor. In rejecting the contention of the accused that the survivor's profession is sufficient to prove consent, the Court correctly took rape outside the patriarchal mores of chastity and virtue, and places it in the domain of dignity and bodily integrity of a woman.

The Court also made use of its powers under S.357 of the CrPC to impose a fine on the accused towards compensating the survivor, bringing the survivor closer to justice and rehabilitation post the incident.

Source:<http://www.dnaindia.com/india/report-being-a-sex-worker-doesn-t-confer-right-to-violate-her-says-delhi-court-2034468>

### Supreme Court rules against trade union's ban against women from working as 'make-up artists' in the film industry

The Supreme Court has established the writ of the Constitution in the Indian film industry, by holding the practice of prohibiting women from working as 'make-up artists' to be unconstitutional and discriminatory against women. The Court was hearing the petition after the Cine Costume Make-up Artists and Hair Dressers Association (CCMAA) disallowed the applications by some women to be made make up artists.

The Court held that the clause in the by-laws of the CCMAA prohibiting women from working as make-up artists was also in contravention of Section 21 of the Trade Unions Act which stipulates that 'any person who has attained the age of 15 may be a member of a registered trade union..'. The Court ordered the CCMAA to amend its by-laws by removing the impugned clause.

You can read the judgment here:<http://supremecourtfindia.nic.in/outright/wc7813C.pdf>

Source:<http://indianexpress.com/article/india/india-others/sc-says-women-can-be-make-up-artists/>

### Madras High Court rules against discrimination between married son and daughter for compassionate employment

The Madras High Court held that for the purpose of granting compassionate employment to the son/daughter of a deceased government employee, there can be no discrimination between a married son and a married daughter. The Court held such discrimination on grounds of marriage as arbitrary and violative of Articles 14, 15 and 16 of the Constitution.

The judgment was delivered pursuant to a petition filed by a married daughter of a deceased government employee through which she appealed against an order denying her employment on compassionate grounds as she was not a divorcee at the time of her father's death.

You can read the judgment [http://judis.nic.in/judis\\_chennai/qrydisp.aspx?filename=205790](http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=205790)

## News and Events

### Registration of marriage compulsory in Delhi, penalty of Rs 1000 for failure to do so

The Delhi (Compulsory Registration of Marriage) Order of 2014 was stamped by the Lt. Governor of Delhi, making it mandatory for all marriages solemnized in Delhi to be registered irrespective of caste, creed and religion. The order provides for a penalty of Rs 1000 in case of non compliance. However, it will not be applicable retroactively.

Several states including Bihar, Karnataka, Andhra Pradesh, Tamil Nadu and Mizoram have legislations providing for compulsory registration of marriages. Failure to register would not render the marriage void, but it will lead to incurring a fine of up to Rs 1,000. In a context of widespread poverty and illiteracy, placing the onus of registering the marriage on pain of financial sanction does not serve the ends of justice.

Source: <http://indianexpress.com/article/cities/delhi/every-marriage-in-the-capital-must-be-registered-says-govt/>

### Special Rapporteur on Violence Against Women submits report on India based on her country mission in 2013

The SR on Violence against Women, Rashida Manjoo submitted her report on her country mission to India, from 22nd April to 1st May on 2013. In the report, the Special Rapporteur examines violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State's responses and provides recommendations. The report, while acknowledging the legislative measures taken to address sexual violence against women, also highlights the fact that 'significant gaps remain in the legislative framework as regards the failure to recognize all forms of violence against women and to adopt a holistic approach which addresses the root and structural causes of violence against women'. The report expresses concern at the deeply entrenched patriarchal social and cultural norms, and the pervasive gender stereotypes.

The report also makes several policy recommendations. It suggests that the government ratify all outstanding international human rights instruments, review the provision for death penalty in the newly amended rape laws (Sec 376 A of the IPC), and include a provision for marital rape as an offence. The report recommends that the government repeal Sec 377 of the IPC, criminalizing homosexuality. The report also recommends the repealing of the controversial Armed Forces Special Powers Act.

The report also asks the government to design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including dowry-related practices, acid attacks, so-called honour crimes and witch-hunting.

You can find the entire report [here](#).

### Delhi High Court gets its first women Chief Justice

The Delhi High Court got its first woman Chief Justice in Justice G Rohini, the senior most judge of the Andhra Pradesh High Court. She succeeds Justice NV Ramana, who has been elevated to the Supreme Court. Justice Rohini will be the tenth judge in the Delhi High Court, which has a total of 40 judges.

Her elevation to the post of Chief Justice is a welcome one, keeping in mind the under representation of women in the judiciary. In the Supreme Court, only 2 of the 29 judges are women, and in all the High Courts in India, only 52 of the 650 judges are women. Apart from her, only two of the High Courts- Jharkhand and Bombay have women Chief Justices in India.

Source: <http://www.livelaw.in/president-approves-appointment-justice-g-rohini-asthe-first-woman-chief-justice-delhi-high-court/>

### Juvenile Justice Act to be repealed and re-enacted

Pursuant to the Supreme Court rejecting a petition seeking to amend the Juvenile Justice Act, the Ministry for Women and Child Development not only decided to repeal and re-enact the existing Juvenile Justice Act, but also drafted the proposed bill for consideration. A copy of the proposed Juvenile Justice Bill, 2014 had been uploaded on the Ministry's website in order to allow comments from all stakeholders, viz. the civil society organisations, non-governmental organisations, and individuals.

While the Juvenile Justice Act has been under great scrutiny, subsequent to the December 16 Case, with respect to the provisions relating to the juveniles in conflict in law, falling under the age group of 16 to 18 years, there have been a plethora of other issues raised by the Women and Child Development. The concerns raised range from the quality of care and rehabilitation measures in Homes, to the inadequate provisions regarding legal counsels for the children. In addition, the matters are inclusive of the increase in reported incidents of abuse of children in institutions, family and communities, delays in various processes under the Act, such as decision by the Child Welfare Committees and Juvenile Justice Boards leading to high pendency of cases, the delays in adoption processes, as well as the inadequacy while dealing with the offences against children.

Source: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=105729>  
<http://www.newindianexpress.com/nation/Juvenile-Justice-Bill-to-be-Tabled-Soon/2014/06/20/article2289454.ece>



You can access a draft of the re-enacted bill [here](#).

### Central Administrative Tribunal questions constitutionality of certain provisions of Sexual Harassment at the Workplace Act

The Central Administrative Tribunal (CAT) in a order regarding four cases of sexual harassment, observed that Section 4 and 7 of the Sexual Harassment at the Workplace Act of 2013 are 'un-constitutional'. These two sections deal with the constitution of internal and local complaints committees, and specify that at least two members of the committee should be persons 'committed to the cause of women'.

In the CAT's reasoning, such a stipulation would vitiate the process of fair trial, as the members would already be 'biased' in favour of women. The tribunal's understanding is emblematic of insecurities and institutional prejudices against women which necessitated the enactment in the first place.

Source: <http://www.thehindu.com/news/national/karnataka/cat-finds-illegality-in-law-against-sexual-harassment-at-workplace/article6204747.ece>

### Inclusive measures implemented in educational institutions for transgendered persons in Delhi

In the wake of the landmark [judgement](#) of the Supreme Court granting legal recognition and protection to the transgender community, educational spaces have started to open up for transgendered persons in Delhi. Both the University of Delhi and the Directorate of Education have separately taken measures to make educational institutions more inclusive for transgendered persons.

The University of Delhi created space for a third gender category in its application forms for the post graduate program. This step now allows applicants from the transgender community to be admitted under a separate category under the Other Backwards Class category. Earlier, the University Grants Commission had notified a third gender category enabling transgendered persons to avail benefits of all scholarship schemes and fellowship programs in higher educational programs.

While it is a progressive step from the University, it is also important to develop a mechanism for sensitizing the university community and also to protect transgendered persons from harassment. Until 2013, the University followed its own [Ordinance XV \(D\)](#) for prohibition of and punishment for sexual harassment. In its definition of sexual harassment, this ordinance included any behaviour that discriminates against a person based on his or her 'gender identity or sexual orientation'. However, the recent Sexual Harassment at the Workplace Act makes no mention of different gender identities and sexual orientation, thereby depriving the transgendered community of any framework for redressal in case of harassment within the university.

In another welcome development, the Directorate of Education of the Delhi Government has, by a notification under the Right To Education Act of 2009, included transgender children within the definition of 'child belonging to disadvantaged group' under the Act. With this move, transgender children in Delhi will now be entitled to admission under the 25% quota available for economically weaker section and disadvantaged students.

Source: <http://timesofindia.indiatimes.com/home/education/news/Transgenders-get-space-in-DUs-PG-admission-forms/articleshow/40135765.cms>  
<http://indianexpress.com/article/cities/delhi/reserved-seats-for-transgender-children-in-schools/>  
Op-Ed:<http://scroll.in/article/674803/Is-Delhi-University-really-prepared-to-enroll-transgender-students?>

### Law Commission recommends reform of the Succession Act for parity to Christian women

The Law Commission of India in its 247th report suggested amending certain sections of the Indian Succession Act of 1925 for being discriminatory against Christian women. The report focuses on Sections 41 to 48 of the Act, and emphasizes that the Act incorporates 'a preferential approach towards men and is unfair and unjust towards Christian women'. The aforementioned sections in effect stipulate that only when neither the father, sibling or children of the deceased intestate are living that the property shall go to the mother of the deceased. Such a position puts the mother of the deceased on a lower pedestal than the father, and has been deemed by the Law Commission to be unfair and preferential towards men.

You can read the full report [here](#).

Source:<http://timesofindia.indiatimes.com/india/Law-panel-wants-Christian-women-to-get-rights-over-dead-childrens-property/articleshow/42476794.cms>

### Supreme Court sets up Social Justice Bench

The Supreme Court set up a 'Social Justice Bench' to deal with all matters pertaining to 'social justice' that come before it. The Bench is to sit every Friday at 2:00 pm and will exclusively hear matters of 'social justice'.

According to a note released in the Supreme Court website, some of the issues that come under 'social justice' are "the release of food grains lying in stocks in drought affected areas, to take steps to prevent untimely death of women and children for want of nutritious food, providing mid day meals, providing night shelters to the destitute and the homeless " among other issues.

While it is interesting that the Apex Court considers it necessary to have a specialized bench to deal with 'social justice' issues, it is still not clear how it will expedite the delivery of justice in such matters. Considering the fact that the Bench is to sit for half a day every week, it is

important that it should not preclude other benches of the Supreme Court from dealing with 'social justice' issues.

You can read the note released by the Supreme Court

<http://supremecourtfindia.nic.in/ottoday/Social%20Justice%20Bench.pdf>

Source: <http://indianexpress.com/article/india/india-others/supreme-court-sets-up-social-justice-bench-to-deal-with-social-issues/>

## *Programmes/Policy/Institution*

### Ministry of Health and Family Welfare releases guidelines and protocols on medico legal care for survivors of sexual violence

The Union Health Ministry released a set of guidelines and protocols for more effective and sensitive medico legal care for survivors of sexual violence and better documentation of medical evidence to improve conviction in rape cases. The guidelines emphasize the role of health professionals in the medico legal process, and aim to sensitize them in dealing with persons from marginalised groups such persons with disabilities, sex workers, LGBT persons, children, persons facing caste, class or religion based discrimination. The guidelines also bar any mention of past sexual practices through comments on size of vaginal introitus, elasticity of vagina or anus. Further, the guidelines bar comments of built/height-weight/nutrition or gait that perpetuate stereotypes about 'victims'.

The guidelines also provide for responding to cases of sexual violence against children, and psycho-social care of the victim. The guidelines also include a comprehensive proforma for the medico legal examination of victims, which incorporates informed consent, examination, treatment, documentation and follow up.

The guidelines and proforma are crucial to increase sensitivity amongst health professionals in matters of sexual violence. In most cases of rape, including high profile ones like the Shakti Mills gangrape, the medical professionals are cavalier in their attitude towards the victims, conducting the two finger test to determine vaginal elasticity. Dissemination of the guidelines and proforma to all health professionals in the country would be crucial to ensure any improvement in victim sensitivity amongst health professional.

The guidelines come in the wake of several declarations by the courts, including a 2013 [judgement](#) of the Supreme Court, against the validity and the relevance of the two finger test. The trial court in the Shakti Mills case, called the two finger test 'degrading, unscientific and archaic', castigating the doctor who used this to measure vaginal laxity of the victim of gang rape.

Earlier in 2013, the Maharashtra government had issued a Government Resolution (GR) doing away with archaic and irrelevant practices, including the '2 finger test'.

Source: <http://epaper.indianexpress.com/c/2565695>

You can access the guidelines and the proforma [here](#).

### Saket District Court in Delhi sets up Vulnerable Witness Deposition Complex

The District Court in Saket established a vulnerable witness deposition complex for child witnesses, victims of rape and domestic violence and other vulnerable witnesses. The witness friendly complex is the second such complex in Delhi's district courts, the first one having been established in Karkardooma Court.

In the vulnerable witness complex, the witness is to be escorted to the court by a facilitator, through a separate entry away from the public glare. The complex is part of an initiative of the judiciary to shield vulnerable witnesses from the trauma of deposing in the presence of the accused. Though such infrastructural changes are significant and must be introduced in all districts in Delhi and indeed, across the country, they provide only partial protection. In cases of sexual violence, the witness, especially the victim is intimidated and pressurised by her family, community, the accused and his associates, and sometimes even the police, compelling them to turn hostile or depose falsely. While shielding the witness during deposition is a necessary step forward, it must be accompanied by a robust witness protection programme to ensure that the shielding is not limited to the period and space of deposition during trial.

Source: <http://www.legallyindia.com/201409175065/Bar-Bench-Litigation/saket-dc-starts-vulnerable-witness-deposition-complex-to-make-hostile-witnesses-friendly>

### National Credit Fund scheme for women to be re-structured

The Ministry of Women and Child Development announced that the Rashtriya Mahila Kosh, or the National Credit Fund scheme for women is to be restructured and reconstituted. The scheme will now aim to assist women in different ways including training, marketing and financial assistance. The fund scheme is now being restructured as a bank which will not provide loans to Self Help Groups but instead seek to train individual women.

However, this step has been criticized by activists who assert that the Self Help Groups have gotten loans from nationalized banks under the scheme to empower rural women through small time agriculture, handicrafts manufacture and other local schemes.

Source: [http://articles.economictimes.indiatimes.com/2014-12-03/news/56684829\\_1\\_maneka-gandhi-rashtriya-mahila-kosh-financial-assistance](http://articles.economictimes.indiatimes.com/2014-12-03/news/56684829_1_maneka-gandhi-rashtriya-mahila-kosh-financial-assistance)  
[http://articles.economictimes.indiatimes.com/2014-12-12/news/56990519\\_1\\_rural-women-poor-women-karnataka](http://articles.economictimes.indiatimes.com/2014-12-12/news/56990519_1_rural-women-poor-women-karnataka)

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