



# BI-MONTHLY LEGAL NEWS

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*Partners for Law in Development*

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## Updates from the UN

### UN working group on discrimination against women submits its annual report on discrimination in public and political life

The UN Working Group on discrimination against women submitted its annual report, recording current achievements in women's political representation and looking at challenges to women's equal, full and effective participation in political and public life in the context of human rights and democracy. It identifies and addresses issues crucial for eliminating gender discrimination in political and public life and presents a framework to eliminate discrimination in law through examples of good practices.

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

### CEDAW formulates general recommendation on economic consequences of marriage, family relations and their dissolution.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) submitted its general recommendation on Article 16 of the CEDAW, which provides for the elimination of discrimination against women in marriage and family relations. The recommendation seeks to act as a guide for state parties in achieving an egalitarian regime under which the economic benefits and liabilities of family relations and their dissolution are borne equally by men and women.

The complete recommendation can be accessed [here](#).

### UN SR on trafficking in persons, especially women and children, submits her report to the HRC

The Special Rapporteur on trafficking in persons, especially women and children, submitted her report to the Human Rights Council. The report comprises a thematic analysis by the Special Rapporteur of the integration of a human rights-based approach in measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, and which leads to human trafficking. It further examines the role of such demand in fostering exploitation and trafficking in persons, and provides an overview of various international and regional legal and policy frameworks and initiatives as well as different approaches and measures undertaken by States and other stakeholders. In addition, the report draws attention to some of the remaining challenges in integrating human rights-based approach, and provides a set of recommendations for addressing them. The SR has recommended that the States should identify and analyse factors that generate demand for exploitative sexual services and labour, and take strong legislative policy and other measures to address these issues. Further, she recommended that States have a responsibility to protect against human rights abuses by third parties, through appropriate policies, regulation and adjudication.

The complete report can be accessed [here](#).

## OHCHR submits report on discrimination against women on nationality related matters to HRC

The Office of the High Commissioner and the Secretary-General submitted its report on discrimination against women on nationality related matters, including the impact on children to the Human Rights Council. The report examines how women in certain countries do not enjoy equal rights with men to acquire, change and retain their nationality and are also not allowed to transfer nationality to their children or spouses on the same basis, which very often results in statelessness. It analyses the negative impact of discriminatory nationality laws on the enjoyment of women's rights and the rights of their children and spouses, and also includes best practices and other measures to eliminate discrimination against women in nationality laws.

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

## UNSC adopts resolution to strengthen efforts to end impunity for conflict related sexual violence

The United Nations Security Council, in a welcome move, unanimously adopted resolution 2106 to strengthen efforts to end impunity for a scourge that affects not only large numbers of women and girls but also men and boys. This resolution emphasises consistent and rigorous investigation and prosecution of sexual violence crimes as a central aspect of deterrence, and ultimately prevention. It further reinforces a compliance-based regime based on reliable and timely information and analysis, and on the actions that must be taken at the political, strategic and tactical levels on the basis of such information.

Source: <http://www.un.org/apps/news/story.asp?NewsID=45253&Cr=sexual+violence&Cr1=conflict#.Uck-ATuSBCg>

## International Developments

### Asia

#### Anti-trafficking group indicted by Nepal Supreme Court for illegally detaining a woman so she could be counselled for being a lesbian

Maiti Nepal, a prominent organization working against trafficking of women and children has been indicted by the Nepal Supreme Court of detaining a woman against her will, to counsel her for being a lesbian. The woman, Rajani Shahi, 30, had left her husband as she was attracted to women. Following this, her husband petitioned Nepal's National Women's Commission, seeking her restitution. The Commission recommended psychiatric treatment for Rajani to change her sexual orientation, at Maiti's rehabilitation centre in Kathmandu.

The internationally acclaimed organization had allegedly detained Rajani for 50 days, according to activists at a Nepal lesbian rights organization, who also claim that they were denied access to her. They took the case to the Supreme Court of Nepal, and the Supreme Court indicted Maiti for illegally detaining Rajani against her will, and ordered her release.

Source- <http://www.sundaytimes.lk/world-news/33938-nepal-court-accuses-top-anti-trafficking-group-of-detention.html>

<http://www.iol.co.za/news/world/nepal-woman-detained-for-lesbian-counselling-1.1523191>

## Domestic Violence Act passed by Sindh Assembly in Pakistan

The Sindh Assembly unanimously adopted the Domestic Violence (Prevention and Protection) Bill, 2013. The passage of this Act came after 5 years of struggle by the Aurat Foundation, in collaboration with activists, jurists, lawyers and women legislators.

The Act defines domestic violence as inclusive of but not limited to, all acts of gender-based, and other physical or psychological, abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship. The Act will be enforceable in the entire province of Sindh.

The new law provides for up to 2 years of imprisonment for offenders, and fines ranging from Rs 1000 and Rs 50,000, and also calls for the formation of a special committee to educate the complainants about their rights.

Source- <http://tribune.com.pk/story/529300/celebrating-milestones-with-the-domestic-violence-act-the-hurly-burlys-done-but-the-battle-hasnt-been-won/>

Op-ed: <http://www.blog.learningpartnership.org/2013/03/pakistan-domestic-violence/>

## UN Special Rapporteur (SR) on Violence against Women Rashida Manjoo finishes country mission to Bangladesh

SR Rashida Manjoo concluded her 10 day visit to Bangladesh, from 19<sup>th</sup> to 29<sup>th</sup> May 2013. She expressed grave concern in her appraisal of the situation of women, stressing the importance of better implementation of laws and change in attitudes to improve the condition of women.

She noted that the most dominant form of violence against women was domestic violence, and other forms of violence like rape, trafficking, forced marriages were also common. One of the main reasons for the dismal condition of women according to her was ‘the absence of effective implementation of existing laws, the lack of responsive justice systems, and impunity for acts of violence’. She also noted that the regressive and stereotypical views on the role of women in society played a big role in perpetuating violence against women.

The SR noted with concern that existing schemes aimed at empowering women economically seem to be limited to specific sectors traditionally believed to be ‘suitable’ for women, thereby perpetuating gender-biased stereotypes in employment. She further noted that there is an urgent need to challenge practices that perpetuate the view that women are cheap labour to be confined to certain types of work.

Her press release can be accessed [here](#).

## Women’s education, security, and right to life continue to be at risk in conflict situations: Pakistan

In contexts where conflict situations, identity politics and religious fundamentalism dominate, women’s rights, dignity and freedom are the most acutely affected. Women are and remain the

'softest targets' in such situations. They are seen as the bearers of their community's or ethnic group's honour, and thus the worst kinds of violence are perpetrated on their bodies and lives in such situations. From education to political participation, social mobility to reproductive rights, women's rights are the most significantly curtailed in such conflict situations. This became apparent in yet another attack on women's education and empowerment in Quetta, a city in the conflict ridden province of Balochistan in Pakistan. A deadly attack was carried out by a female suicide bomber on a bus full of women university students, followed by another detonation and attack by gunmen in the hospital in which the victims were being taken to, killing 25 people in the process. The attack reveals the complex and highly fraught nature of the condition of women in contexts of sectarian violence post the shooting of Malala Yousafzai. Malala was a young school girl who was shot in the head by Taliban extremists opposed to women's education. She however miraculously recovered and has been relocated to the UK. Human rights activist Asma Jahangir has said that there is no difference in effect between the attack on Malala and the suicide bombing in the bus as they both were perpetrated by fundamentalist forces intending to stymie women's education and empowerment.

The Quetta bombing was carried out by a woman member of the banned Lashkar-e-Jhangvi, showing how women who are often at the receiving end of violence at the hands of extremists and religious fundamentalists can also get co-opted into and complicit with such forms of violence. This case highlights the fact that peace is a necessary pre-condition for change, and indeed for structural reforms to address the deeply entrenched subordination of women. Law and order approaches are not a solution, and neither is exile or re-location from zones of conflict, for the problem will continue to find softer targets in the ordinary and less privileged inhabitants who remain, and will continue to devastate society, especially women. Such attacks are all the more damaging given the abysmal context of women's education in Pakistan. Roughly 50 percent of girls are enrolled in school, according to a report by the Society for the Protection of the Rights of the Child. Militants have destroyed or damaged at least 943 schools in the tribal region and Khyber Pakhtunkhwa province, another region with sectarian strife, from 2009 to 2011, according to Pakistani government figures. Some were targeted because they were used by the military, but many of the attacks were motivated by the Taliban's opposition to girls' education and schooling that doesn't follow their strict interpretation of Islam.

Source-<http://www.deccanchronicle.com/130616/news-world/article/death-toll-pakistan-blast-rises-woman-lej-suicide-bomber-involved>

<http://dawn.com/news/1020249/no-difference-between-attack-on-university-students-in-quetta-and-malala-asma-jehangir>

## Iran officially replaces the 1991 Islamic Penal Code with a new body of legislation

Iran's new penal code, known as the 2009 Islamic Penal Code, was officially ratified by Iran's Guardian Council of the Constitution, the upper house of the Parliament. The earlier penal code from 1991 was temporary, whereas the new law is effectively permanent.

The new legislation, however, only brings more bad news for homosexuals in Iran, as it for the first time classifies homosexuality as a crime, punishable by lashing (Article 237). It also classifies and imposes different punishments for different forms of homosexual intercourse, such as penetrative and non-penetrative, top and bottom. Same sex relations between women would be punishable by 100 lashes, irrespective of whether the relationship was consensual or forced. The new code retains stoning as the form of executing a death sentence for people convicted of adultery, thus retaining inhuman, heinous forms of punishment that has been condemned throughout the world.

The full text of the new law can be found [here](#).

## Hong Kong Court of Final Appeal allows transgender woman to marry

After appealing to Hong Kong's Court of Final Appeal, a transgender woman was allowed to marry. The Court ruled that the current law which deprived transgendered people of their right to marry their partners was unconstitutional.

The transgender woman, identified as 'W', had undergone government funded sex realignment surgery (SRS) five years back, but was barred from marrying as her birth certificate still classified her as male. Same sex marriage is illegal in Hong Kong.

The decision of the Court of Final Appeal is not just a radical one, it is a welcome relief to the transgender community of Hong Kong as it includes post operative male to female transsexuals in references to 'women' and 'female' in Hong Kong marriage laws.

Source: <http://www.bbc.co.uk/news/world-asia-china-22506472>

<http://www.scmp.com/lifestyle/arts-culture/article/1265976/hong-kong-starts-embrace-transgender-issues>

### **Beyond Asia**

## The Supreme Court of the United States rejects the anti-prostitution pledge as unconstitutional

The United States Supreme Court, in the case of *United States Agency for International Development v. Alliance for Open Society International, Inc*, declared the Anti-Prostitution pledge which was a provision in the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 as violative of the First Amendment to the US constitution.

The pledge, part of the Act adopted ten years back, mandated that for non-governmental organizations to qualify for funding, they must explicitly adopt an anti-prostitution policy. The chief fallout of this pledge was that it led to the conflation of activities around HIV prevention and treatment of sex workers with actual promotion of prostitution. As a result, a number of NGOs working with sex-workers suffered and lost their funding. However, the fundamental problem with the pledge was its highly myopic moral understanding of sex work that failed to recognize it as work in itself, and thus rendering the struggles of sex workers for better and more dignified work conditions as illegitimate.

In this context, the Veshya Anyay Mukti Parishad (VAMP), a collective of sex workers based in Sangli, Maharashtra, working for better work conditions and reducing HIV among sex workers there, took a very courageous stand and protested the pledge provision as being coercive. Led by Sampada Gramin Mahila Sanstha (SANGRAM), they preferred to return all the USAID funding they received (Rs 11 lakhs) over signing the anti prostitution pledge. According to their statement, 'In one voice, VAMP refused to sign the pledge, which directly contradicted what we knew -- that adult sex workers, empowered by collective solidarity had the right to choose their work with dignity and to find their own solutions to HIV and other challenges.'

The Supreme Court of the US, rejecting the pledge as constitutional by a majority of 6 to 2, held that the pledge was a clear violation of the First Amendment's compelled speech doctrine as it sought to leverage funding by regulating speech outside the contours of the program.

Op ed: <http://lawprofessors.typepad.com/conlaw/2013/06/court-decides-prostitution-pledge-case.html>

Source: <http://edition.cnn.com/2013/06/20/politics/scotus-anti-aids-program/index.html>

<http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/of-a-pledge-and-a-people/article4871421.ece>

## Ireland's Protection of Life during Pregnancy Bill 2013 proposes limited protection to women's life in extreme cases, but not choice

The new Bill is seen as a modest step towards helping women make a choice regarding termination of their pregnancies by bringing legal clarity to the situations in which a woman can abort her pregnancy. The Bill states that it will be an 'offence to intentionally destroy unborn human life', with those guilty liable to a fine or imprisonment for up to 14 years. Most importantly, the Bill also gives statutory effect to the ruling of the Ireland Supreme Court in the landmark case of *Attorney General v. X* which established the right to abortion where pregnancy posed a risk to the woman's life. The Bill mandates that in the rare occasion that an abortion is absolutely necessary, a medical institution cannot refuse to provide such service. The bill also widens the number of hospitals where terminations can be performed from 19 to 25 to include the major teaching hospitals providing intensive care services.

However, the new bill is being criticized for being insufficient, especially in extreme cases like rape, fatal foetal abnormalities, and in rapidly escalating conditions like sepsis. It is imperative that the new bill places women's health and life at the heart of its concern and intent, especially after the tragic death of Savita Halappanavar, a young Indian woman in Ireland, who was denied an abortion despite severe peri-natal complications, which eventually led to her death.

Source-<http://www.irishtimes.com/news/politics/abortion-legislation-contains-number-of-significant-changes-1.1427094>

<http://reproductiverights.org/en/feature/ireland-abortion-law-a-modest-step-forward>

<http://www.irishtimes.com/news/politics/proposed-law-not-sufficient-say-savita-halappanavar-s-parents-1.1440378>

## Selective equality- The US Supreme Court strikes down facial inequality but fails to act against indirect, intersectional discrimination

Three recent judgments from the US Supreme Court highlight the challenges in fighting discrimination in all its forms and complexities. Even as the constitutional protection was extended to same sex marriage by the US Supreme Court, it failed to protect the voting rights of African American and other racial minorities. The Supreme Court of the United States gave a major shot in the arm for same sex marriage supporters in two separate and major rulings. In the first case, *Unites States v. Windsor*, the Court declared Section 3 of the Defense of Marriage

Act.1996 as unconstitutional. The section prohibited any federal recognition of same sex marriages entered in to at state level. The Supreme Court struck down the impugned section by a majority of 5 to 4, holding that laws motivated by an ‘animus’ against a certain group and its rights were unconstitutional . The ruling will give immediate benefits to same sex couples married in states that allow such unions, and will also allow the administration to provide other benefits through executive action.

In the second case, *Hollingshurst v. Perry*, the Supreme Court dismissed an appeal by some private party proponents of Proposition 8, a state referendum passed in 2008 that revoked the right to marry for same-sex couples in California. A lower court in California had earlier in 2010 ruled that Proposition 8 was unconstitutional, and the California administration preferred not to appeal against the judgement. The Supreme Court ruled that private citizens had no standing to appeal against the judgement of the lower court in this case, thereby affirming the decision of the lower court.

In another judgement, the Supreme Court took a turn for the regressive by overturning the 1965 Voting Rights Act, a big blow to the democratic rights of coloured citizens of the US. The Act, passed in 1965 authorised the Congress to enforce the 15<sup>th</sup> Amendment’s provisions, and barred states form curtailing the rights of African Americans to vote. The Act was the culmination of a long history of struggle by African Americans and other marginalized sections of the US, providing constitutional safeguard of their rights. The Supreme Court, however, decided that the Act was not needed anymore as the nation was no longer divided on racial lines, especially after an African American has been voted as president twice. To paraphrase Justice Ginsburg in his dissenting judgement, African-American and Latino voters may well find that the Supreme Court has thrown away the umbrella when it is still raining on them.

It is also significant to note that the scrapping of the Act will have economic implications for the African American community, affecting the economically weaker sections the most. A comparative study of North Carolina (where only 40 counties were covered by the act) found that Voter’s Right Act counties recorded greater increases in black voting and elected officials, experienced faster growth in black incomes and occupational status, and attracted more revenue from both county and outside government sources

Source: <http://www.hrw.org/node/116761>

[http://www.nytimes.com/2013/06/27/us/politics/supreme-court-gay-marriage.html?pagewanted=1&\\_r=1](http://www.nytimes.com/2013/06/27/us/politics/supreme-court-gay-marriage.html?pagewanted=1&_r=1)

<http://www.newyorker.com/online/blogs/newsdesk/2013/06/voting-rights-act-end-to-racism-by-judicial-order.html>

<http://www.bloomberg.com/news/2013-06-26/voting-rights-act-brought-major-economic-benefits.html>

## Gay rights activist challenges constitutionality of anti-sodomy law in Jamaica

Javed Jaghai, a gay rights activist has been granted a Constitutional Court hearing as he tries to challenge the constitutionality of the anti-sodomy law in place in Jamaica. This is the second constitutional challenge under Jamaica's Charter of Fundamental Rights and Freedoms, adopted in 2011. Through this challenge, Javed seeks to have the archaic anti-sodomy law, enacted by the colonial administration in 1864 ‘read down’ to decriminalize private sexual acts between

consenting adults. Javed, who was evicted by his landlady for being gay, will have to face opposition from several religious organizations like the Jamaica Association of Evangelicals, the Ethiopian Orthodox Church, and from other anti-gay groups who have all impleaded themselves in the challenge as interested parties.

The case makes for an interesting parallel with the Delhi High Court judgement in 2009 which read down Section 377 of the Indian Penal Code to decriminalize private acts of sex between consenting adults. One can only hope that the Jamaican Constitutional Court protects the constitutional and democratic rights of a Jamaican citizen instead of capitulating to the powerful anti-gay lobby.

Source: <http://www.gaystarnews.com/article/gay-student-challenges-jamaica%E2%80%99s-anti-sodomy-law130213>

[http://www.huffingtonpost.com/2013/02/13/javed-jaghai-gay-jamaica-anti-sodomy-laws-\\_n\\_2679242.html](http://www.huffingtonpost.com/2013/02/13/javed-jaghai-gay-jamaica-anti-sodomy-laws-_n_2679242.html)

## Nigeria and Russia pass draconian and homophobic anti-gay bills

**Nigeria-** The House of Representatives in Nigeria passed the Same Sex Marriage (Prohibition) Bill, a law that provides for up to 14 years of imprisonment for same sex marriage. It also prohibits the formation of any organization for homosexual rights and public show of same-sex amorous relationships directly or indirectly." Those who violate these laws would face 10-year imprisonment as well. The European Parliament, the directly elected parliamentary institution of the European Union called upon the Nigerian Parliament to reject the homophobic and draconian Bill.

**Russia-** President Vladimir Putin signs into law an ‘anti gay propaganda bill’, passed earlier by both houses of the Russian parliament. The new law criminalizes propaganda of ‘non traditional sexual relations’ to minors through the internet or any other media. This new law is likely to be used to stifle all forms of homosexual expression and activities by conveniently creating a category for ‘traditional’ sexual intercourse.

Source: <http://www.lgbt-ep.eu/press-releases/nigeria-adopts-harsh-homophobic-law-in-recent-history/>

<http://www.lgbt-ep.eu/press-releases/european-parliament-calls-on-nigeria-to-stop-persecuting-lgbt-people/>

<http://www.pinknews.co.uk/2013/06/30/russia-putin-signs-anti-gay-propaganda-bill-into-law/>

## Brazil judicial panel rules that gay couples cannot be denied marriage licenses

The National Council of Justice (NCJ) of Brazil declared that government offices that issue marriage licenses have no standing to deny licenses to same sex couples. The NCJ is a panel that oversees the legal system in Brazil, and is headed by the Chief Justice of the Brazilian Supreme Court, and among its main responsibilities is to make sure that the judiciary remains autonomous.

The Brazilian Supreme Court had earlier in 2011 recognized homosexual unions, declaring them to be constitutionally legitimate, and even though the ruling of the NCCJ is not a federal law, and can be challenged in the Supreme Court, it has given marriage equality proponents much to be happy about. Brazil is now the third South American country after Uruguay and Argentina to legalize same sex marriage.

Source: <http://www.globalpost.com/dispatch/news/afp/130514/brazil-judicial-panel-clears-way-gay-marriage>

## Scotland publishes Bill to legalise same sex marriage

The Government of Scotland has published the Marriage and Civil Partnerships Bill which allows same sex partners to marry in Scotland. The Bill is similar to the Bill that the British government is trying to bring about in England and Wales, with some differences.

The Scottish government's proposal also aims to protect the rights of religious celebrants and groups who are opposed to allowing gay couples to wed. Individual celebrants who do not wish to solemnise a same sex marriage can opt out of doing so even if their church or belief group does not object to the marriage. The Scottish Bill also enables Humanist celebrants to legally solemnize same sex as well as opposite sex unions, thus putting them at par with other religious celebrants. It also allows civil marriage ceremonies to take place anywhere, other than religious premises, agreed between the couple and the registrar.

Source: <http://www.pinknews.co.uk/2013/06/27/bill-published-to-make-same-sex-marriage-legal-in-scotland/>

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-23067324>

## Australian Court rules in favour of Australians who identify as neither sex.

The New South Wales Court of Appeal has ruled that Australians do not have to be registered as 'man' or 'woman' in the register of birth, death or marriage. Through this remarkably progressive ruling the Court overruled the decision of an earlier court, and laid down that a person's sex can be listed as non-specific in Australian law. The case has been sent back to the Administrative Decisions Tribunal to determine what the description for such a person who does not identify as male or female will be, and whether a term such as "nonspecific" is acceptable.

The ruling of the Court will go a long way in establishing the nuanced character of sex and gender, going beyond the normative binaries of male and female.

Source: <http://www.japantimes.co.jp/news/2013/06/20/asia-pacific/were-not-all-male-or-female-new-south-wales-court-rules/#.Uc1X3TtvCjs>

<http://www.bbc.co.uk/news/world-asia-22731013>

## Brazil passes resolution allowing use of in vitro fertilization by gay couples and single people.

The Brazilian Federal Council of Medicine published a resolution in the National Gazette of Brazil allowing gay couples and single persons to use in vitro fertilization. In vitro fertilization or IVF is the process by which an egg is fertilized by sperm outside the body.

Additional regulations include, among other things:

- the limit of age 50 for in vitro fertilization
- mandatory informed consent for all patients undergoing the procedure
- prohibition of selection of gender or any other biological characteristic of the future child and,
- a ban on the fertilization of human oocytes for any purpose other than human procreation.

Source: [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403591\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403591_text)

## The European Court of Human Rights (ECHR) rules against Moldova in a case of domestic violence.

The ECHR in the case of Eremia and Others v. Moldova ruled that the responsibility to take decisive action in a domestic violence case resided with the state, and failure to do so was a breach of the European Convention on Human Rights and Fundamental Freedoms.

In this case, the authorities of Moldova had failed to provide sufficient protection to the applicant, Lilia Eremia and her daughters from her husband, and the applicant in her submissions before the court argued that the authorities had not ensured timely and sufficient protection for her and her children, and had also exempted the husband from criminal liability by suspending investigations against him. The Court ruled that the failure of the state to fulfil its positive obligations breached the right to be protected from inhuman treatment (Article 3); the right to private life (Article 8); and the prohibition of discrimination (Article 14) of the European Convention on Human Rights and Fundamental Freedoms. The Court also ruled that the Republic of Moldova pay €17,000 in damages and expenses to the applicant.

A short summary of the case can be accessed [here](#).

Source: <http://www.humanrightseurope.org/2013/05/judges-make-e17000-award-after-moldovas-domestic-abuse-human-rights-breach/>

## National

### Judgements/Orders

## SC holds that ‘two finger test’ is a violation of rights

In a landmark judgment, the Supreme Court of India, held that the ‘*two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.*’

Taking into consideration the views taken in International Covenant on Economic, Social, and Cultural Rights 1966, United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the Court noted that rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. Further, it observed that the survivors are also entitled to medical procedures conducted in a manner that respects their right to consent.

The two-finger test has been widely used during medical examination of the rape survivors to determine whether they are 'habituated to sexual intercourse' or not.

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

Source: <http://www.indianexpress.com/news/twofinger-test-violates-rape-victims-right-to-privacy-supreme-court/1117816/>

### Madras HC accepts PIL praying for end to issuing talaq by Kazis

The Madras High Court accepted a PIL, filed by a senior lawyer, also the first woman to head the Wakf Board and the Tamil Nadu Minorities Commission in Tamil Nadu, to stop the practice of the Kazis (Muslim clerics) issuing talaq (divorce) certificates. Through the PIL, the petitioner has stated that though the Kazis have not been statutorily conferred any administrative or judicial power to issue certificates and other documents certifying or approving talaq, they had been continuing the practice unlawfully. She further stated that assuming that the practice of talaq in respect of personal law is constitutionally valid, whether the condition precedent for invoking triple talaq was satisfied or not cannot be adjudicated or inquired into by the kazis. Such a procedure can be conducted only by a court of law.

Though women belonging to other religions have been sufficiently protected by necessary legislations against arbitrary divorce, Muslim women in India have been subject to unilateral and arbitrary divorce by their husbands. No steps for codification of Islamic law have been taken by the state, though it was provided that the state should endeavour to secure citizens equality before the law.

Source: [http://articles.timesofindia.indiatimes.com/2013-06-04/chennai/39740073\\_1\\_triple-talaq-muslim-women-certificates](http://articles.timesofindia.indiatimes.com/2013-06-04/chennai/39740073_1_triple-talaq-muslim-women-certificates)

[http://articles.timesofindia.indiatimes.com/2013-06-05/india/39763542\\_1\\_triple-talaq-muslim-women-certificates](http://articles.timesofindia.indiatimes.com/2013-06-05/india/39763542_1_triple-talaq-muslim-women-certificates)

<http://www.deccanchronicle.com/130605/news-current-affairs/article/petition-against-kazis%E2%80%99-power-approve-talaq>

<http://www.thehindu.com/news/national/tamil-nadu/pil-plea-to-declare-kazis-are-not-empowered-to-certify-talaq/article4782023.ece>

### J&K Police directed to reinvestigate 1991 Kunan-Poshpora mass gang rape

In a move long overdue, the Judicial Magistrate of Kupwara district, Kashmir, while dismissing the conclusions made by the police in the recently filed closure report in the case of the Kunan Poshpora mass rape which happened on the 23<sup>rd</sup> and 24<sup>th</sup> February 1991, directed the police to re-open investigation. These directions came after a human rights activist filed a petition on behalf of the survivors of Kunan Poshpora mass rape against the closure report of the Jammu & Kashmir Police.

On the night of 23<sup>rd</sup> February 1991, more than 30 women were gang raped by soldiers of 4 Rajputana Rifles in Kunan-Poshpora villages of north Kashmir's Kupwara district. After the incident in 1991, police had lodged an FIR under section 376, 452 and 342 at police station Trehgam against the Army. However, the Press Council of India (PCI) team, which visited Kashmir in June 1991, claimed that charges against the army were 'well-concocted bundle of fabricated lies.' The J&K government closed the investigations as 'untraced'. People in Kashmir have accused Indian officers of being insensitive to sexual crimes and ignoring related complaints. The judicial system of India has also been under fire for having slow legal procedures regarding complaints of sexual abuse.

Sources: <http://www.presstv.ir/detail/2013/06/21/310077/kashmir-court-reopens-gangrape-case/>  
<http://indiatoday.intoday.in/story/jammu-and-kashmir-army-gangraped-kunan-poshpora-mass-rape-case/1/284247.html>

### Soni Sori granted bail, now has only one more case pending against her

Soni Sori was granted bail by a court in South Chhattisgarh in another case filed against her. She was accused of allegedly torching vehicles near Dantewada in Chhattisgarh. She has already been acquitted in 6 (out of 8) other cases filed against her. Sori was arrested in October 2011 for her alleged links with the Maoists. Sori has complained of sexually torture by the Chhattisgarh Police while in custody.

Currently, there are close to 2000 cases against tribal people. Majority of these tribal people do not speak any language other than Gondi, have little or no money to pay fees, have no national or international rights groups to defend their cases and have been booked for allegedly participating in Naxal activities.

Source: <http://www.thehindu.com/news/national/soni-sori-gets-bail-in-one-more-case/article4766802.ece>

### Madras HC grants woman maintenance of Rs. 500 after 13 years of struggle

In a case that created a furore for its extraneous pronouncements on premarital sex, the Madras High Court awarded maintenance to a woman whose legal status as wife was challenged by the husband. The Court, merely reiterating judicial precedence, observed that both the petitioner and the respondent lived as husband and wife and had two children together and thus their relationship could be seen as that of marriage.

While the court upheld the presumption of marriage on the basis of evidence produced and the consequent right of the wife to claim maintenance, it failed to award even a remotely adequate sum for maintenance. . The Court directed the man to pay the woman a monthly maintenance of Rs. 500 per month! Interestingly, the trial and appeal court dedicated all attention to ascertaining

marriage and entitlement, without going into the question of the man's income or the needs of his deserted wife and children. The 2001 amendment to the maintenance provision removed the statutory ceiling of how much could be awarded to the wife – paving the way for reading economic rights into marital relationships. Disturbingly however, women claimants continue to be awarded paltry sums that in no way constitute maintenance or even ward off destitution, the original objective of the law.

Source: <http://www.legallyindia.com/201306193766/Bar-Bench-Litigation/read-full-madras-high-court-judgment-on-pre-marital-sex-marriage-more>

<http://www.firstpost.com/living/misreading-the-madras-hc-ruling-premarital-sex-is-not-marriage-883429.html>

Op-ed: [http://www.business-standard.com/article/beyond-business/the-reactions-were-flippant-and-uncalled-for-flavia-agnes-113062200622\\_1.html](http://www.business-standard.com/article/beyond-business/the-reactions-were-flippant-and-uncalled-for-flavia-agnes-113062200622_1.html)

## News

### Maharashtra Government does away with irrelevant medical tests for sexual assault survivors

In a long awaited move, the Maharashtra Government, acknowledging the humiliation and trauma that survivors of sexual assault often face during their medical examination, has issued a Government Resolution to do away with irrelevant medical practices, including the 'two finger test'. As per the General Resolution, doctors, paramedics and medical officers of the state health department would have to adhere to a new manual that details the manner in which the medical examination should be conducted. They would be trained to deal with victims of sexual assault in a sensitive manner.

The two finger test has been widely used during medical examination of survivors of sexual assault to determine whether they are 'habituated to sexual intercourse'. Since questions relating to past sexual history are barred vide amendment to Section 146 of the Indian Evidence Act in 2002, requiring the medical examination to record the state of the hymen or elasticity of the vagina is against the spirit of the Act.

However, this move has also been criticized for retaining several problematic medical practices. Centre for Enquiry into Health and Allied Themes (CEHAT), an organization for research and advocacy on health and other similar themes has raised several concerns with the revised sexual assault examination proforma and manual. The manual mandates recording the status of the hymen and over-emphasizing on injuries by noting height-weight of the survivor and accused and several others. The manual doesn't use the Criminal amendment law 2013 while explaining rape but instead defines 'what comprises sexual intercourse'. The manual mandates that every accused must undergo a potency test to determine whether he is capable of performing the sexual act. The proforma does not include crucial details from the survivor which may be necessary for treatment and for evidence collection, like forms of sexual assault, body parts touched, details regarding emission of semen and condoms used. The manual does not use the definition of rape as given in the Criminal Amendment Law, 2013, but only defines 'what comprises sexual intercourse', which doesn't include non penile penetration.

Source: <http://www.indianexpress.com/news/maharashtra-does-away-with-finger-test-on-rape-victims/1114702/>  
<http://www.firstpost.com/india/finally-maharashtra-does-away-with-finger-tests-on-rape-victims-773799.html>  
<http://www.indianexpress.com/news/maharashtra-rape-examination-norms-fall-short/1114982/>

## MHA issues directions to register Zero FIR if jurisdiction not known

Implementing Section 166A of Criminal Law (Amendment) 2013, the Ministry of Home Affairs has directed that all police stations across the country should register a Zero FIR on receipt of complaint or information about a crime irrespective of jurisdiction. According to the Ministry, the police shall, on receipt of a complaint or information, immediately register an FIR and upon investigation, if it is found that the subject matter relates to a different jurisdiction, the case would accordingly be transferred.

Though this is a welcome move, however it is left to be seen how well this directive is implemented. Another problem that this directive does not seem to address is the refusal to register FIRs even though the subject matter relates to the jurisdiction of that station, on frivolous grounds such as the crime not being serious enough.

Source: <http://www.indianexpress.com/news/jail-term-for-refusing-to-file-fir-centre/1124220/0>

## Children of transgender and sex workers no longer need father's name or address proof to enrol: School Education Department of Maharashtra Govt

In a welcome move, the School Education Department of the Maharashtra Government has instructed schools to not insist on the father name and/or proof of address of children of transgender parent(s) and sex workers while enrolling in school. This Government Resolution, issued under the Right to Education Act, interpreted the definition of 'child belonging to disadvantaged group' as including children of sex workers (being socially and economically disadvantaged) and transgender, to whom the 25% reservation as stated in the law, is applicable.

Source: [http://articles.timesofindia.indiatimes.com/2013-06-04/news/39739676\\_1\\_aastha-parivar-address-proof-transgenders](http://articles.timesofindia.indiatimes.com/2013-06-04/news/39739676_1_aastha-parivar-address-proof-transgenders)

## MoHFW directs NRHM to remove 2-child norm from JSY.

After consistent advocacy by Coalition Against Two-child Norm and Coercive Policies, the National Alliance on Maternal Health and Human Rights (NAMHHR), the Right to Food Campaign (RTFC), and the Working Group for Children under six (WGCU6) with the support of eminent individuals, national networks and NGOs, against the obvious discrimination contained in many development schemes against women who have more than two children, the Ministry of Health and Family Welfare issued a Government Order to the National Rural Health Mission for removal of these conditions.

This Government Order is specific to the Janani Suraksha Yojana. The GO noted that that JSY 'excludes a significant proportion of women by virtue of exclusion criteria/ conditionalities of minimum age of mother and parity. These women who are excluded include adolescents below

the age of 19 years and multiparous women who are at higher risk of maternal and perinatal outcomes.’ The Ministry directed the National Rural Health Mission to remove ‘conditionalities associated with parity and minimum age of the mother for institutional deliveries in the High Performing States’ and remove ‘conditionalities associated with parity and minimum age of the mother for home deliveries in all States/UTs’.

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

### UN Special Rapporteur on extrajudicial, summary or arbitrary executions submits report on India visit.

The Special Rapporteur (SR) on extrajudicial, summary or arbitrary executions, Christof Heyns had conducted an official visit to India from 19<sup>th</sup> to 30<sup>th</sup> March 2012. He recently presented his report on the visit to the Human Rights Council. The Report presents his main findings and proposes recommendations to ensure better protection of the right to life in India. He notes that India’s human rights situation has many positive elements; however, the level of extrajudicial executions in the country still raises serious concern. The report also examines at the role of various non-State actors in the violation of the right to life, including killings by armed groups and those in the context of communal violence.

In his report, the SR recommends that India should enact the Prevention of Torture Bill and ensure its compliance with CAT. Further, he recommends that India should repeal, or at least radically amend, AFSPA and the Jammu and Kashmir AFSPA, with the aim of ensuring that the legislation regarding the use of force by the armed forces provides for the respect of the principles of proportionality and necessity in all instances, as stipulated under international human rights law.

The Report can be accessed [here](#)

## Resources

### ‘Broken Dreams: A report on the Rana Plaza collapse’: Odhikar

Odhikar, an organisation in Bangladesh aimed at creating a wider monitoring and awareness raising system on the abuse of civil and political right, conducted a fact finding report on the Rana Plaza. Hundreds of garment workers – mostly women, were killed when a building with five garment factories collapsed in Dhaka, Bangladesh.

The report, titled ‘Broken Dreams: A report on the Rana Plaza collapse’ can be accessed [here](#).

### ‘Towards Gender Inclusivity: a study on contemporary concerns around gender’: Alternative Law Forum & LesBit

This monograph has been authored by Sunil Mohan and Sumathi Murthy and edited by Alok Vaid-Menon. It is based on interactions of the authors with queer female-assigned-at-birth individuals. The monograph is said to reflect on such issues as patriarchal norms within the queer

and trans\* communities, the politics of self-identity and how the women's movement and legal systems view gendered violence.

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

### 'Muslim Leadership and Women's Education': Nasreen Ahmed

This book is a study of the efforts at modern education for Muslim women, especially with reference to the Aligarh Movement and the initiatives inspired by it in other parts of UP, namely Lucknow, Allahabad, Rampur and Agra. The role of Muslim leaders, both male and female, the nature of the problems they encountered and the manner in which they countered them is the major thrust of this study.

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

### 'Feminist Reflections: UN's High Level Panel Report on Post 2015 Development Agenda' : Centre for Women's Global Leadership, Feminist Task Force, and Women's International League for Peace and Freedom

This report, published by CWGL, Feminist Task Force and WILPF reflects upon and critically reviews the report of the High Level Panel (HLP) of the UN ON THE post 2015 Development Agenda. The report, while appreciating the efforts of the HLP to strive for sustainable development, including goals and targets set for gender parity, also expresses concern over some aspects of the report from a feminist perspective.

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

### 'Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities': LABIA

Breaking the Binary is a report by Lesbians and Bisexuals in Action based on a research project which began in 2009, involving narratives and life histories of 50 persons assigned gender female at birth (PAGFB). The study explores their life choices, their circumstances, and their struggles, and how their identities undergo changes in public spaces. The report is the culmination of the study, and challenges and questions many of our basic assumptions around gender and sexuality.

## OBITUARY

Dr Asghar Ali Engineer, eminent Islamic scholar, anti-communal activist and proponent of women's rights passes away.

Dr Asghar Ali Engineer, renowned scholar on liberation theology in Islam, reformist and activist against communalism and ethnic violence passed away on the 14<sup>th</sup> of May, 2013. He was a tireless advocate for communal harmony, and also struggled against the powerful priests (Sayedna) in the Bohra Muslim community from which he belonged. He was also a champion for women's rights

and equality, especially in Islamic societies. Dr Engineer spent a large part of his life understanding the dynamics of communal violence as he attempted to fight it, and thus he had a clear understanding of the acute sociological and political ramifications of communal politics and violence. He merged scholarly interest with passionate activism in his struggle against communalism of all forms. He studied the rise and trajectory of communal politics in India, being closely involved at an individual level and with civil society groups investigating riots in Jabalpur in 1961, Ahmadabad, Pune and Sholapur in 1982, Meerut in 1987, Mumbai in 1992 and Gujarat in 2002. He was also a proponent of women's rights and equality, and campaigned for the emancipation of women under Islam. His studies also show how women are the worst victims of communal violence. Dr Asghar Ali Engineer's demise is a sad and irreparable loss for all progressive and secular forces in the country.

### Dr Vina Mazumdar, pioneering feminist activist and scholar passes away.

Dr Vina Mazumdar, one of the leading figures of the Indian women's movement passed away on the 30<sup>th</sup> of May, 2013. She was a leading feminist activist, as well as a thorough scholar of women's studies. She was the founding director of Centre for Women's Development Studies (CWDS). Apart from that, she was also in the decision making bodies of the University Grants Commission (UGC), Indian Council of Social Science Research (ICSSR) and Planning Commission of India. She started her academic life by teaching Political Science at Patna University. She was then selected as a fellow at Indian Institute of Advanced Studies, Shimla. She was appointed as Member Secretary of Committee on the Status of Women in 1972. Her writings on the women's movement, role of education, condition of rural woman and many other issues have been widely published, and are regarded as seminal works. Vina di, as she was fondly called by others in the women's movement, will be dearly missed and remembered, for not only inspiring generations of women and men to understand and fight patriarchy, but also for helping transform the academic discipline of women's studies in to a movement by bringing together theory and activism.

### Shivananda Khan, renowned LGBT activist passes away.

Shivananda Khan, a tireless promoter of rights of transgender people and men who have sex with men passed away on 20<sup>th</sup> May. He was the founder of Naz Foundation International, and worked extensively for the rights of sexual minorities in Europe, Asia and the Pacific. He was also one of the key founders of the Asia Pacific Coalition on Male Sexual Health (APCOM), a group that works extensively for the empowerment of transgender communities and gay men in Asia and the Pacific region. He worked tirelessly to place transgender and MSM (men who have sex with men) health issues, especially HIV issues firmly within the developmental agenda of nations in Europe, Asia and the Pacific. His demise will leave a significant void in the LGBT movement and in the struggle for empowerment of sexual minorities globally.

