

# **Annual Newsletter Digest 2016**

**Partners for Law in Development**



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- ❖ Special Rapporteur on rights of persons with disabilities urges States to ensure access and support to persons with disabilities

### **CEDAW and other treaty bodies**

- ❖ CEDAW calls for respect for rights of rural women and passes General Recommendation no. 34
- ❖ Council of Europe provides comparison of the Istanbul Convention and CEDAW framework
- ❖ CESCR issues General Comments no. 22 on the right to sexual and reproductive health, and no. 23 on just and favourable conditions of work
- ❖ CRPD issues General Comment to guide States on how to promote empowerment of women
- ❖ UN-CAT and UNCRC reprimand countries for continued IGM violations
- ❖ UN-CAT investigates USA and Australia on the prevalence of Inter-Sex Genital Mutilations

### **REGIONAL HUMAN RIGHTS SYSTEMS/ ICC**

- ❖ International Criminal Court convicts Congolese former president of war crimes
- ❖ IACHR finds that gay man is entitled to his deceased partner's pension
- ❖ European Court of Human Rights rejects refusal to grant residence permit to gay couple
- ❖ UN and African experts urge Sierra Leone's President to sign 2015 Safe Abortion Bill
- ❖ UN experts and Inter-American human rights systems urge Canadian government to address violence against indigenous women and girls

❖ **Inter-American Court of Human Rights rules against Colombia for discrimination on the basis of sexual orientation**

❖ **INTERNATIONAL LEGAL DEVELOPMENTS**

❖ **Asia**

❖ **Pakistan and Malaysia take measures to enhance social and political rights of transgender persons.**

❖ **Federal Court of Malaysia creates the tort of sexual harassment**

❖ **Bangladesh and Pakistan backtrack while Kyrgyzstan imposes criminal sanctions against those conducting child marriages**

❖ **Maldives passes Gender Equality Act**

❖ **Pakistan Parliament passes legislation against honour killings and toughens laws on rape**

❖ **Cambodia bans commercial surrogacy**

❖ **Saudi Arabia amends procedural laws to enable access to justice for women**

❖ **Indonesia bans LGBT promotion on TV and radio, drafts bill to comprehensively ban LGBT Propaganda**

❖ **Bangladesh rejects petition to remove Islam as country's state religion**

❖ **China and Pakistan's Punjab province enact laws to curb violence against women**

❖ **Pakistan Islamic Council proposes 'lightly beating wife permissible' under its draft women's protection bill**

❖ **Japan proposes to address discrimination against LGBT within the sexual harassment law, while South Korean gay couple seeks legal status for their same-sex marriage**

❖ **China and Bangladesh adopt, while Kyrgyzstan parliament rejects law to limit NGO freedom & foreign funding**

❖ **Sex workers in Taiwan demand right to work, decriminalization of prostitution**

❖ **Saudi women file petition to end male guardianship system**

**Beyond Asia**

❖ **Seychelles, Nauru, Belize decriminalize same-sex relationships**

❖ **Italy and Aruba vote in favour of same-sex civil unions**

❖ **Colombia, Isle of Man, Greenland and Gibraltar legalize same sex marriage**

❖ **Campeche and Sonora in Mexico legalizes same-sex marriage, but parliament blocks legalization at the national level**

- ❖ Botswanan court orders government to register LGBT group as an NGO
- ❖ Hungarian authority finds job discrimination on basis of transgender status
- ❖ Italy legitimizes same-sex parentage of children
- ❖ Suriname courts recognize transgender identity in census while the Swedish government pays compensation to trans persons forced to undergo sterilization
- ❖ Tanzania moves to combat high child marriage, but de-prioritizes health benefits for gay men
- ❖ Chile strikes down repressive abortion law
- ❖ France decriminalizes sex work but penalizes buyers of sex
- ❖ Gambia, Egypt and Bohra leaders in Australia ban Female Genital Mutilation(FGM)
- ❖ Germany rape law: ‘No means No’ law passed
- ❖ UK Police to record misogyny and harassment against women as hate crimes
- ❖ Kenyan court legitimizes intrusive anal exams while civil society fights for the decriminalization of gay sex
- ❖ US Courts militate against abortion restrictions while Texas, Oklahoma and Ohio governments introduce bills to make abortions difficult
- ❖ Algeria passes law punishing domestic violence and sexual harassment
- ❖ US Supreme Court agrees to hear case regarding rights of transgender persons to use washrooms in schools, while South Dakota’s Governor Vetoes Anti-Transgender Student Restroom Bill
- ❖ Guatemalan court convicts former paramilitary and retired army officer and for rape and murder during civil war
- ❖ Gender equality and women’s voices central to the short-lived peace deal between Colombian government and the FARC
- ❖ Australia passes anti-terrorism legislation supporting the suspension of individual freedoms of children as young as 14

## **NATIONAL DEVELOPMENTS**

### ***New Law/Amendments***

- ❖ UN experts urge India to repeal the FCRA
- ❖ The special Rapporteur on adequate housing presents a report on the gendered aspects of the right to the housing in India
- ❖ Central Government notifies new Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Amendment Rules
- ❖ Rajya Sabha passes Mental Health Care Bill, 2013
- ❖ Problematic Transgender Persons (Protection of Rights) Bill, 2016 passed by Lok Sabha
- ❖ Child Labour (Prohibition and Regulation) Amendment Act, 2016, legalises labour by children under 14 years
- ❖ Scope of Rights of Persons with Disabilities Act is expanded to benefit more persons
- ❖ Lok Sabha passes Maternity Benefits Act, 1961
- ❖ Maharashtra passes the Prohibition of Social Boycott Act
- ❖ Delhi Government to introduce the Placement Agency Regulation Bill in Assembly
- ❖ Gujarat to provide reservations to the economically backward in the upper castes
- ❖ Nagaland Chief Minister pledges to grant 25% reservation to women in Urban Local bodies
- ❖ MWCD releases draft National Policy for Women 2016
- ❖ Introduction of the Civil Aspects of International Child Abduction Bill, 2016

***Judgments/Orders*** *(To read more about any of the judgments click on the relevant theme title)*  
***SEXUAL AND GENDER BASED VIOLENCE***

- ❖ Delhi High Court holds consent of a minor immaterial for reduction of sentencing in rape
- ❖ Delhi High Court holds that there is no upper limit for compensation to victims of sexual assault
- ❖ Supreme Court mitigates sentence of the former police head, S.P.S Rathore, for molestation of a minor, the late Ruchika Girhotra
- ❖ High Court of Madras decrees that a victim of acid attack can claim compensation under the Victim Compensation Scheme framed under Section 357-A of Cr.P.C
- ❖ Supreme Court orders enhancement of compensation in acid attack cases on the ground of severity of injury
- ❖ Supreme Court asks Central Government to form a National Policy on Compensation for victims of sexual violence
- ❖ Apex Court orders lifelong monthly compensation to be given to victim of sexual assault

#### **REGULATION OF SEXUALITY/MORAL POLICING**

- ❖ Guidelines by Central Information Commission (CIC) to protect lovers from retributive family/societal violence for inter-community marriages
- ❖ Bombay High Court rules that obscene acts in private will not amount to an offense
- ❖ Madras High Court directs Tamil Nadu to take action on the growing number of 'honour' killings
- ❖ SC decrees that unnatural death within 7 years of marriage in and of itself is not sufficient for conviction for 'dowry death'
- ❖ Supreme Court refers curative petition and celebrities' petition concerning Sec. 377 of Indian Penal Code to a larger constitutional bench

#### **MARRIAGE, DIVORCE AND FAMILY**

- ❖ Supreme Court rules that women can also be prosecuted against under the Protection of Women against Domestic Violence Act, 2005
- ❖ Orissa High Court rules that 'residence' for jurisdiction under PWDV Act includes temporary residence and that even if not living with perpetrator, a woman can be aggrieved person under PWDVA
- ❖ High Court of Kerala rules that even a divorced wife is entitled to initiate proceedings under the PWDVA while Punjab and Haryana High Court rules that a complaint under Domestic Violence Act cannot be sustained after divorce

- ❖ Delhi High Court holds that National Commission for Women (NCW) is acting beyond jurisdiction by taking complaints from women directly
- ❖ Allahabad High Court says that Triple Talaq cannot be invoked without serious reasons and attempts at reconciliation
- ❖ Delhi High Court rules that intention to continue marriage just to torment is relevant factor for considerations of cruelty
- ❖ Delhi High Court rules that unilateral withdrawal of consent from mutual consent divorce amounts to mental cruelty
- ❖ SC states that allegation of extra-marital relationship must be accompanied by other ingredients to qualify as cruelty under Section 498-A IPC
- ❖ Orissa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases
- ❖ Delhi High Court holds that tenanted premises comes under the category of 'shared household' under PWDVA
- ❖ Supreme Court holds that presumption of abetment of suicide cannot be disturbed
- ❖ Supreme Court rules that Hindu son can divorce wife on the ground of cruelty if she tries to pry him away from his aged parents
- ❖ SC decrees that unnatural death within 7 years of marriage in and of itself is not sufficient for conviction for 'dowry death'
- ❖ Delhi High Court observes that a decree for restitution of conjugal rights only pertains to cohabitation, not sexual intercourse.
- ❖ Bombay High Court rules that mere talaqnama not sufficient proof of Muslim divorce
- ❖ Delhi High court grants divorce because wife calls husband 'corrupt' and 'womaniser' in pleadings
- ❖ Delhi High Court rules that women can be 'karta' of Hindu undivided family
- ❖ Supreme Court rules that 'stridhan' given at the time of marriage is not held by in-laws in 'trust' in the absence of a common residence
- ❖ Orissa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases

### **CUSTODY AND MAINTENANCE**

- ❖ Delhi High directs due process of law to be followed before depriving adoptive parent of child's custody
- ❖ Bombay High Court waives court fee for mothers claiming maintenance for minor sons
- ❖ Mere allegations of infidelity insufficient to rebut the legal presumption of paternity



- ❖ Orissa High Court allows magistrates to issue ex-parte interim order for temporary custody of child
- ❖ High Court of Chhattisgarh decrees that assets left by deceased husband can be proceeded against in petition for maintenance
- ❖ Delhi High Court rejects interim maintenance for a professionally qualified woman capable of sustaining herself
- ❖ High Court of Madhya Pradesh holds that wife living separately from husband without 'sufficient reason' is not entitled to maintenance

### **MATERNITY BENEFITS AND LABOUR**

- ❖ High Court directs Maharashtra Government to set up State Coordination Committee for granting benefit of child care leave
- ❖ High Court of Uttaranchal holds that contractually or temporarily employed government servants are entitled to maternity leave
- ❖ Supreme Court clarifies principle of 'equal pay for equal work' for all employees, whether temporarily or regularly engaged

### **TARGETTED VIOLENCE**

- ❖ Supreme Court holds armed forces accountable for 'encounter' deaths
- ❖ SC directs all government authorities to strictly implement the SC/ST Act 1989
- ❖ Calcutta High Court directs State Government to address the practice of witch-hunting
- ❖ Supreme Court calls on the Central Government to explain the lack of legislative safeguards from custodial torture

### **CIVIL LIBERTIES**

- ❖ Supreme Court upholds Bombay High Court decision that ban on women entering the sanctum sanctorum of Haji Ali Dargah is unconstitutional
- ❖ Supreme Court and Bombay High Court hold that banning entry of women into temples discriminates against women
- ❖ Bombay High Court strikes down criminalisation possession and consumption of beef in Maharashtra as infringement of right of privacy
- ❖ SC mandates commission of committee to address long pending issue of right to shelter of homeless persons in urban areas

### **REPRODUCTIVE RIGHTS**

- ❖ Supreme Court and Mumbai High Court assert that decisions relating to medical termination of pregnancy should be based on the health of the mother, and therefore are her prerogative
- ❖ SC issues directions to enhance effectiveness and implementation of legislations prohibiting sex-selection
- ❖ Supreme Court mandates the Central Government to actively end mass-sterilization camps as they violate the reproductive freedoms of vulnerable persons
- ❖ Bombay High Court directs blocking of internet searches relating to sex-selection

### **CHILDREN**

- ❖ SC directs Union Government to take firm steps for addressing the growing problem of drug-usage among children
- ❖ SC refuses to extend protections of Juvenile Justice Act for those who commit grave and heinous offences
- ❖ Delhi Police Commissioner issues internal circular requiring all police officers to report and register missing child information on web-portals within 24 hours

### **DISABILITY**

- ❖ Supreme Court rules 3 percent quota for persons with disability in all central government posts
- ❖ Supreme Court orders Spice Jet to compensate disability activist for forcibly de-boarding her on account of her cerebral palsy

### ***News and events***

- ❖ MWCD proposes bill on human-trafficking [Vol. 9(III) May-June 2016]
- ❖ Law Commission submits report on protection of children from abduction by a parent [Vol. 9(V) Sep-Oct 2016]
- ❖ New data shows worsening of Sex Ratio at Birth (SRB) [Vol. 9(VI) Nov-Dec 2016]
- ❖ Proposed Citizenship (Amendment) Bill, 2016, discriminates on the basis of religion and region [Vol. 9(IV) Jul-Aug 2016]
- ❖ Maharashtra to give women slum dwellers joint ownership rights [Vol. 9(IV) Jul-Aug 2016]
- ❖ The Union Cabinet approves an amended HIV and AIDS (Prevention and Control) Bill, 2014 [Vol. 9(V) Sep-Oct 2016]
- ❖ Expert panel states that Cabinet Bill on surrogacy violates reproductive rights [Vol. 9(VI) Nov-Dec 2016]
- ❖ Supreme Court asks Central Government to form a National Policy on Compensation for victims of sexual violence [Vol. 9(III) May-Jun 2016]

- ❖ Supreme Court reprimands Maharashtra government for regressive and arbitrary law making with respect to liquor prohibition in dance-bars [Vol. 9(V) Sep-Oct 2016]

### ***Programmes/Policy/Institution***

- ❖ Indian Psychiatric Society issues guidelines for doctors on sexual and other ethical boundaries [Vol. 9(V) Sep-Oct 2016]
- ❖ University Grants Commission notifies gender neutral regulations on sexual harassment in higher educational institutions [Vol. 9(III) May-Jun 2016]
- ❖ Delhi Commission for Women (DCW) monitors sale of acid, Delhi government takes responsibility for treatment [Vol. 9(II) Mar-Apr 2016]
- ❖ Amended Victim Compensation Scheme notified by Delhi Government, proposed fund by Union government for minor victims of sex abuse [Vol. 9(VI) Nov-Dec 2016]
- ❖ Central Government plans to launch an Umbrella Scheme for Transgender Children [Vol. 9(I) Jan-Feb 2016]
- ❖ Central Government delays plan to increase quota for women in Panchayats [Vol. 9(I) Jan-Feb 2016]
- ❖ Islamic Centre in Mumbai awards certificates to first female Qazis trained by Darul Uloom-e-Niswa [Vol. 9(I) Jan-Feb 2016]
- ❖ Mahila Samakhya set to be merged with National Rural Livelihood Mission [Vol. 9(I) Jan-Feb 2016]

## **UN Updates**

### **UNGA overcomes hurdles to appoint the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

In June, seven ‘core group’ countries brought a resolution to the UN Human Rights Council create the United Nation’s first LGBT rights watchdog whose independent expert would monitor violence and discrimination based on sexual orientation and gender identity. Organization of Islamic Cooperation (OIC) and non-OIC countries strongly opposed the resolution on the grounds that the concept of sexual orientation was alien to the international human rights norms and the cultural values of many societies. The oppositions manifested as no-action motions, proposed amendments and opposition to specific parts of the text. The UNHRC however adopted the resolution at its 33<sup>rd</sup> session in July.

In November, at the 71<sup>st</sup> session of the 3<sup>rd</sup> Committee of the United Nations General Assembly (UNGA), the oppositions to the mandate were overcome through a narrow vote that rejected language and propositions advanced by these countries. 84 countries voted in favour of continuing the mandate of the Independent Expert, while 77 voted against. India abstained from voting. Vitit Muntarbhorn assumed the office of the independent expert to the mandate

*The text of the UNHRC resolution can be found here: <http://bit.ly/2pFovEI>*

*A description of the process of voting on the mandate at the UNHRC is accessible here: <http://bit.ly/2oubOCJ>*

*A recording of the UNHRC proceedings may be found here: <http://bit.ly/2opAHbH>*

*The outcome of the UNGA voting may be seen here: <http://bit.ly/2oYgg8N>*

### **UN Human Rights Council adopts resolution reaffirming the rights of human rights defenders, and calling upon States to take responsibility for their protection**

The UNHRC adopted a resolution which affirmed the essentiality of human rights defenders in promoting, protecting and contributing to the realisation of economic, social and cultural rights. The resolution condemned efforts by States and business enterprises alike to stifle human rights defenders, and provides guidelines on ensuring accountability and transparency.

Concern over the special systemic violence and discrimination faced by women human rights defenders was also expressed. In an earlier (28<sup>th</sup>) session, the UN Special Rapporteur on situation of human rights defenders Michel Forst had submitted his report indicating that those working on economic, social and cultural rights, minority rights, environmental defenders, LGBT rights defenders, women’s rights defenders and others were most exposed to threats.

The adoption of the resolution commenced in the context of opposition of the text by countries like China, Russia and Egypt.

*The text of the UNHRC resolution may be accessed here: <http://bit.ly/1WQ6xZR>*

*The text of the UN Special Rapporteur’s report may be accessed here: <http://bit.ly/1NBNeD7>*

### **Economic and Social Council adopts resolution on ‘mainstreaming a gender perspective into all policies and programmes in the United Nations system’**

The 2016 Session of Economic and Social Council adopted a resolution to bring about gender parity and anchoring it in the responsive implementation of 2030 Agenda on Sustainable Development. The Council charted a multi-year agenda prioritizing women’s economic empowerment, rural women and girl’s empowerment, and social protection systems. A comprehensive set of recommendations for Governments and other stakeholders were outlined, emphasising the importance of a robust and non-discriminatory legal framework and the involvement of women in decision-making processes at all levels.

*The text of the resolution can be accessed here: <http://bit.ly/2piqMJ2>*

### **UN Development Programme acknowledges multiple invisibilized forms of work in the Human Development Report 2015**

The UNDP published its Human Development Report for the year 2015. The report acknowledges that work is directly linked with the richness of human lives and is therefore a better measure of human development. The Report embraces an expanded meaning of work, recognizes inequities in how men and women are paid, advocates for protections from abuse for women in informal domestic work settings, suggests strategies for ensuring workers’ well-being through rights-based approaches and also provides policy guidelines to make marginalized work such as care work (disproportionately performed by women) valued and sustainable.

*The full text of the Report can be accessed at: <http://bit.ly/1RnrfRe>*

*An overview of the report can be accessed at: <http://bit.ly/2pUtxMO>*

### **United Nations Secretary-General announces High-Level Panel on Women’s Economic Empowerment**

The UN Secretary-General Ban Ki-moon announced the establishment of the first ever High-Level Panel on Women’s Economic Empowerment to provide recommendations for the implementation of the Sustainable Development Goals 2020 Agenda. The objective of the Panel is ‘*to improve economic outcomes for women and promote women’s leadership in driving sustainable and inclusive, environmentally sensitive economic growth.*’ As part of its mandate, the Panel will evolve key policy recommendations and strategies that can be implemented by governments, private sector, the UN system and other stakeholders.

The Panel is supported by the United Kingdom, the World Bank group and UN Women, and is co-chaired by Luis Guillermo Solis, President of Costa Rica, and Simona Scarpaleggia, CEO of IKEA Switzerland. They will be joined by the leaders of the International Monetary Fund, World Bank Group, UN Women and a diverse range of eminent gender and equality actors, economics experts, academics, trade union leaders, business and government representatives from all regions.

Source: <http://bit.ly/1RB5BcR>

### **UN High Commissioner for Human Rights emphasises the role of upholding human rights of women for an effective public health response to the Zika epidemic**

In the midst of a Zika fever epidemic in Latin American countries, which has led the World Health Organization to declare a Public Health Emergency of International Concern, the UN

High Commissioner for Human Rights emphasized that a public health response must uphold the human rights of women to be effective.

Apart from causing fever and rash, the Zika virus transmits from mother to foetus, leading to newborn microcephaly, a kind of neurodevelopmental disorder. Several countries, including Colombia, Ecuador, El Salvador and Jamaica have responded by advising women to postpone their pregnancies. The High Commissioner for Human Rights reminded governments that such a response “ignores the reality that many women and girls simply cannot exercise control over whether or when or under what circumstances they become pregnant, especially in an environment where sexual violence is so common.” He reiterated that a public health response must uphold sexual and reproductive rights of women, by ensuring that men, women and adolescents have access to comprehensive sexual and reproductive health services include contraception, emergency contraception, maternal healthcare and safe abortion services to the full extent.

Source: <http://bit.ly/23NsttJ>

### **Commission on the Status of Women convenes 60<sup>th</sup> session on the theme of women’s empowerment and the link to sustainable development**

The Commission on the Status of Women convened its 60<sup>th</sup> session on the theme of women’s empowerment and the links to sustainable development. The Commission reaffirmed that the CEDAW and the CRC, as well as other treaties provide an international legal framework and a comprehensive set of measures for realizing gender equality and the empowerment of women and girls, and the full and equal enjoyment of all human rights and fundamental freedoms of all women and girls throughout their life cycle. The emphasis of this session remained on strengthening normative, legal and policy frameworks, including the Beijing Declaration and Platform for Action. As part of the agreed conclusions, the session also called for fostering enabling environments for financing gender equality, strengthening women’s leadership and their full and equal participation in decision-making in all areas of sustainable development. To promote accurate monitoring and evaluation of plans, the need for gender-responsive data collection, follow-up and review processes as well as enhancing national institutional arrangements was emphasised.

The session also included side events organized by participating civil society organizations, on effective gender-responsive climate solutions, the connections between undocumented immigration and trafficking of women, as well as evolving models to recognize and value unpaid care work of women at home as a means of women’s empowerment and sustainable development.

*The agreed conclusions can be found at: <http://bit.ly/1WZfuSC>*

Source: <http://bit.ly/2opivPh>

### **UN OHCHR submits report on Human Rights Council Resolution on Protection of the Family**

After the resolution on the protection of the family passed by the Human Rights Council at its 29<sup>th</sup> session [*PLD Newsletter Vol. 7(III) May-June 2015*], the UN Office of the High Commissioner on Human Rights submitted his report on the resolution, and the international framework regarding the parameters on the role of the family in sustainable development, to the

Human Rights Council. The Report details other instruments that focus on the family as a unit for poverty eradication and sustainable development, including resolutions by the General Assembly. The Report further states that the international human rights law framework does not stipulate any definition of the family, but that it must be understood in its widest sense. The only two conditions imposed are respect for the principle for equality and non-discrimination, including equal rights for women, and effective guarantee of the best interest of the child. It also reiterates the obligation of states to protect specific forms of family, such as de facto unions and same-sex unions. It further draws attention to the right to marry and to found a family, prohibition of early, forced and child marriages, right to decide the number and spacing of children, and the right to not be subject to violence and abuse within the family.

The report can be accessed here: <http://bit.ly/2oucND>

### **Security Council commits to effective implementation of Resolution 1325(2000) while emphasizing on women, security and peace**

The Presidential Statement of Security Council marked the urgent need of involving women in peace-building and conflict resolution initiatives for a comprehensive approach to the sustenance of peace, in line with resolution 1325(2000). The Security Council stressed on the importance of equal participation of women in decision-making processes, with emphasis on political participation and leadership. The Council also highlighted the positive impact of economic empowerment of women on security endeavours, and reiterated the need for provision of better educational and occupational opportunities. To this effect the Council encouraged its Member States to increase funding on women, peace and security including more aid in conflict situations

Source: <http://bit.ly/23fNyM1>

### **UNHRC adopts resolution committing states to protect civil society space**

UNHRC adopted a resolution committing States to protect civil society space thereby responding to the shrinking of civic space in all parts of the world. The resolution emphasises the essential role of civil society in contributing to peace and security, human rights and sustainable development, citing the recently adopted 2030 Agenda for Sustainable Development. The draft resolution was led by Chile, Ireland, Japan, Sierra Leone, and Tunisia. Based on states' existing obligations under international human rights law, the resolution also gives crucial guidance to states on a diverse range of issues, including on civil society participation in decision making processes, access of civil society to resources, and access to information, among many others.

The resolution can be assessed here: <http://bit.ly/2oucfFk>

### **UN Summit on Refugees & Migrants held at 71st session of UN General Assembly on September 19, 2016 and CEDAW, CMW, UN Women and OHCHR release a joint statement at the Summit**

The 71st session of the UN General Assembly on 19 September held a summit on refugees and migrants to consider the key elements of a global compact for safe, regular and orderly migration, and responsibility-sharing for refugees. The summit agreed that the New York Declaration of commitments applied to refugees and migrants. The commitments underscore the importance of a comprehensive and gender-responsive reception for persons arriving in other countries. The Declaration thus recognizes the gendered dimensions of migration and asylum - committing States Parties to responses which mainstream a gender perspective, promote gender



equality, combat sexual and gender-based violence, guarantee sexual and reproductive health services, and tackle multiple and intersecting and multiple forms of discrimination.

In a Joint Statement issued by CEDAW, CMW, UN Women and OHCHR, issued at the UN General Assembly Summit for Refugees and Migrants, the unique problems of rights of women and girls were sought to be given priority. States were urged to comply with obligations under the CEDAW Convention, taking cognizance of the fact that due to work force declining and an ageing population migrants are becoming more essential to address labour market needs, and it therefore becomes imperative to identify rights to education, decent environments and health. Gender-responsive and rights-based policies were urged, recognizing that migrant women and girls are often subject to intersecting forms of discrimination.

*Source for UN Summit on Refugees and Migrants:* <http://bit.ly/2ccxZlr>

*Information on the joint statement can be found here:* <http://bit.ly/2opcy56>

*Source:* <http://bit.ly/2hz9krW>

### **United Nations bodies jointly release report on rape crimes and their prosecution in Côte d'Ivoire**

United Nations Operation in Côte d'Ivoire (UNOCI) and the United Nations High Commissioner for Human Rights (OHCHR) jointly issued a report on the findings of investigations carried out by the Human Rights Division (HRD) of UNOCI on rape cases and their judicial prosecution in Côte d'Ivoire between 1st January 2012 and 31 December 2015. The findings revealed that majority of the victims were children, and that this is due to proliferation of rape culture in conflict situation. The data collected also revealed that in most cases, the rape offence is reclassified and passed off as a less grave offence. Irregular holding of sessions by the court further marred the situation. The report highlighted the importance of a national strategy, of building institutional capacity to respond to gender based violence and recommends revision of Criminal Code in accordance with international standards.

*Information on the UN report can be found here:* <http://bit.ly/2o6CTZD>

## **Independent Mechanisms and Reports**

### **UN Special Rapporteur on violence against women engages with stakeholders on the need for separate treaty**

The Special Rapporteur on violence against women urged stakeholders ranging from non-governmental organizations, States and academia to revisit the discussion on the adequacy of the international framework on violence against women. Accordingly, she posed pertinent questions to which responses were sought. The questions inquired into the need for a separate legal binding treaty on violence, the need for a separate monitoring body, incorporation gaps, fragmentation of policies and suggestions to close gaps.

*The link for the call for submissions on separate treaty for violence can be found here:* <http://bit.ly/2pU9GNS>



### **UN Special Rapporteur on the right to health submits report focusing on the right of adolescents to mental and physical health**

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health submitted a report to the UN Human Rights Council focusing on the need for States to implement measures necessary to guarantee optimum health and development in accordance with the unique nature of adolescence. Among other things, the report highlighted that lack of access to safe reproductive health services and information adversely affected adolescent girls. The mental health impact on LGBT and queer adolescents was also acknowledged. Importantly, the report indicated the autonomy of adolescents with respect to determining their own health care, and advocated an approach that seeks to forge partnerships with them towards shaping a facilitative environment for the realisation of their right to health; including by capitalizing upon their leading role using and shaping communications technologies.

*The full text of the report may be accessed here: <http://bit.ly/2opmeMR>*

### **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment calls for recognition and redress of torture like practices targeting women and queer persons**

In a report submitted to the Human Rights Council at its twenty-first session, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment recognized that the existing prohibitions in international law do not adequately protect the unique interests of women or gay, lesbian, bisexual and transgender persons. The report discusses the special needs of women and non-heterosexual and transgender persons in detention, including concerns around health, protection and invasive searches. The reality of trafficking of women and the mistreatment of queer persons in health care settings was also highlighted, among other factors. States were urged to recognize their heightened obligations and repeal laws that support such practices as well as to introduce legal remedies. The importance of de-criminalizing same-sex relationships was also reiterated.

*The full text of the Report can be accessed at: <http://bit.ly/1ntdjZh>*

### **Reports of UN Special Rapporteurs on rights to food and safe drinking water reflect gendered aspects of the realization of all these rights**

At the 31<sup>st</sup> session of the UN HRC, the UN Special Rapporteur on the Right to Food issued a report to the General Assembly. The report identifies how institutionalized gender discrimination and violence impose barriers preventing women's enjoyment of the right to adequate food and nutrition, causing women to experience hunger and poverty disproportionately. The report recognizes that international law fails to fully endow women with their right to food; discussing also the importance of land, property and intellectual property rights for women to secure food security and the incompatibility of corporate models of agriculture with female participation in and ownership of farming practices.

At the 33<sup>rd</sup> session of the UNHRC, a detailed report on gendered aspects of the right to safe drinking water and sanitation was released by the Special Rapporteur on the human right to safe drinking water and sanitation. Taking cognizance of how gender inequality affects access to safe water and sanitation, the report stresses on the material and structural determinants of gender

inequalities in access to water, sanitation and hygiene.

*The text of the report of the Special Rapporteur on the right to food may be accessed here:*  
<http://bit.ly/2g0FMGO>

*The text of the report of the Special Rapporteur on the right to water may be accessed here:*  
<http://bit.ly/2coDyhh>

### **Special Rapporteurs on minority issues, contemporary forms of slavery and violence against women note the vulnerability of women, children, minorities and low castes in their reports**

The UN Special Rapporteur on minority issues submitted her report on discrimination based on caste and analogous systems of inherited status, which acknowledges caste as a basis of discrimination in several countries around the world, including India. Recognising that caste-linkages with select professions and occupations amount to discrimination based on work and descent, the report notes the deeply embedded nature of caste in interpersonal and communal relationships; noting further that women and girls are particularly vulnerable to multiple and intersecting forms of discrimination because of their gender and unprivileged caste status. India challenged this report at the 31st session, arguing that caste was not a part of the mandate of the Special Rapporteur on minority issues.

The report of the Special Rapporteur on contemporary forms of slavery defined and highlighted the extent of debt bondage around the world especially in South Asia and ASEAN States. It took note that 'vulnerable people, including those belonging to minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, are disproportionately impacted'.

In her report, the Special Rapporteur on violence against women, highlighted gaps in incorporating regional and international guidelines into domestic law. It also advocated for the creation of instruments like a 'femicide watch', the creation of protection services for women survivors of violence, and also called for capacity building of professionals.

*The report of the Special Rapporteur on minority affairs can be accessed here:*  
<http://bit.ly/2itlTZp>

*The report of the Special Rapporteur on contemporary forms of slavery may be accessed here:*  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/33/46](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/46)

*The report of the Special Rapporteur on violence against women is accessible here*  
[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/42](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/42)

### **UN experts call on States to repeal restrictive abortion policies**

In June, experts from the Human Rights Committee considered the complaint of a woman from Ireland who was forced to choose between carrying her child to term despite knowing it would certainly die, or seek expensive treatment abroad. The experts noted that the trauma, expense, misinformation and lack of services could be avoided if she was allowed to terminate her pregnancy in her own country. Accordingly, Ireland was called upon to amend its law on voluntary termination of pregnancy.

In September, a group of human rights experts called on States across the world to repeal restrictive abortion laws and policies as well as barriers to safe reproductive health services. The call highlighted the prevalence of health complications and violence which disproportionately affected women in countries where abortions were illegal. Stress was laid upon the importance of

evidence-based comprehensive sex education as well as the availability of and accessibility to contraception.

*Information on the Human Rights Committee findings for Ireland can be accessed here*

[http://www.un.org/apps/news/story.asp?NewsID=54180#.WMd\\_DtJ97ce](http://www.un.org/apps/news/story.asp?NewsID=54180#.WMd_DtJ97ce)

*Information on the experts suggestions to States across the world can be accessed here*

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20600&LangID=E>

### **UN Special Rapporteur in the field of cultural rights submits report on the intentional destruction of cultural heritage as a violation of human rights**

The Special Rapporteur in the field of cultural rights Karima Bennouna submitted her first report to the Human Rights Council at its thirty-first session, framing the intentional destruction of cultural heritage as a form of human rights violation. By way of preliminary recommendations, the report calls upon states to ensure the right of all individuals to practice their cultural rights, including by dissenting and disempowered individuals within groups. It also calls upon states to ensure the full participation of women to access, contribute to and participate in all aspects of cultural life, including in identifying and interpreting cultural norms.

The Report can be accessed here: <http://www.wunrn.org/pdf/hrc2.pdf>

### **Independent Expert on the enjoyment of human rights by persons with albinism presents first report to the Human Rights Council**

Ikponwosa Ero, the independent expert on the enjoyment of human rights by persons with albinism, presented her first report to the Human Rights Council in its 31st session. The report identifies the genetic causes of albinism, as caused by a lack of melanin in the skin, hair and eyes, and is non-contagious and genetically inherited. Persons with albinism are at risk of gruesome violence for their body parts, as they are used in witchcraft rituals, potions or amulets. Women and children are at a disproportionate threat of being attacked on account of this genetic condition. The report also identified effective measures to end such violence, through fast track immediate investigation of allegations and prosecution of alleged perpetrators; appropriate legal, social, psychological and medical remedy and redress for victims; actions to prevent trafficking in body parts, as well as measures for the safe re-integration of displaced persons with albinism.

*The report can be accessed at* <https://daccess-ods.un.org/TMP/8921688.19904327.html>.

*Source:* <http://bit.ly/2pUqiFh>

### **Special Rapporteur urges States to ensure access and support to persons with disabilities**

The Special Rapporteur on rights of persons with disabilities has submitted a report to the Human Rights Council. The report discusses normative aspects of support, care and assistance as well as State obligations to ensure access to support systems in human rights and international law, as well as approaches in making interventions. Expressing concern about the intersectional discrimination arising from gender and disability, the report notes that girls with disability are less likely to be educated and employed, and less likely to receive support provisioning. In its recommendations for States the report, among other things, urges States to create systems that are sensitive and responsive to the disadvantage experienced by women and girls.

*Source:* <http://bit.ly/2pFl8k2>

## **CEDAW and other treaty bodies**

### **CEDAW calls for respect for rights of rural women in its General Recommendation no. 34**

The CEDAW committee called for a focus on rural women and girls and the effective implementation of the Sustainable Development Goals (SDGs) in accordance with Article 14 of the Convention; and issued General Recommendation no. 34 which links the discrimination faced by rural women to wider socio-economic and political inequality of rural contexts. It notes the negative impact of fiscal, trade and tax policies on rural women and calls for national economic policies and strategies that specifically address the rights and empowerment of rural women. Taking on an intersectional approach the GR links other factors of marginalisation and disadvantage such as ethnicity, location and migrant status. Importantly, the report expands the scope of state obligation to include the extra territorial obligations of states to regulate private actors and to ensure that their bilateral and multilateral roles advance the rights of rural women globally.

*The call for focus on rural women is available here: <http://bit.ly/2pFdq6q>*

*The General Recommendation no. 34 can be accessed at: <http://bit.ly/1TZ5ys1>*

### **Council of Europe provides comparison of the Istanbul Convention and CEDAW framework**

The Council of Europe (CoE) published a comparison of measures to prevent and combat violence against women contained in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) frameworks. Drawing from the principles and case law developed by CEDAW and the CEDAW Committee, the Istanbul Convention codifies established international standards, jurisprudence and developments.

*Information on the Council of Europe comparison can be accessed here: <http://bit.ly/2opiYBk>*

### **CESCR issues General Comments no. 22 on the right to sexual and reproductive health, and no. 23 on just and favourable conditions of work under Treaty bodies**

The UN Committee on Economic, Social and Cultural Rights (CESCR) issued General Comment no. 22 on the right to sexual and reproductive health (Article 12 of the Covenant). The Comment reaffirms the right to sexual and reproductive health as an integral part of the right to health, recognising the multiple and intersecting forms of discrimination that impede the enjoyment of this right by certain individuals and population groups, in particular LGBTI persons and persons with disabilities. The Comment iterates how sexual and reproductive health are distinct but interrelated to each other, and how fulfilment relies upon the right to make free and informed decisions in the absence of coercion, discrimination and violence.

General Comment no. 23 on the other hand addresses unique gender related challenges on the realisation of the rights and freedoms associated with work. The Comment reaffirms trade union rights, the rights to freedom of association and to strike as being crucial for the maintenance of just and favourable conditions of work. It also recognises the specific challenges faced by women due to their predominance in part-time, informal and domestic sectors of labour, urging measures to be taken to reduce inequities in working conditions on these bases.

*The text of the General Comment no.22 may be accessed here: <http://bit.ly/2oY6bss>*

*The text of the General Comment no.23 may be accessed here: <http://bit.ly/2pUqGU9>*

### **CRPD's General Comment 6 provides guidance on engendering policies on disability to Article 6 of the Convention**

The Committee on the Rights of Persons with Disabilities (CRPD), in a General Comment on Article 6 of the Convention on the Rights of Persons with Disabilities, has recognized that policies addressing women traditionally ignore concerns of disabled persons and simultaneously, policies targeted at disabled persons neglect aspects specific to disabled women and girls. The General Comment laid out obligations of States and advocated the importance of information and family support systems. The document calls on States to repeal or reform legislation which discriminates, and moreover actively embark on public campaigns. Interlinkages with other articles of the Convention were also illustrated, to demonstrate how the rights enumerated in these are specifically pertinent for women and girls with disabilities.

*The full text of the General Comment can be accessed here: <http://bit.ly/2pUqsMT>*

### **UN-CAT and UNCRC reprimand countries for continued IGM violations**

At the fifty-ninth session of the UN Committee Against Torture (UNCAT) in response to inter-sex NGO reports on the persisting practice of IGM in USA and Australia, the Committee asked USA to comment on reports of premature surgery and medical treatment to which intersex people are generally subjected and to indicate the number of intersex people who have undergone sex-assignment surgery. Australia was asked to provide information on efforts made towards prohibiting sterilization, and civil/criminal remedies available to people. Both countries now need to explain themselves through reports due in 2017 and at a review held in Geneva.

The UN Committee on the Rights of the Child (CRC) at the Concluding Observations of its 73<sup>rd</sup> Session, recognized inter-sex genital mutilations as a 'harmful practice' and issued strong,

binding recommendations on both South Africa and New Zealand to adopt legal and policy measures to prevent against and compensate victims of the practice.

*Information about the UNCAT submissions may be found here: <http://bit.ly/2opgToF>*

*The UNCRC Concluding Observations may be accessed here: <http://bit.ly/2dXYm21>*

### **UN-CAT investigates USA and Australia on the prevalence of Inter-Sex Genital Mutilations**

At the fifty-ninth session of the UN Committee Against Torture (UNCAT) on issues prior to the submission of the sixth periodic report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the body responded to inter-sex NGO reports on the persisting practice of IGM in USA and Australia. The Committee asked USA to comment on reports of premature surgery and medical treatment to which intersex people are generally subjected and to indicate the number of intersex people who have undergone sex-assignment surgery. Australia was asked to provide information on efforts made towards prohibiting sterilization, and civil/criminal remedies available to people. Both countries now need to explain themselves through reports due in 2017 and at a review held in Geneva.

*Source: <http://bit.ly/2opgToF>*

## **Regional Human Rights systems**

### **International Criminal Court convicts Congolese former president of war crimes**

In a landmark decision, the International Criminal Court convicted the former Congolese vice-president, Jean-Pierre Bemba for war crimes and crimes against humanity in his capacity as president and commander-in-chief of the Mouvement de libération du Congo. The court found that not only did the forces commanded by Bemba rape numerous women and men, these forms of sexual violence were in fact part of the modus operandi of the troops. The decision is remarkable because it heralds a series of firsts. It is the first conviction before the ICC for crimes of sexual violence as well as the first conviction of an individual charged with command responsibility, under Article 28 of the Rome Statute. It is also the first case in which testimony from male victims of sexual violence was heard in support of the charge of rape. This has been a significant development signalling a new era of accountability for sexual violence crimes. It is also not insignificant that it was in fact three women judges who oversaw the proceedings.

*Information on the conviction can be found here: <http://bit.ly/2p6y2Eo>, <http://bit.ly/22Fn9Hk>*

### **IACHR finds that gay man is entitled to his deceased partner's pension**

Responding to an appeal against a judicial order ratifying a private-pension fund's decision to deny a Mr. Duque the pension of his deceased partner of ten years, the Inter-American Court of Human Rights ruled that the Colombian State had violated the petitioner's right to equality and non-discrimination as provided for in the American Convention on Human Rights and was thus obligated to start paying the pension within three months and retroactively for thirteen years plus a US\$10,000 dollar for immaterial injuries. The ruling is symbolic as it is the first IACHR decision with implications for same-sex partnerships and the right to social security of same-sex couples. It sets precedent for same-sex issues globally, and acts as a wake-up call for discriminatory domestic legal systems. The decision also mandates the disseminating of its summary and a sentence on its official page for public awareness.



*Information on the IACHR decisions may be accessed here: <http://bit.ly/2pFm19q>*

*A summary of the judgment is accessible here: <http://hrlibrary.umn.edu/cases/150-11.html>*

### **European Court of Human Rights rejects refusal to grant residence permit to gay couple**

In the case of Taddeucci and McCall v. Italy, where the Italian authorities refused to grant a residence permit to a gay couple on family grounds, the European Court of Human Rights held it in violation of Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The decision is of the great importance to all those Council of Europe Member States that yet provide no recognition and discriminate for immigration purposes on the ground of marital status.

*Information on the European Court of Human Rights is available at: <http://bit.ly/2ouilF9>*

### **UN and African experts urge Sierra Leone's President to sign 2015 Safe Abortion Bill**

A group of United Nations and African Commission on Human and Peoples' Rights Commission human rights experts urged the President of Sierra Leone, Ernest Bai Koroma, to sign the 2015 Safe Abortion Bill for it to enter into force without further delay. The 2015 Safe Abortion Bill, passed by Parliament in December 2015, is aimed at ensuring women's and adolescents' access to safe services regarding abortion and authorizes the termination of a pregnancy under any circumstances up to 12 weeks and in cases of incest, rape, fatal impairment as well as when the woman's health is at risk, up to 24 weeks.

The group warned that reluctance towards the decriminalization of abortion by some parties, including religious organizations, has resulted in delays in signing the Bill, as the President sent it back to Parliament for reconsideration. The group and experts also called on the President to respect its obligations under international and regional human rights law by ensuring access to sexual and reproductive health and rights for women, including maternal health care and access to all methods of contraception.

*Source: <http://bit.ly/2pFmNTF>*

### **UN experts and Inter-American human rights systems urge Canadian government to address violence against indigenous women and girls**

Six human rights experts from the UN and Inter-American Human Rights systems urged the Canadian government to address the root causes of extreme violence and discrimination against indigenous women and girls in Canada. The experts had also taken part in a two-day symposium at the University of Ottawa with indigenous women leaders and their allies on murders and disappearances of Indigenous women and girls to discuss the possible framework and structure of the inquiry.

Canada had faced criticism from the UN and the Inter-American Commission on Human Right (IACHR), which conducted their own inquiries, for its inaction to address the disappearances and murders of Indigenous women and girls, and the neglect of their human rights. In December 2015, the Canadian government announced a national inquiry, suggesting a new recognition of the crisis.

*Source: <http://bit.ly/1Sq3GIB>*

## **Inter-American Court of Human Rights rules against Colombia for prohibited discrimination on the basis of sexual orientation**

Inter-American Court of Human Rights in a landmark decision ruled that the Colombian State for failure to provide a gay man with equal access to public benefits following the death of his partner. The Court held that Colombia had violated the petitioner's right to equality and non-discrimination as provided for in the American Convention on Human Rights and ordered the Colombian State to start paying the pension within three months and retroactively for 13 years plus a US\$10,000 dollar for immaterial injuries. This is the first time that the Court has ruled on the issues of discrimination and access to social rights as they pertain to same-sex couples and will have an enormous impact on international human rights jurisprudence.

Source: <http://bit.ly/2pFm19q>

## **International Legal Developments**

### Asia

#### **Pakistan and Malaysia take measures to enhance social and political rights of transgender persons**

The north-western province of Khyber-Pakhtunkhwa unanimously passed a resolution calling on the federal government to ensure voting rights for transgender women, signalling support for the region's transgender women who have been target of violent attacks and denied emergency responses by medical and police services.

In a petition for recognition of fundamental rights for transgender persons, the Lahore High Court directed authorities to include transgender people in the 2017 Census. Activists recognize that being counted in census and through national identity cards would not end the violence but would help access to basic amenities like medical care and employment programs.

Also, Pakistan's Tanzeem Ittehad-i-Ummat, a non-state clerical body has issued a fatwa declaring that a transgender with male indications on his body may marry a transgender with female indications on her body. It also declared sinful any act of humiliating, harassing the transgender community and pronounced that they will be qualified inheritors and will possess the right to be buried in Muslim ceremonies.

Malaysia's Penang Legislative Assembly has formed a committee to oversee transgender issues. Formed after a delay of 2 years, the eight member committee will be focussing on the issue of use of public toilets by the transgender community, healthcare and legal representation; and will oversee issues related to transgender in hospitals and under arrest.

*Information on the Khyber-Pakhtunkhwa resolution:* <http://bit.ly/2h7Byes>

*Information on the Lahore High Court ruling:* <http://bit.ly/2j1Mzkt>

*Why it is important to be included in census records:* <http://bit.ly/2fYnVzO>

*Information on the fatwa:* <http://bit.ly/28YJnOb>

*Source for Malaysia's Legislative Assembly news:* <http://bit.ly/2o6xmSP>

#### **Federal Court of Malaysia creates the tort of sexual harassment**

The Federal Court of Malaysia has introduced the tort of sexual harassment by defining it as "a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another



person which is calculated and does cause that person alarm, fear or distress.” The Employment (Amendment) Act of 2002 and the 1999 Practice code did not define the rights and liabilities of the harasser and victim and was insufficient, which necessitated the civil remedy. The possibility of tortious action broadens the avenue for a victim of sexual harassment to damages.

*Information about the ruling can be found here* <http://bit.ly/2pidlbZ>

*The text of the tort ruling can be found here* <http://bit.ly/2pFnbo0>

### **Bangladesh and Pakistan backtrack while Kyrgyzstan imposes criminal sanctions against those conducting child marriages**

In December, the Bangladesh government placed an amendment to the Child Marriage Restraint Act before parliament which sought exceptions for child marriage in special cases like elopement or pregnancy in a bid to protect the ‘honour’ of the child and lower the legal marriageable age to 16. Civil society has criticized this attempt, recognizing that such a move would only enable a legal loophole that will legitimize an already widespread practice in Bangladesh.

In Pakistan, the National Assembly's Standing Committee on Religious Affairs and Interfaith Harmony has rejected the "child marriage restraint" bill after the Council of Islamic Ideology dubbed it as “anti-Islamic” and “blasphemous.” Introduced by a member of the ruling Pakistan Muslim League, the bill sought to increase the legal age of marriage from 16 to 18 years and to impose harsher penalties to those who arrange for child marriages.

Conversely, the President of Kyrgyzstan has signed into law criminal sanctions on those who conduct marriages for children below 18. Despite being illegal already, child marriage is a persisting social problem in the country where underage girls are typically forced into marriages that are usually unregistered – and therefore unprotected - owing to the illegality of the practice. The new law will therefore fail to address the larger problem.

*Sources:*

*Bangladesh:* <http://bit.ly/2fRBooY>

*Pakistan:* <http://bit.ly/20bbbUM>

*Kyrgistan:* <https://www.hrw.org/news/2016/11/21/kyrgyzstan-ops-fight-against-child-marriage>

### **Maldives passes Gender Equality Act**

In a historic move, the Maldives parliament passed the Gender Equality Act. The Act draws from the Maldivian Constitution that forbids any differentiation in freedoms and rights based on gender or any other factor under article 17 and article 20 that guarantee equal protection and benefits under law. The Act seeks to realise the Constitutional guarantees to eliminate discrimination between genders, by outlining the role of government, mandating agencies to assure equal opportunities in employment and equal pay for equal work. It also puts on the onus on the government and media to promote gender equality.

*Source:* <https://english.sun.mv/39119>

### **Pakistan Parliament passes legislation against honour killings and toughens laws on rape**

A joint session of the lower and upper house of the Pakistan Parliament unanimously passed legislation against honour killings, removing a loophole in existing law that allows killers to walk free after being pardoned by family members. Under the new law, relatives can forgive

convicts in the case of a death sentence, but they would still have to face a mandatory life sentence. The Bill was first introduced in March 2016 but failed to gain traction. The Bill was re-introduced following the murder of a popular media celebrity Qandeel Baloch by her brother in July 2016. An anti-rape law was also passed during the same session that the case has to be disposed-off within 3 months and if found guilty the perpetrator will serve a mandatory sentence of 25 years.

Source: <http://www.reuters.com/article/us-pakistan-honourkillings-idUSKCN1261OK>

### **Cambodia bans commercial surrogacy**

The health ministry of the Cambodian government distributed a letter to surrogacy providers in the capital Phnom Penh asking them to comply with the new injunction which completely banned the practice of surrogacy. The letter also banned commercial sperm donation. The abrupt ban is likely to drive up surrogacy costs globally and adversely affect expectant parents and surrogates who have not carried the pregnancy to term.

Source: <https://www.bioedge.org/bioethics/cambodia-bans-commercial-surrogacy/12079>

### **Saudi Arabia amends procedural laws to enable access to justice for women**

The Ministry of Justice in Saudi Arabia has made new rules intended to simplify legal procedures for female claimants. The legal system obliges plaintiffs to file lawsuits at courts in locations where the defendants lived. Women have been exempted from this rule as they are no longer required to travel to the defendant's hometown to file a case relieving them of the burden of travelling to claim justice. They can file a case in their own area irrespective of whether or not the defendant also resides there. The other changes include giving women priority in cases of alimony and custody.

Source: <http://bit.ly/1Qu6IVQ>

### **Indonesia bans LGBT promotion on TV and radio, drafts bill to comprehensively ban LGBT Propaganda**

The backlash against Indonesia's LGBT community continues with the Indonesian Broadcasting Commission (KPI) issuing bans on campaigns related LGBT issues on television and radio. KPI officials were joined by the Indonesian Child Protection Commission in saying that any content that might encourage children and adolescents to imitate or justify LGBT behaviours should be blocked. Religious groups had earlier in February issued a "fatwa" on homosexuality, transgender and "adultery practices", labelling them as forbidden. In addition to this, Indonesia's Communication and Information Ministry has also asked Facebook and WhatsApp to block LGBT-themed emojis and stickers in Indonesia. Amidst this crackdown on LGBT content, the communications and Information Minister is reportedly drafting a bill to comprehensively ban LGBT "propaganda".

Source: <http://bit.ly/2pUcXg3>

### **Bangladesh rejects petition to remove Islam as country's state religion**

Bangladesh's High Court rejected a petition challenging the constitutional provision that recognizes Islam as the state religion. The public interest litigation was filed after the passage of the Eighth Amendment Bill in 1988 which declared Islam as the state religion. Bangladesh's first

constitution, framed after independence in 1971, adopted secularism as one of its main principles, along with socialism. The petition argued that having Islam as the state religion conflicts with the secular nature of the state and discriminates against non-Muslims. The court's ruling has not been against the subject matter of the petition but that the petitioning organisation, the Committee against Autocracy and Communalism, did not have the right to be heard in the court. The issue has become even more relevant in light of recent attacks against atheists and religious minorities and is a huge setback for secular forces.

Source: <http://www.dw.com/en/bangladeshi-court-keeps-islam-as-state-religion/a-19148093>

### **China and Pakistan's Punjab province enact laws to curb violence against women**

China passed its first-ever national law against domestic violence, the result of a decade-long campaign driven by the country's civil society groups. The new law takes a significant step forward from existing legislation by defining domestic violence as physical and psychological abuse of family members and cohabitating non-family members. Under the new law, one of the biggest protective mechanisms is relaxation in the rules of obtaining a restraining order which earlier required a lawsuit to be filed and production of evidence of abuse. Though it does not cover separated/divorced couples, nor does it address sexual abuse or economic control, the law is ground breaking for addressing what has long been deemed a private matter in China.

The legislative assembly of Punjab in Pakistan passed the historic protection of women against violence bill providing comprehensive protection to women against all forms of violence. It encompasses abatement of an offence, stalking and cyber-crime and includes domestic violence, emotional, psychological and economic abuse within the ambit of violence against women. The bill also introduced implementation mechanism through the District Violence against Women Centres (VAWCs), toll free hotline number, court orders (residence, protection and monetary) and setting up of shelter homes. The bill has, however received flak from religious organisations who deem it a western agenda to destroy traditional families.

Source: China <http://bit.ly/2pViAe1> , Pakistan: <http://reut.rs/2op5Hso>

### **Pakistan Islamic Council proposes 'lightly beating wife permissible' under its draft women's protection bill**

The Council of Islamic Ideology, a constitutional body that advises the legislature on bills' compatibility with Islam, has passed its own draft version of a Women's Protection Bill, where it proposes husbands may "lightly beat" their wives as a form of discipline. It also prohibits female nurses from taking care of male patients, and bans the presence of women in receptions held for visiting foreign dignitaries. Earlier this year, the Punjab Assembly passed a women's protection bill, which the council and religious parties strongly rejected, declaring it 'un Islamic' [PLD Newsletter Vol. 9(II) March-April 2016].

Source: <http://ind.pn/1WSeSQ2>

### **Japan proposes to address discrimination against LGBT within the sexual harassment law, while South Korean gay couple seeks legal status for their same-sex marriage**

The Health, Labour and Welfare Ministry of Japan plans to introduce revised guideline under the Equal Employment Opportunity Law to bring discriminatory acts against sexual minorities within its ambit of sexual harassment. A draft of the revised guidelines points out that people can

be victims of sexual harassment regardless of their sexual orientation and self-identification. The draft also urges the companies to provide counselling to pregnant women, mothers and fathers who face workplace harassment on asking for maternity and paternity leaves respectively. A bill in consonance with this has been tabled by four parties to the Diet for elimination of discrimination against sexual minorities.

In a first of its kind case, a lawsuit filed by a gay couple seeking legal status for same sex marriage was rejected by a South Korean district Court. While homosexuality is legal in South Korea, same-sex marriage is not recognised and the country remains deeply conservative about matters of sexual identity. Although the Court rejected the lawsuit saying that it cannot be recognised as legitimate under the current legal system, it identified the need for a separate legislation to recognize such unions as marriage.

*Sources:*

*Japan:* <http://kyodonews.net/news/2016/05/26/62618>

*Korea:* [http://www.koreatimes.co.kr/www/news/nation/2016/05/116\\_205575.html](http://www.koreatimes.co.kr/www/news/nation/2016/05/116_205575.html)

### **China and Bangladesh adopt, while Kyrgyzstan parliament rejects law to limit NGO freedom & foreign funding**

China's National People's Congress has adopted the draconian law on the 'Management of Foreign Non-Governmental Organizations Activities in China' that places restrictions on foreign NGOs and their domestic partners. Under the new law, foreign NGOs are banned from undertaking activities deemed as 'endangering national unity, national security or ethnic unity or harming China's national interests and societal public interests' The law also prohibits foreign NGOs from conducting 'political activities' without specifying what such activities entail, leaving room for arbitrary and broad interpretations of the law. This will have severe consequences for freedom of expression, peaceful assembly and association, which are already sharply curtailed under existing laws and policies. The law is the latest in a raft of legislations passed last year, including Anti-Terrorism Law and National Security Law which aims at bolstering government power at the cost of human rights under the guise of national security.

The Bangladesh parliament also adopted the highly controversial and internationally criticized Foreign Donations (Voluntary Activities) Regulation Bill 2016 which represses critical human rights work in Bangladesh. The Bill states that the NGO Affairs Bureau (NGOAB), which is under the direct supervision of the Prime Minister's Office, will have the authority to cancel or withhold the legal registration of a non-governmental organization (NGO) or ban its activities for having engaged in anti-State activities, financing extremism and terror activities or for making derogatory comments about the Constitution and constitutional institutions of Bangladesh. This Bill thus imposes disproportionate restrictions on freedoms of expression and association in Bangladesh, in violation of international human rights standards.

Conversely, Kyrgyzstan's parliament voted against a bill aimed at amending several provisions of the Law on Non-Commercial Organisations which seeks to target foreign funded NGOs. The draft law was first proposed in 2013 and attempted to impose the label of 'foreign agent' on all NGOs receiving funding from abroad and engaging in any deemed to be "political activities." [PLD Newsletter Vol. 7 (V) September - October 2014]. 65 of the 111 members of parliament present voted against the proposed legislation. Though many politicians had publicly supported

the proposed law, fears over the impact on the country's democratic credentials prompted politicians to reject it.

*Source:*

*China:* <https://www.hrw.org/news/2016/04/28/china-new-law-escalates-repression-groups>

*Bangladesh:* <http://bit.ly/2opsC6Q>

*Kyrgyzstan:* <http://bit.ly/2ou9CTW>

### **Sex workers in Taiwan demand right to work, decriminalization of prostitution**

The Collective of Sex Workers and Supporters (COSWAS) and advocates for the right of sex workers have asked the Taipei city Government to decriminalise sex work. Prostitution was criminalised in Taipei in 1997, driving prostitution underground, leaving many impoverished and driven to suicide. They held demonstrations and criticised the Mayor for failing to fulfil his campaign promise to start a dialogue on prostitution and government-sanctioned red-light zones in Taipei. Activists laid out their demands, which include urging the Mayor to undertake a review of police department regarding their illegal arrest sex workers, and seek a city-wide dialogue to legalize prostitution.

*Source:* <http://bit.ly/2pUfeYK>

### **Saudi women file petition to end male guardianship system**

Women in Saudi Arabia have signed an online petition calling for the government to abolish the country's guardianship system, which prevents women from engaging in fundamental tasks without the permission of a male relative. Under the law, all women must have a male guardian, usually their father, husband or brother, whose permission must be granted for anything from marriage to travel, renting a living accommodation, and medical procedures. Saudi Arabia's government agreed to abolish the guardianship system twice – in 2009 and 2013 – after a review by the United Nation's Human Rights Council. It instituted some reforms by, for instance, making it easier for women to work, appointing women to the King's advisory board, and allowing women to vote and run as candidates in municipal elections. However, these reforms had limitations and stopped short of providing women basic rights.

*Source:* <http://bit.ly/2opu60P>

## ***Beyond Asia***

### **Seychelles, Nauru, Belize decriminalize same-sex relationships**

The Seychelles National Assembly has passed an amendment to the island nation's penal code that decriminalizes the act of sodomy. The motion was presented by the foreign affairs ministry, who felt that it was not the government's role to decide on matters of morality. No one in the Parliament voted against the motion, while those who were not explicitly in favour abstained from voting. Seychelles joins Mozambique as the only other African nation to have decriminalized homosexuality.

The Government of Nauru reformed criminal law, replacing the Criminal Code of 1899 to broaden the definition of rape to include marital rape, introduces the offence of stalking and



voyeurism and de-criminalising homosexuality. Even as it increased penalties for sexual offences, punishments such as death penalty, imprisonment with hard labour and solitary confinement were removed.

In a landmark judgement, the Supreme Court of Belize ruled Section 53 of the Belize Criminal Code, which banned carnal intercourse against the order of nature with imprisonment up to 10 years as unconstitutional. LGBT activist Caleb Orozco had in 2010 challenged the law claiming it violates rights guaranteed in the Belizean Constitution. The Court invoked international human rights obligations, particularly those under the ICCPR, and held that sex under the non-discrimination clause of the Belize Constitution included sexual orientation. Belize is the third nation to decriminalize gay sex this year and the first nation in the Caribbean region.

*Information about the Seychelles parliamentary decision is available here: <http://bit.ly/2pFFmtP>*

*Information about Nauru's legal update can be found here: <http://bit.ly/2opr7Wr>*

*Information on the Belize supreme court can be found here: <http://bit.ly/2pinLIR>*

### **Italy and Aruba vote in favour of same-sex civil unions**

The Italian Chamber of Deputies passed a same-sex civil unions bill in a vote of confidence ensuring that it will become a law. Already approved by the Senate in February, a final vote in the lower house was required for the legislation to take effect. The issue has been highly controversial, amid staunch opposition from Catholic conservatives. The bill grants same-sex couples many of the same rights as married heterosexual couples. Though a milestone in the struggle toward legal recognition for same sex-couples, the bill falls short of giving couples rights to their partner's children.

The Parliament of Aruba also passed a civil unions bill after it was brought forward by a local member of parliament who married her female partner outside the country. The bill has many positive features; for instance, the subject of the legislation is gender-neutral. In effect, the bill brings all the rights available to heterosexual marriages.

*Information on Italy's same-sex civil union bill: <http://bit.ly/2pieFf8>*

*Information on Aruba's civil union bill can be found here: <http://bit.ly/2cdLOf1>*

### **Colombia, Isle of Man, Greenland and Gibraltar legalize same sex marriage**

The Colombian Constitutional court in April upheld the validity of same-sex marriage in the country. The court said that limiting the right to marry and form a family to heterosexual couples violates the right to non-discrimination and equality.

The Isle of Man has also passed the Marriage and Civil Partnership (Amendment) Bill 2016 after a process of running it through different voting rounds. The bill will allow same-sex couples in a civil partnerships to convert their unions to marriage.

In an adoption of Denmark's matrimonial laws, a same-sex marriage bill was passed unanimously by Greenlandic Parliament and Danish Parliament last year.

The Gibraltar parliament also unanimously passed a bill legalizing civil marriages between same-sex couples. The Chief Minister stressed that there was no interference with any religion, sacrament or 'course of nature'.

*Information on the approval of same-sex marriages in Colombia: <http://bit.ly/24pe4U1>*

*Information on the Isle of Man's bill can be found here: <http://bit.ly/29W9HyL>*

*Information on Greenland's bill can be found here: <http://bit.ly/2pFw9is>*

*Information on Gibraltar's legislation can be found here: <http://bit.ly/2eIUiPB>*

### **Campeche and Sonora in Mexico legalizes same-sex marriage, but parliament blocks legalization at the national level**

Campeche and Sonora became the 7th and the 8th state in Mexico to legalise same sex marriage wherein same-sex couples will no longer need a court injunction to marry. Other states to legalise such marriages are Mexico City and the states of Campeche, Chihuahua, Coahuila, Guerrero, Jalisco, Nayarit and Quintana Roo. Legislations to change laws covering same sex marriages are still pending in several other states.

Mexico's President Enrique Peña Nieto had signed an initiative to amend the Constitution in order to legalise same sex marriage throughout the nationwide, but massive demonstrations occurred on the streets by pro-family groups who expressed opposition to the measure. The Pope even extended his support to the protests, claiming that this was a valiant defence of the family structure. The initiative then suffered a crushing defeat when a congressional committee rejected the measure.

*Information on Mexican state recognition of same-sex marriage can be found here*

*<http://bit.ly/2oXTUEF>*

*Information on Mexico's blocking of the initiative is available here: <http://bit.ly/2oS87AT>*

### **Botswanan court orders government to register LGBT group as an NGO**

In a significant development for LGBT rights in Africa, the Gaborone High Court of Appeal ruled that an LGBT group had the right to be registered as an NGO. The court said there was no evidence to back up claims that the group would be used for purposes 'contrary to peace, welfare or good order in Botswana'. The continued refusal to register the organization therefore was 'unlawful'. Homosexuality is not technically outlawed in Botswana, but gay people are often persecuted under the penal provision that bars 'carnal knowledge of any person against the order of nature'.

*Information on the court ruling can be found here: <http://bit.ly/1SGnEfx>*

### **Hungarian authority finds job discrimination on basis of transgender status**

Responding to a case where a transgender woman was rejected for a job based on their gender, and laughed at, the Hungarian Equal Treatment Authority found that the employer discriminated against her on the basis of gender identity not only in their hostile behaviour but also in the fact that they were looking exclusively for a female shopping assistant. The authority was constituted under the country's Equal Treatment Act (2003).

*Information on the decision can be found here: <http://bit.ly/2pFshAP>*

### **Italy legitimizes same-sex parentage of children**

In September, the Italian Supreme Court found no obstacle to the registration of a Spanish birth certificate mentioning two mothers. This important decision has implications for safeguarding the fundamental rights of minors born, adopted or raised in same-sex families. Italian couples were forced to go abroad to conceive their children. In the case, the gestational mother was a Spanish citizen who was carrying the egg donated to her by her Italian partner, who later became

her spouse under Spanish law. This decision will coax the Italian legislature to act and to adapt laws in order to guarantee equal treatment of all families living in Italy, regardless of their origin, size or shape.

In March, the Court of Appeals in Trento, Italy affirmatively ruled that the names of both same-sex partners should be listed on the child's birth-certificate even if only one is the biological father.

*Information on the Italian Supreme Court decision can be found here: <http://bit.ly/2pFzCh8>*

*Information on the Court of Appeals ruling can be found here: <http://bit.ly/2pFrkpi>*

### **Suriname courts recognize transgender identity in census while the Swedish government pays compensation to trans persons forced to undergo sterilization**

Responding to an appeal from a transgender woman named Yvanna Hilton, a judge in Paramaribo ruled that it was their right to reflect her change in gender in her census documents, and thus ordered the census office to amend her recorded sex in its records. The ruling was opposed by religious groups like the Association of Pentecostal Churches in Suriname and the Suriname Islamic Association SIV.

The Swedish Government announced an initiative to enact a law to pay compensation to trans victims of forced sterilisation. Forced sterilisation was a requirement for legal gender recognition until 2013 in Sweden under the previous Gender Recognition Act. This was ruled as discriminatory and in breach of the Swedish Constitution and the European Convention on Human Rights by the Sweden Court of Appeals in December 2012. The move is significant in recognizing the wrong of tying gender affirmation to forced sterilization and taking responsibility for the violation of human rights caused by this practice. However, currently 24 states in Europe still require forced sterilisation from trans people, which keeps many from accessing legal gender recognition.

*Source: <http://bit.ly/2oSp5PD>, <http://bit.ly/2pizmrh>, <http://bit.ly/2oYaZxX>*

### **Tanzania moves to combat high child marriage, but de-prioritizes health benefits for gay men**

In an important milestone in the fight against child marriage in Tanzania, the High Court ruled that the legal age for girls to marry should be increased to 18 years, consistent with the legal minimum age for boys to get married. The court held sections 13 and 17 of the Tanzania Law of Marriage Act were unconstitutional. The sections allow girls to marry at age 15 with parental permission and at age 14 with the permission of a court respectively. The court directed the Tanzanian Government to rectify the discriminating provision in the Marriage Act within a year. The court ruling follows upon a series of new legal measures already adopted by the Tanzanian government that criminalises marrying and impregnating primary and secondary school-going girls with up to 30 years of imprisonment. Tanzania has one of the highest rates of adolescent pregnancy and births in the world.

In other news, the Tanzanian minister for health said that the government had received reports that some non-governmental organizations were promoting and normalizing same-sex relationships as part of their HIV programs, and this was unacceptable to them because same-sex activity is illegal in Tanzania. Accordingly, the government suspended community-based HIV/AIDS prevention programs for men, while retaining it for adolescent girls, drug users and other groups.



*Information on the Court ruling can be found at these links:*

<http://tmsnrt.rs/2oNxrJP> , <http://bit.ly/2af8EFY>

*Information on the government's parliamentary provisions can be found here*

<http://www.reuters.com/article/us-tanzania-childmarriage-idUSKCN0ZK1US>

*Information on Tanzania's suspension of HIV programs for gay men can be found here*

<http://www.reuters.com/article/us-tanzania-hiv-idUSKBN12V2KI>

### **Chile strikes down repressive abortion law**

Chile's House of Representatives approved an abortion bill, which might put an end to the country's complete protections for "children before birth". The bill was introduced by the government of Socialist President Michelle Bachelet which allows abortion in cases of rape, when the mother's life is at risk, and when the unborn child suffers a disability likely to be fatal. The legislators also approved the possibility of obliging the director of a hospital to make sure that an abortion be performed on any woman over 18 who asked for it following a rape, even if she did not report the rape to police. This has been termed as a historic day in Chile where women for the first time in decades will have access to safe abortion. Despite being predominantly Catholic, Chile allowed abortion until 1989. But the practice was banned by General Augusto Pinochet in one of the last acts of his military government.

*Source:* <http://bit.ly/2bXuZKs>

### **France decriminalizes sex-work but penalizes buyers of sex**

France National Assembly adopted a law that decriminalizes women in sex work while penalizing buyers of sex. This makes France the fifth country to adopt an abolitionist policy after Norway, Sweden, Iceland, Canada, and Northern Ireland. Based on the Nordic model which envisions an eventual eradication of prostitution, the new law directly addresses the extreme forms of violence against women and is being hailed by some as a step towards achieving gender equality. Yet, this law has been severely criticised by the French Union of Sex Workers calling the law 'repressive' that will affect the livelihoods of France's sex workers, estimated to number between 30,000 and 40,000. Supporters of the law state that it will increase safety while many advocacy groups committed to protecting rights of sex workers argue that penalizing the clients ultimately forces sex workers underground rendering them more vulnerable to dangers and violence.

*Sources:* <http://bit.ly/2pUyyoy>, <http://cnn.it/2oplUOl> , <http://ab.co/23js0hK>

### **Gambia, Egypt and Bohra leaders in Australia ban Female Genital Mutilation (FGM)**

In December 2015, Gambia amended the Women's Act 2015 by inserting FGM law which bans the practice of Female Genital Mutilation [*Vol. 8 (VI) November - December 2015*]. The law has been invoked for the first time by the Banjul Magistrate Court in a case involving the death of five month old girl because of alleged practice of FGM. This case will set precedence about the application of the law on FGM in Gambia.

In a similar move, Egypt's cabinet approved a draft amendment to the law against Female Genital Mutilation (FGM), imposing harsher punishments on the practice and considering it a felony. The draft law classifies FGM as a felony instead of a misdemeanour, punishable with imprisonment between 5-7 years and up to 15 years in case the operation led to a permanent disability or death. Experts say that severe forms of FGM can lead to life-long psychosexual problems and troubles related to menstruation, sexual intercourse and childbirth.

Following the Australian Supreme Court decision in November 2015 convicting three high-ranking Bohra clerics to imprisonment for conspiring to undertake *Khatna* (female genital mutilation) of two 7 year old Bohra girls, the Australian Bohra Jamaat has issued a public announcement banning Female Khatna.

Source: <http://bit.ly/2optl84> , <http://bit.ly/2pFpiFC> , <http://bit.ly/1TsPCwJ>

### **Germany rape law: ‘No means No’ law passed**

The German Parliament unanimously voted to pass a new ‘No means No’ law, amending previous legislation. Previously, under section 177 Criminal Code, victims were required to establish physical resistance against their assailant in order for the offence of rape to be proven. The new law removes this requirement, intending to cover ‘actual situations in which most attacks occur’. The law broadens the definition of sexual offences to include ‘groping’. Even as this law paves the way for Germany to ratify the Istanbul Convention, it does not go far enough to address drug rape. While Germany plugs a longstanding legislative gap, it is unfortunately coloured by anti-migrant impulse reflected by the new provisions for deporting sexual offenders, seemingly motivated by the reported sexual assaults by migrant men.

Source: <http://bit.ly/2oXTog4> , <http://bbc.in/29kaUJM>

### **UK Police to record misogyny and harassment against women as hate crimes**

Nottinghamshire Police has announced that crimes ranging from harassment on the street to physical approaches will be recorded as misogynistic hate crimes, which it defines as ‘incidents against women that are motivated by an attitude of a man towards a woman, and includes behaviour targeted towards a woman by men simply because they are a women’.

Source: <http://www.bbc.co.uk/news/uk-england-nottinghamshire-36775398>

### **Kenyan court legitimizes intrusive anal exams while civil society fights for the decriminalization of gay sex**

The Kenyan National Gay and Lesbian Human Rights Commission (NGLHRC) had filed a petition in Kenya's High Court calling for the decriminalization of gay sex, which is punishable by 14 years in jail. Present penal code in Kenya makes "carnal knowledge... against the order of nature" a crime attracting a 14 year sentence while "gross indecency with another male" is punishable by five years in jail. The petition states that the law violates constitutional rights to equality, dignity and privacy and also degrades the inherent dignity of affected individuals by outlawing their most private and intimate means of self-expression. Between 2010 to 2014, Kenya has prosecuted 595 people under the Penal Code while making it socially acceptable to persecute, intimidate and blackmail and use violence on sexual minorities.

While the NGLHRC fights the case in the Kenyan High Court, a Kenyan court ruled that law enforcement can force men accused of homosexuality to undergo anal examinations to buttress charges of homosexuality. Forced anal exams violate the Convention against Torture, the International Covenant on Civil and Political Rights and the African Convention on Human and Peoples’ Rights, all of which are treaties that Kenya has ratified. This ruling came in response to a petition by two men who were subject to anal exams in pursuit of pornography allegations after a scandal erupted on social media based on the leaked images from the cell phone of one of the men.

Source: <http://bit.ly/1rP5M9F> , <http://bit.ly/2oub4Wy>

### **US Courts militate against abortion restrictions while Texas, Oklahoma and Ohio governments introduce bills to make abortions difficult**

In a historic ruling in June, the Supreme Court struck down a Texas abortion law which imposed numerous restrictions on access to abortion. In the *Whole Woman's Health v. Hellerstedt* case, the court reversed a decision by the 5th U.S. Circuit Court of Appeals, which had upheld the law thereby closing many clinics and further reducing availability of abortion in Texas. Although hailed as a historic victory for abortion rights advocates, the ruling does not automatically apply to the entire country; each of the other state laws will have to be challenged in Court.

Oklahoma Supreme Court also struck down a law that imposed an unconstitutional restriction on a woman's right to have an abortion. The law sets new criminal penalties for providers who violate abortion-related statutes as well as individuals who help a minor evade the requirement to obtain parental consent. The Supreme Court said that the legislation violated the constitutional right to an abortion by placing burdens on providers that are rarely seen by medical providers of other services.

Ever since the *Whole Woman's Health vs. Hellerstedt* judgment recognized that there was an 'undue burden' on the Constitutional right of women to seek abortive services, State legislatures have been passing anti-abortion measures to bypass the Supreme Court ruling. The Texas Department of State Health Services rules requiring the burial or cremation of embryonic tissue came into effect in December, which will drive up costs of abortion services and shame women seeking the same.

Ohio also passed a 'heartbeat bill' that bans abortions after a fetus' heartbeat can be heard – which is about six weeks into pregnancy. In February, a bill was sought to be introduced in Oklahoma's legislative house which would require a pregnant woman to attain the permission of the foetus' father before availing abortion services.

*Information on the Supreme Court in Washington's decision on the Texas law:* <http://nyti.ms/2pFNd11>

*Information on the Oklahoma Supreme Court ruling can be found here:* <http://reut.rs/2dOMpf3>

*Information on the Texas fetal burial rules:* <http://cnn.it/2jFvxZJ>

*Information on Ohio's heartbeat bill:* <http://bzfd.it/2pFkoZr>

*Information on Oklahoma's permission bill:* <http://ind.pn/2kHFjZJ>

### **Algeria passes law punishing domestic violence and sexual harassment**

Algeria's Parliament passed a law criminalizing domestic violence against women and sexual harassment. As per the legislation, any husband injuring his wife can be punished from 10 to 20 years in prison depending on the extent of injuries. It also includes imprisonment of up to 2 years for any husband who acts to "dispose of the assets or financial resources" of his wife.

The opposition to this law came from various conservative groups as well as members of the Parliament, on the basis that it would lead to a breakdown of marriages since men would be deterred from marriage. Justice Minister Tayeb Louha defended the legislation within the parameters of Islamic Law, stating that the Quran protects the honor of women and does not permit violence against them.

Source: <http://bit.ly/1DVbghV>

### **Guatemalan court convicts former paramilitary and retired army officer and for rape and murder during civil war**

Guatemalan courts convicted a former paramilitary and a retired army officer of committing rape and murder and holding sexual slaves during the country's 1960–1996 civil war. In a landmark ruling, the two former military personnel were found guilty of holding indigenous Mayan women as domestic and sexual slaves in a military base. The defendants were sentenced to a total of 360 years in prison, while prisoners in Guatemala may serve 50 years at most; the women are now seeking \$3 million in damages.

Source: <http://bit.ly/1PG4iCM>

### **US Supreme Court agrees to hear case regarding rights of transgender persons to use washrooms in schools, while South Dakota's Governor Vetoes Anti-Transgender Student Restroom Bill**

The Supreme Court has chosen to take up a case involving a 17 year old transgender boy in Virginia who is fighting for the right to use the boy's restroom at his school. The case will deliberate on significant aspects of the right to equitable treatment. It would examine the legal question of whether the government can interpret existing prohibitions on discrimination as including within its scope gender-discrimination. The decision by the apex body to hear the case is in itself significant because the ruling will have bearing on transgender-rights for years to come.

The South Dakota state senate in U.S.A. passed a Bill by a 15-20 vote to ban transgender students from using school restrooms as per their self-identified gender identity. After the Bill was passed by the Senate, South Dakota Governor Dennis Daugaard vetoed the bill saying that this bill does not address any pressing issue and that such decisions were best left to local school officials.

Passing the bill would have meant that trans\* individuals would be required to use the facilities designated for the gender they were assigned at birth. Many activists and lawyers welcomed this move by the Governor. The Bill also violated Title IX of the Education Amendments of 1972, which prohibits sex discrimination in schools. The U.S. Department of Education had ruled that Title IX, in prohibiting sex discrimination, applies to discrimination based on gender identity.

Source: <http://bit.ly/2pFatmx> , <http://nyti.ms/2lq13Ly> , <http://bit.ly/1KpNowI>,  
<http://bit.ly/2pUn707>

### **Gender equality and women's voices central to the short-lived peace deal between Colombian government and the FARC**

A peace agreement signed by the Colombian government and the Revolutionary Armed Forces of Colombia – People's Army (FARC), is unique for locating women centrally within its framework. The agreement acknowledged the injustices inflicted upon women during the fifty years of conflict that plagued the nation. Negotiations on the deal were unique in their inclusion of women's perspectives - millions of whom have been internally displaced and thousands of whom have experienced sexual violence. A gender sub-commission was tasked with ensuing that

women's perspectives were properly represented. LGBTI rights were also considered, possibly for the first time ever in a peace process. However, put to a national referendum for approval, the deal was rejected in October 2016.

*Information on the deal can be found here: <http://bit.ly/2opmZFz>*

### **Australia passes anti-terrorism legislation supporting the suspension of individual freedoms of children as young as 14**

The Australian Parliament has passed legislation that reduces the minimum age for the imposition of 'control orders' from 16 years to 14. Control orders are a mechanism whereby courts can restrict the movement of suspects' movements by electronic tagging, curfews and other rules. The legislation means that serious restrictions can be imposed on children below 16 even if not yet charged with an offence. The move is part of Australia's recent trend of counter-terrorism legislation that raises questions about fundamental rights violations.

Source: <https://www.hrw.org/news/2016/11/22/australia-expands-control-orders-children>

## **National Developments**

### **New Laws/ Amendments**

#### **UN experts urge India to repeal the FCRA**

The independent human rights experts appointed by the Human Rights Council to examine the situation of human rights defenders, freedom of speech and expression and right to freedom of peaceful assembly and of association have asked Government of India to repeal the Foreign Contribution Regulation Act (FCRA) citing that it is being used to harass and silence the human rights defenders and to obstruct civil society's access to foreign funding. The human rights experts said that FCRA fails to comply with the international human rights norms and standards as its provisions are mostly used to silence organizations involved in advocating civil, political, economic social, environmental or cultural rights. The vague terms used in the Act such as 'political nature' and 'public interest' are very broad and broadens the net of restriction on the civil society.

*The UNHRC experts' call can be found at: <http://bit.ly/2pUsrkd> , <http://bit.ly/2oS8qeR>*

*The UN Special Rapporteurs' note can be accessed at: <http://bit.ly/2pFnQTH>*

#### **The Special Rapporteur on adequate housing presents a report on the gendered aspects of the right to the housing in India**

The Special Rapporteur on adequate housing presented a report on housing in India to the UNHRC in March 2017, providing an overview of critical issues related to housing in the country with strong recommendations for a human rights approach. The report suggests adopting national legislation with explicit recognition of the right to adequate housing without discrimination on any ground. The report further acknowledges how inheritance practices continue to be used to deny women title to housing and property rights and how domestic and social violence continue to adversely affect them.

*The full text of the housing-report for India may be accessed here: <http://bit.ly/2oY8zzq>*



### **Central Government notifies new Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Amendment Rules**

The Central Government has notified the new Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016. The Rules have increased relief to victims ranging from Rs 85,000 to Rs 8.25 lakh depending on nature of offence, which were earlier between Rs 75,000 and Rs 7.5 lakh. A separate provision of relief for offences of rape and gangrape have been introduced, with no requirement of medical examination for non-invasive offences such as outraging the modesty, attempting to or disrobing a woman, sexual harassment, voyeurism and stalking. It stipulates that investigation and filing of charge sheet in cases of atrocities against SC/ST women must be completed within 60 days of commission of the offence, a departure from the earlier rules that set no time limit for filing the charge sheet.

Source: <http://bit.ly/2pUeAub> , <http://bit.ly/2oufsVq>  
The text of the Rules can be found here: <http://bit.ly/2oNxyVW>

### **Rajya Sabha passes Mental Health Care Bill, 2013**

Rajya Sabha passes Mental Health Care Bill, 2013 The Mental Health Care Bill, 2013 passed by the Rajya Sabha intends to bring domestic legislation in line with the UN Convention on the Rights of Persons with Disabilities (ratified by India in 2007). The Bill enshrines the right to mental health care and treatment which is accessible, affordable and of adequate quality. The Bill also emphasises the need for equality of persons with mental illness in access to treatment, legal services, medical records, complaints procedures regarding treatment, and protection from inhuman and degrading treatment. Provisions are included for mentally ill persons to make advanced directives as to the conduct of future treatment should their decision-making capacity be diminished. The Bill makes provisions for the institution of mental health authorities and establishments, including a mental health review commission and board. The Bill decriminalises suicide and declares that survivors of attempted suicide are presumed to be sufferers of mental illness. Finally, the Bill restricts the use of electro-convulsive therapy (ECT) and prohibits its use on child patients

Source: <http://bit.ly/2pFuz2T>

### **Problematic Transgender Persons (Protection of Rights) Bill, 2016 passed by Lok Sabha**

A flawed Rights of Transgender Bill, 2016 passed by the Lok Sabha Ostensibly to recognise and protect transgender persons, the transgender bill rolls back many of the rights bestowed by the Supreme Court in NALSA vs. UOI. Most importantly, it takes away the right to self-determination of gender identity, instead pathologising it. The Bill requires certification of transgender identity. Despite the Supreme Court holding that transgender persons be entitled to affirmative action on par with Other Backward Caste category, the Bill fails to guarantee the rights to residence, non-discrimination in employment, education in government funded or recognized institutions; it also fails to provide legal remedies against discrimination, harassment or sexual violence. The Bill has been criticised and rejected by the transgender communities who call for a participatory process of drafting a law that is in full compliance with the NALSA judgement.

Source: <http://bit.ly/2o6MING> , <http://bit.ly/2oNyAB7>

### **Child Labour (Prohibition and Regulation) Amendment Act, 2016, legalises labour by children under 14 years**

In a regressive move for child rights in the domains of education, work, play and equal opportunity, the Lok Sabha passed the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, that allows children below 14 years of age to work in family establishments. The premise of the provision is that education and work can go hand in hand, but educationists, child-rights activists, as well as other civil society organizations disagree, as this not only fails to protect children from exploitation but also contravenes the Right of Children to Free and Compulsory Education Act. In a context of poverty and social pressure, it is more than likely that even close family will prefer immediate monetary income at the expense of the child's education and development. Besides, agriculture with the use of chemicals, beedi-making and carpet weaving, are all family run enterprises that put children at risk. Even where the child combines education with work, the high stress of juggling both has adverse consequences for the child's health and will result in dropping out of school. The Bill is strongly critiqued on all these counts, in addition for being contrary to the recommendations of the Parliamentary Standing Committee on Labour.

Source: <http://bit.ly/2o6D5YU> , <http://bit.ly/2opz10o>

### **Scope of Rights of Persons with Disabilities Act is expanded to benefit more persons**

The number of infirmities listed in the Rights of Persons with Disabilities Act has been increased from 7 to 21, through a Bill that was tabled in the winter session of Parliament. Responding to a Supreme Court directive and suggestions from the home ministry, the Act now includes Parkinson's disease and acid-attack among its recognized infirmities. Other provisions include a stress on making public buildings accessible, the strengthening of the offices of public authorities, the creation of funds to provide financial support as well as education-related interventions.

Source: <http://bit.ly/2hy7BU1>

### **Lok Sabha passes Maternity Benefits Act, 1961**

The Rajya Sabha amendment to the Maternity Benefits Act, 1961 increased maternity leave to six months, and required private sector to have a crèche at the workplace if they employ more than 50 women employees. The amendment discourages women from having more than two children, by reducing leave in the circumstances to 12 weeks. Like other labour laws, these benefits are available only to women in the organized formal sector, leaving out the informal and unorganized sectors where the largest number of India's women workforce exists.

In March, the Lok Sabha passed the Rajya-Sabha approved bill. Establishments with more than 50 employees are mandated to have creche facilities, and work-from home options are to be available if required.

Source: <http://bit.ly/2o6Jp2u> , <http://bit.ly/2pizEyh> , <http://bit.ly/2pFiYy1>

### **Maharashtra passes the Prohibition of Social Boycott Act**

The Maharashtra Legislature passed the Prohibition of Social Boycott Act, intending to address social ostracism inflicted in the name of caste, creed and community. The law defines social boycott as an individual or group denying to any person access to places of worship, visiting

burial grounds or other places used by the community; or when there is an interference or obstruction in the inter-caste marriages, or upon imposition of a dress code. It also prohibits obstructing, barring or discriminating against children from going to school, temples or medical institutions. The law makes social boycott a criminal offence, with a sentence of up to seven years imprisonment and a fine up to Rs. five lakhs. It also stipulates a time limit of 6 months for disposal of complaints, in addition to mandating appointment of district level officers to tackle and pursue social boycott cases.

The Central Government is planning to ask other states to replicate the Maharashtra law on social boycott. It also acknowledges that the implementation of such a law will be difficult in states such as Haryana, Rajasthan, Telangana and Andhra Pradesh, where caste-based panchayats exercise enormous influence over communities.

*The Act can be accessed at: <http://bit.ly/2piq8LA> ; Source: <http://bit.ly/2oSnPWb>*

### **Delhi Government to introduce the Placement Agency Regulation Bill in Assembly**

The Delhi government's Labour Department proposes to introduce the Placement Agency Regulation Bill in the upcoming budget session which will regulate the functioning of private placement agencies in Delhi for domestic workers and to improve the working conditions of domestic workers. The Bill was prepared after receiving suggestion from the Delhi Commission for Women (DCW).

The Bill makes licensing of placement agencies compulsory, provides terms and conditions under which the domestic helps will work and makes provisions for the minimum wages on hourly and monthly basis (according to the Minimum Wages Act), welfare schemes such as insurance and health care. It also lays down provisions for stringent action punishment and penalty such as; blacklisting the agency, seizure of their license and other action as per law against agencies that violate rules, non-registration and not getting proper license.

*Source: <http://bit.ly/2arX2gV>*

### **Gujarat to provide reservations to the economically backward in the upper castes**

The Gujarat Government is planning to introduce an ordinance to give 10 percent reservation for economically backward classes (EBC) among upper-castes for families that earn less than 6 lakh annually. This proposal was introduced against the backdrop of the Patidar agitation in Gujarat since last year, where the community was seeking to be included in the OBC category in light of their economic backwardness. The state government already provides 49 percent reservations to SC/STs and OBCs. An additional 10 percent reservation is likely to lead to a legal challenge for breaching the upper limit of 50 percent laid down by the Supreme Court.

*Source: <http://bit.ly/2oY2iUE>*

### **Nagaland government pledges to grant 25% reservation to women in Urban Local bodies**

Nagaland government has announced a 25% reservation to women through nomination and not election to the Urban Local Bodies (ULB). The nominations will be done by the Deputy Commissioners of the respective districts after thorough consultation with Naga Mothers' Association (NMA) and women bodies of the districts. Election to the urban local bodies (ULBs) in the state has been pending in the wake of the ongoing case filed in the Supreme Court by Naga Mothers' Association (NMA) demanding 33 per cent reservation for women in Municipal and



Town Councils.

Source: <http://bit.ly/2optR63>

### **MWCD releases draft National Policy for Women 2016**

Ministry of Women and Child Development has released a draft National Policy for Women 2016 which will replace the National Policy for the Empowerment of Women, 2001. The draft is aimed at re-scripting women's empowerment by following a socially inclusive rights-based approach and has invited comments on the same. Women's groups critiqued this policy for lack of a directional preamble, contextualising status of women, acknowledgment of specific challenges or indeed, impact of structural inequalities of caste, class, conflict, sexuality and ableism amongst others on specific groups of women.

The draft policy can be accessed here: <http://bit.ly/209zHEC>

### **Introduction of the Civil Aspects of International Child Abduction Bill, 2016**

The Civil Aspects of International Child Abduction Bill, 2016, is intended to enact domestic legislation in order for India to accede to the Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention enhances international recognition of rights of custody and mechanisms for the return of removed children. The Bill, if passed, is expected to impact the freedoms available to victims of domestic violence, particularly women, seeking to escape violence with their children. Recent data on the Hague Convention shows that 68% of absconding parents were mothers, the majority of which were fleeing abusive and violent homes.

Source: <http://bit.ly/2cq1hvM>

### **Judgments/ orders**

#### **SEXUAL AND GENDER BASED VIOLENCE**

#### **Delhi High Court holds consent of a minor immaterial for reduction of sentencing in rape**

The Delhi High Court disposed an appeal challenging the conviction and sentence under Sections 363, 366 and 376 of the Penal Code, 1860. The appellant contended that it was apparent from the evidence laid before the court that the prosecutrix was a consenting party having an affair with the appellant and therefore the sentence of the appellant should be reduced. The court held that since the consent of a girl below the age of 16 years is immaterial, it cannot be a mitigating circumstance to merit a sentence less than minimum 7 year sentence prescribed in law. The Court observed that the accused had enticed the minor prosecutrix into giving consent, making her consent immaterial. Citation: *Raju Kumar Verma @ Raju v. State (Govt. of NCT) of Delhi*, 2016 SCC OnLine Del 2993.

#### **Delhi High Court holds that there is no upper limit for compensation to victims of sexual assault**

In a case of sexual assault of a minor, the Court read in the provisions of the Criminal Procedure Code and the Protection of Children from Sexual Offences Act to hold that there is no upper limit to the compensation that could be awarded to a child, explaining that the amount of compensation must be based on circumstances of a case rather than the limitations of State compensation schemes. As this case concerned a male child victim, a category not expressly

included in the definition of 'victim' of sexual offences in the Delhi Victims Compensation Scheme, 2011, the Delhi High Court re-affirmed that minor boys fell within the scope of this relief and awarded 3 lakh to a minor boy who was sexually assaulted by three senior boys in 2013.

Source: <http://bit.ly/29WnpjP>

### **Supreme Court mitigates sentence of the former police head, S.P.S Rathore, for molestation of a minor, the late Ruchika Girhotra**

The Supreme Court upheld the conviction of former police head, S.P.S Rathore, for molestation in the Ruchika Girhotra case, yet reduced his 18 month sentence to a paltry 6 months already served, on grounds of old-age, ailments and past meritorious service. Ruchika had been molested by the accused, while he was of the President of the Haryana Lawn Tennis Association (HLTA) in 1990. As retribution for complaining, the accused had the minor victim was expelled from school and her brother arrested in several theft cases, driving Ruchika to commit suicide in 1993. On persistent efforts of Ruchika's childhood friend, the sole witness to molestation a criminal prosecution ensured, despite with the delaying tactics of the powerful accused.

Coming after 26 years of the molestation, at a time of heightened consciousness about sexual abuse of minors, this verdict amounts to nothing short of rewarding a powerful man for obstructing the course of law.

Citation: S.P.S. Rathore vs. C.B.I., 2016 SCC Online SC 985

Source: <http://bit.ly/2oNF7Mc>

### **High Court of Madras decrees that a victim of acid attack can claim compensation under the Victim Compensation Scheme framed under Section 357-A of Cr.P.C**

The High Court of Madras directed the victim of acid attack to file an application for compensation under the Victim Compensation Scheme (framed under Section 357-A of the CrPC) before the District Legal Services Authority (DLSA) within a period of three weeks from the judgment. The court also directed the DLSA to consider the same and pass orders recommending the petitioners case for compensation.

Source: <http://bit.ly/2hiZyOO> , <http://bit.ly/2oSsduR>

Citation: *Muthulakshmi v. The District Collector, Ramnad District*, 2016 SCC OnLine Mad 10398

### **Supreme Court orders enhancement of compensation in acid attack cases on the ground of severity of injury**

The Supreme Court in *Parivartan Kendra v. Union of India* held that no bar exists on the amount of compensation to be paid by the state government to victims of acid attacks, and that the amount should be determined depending on the severity of injury and taking into account loss to the victim in a long run.

The NGO Parivartan Kendra filed a PIL in the Supreme Court highlighting the plight of the acid attack victims and the inadequate amount of compensation given to them. The Court in this case observed that compensation can be enhanced by the state government on the basis of severity of

victim's injury, expenditure with regard to grafting and reconstruction surgery, physical and mental pain, etc. It directed that compensation should be awarded keeping in mind physical injury as well as victim's inability to lead a full life. It held that the state has a duty to prevent such crimes and in case of failure it will be duty bound to pay the compensation.

*Citation: Parivartan Kendra v. Union of India, (2016) 3 SCC 571*

### **Apex Court orders lifelong monthly compensation to be given to victim of sexual assault**

In a recent case, the apex court convicted a man for the offence of rape, while also ordering the state to pay a sum of Rs.8,000/- per month as compensation to the victim for the rest of her life. In this case, the victim was a blind girl who had sexual intercourse with the accused on the condition that he will marry her. However, when she became pregnant, the accused abandoned her. The Supreme Court recognised that the victim was in a vulnerable position as she had no family support and therefore, a duty was cast upon the State to look after her.

*Citation: Tekan @Teka Ram v. State of Madhya Pradesh, Cr. App. No. 884/2015*

*Source: <http://bit.ly/1SlxaqN>*

### **REGULATION OF SEXUALITY/MORAL POLICING**

#### **Guidelines by Central Information Commission (CIC) to protect lovers from retributive family/societal violence for inter-community marriages**

On an inquiry about rules and procedures under the Special Marriage Act, especially in relation to fraud/ void marriages and the concern for parental consent, the CIC made note of the violent social consequences of inter-caste and inter-religious marriages, to make recommendations to the Union and State governments to implement. These included, that an additional column be provided in applications for registration of marriage to allow couples to indicate reasonable apprehensions of threat to their life and liberty; with provision for providing security to the concerned couple. The Commission sought to balance the right to prevent fraudulent marriages, through the notice period, with the greater need to protect the couple from intimidation and real risk to life and liberty under articles 21 of the Constitution. The recommendations included displaying notice to marry on the official website, along with an official warning against assaulting the liberty of would-be spouses, thereby leaving space for genuine objections while protecting the couple's right to marry.

*Citation*

*Shashi v. PIO, Sub Divisional Magistrate (Civil Lines), CIC/SA/A/2016/001556*

#### **Bombay High Court rules that obscene acts in private will not amount to an offense**

The Bombay High Court in *Amardeep Singh Chudha vs. State of Maharashtra* held that obscene acts in private will not amount to an offence. The case related to the quashing of an FIR filed under S.294 of the IPC, obscenity in public, against men who were arrested from a house party. The petitioners contended that the acts alleged in the FIR took place in a private place so it is out of the purview of Section 294 of IPC. The court agreed with the contention of petitioners saying that a flat or apartment which is owned by a private individual for the private use cannot be called a public space. The court added that in a private space public does not have any right

except entering it therefore the provision of obscenity cannot apply. It also observed that the FIR did not mention any other offense other than obscenity therefore quashed the FIR.

*Citation: Amardeep Singh Chudha vs. State of Maharashtra, 2016 SCC OnLine Bom 2286*

### **Madras High Court directs Tamil Nadu to take action on the growing number of ‘honour’ killings**

The Madras High Court issued directions to the Tamil Nadu government in *B. Dilipkumar v. The Secretary to the Government to create Special Cell* for tackling growing number of honour killings in the state. After the brutal honour killing of a woman named C. Vimaladevi, her husband approached the Madras High Court for the directions to the concerned government authorities to take appropriate action. The petitioner provided a list of officials who failed to protect the couple as well as the number of honour killings that has taken place in the state in the recent years.

The High Court took into consideration the decision of Punjab and Haryana High Court in the case of *Manmeet Singh vs. State of Haryana* for directing the state police to ensure that the complaints of honour killings be dealt with promptly and sensitivity. It also directed that the state government create a Special Cell in every district comprising of Superintendent of Police, District Social Welfare Officer and District Adi-Dravida Welfare Officer to receive the complaint of harassment and threats to the couples of inter-caste marriages; including a 24 hours helpline by special cell to provide necessary assistance/advice and protection to the couples, and counseling to the aggrieved party and the parents.

*Citation: B. Dilipkumar v. The Secretary to the Government, 2016 SCC OnLine Mad 2122*

### **SC decrees that unnatural death within 7 years of marriage in and of itself is not sufficient for conviction for ‘dowry death’**

Ruling that the prosecution had failed to prove that the husbands and relatives had caused the death of the wife due to dowry pressures, especially since the family was wealthy and enjoyed status in society, the Court said that the legislative presumption as to dowry death under Section 113B of the Dowry Prohibition Act, 1961 would only get activated when it was proved that the deceased lady had indeed been subject to cruelty in the ‘reasonable contiguity of death’. The mere fact of unnatural death within 7 years of marriage is not ipso facto sufficient for conviction for ‘dowry death’.

*Source: <http://bit.ly/2oXVBBO> , <http://bit.ly/2g4T4jh>*

*Citation: Baijnath v. State of Madhya Pradesh, 2016 SCC OnLine SC 1287*

### **Supreme Court refers curative petition concerning Sec. 377 of Indian Penal Code to a larger constitutional bench**

The Supreme Court after hearing the curative petition on sec. 377 in an open court has decided to refer it to a larger bench. The court in its order referred the matter to constitutional bench comprising of five Hon’ble Judges of the Supreme Court stating that the issues raised in the petition are of considerable importance, public interest and include constitutional dimensions. Earlier in the year 2009 in the case of *Naz Foundation vs. the Government of NCT of Delhi*, High Court found section 377 violating Article 14, 15 and 21 and unconstitutional. But in the

year 2013 the Supreme Court of India in Suresh Kumar Kaushal vs. Naz Foundation held that section 377 of IPC does not violate the constitution.

Celebrities of LGBT community have also moved the Supreme Court seeking quashing of Section 377 of IPC to protect their sexual preferences, saying these are part and parcel of the right to life. The petition, moved by chef Ritu Dalmia, hotelier Aman Nath and dancer NS Johar among others argues that section 377 is an infringement of their fundamental rights. The court directed that this matter be clubbed with the curative petition against 377, which is to be heard by a five judge bench.

Source: <http://bit.ly/2pFmtoh> , <http://bit.ly/2opzUaw>

### **MARRIAGE, DIVORCE AND FAMILY**

#### **Supreme Court rules that women can also be prosecuted against under the Protection of Women against Domestic Violence Act, 2005**

A two-judge bench of the Supreme Court has struck down the words ‘adult male’ from Section 2(q) of the PWDV Act, to allow a complaint to be made against another woman. The judges found that the object of the legislation was to protect women from domestic violence and the reality is that this violence can and is perpetrated or abetted by women as well. The bench felt that this reading is more equitable as per the mandate of Article 14 of the Constitution, as well as the object of the legislation which was a social benefits statute meant to protect women from all forms of domestic violence.

The decision is controversial because whereas it focuses on the objective of the legislation to the exclusion of the socio-economic realities experienced by women, in which they often become soft targets to deflect attention away from prosecuting male family members.

*Citation:* Hiral P. Harsora vs. Kusum Narottam das Harsora, CIVIL APPEAL NO.10084 of 2016(ARISING OUT OF SLP (CIVIL) NO. 9132 OF 2015)

Source: <http://bit.ly/2pUttNf> , <http://bit.ly/2oYgUDx>

#### **Orissa High Court rules that ‘residence’ for jurisdiction under PWDV Act includes temporary residence and that even if not living with perpetrator, a woman can be aggrieved person under PWDVA**

While hearing a case about a widowed mother taking temporary shelter at her eldest daughter’s home after being compelled to leave her house, the Orissa High Court held that ‘residence’ under Section 27 of the Protection of Women from Domestic Violence Act, 2005 would include both temporary and permanent residence of an aggrieved person. Section 27 of the Act deals with the jurisdiction of a competent court to pass necessary orders under the legislation on behalf of women applicants. The decision of the court therefore makes it easier for women applying for relief under the legislation, despite unstable residential conditions.

A remaining limitation, however, might be posed by the position that “temporary residence does not include a place where the aggrieved person may stay or reside for the purpose of filing a case against another or a place where the aggrieved person has gone on a casual visit, a lodge or hostel or a guest house or an inn where she stays for a short period; rather a place where the

aggrieved person was force to reside for the time being in view of the commission of domestic violence”.

*Citation:* Rabindra Nath Sahu vs. Smt. Susila Sahu, 2016 SCC OnLine Ori 592

*Source:* <http://bit.ly/2cY32Ae>

The High Court of Orissa also ruled that even if a woman is not living with the accused/respondent at the time of filing of application under Protection of Women from Domestic Violence Act, 2005, she could file an application before Magistrate under the PWDV Act. It would be deemed sufficient if the aggrieved person lived with the respondent at any point of time and despite living at separate places currently, they are related by consanguinity, marriage, or through a relationship in the nature of marriage.

*Citation:* *GiridhariNath v MamitaraniSutar*, 2016 SCC Online Ori 818

*Source:* <http://bit.ly/2opwCEj>

**High Court of Kerala rules that even a divorced wife is entitled to initiate proceedings under the PWDVA while Punjab and Haryana High Court rules that a complaint under Domestic Violence Act cannot be sustained after divorce**

Recognizing that even after divorce certain obligations like custody of children and operation of bank accounts continue, the High Court of Kerala ruled that it would be illogical to hold that the scope of protections under the Protection of Women from Domestic Violence Act, 2005, cease after dissolution of marriage. The claim for maintenance had been challenged by the husband on the ground that there was a pre-nuptial agreement between the couple that no claims would be made after marriage. The Court rejected this saying that the statutory provisions of the Domestic Violence Act could not be contracted out unless it was proved that there was a mutually satisfactory settlement of all claims. The legally divorced wife thus had a locus standi during her entire lifetime.

*Source:* <http://bit.ly/2gt5of9>

*Citation:* *Bipin v. Meera D.S.*, 2016 SCC OnLine Ker 19559

However, the Punjab and Haryana High Court held that the provisions of the Domestic Violence Act can only be invoked while the marital relationship is in existence. Once a marital relationship is ended by a divorce decree, a complaint under Domestic Violence Act cannot be filed at all.

This finding of the Court was made on an appeal filed by the husband seeking to quash a complaint filed by his wife under the Domestic Violence Act. He claimed that the marital relationship between the petitioner and his wife had ended by an exparte divorce decree, and therefore a complaint under the Domestic Violence Act was not maintainable.

The Court noted that the language of relevant provisions i.e. Section 2(a) and 2(f) of the said Act uses ‘who is’ and ‘has been’, both being verbs are in present tense, requiring the marital relationship to be in existence . In relying upon technicalities to reject the case, the judgment does disservice to the goals of the statute that extends protection to wives, girlfriends and live in partners amongst others, to address intimate partner abuse arising from the power inequalities .



The court failed to question the circumstances of the ex parte divorce decree, or go into the substance of domestic violence allegations, neglecting the core concerns that this law seeks to remedy.

Citation: *Amit Agarwal v. Sanjay Aggarwal*, 2016 SCC OnLine P&H 4200.

### **Delhi High Court holds that National Commission for Women (NCW) is acting beyond jurisdiction by taking complaints from women directly**

In the case of *Kunal Chauhan v. National Commission for Women* the Delhi High Court held that the NCW frequently in many cases has taken actions beyond its jurisdiction.

The petitioner is a Marine Engineer against whom his wife had filed a complaint with the Special Unit of Women and Child of Crime Against Women Cell of Delhi Police and also filed a petition in the District Court at Saket, New Delhi. She had also filed a complaint with the NCW which issued an advisory order to the High Commissioner of India in Singapore. On receipt of this advisory order, the petitioner was sacked by his employer, leading to him filing a writ of mandamus under section 226 of the Constitution for recalling the advisory order of NCW. In response the NCW explained it derives its authority from a letter issued by the Ministry of Overseas affairs, Government of India to receive and process complaint of Indian women deserted by their husbands who live overseas.

The Court held that NCW has misconstrued its functions. It explained that the letter from the Ministry places NCW as a coordinating authority to guide women in distress to the appropriate authority with the power to address the complaint, rather than adjudicate on behalf of the appropriate agencies. Citation: *Kunal Chauhan v. National Commission for Women*, 2016 SCC OnLine Del 2009

### **Allahabad High Court says that Triple Talaq cannot be invoked without serious reasons and attempts at reconciliation**

A Muslim couple approached the Allahabad High Court petitioning that police and others were harassing them for living together, and that they were at liberty to choose their life partner. The Court criticized the manner in which the husband had divorced his first wife using triple talaq only to marry his current wife, noting that “the view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions”. The judges observed that the idea of divorce in Islam is itself permissible only in cases of extreme emergency and that the law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause preceded by attempts at reconciliation between husband and wife by an arbiter from each family.

Source: <http://bit.ly/2ho3eKF>

Citation: *Hina v. State of U.P.*, 2016 SCC OnLine All 994

### **Delhi High Court rules that intention to continue marriage just to torment is relevant factor for considerations of cruelty**

The Delhi High Court observed that where it was evident that the husband and wife indulge in mutual bickering till the stage where they target each other mentally, insistence by one of them on retaining the matrimonial bond would be relevant to consideration of the issue of cruelty,

since it could be deemed obvious that the intention of said spouse would be to torment and traumatise the other.

Source: <http://bit.ly/2oY6MdP>

Citation: *Anurag Sharma v. Manushi Sharma*, 2016 SCC OnLine Del 5871

### **Delhi High Court rules that unilateral withdrawal of consent from mutual consent divorce amounts to mental cruelty**

In a case where the husband withdrew consent after having entered into a settlement deed for mutual consent divorce with his wife, the Delhi High Court took into due consideration the emiserating situation in which the wife would be left by such an action. The two-judge bench observed that when there was no allegation of force, fraud or undue influence, and considering that the wife had also withdrawn her divorce petition and hence her claim for custody of her son, the husband's action could only amount to mental cruelty. The judges also relied on case precedent to reiterate that when there is continual separation and a concomitant refusal to sever legal ties, the law does not then serve the sanctity of marriage by reinforcing that tie. In fact, it would amount to showing scant regard for the feelings and emotions of the parties.

Source: <https://indiankanoon.org/doc/169701404/>

Citation: *Rajiv Chhikara v. Sandhya Mathur*, 2016 SCC OnLine Del 6224

### **Supreme Court states that allegation of extra-marital relationship must be accompanied by other ingredients to qualify as cruelty under Section 498-A IPC**

Despite the fact that the accused was involved in an extra-marital affair, and that the wife, the paramour and the latter's relatives killed themselves because of abject social humiliation, the Supreme Court ruled that this could not be regarded as mental cruelty and would better constitute grounds for divorce. It was felt that, although immoral, other ingredients needed to be brought home to constitute a criminal offence. The judges also commented that the wife was 'guided by rumour' and also that her suspicion 'has no boundary', and that this would not constitute an offence or establish guilt under Section 306 of the IPC.

Source: [http://supremecourtfindia.nic.in/FileServer/2016-11-24\\_1479989961.pdf](http://supremecourtfindia.nic.in/FileServer/2016-11-24_1479989961.pdf)

Citation: *K.V. PrakashBabu v. State of Karnataka*, 2016 SCC OnLine SC 1363

### **Orrisa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases**

In this case, the Orrisa High Court set aside the judgment of the Family Court which allowed the application for divorce in favour of the husband.

The respondent had filed an application under section 13 (i) (a) of the Hindu Marriage Act, 1955 for grant of divorce against the appellant alleging that she had deserted him by voluntarily leaving the house with the minor child causing cruelty. The Family Court gave the decision in favour of the husband. Thereafter the appellant approached the High Court. According to appellant she was thrown out of the house immediately after the birth of child. The question

before the court was that whether the allegations made by the respondent fall under the category of cruelty which is a ground for divorce.

The court observed that the allegations made do not fall under the category of cruelty because marriage is reviewed as a whole and few isolated instances will not amount to cruelty especially if the marriage is new and couple has a new born child. Therefore, the Court in this case held that the marriage in this case is not ruined beyond any hope of reconciliation and directed the respondent to restore the conjugal relationship and maintain both child and the wife.

*Citation: Sonali Samal v. Vikrant Parida, 2016 SCC OnLine Ori 198*

### **Delhi High Court holds that tenanted premises comes under the category of 'shared household' under PWDVA**

In this case the tenant and his wife were involved in a matrimonial dispute while they were living on rent. In the meanwhile the rent expired and the tenant did not vacate the premises which led to the filing of suit of eviction by the landlord. The Trial court gave the judgment in the favour of landlord for eviction. The appellant challenged the judgment of Trial court saying that the premises were her matrimonial home and her Constitutional and statutory right to residence and shelter was compromised by this judgment.

The Court observed that her right cannot be enforced against the landlord who does not come under the purview of respondent in a domestic relationship. Moreover, the eviction was proposed in accordance with the provisions of law after the term of expiry of the tenancy. The Court rejected the claim of appellant and held that landlord is an outsider in the matrimonial dispute between the parties and it is not lawful to force the landlord to extend the tenancy without their willingness.

*Citation: Anukriti Dubey v. Partha Kansabanik, 2016 SCC OnLine Del 1930*

### **Supreme Court holds that presumption of abetment of suicide cannot be disturbed**

The Supreme Court upheld that judgment of the Karnataka High Court which invoked presumption of abetment of suicide against the husband and his relatives in cases where the woman has committed suicide within seven years of the marriage. It cautioned that only in rarest of cases Court can refuse to invoke the presumption of cruelty. However, if the prosecution succeeds in establishing the component of cruelty leading to conviction under Section 498A, and if other requirements of Section 113A of the Evidence Act stand satisfied, the statutory presumption stands. According to the prosecution, victim committed suicide due to the dowry demands. But the appellant contented that suicide was an outcome of the victim being stopped from going to her mother's place. Rejecting this appellant's contention as untrustworthy, the Supreme Court said that no explanation was given by the accused for the injuries on the person of the victim. Therefore, the Court upheld the order of the High Court cancelling the bail and directing the appellant to serve the remaining period of the sentence.

*Citation: Satish Shetty v. State of Karnataka, 2016 SCC OnLine SC 589.*

### **Supreme Court rules that Hindu son can divorce wife on the ground of cruelty if she tries to pry him away from his aged parents**

In a highly questionable move, the Supreme Court while confirming the divorce of a Karnataka-based couple said that a Hindu son has a 'pious obligation' towards his aged parents and that the wife becomes a 'part of the family' once she gets married. The basis for such reasoning was merely 'Indian culture and ethos'. The court found that if the wife tried to dissuade the husband from the parents, the action amounted to cruelty, by virtue of which the husband can secure a divorce.

*Citation:* Narendra vs. K. Meena, CIVIL APPEAL NO.3253 OF 2008, [http://www.thehindu.com/multimedia/archive/03037/Hindu\\_son\\_can\\_divo\\_3037056a.pdf](http://www.thehindu.com/multimedia/archive/03037/Hindu_son_can_divo_3037056a.pdf)

*Source:* <http://bit.ly/2d7QFE5>

### **Delhi High Court observes that a decree for restitution of conjugal rights only pertains to cohabitation, not sexual intercourse**

In a particular case, the Family Court passed a decree for restitution of conjugal rights, but the appellant/wife preferred an instant appeal as she did not want to be forced to have physical relationship with respondent/husband in execution of the decree. The Court ruled that the object of decree for restitution of conjugal rights is to bring about cohabitation between parties so that they can live at their matrimonial home in amity, and if it is not complied with for a period of one year it becomes a ground to seek dissolution of marriage under Section 13(1A)(ii) of Hindu Marriage Act, 1955.

The Court therefore saw the scheme of the legislation and the purpose of seeking restitution of conjugal rights as a stepping stone to divorce. They found that the purpose behind filing of a petition under Section 9 of the Hindu Marriage Act for seeking a decree for restitution of conjugal rights or filing the execution appears to be not to force the wife to resume cohabitation but through disobedience, to achieve the requirement under Section 13(1A)(ii) of Hindu Marriage Act, 1955 to seek divorce. It was made clear that the passing of a decree for restitution of conjugal rights at the most enforces cohabitation but it does not and cannot enforce sexual intercourse.

*Source:* <https://indiankanoon.org/doc/154265535/>

*Citation:* Sudha Gupta vs. Har Prasad Gupta, MANU/DE/2750/2016

### **Bombay High Court rules that mere *talaqnama* not sufficient proof of Muslim divorce**

The Bombay High Court in *Shakil Ahmad Jalaluddin Shaikh vs. Vahida Shakil Shaikh* has held that, mere existence of a document like *talaqnama*, is not sufficient to render a valid *talaq*.

The case pertained to an appeal before the High Court against an order of the Sessions Court granting maintenance to the woman under S.125, CrPC. The husband contended that he had validly divorced his wife, and under the Muslim Women (Protection of Rights of Divorce) Act, 1986, he had no obligation to give any maintenance to the wife beyond the *iddat* period.

The High Court, however, rejected this contention and held that a document such as the *talaqnama* is insufficient for a valid divorce under Muslim law, unless it can be proved that the necessary preconditions of arbitration and conciliation were also undertaken, as per the Supreme

Court decision in *Shamim Ara v. State of UP*.

Citation: Shakil Ahmad Jalaluddin Shaikh v. Vahida Shakil Shaikh, W.P.2201/2007, Bom. HC

Source: <http://bit.ly/2pFfZpc>

### **Delhi High court grants divorce because wife calls husband ‘corrupt’ and ‘womaniser’ in pleadings**

In a recent judgment, the Delhi High Court dismissed an appeal by a woman against a divorce order granted by the family court. In her written statement before the family court, she had alleged that her husband was a ‘corrupt officer’ and a ‘womaniser’. The High Court observed that the statements made by the wife were not in the heat of the moment but in a pre-meditated and calculated manner, in legal proceedings and that there was no cogent evidence to prove the same.

Stating that to be called a womanizer and corrupt by his own spouse, would have caused such pain and suffering to the respondent as would lead him to entertain the apprehension that it would not be conducive to his physical and mental wellbeing, the High Court upheld the order of the divorce.

Citation: AS v. SNS, MAT. APP. 54/2009

Source: <http://bit.ly/2oNFx5e>

### **Delhi High Court rules that women can be ‘karta’ of Hindu undivided family**

The Delhi High Court ruled that the eldest woman can be a *karta* of a Hindu Undivided Family (HUF). In this case, after the death of the four brothers in an HUF, the eldest son of a younger brother declared himself to be the next *karta*. This was challenged by the daughter of the eldest brother, who was the senior-most member in the family. The respondent argued that the 2005 Amendment to the Hindu Succession Act gave equal rights to daughters in succession to ancestral property, but not management of the estate.

Rejecting the contention, High Court held that “[t]he amendment recognises equal rights of inheritance to Hindu males and females, its objective is to recognise the rights of female Hindus and to enhance their rights to equality apropos succession. Therefore, courts would be extremely vigilant in any endeavor to curtail or fetter statutory guarantee of enhancement of their rights. Now that this disqualification has been removed by the 2005 amendment, there is no reason why Hindu women should be denied the position of a karta”.

Citation: Sujata Sharma v. Manu Sharma, 2015 SCC OnLine Del 14424

Source: <http://bit.ly/2oYbOah>

### **Supreme Court rules that ‘stridhan’ given at the time of marriage is not held by in-laws in ‘trust’ in the absence of a common residence**

In a recent case, the father of a deceased woman had lodged a complaint under S.6, Dowry Prohibition Act, against her husband and in-laws for return of dowry articles. Under S.6, whoever receives dowry on behalf of a woman, is bound to return the dowry articles to her within stipulated time, and after her death, to her parents in the absence of children.

In the instant case, the woman was residing with her husband in Bangalore, while her in-laws stayed separately in Vizianagaram. The Apex Court held that since the in-laws were not residing

with the couple, it could not be said that they received the articles on behalf of the woman, and thereby they were not holding it in trust for her.

Citation: *Bobbili Ramakrishna Raju v. State of Andhra Pradesh*

Source: <http://bit.ly/2o6HI4W>

### **Orrisa High Court rules that the length of cruelty alleged should be taken into consideration while deciding upon the divorce cases**

The Orrisa High Court in the case of *Sonali Samal v. Vikrant Parida* set aside the judgment of the Family Court which allowed the application for divorce in favour of the husband.

In this case the respondent had filed an application under section 13 (i) (a) of the Hindu Marriage Act, 1955 for grant of divorce against the appellant alleging that she had deserted him by voluntarily leaving the house with the minor child causing cruelty. The Family Court gave the decision in favour of the husband. Thereafter the appellant approached the High Court. According to appellant she was thrown out of the house immediately after the birth of child. The question before the court was that whether the allegations made by the respondent fall under the category of cruelty which is a ground for divorce.

The court observed that the allegations made do not fall under the category of cruelty because marriage is reviewed as a whole and few isolated instances will not amount to cruelty especially if the marriage is new and couple has a new born child. Therefore, the Court in this case held that the marriage in this case is not ruined beyond any hope of reconciliation and directed the respondent to restore the conjugal relationship and maintain both child and the wife.

Citation: *Sonali Samal v. Vikrant Parida*, 2016 SCC OnLine Ori 198

### **CUSTODY AND MAINTENANCE**

#### **Delhi High directs due process of law to be followed before depriving adoptive parent of child's custody**

The Delhi High Court disposed of a habeas corpus writ petition directing the NGO to hand over the custody of a minor adopted child to the adoptive mother. The petitioner contended that she had the rightful custody and guardianship on the child based on the adoption deed signed in 2008. The dispute between the biological parents and adoptive mother on the custody of the child was settled in 2015 wherein CWC passed an order in favour of the adoptive mother. However, in May 2016 the CWC suo moto took up the matter based on a newspaper report that the child's biological mother contended that she was forced to part with the child and made to sign various documents, which were not even explained to her. Based on this the petitioner was directed to be present before CWC and custody of the child was forcibly taken by CWC and handed over to an NGO in the presence of the biological mother.

The court held that the adoptive mother cannot be deprived of the child's custody without following the due process of law and the procedure adopted by CWC was extremely unusual and dangerous and not in the best interest of the child.

Citation: *Sulekha v. State NCT of Delhi*, 2016 SCC OnLine Del 3566



### **Bombay High Court waives court fee for mothers claiming maintenance for minor sons**

A 1994 notification issued by the State government, exempted court-fee payments only to mothers seeking maintenance for minor girls, but not minor boys. A PIL filed by MajlisManch sought parity in exemption, pointing out that this exemption was discriminatory to male children, and more importantly, the only sufferer is the mother as the child would obviously be unable to pay. The PIL also stated that the existing situation deterred those mothers who were unable to pay court fees on the amount claimed as maintenance for the son. The court extended the exemption to maintenance claims by mothers on behalf of male children, noting that there were multiple better sources of revenue for the court.

The ruling is significant for it acknowledges not only the institutional limitations but also the financial context experienced by mothers seeking maintenance.

*Citation:* PIL/72/2016

*Source:* <http://bit.ly/2pFqzPY> , <http://bit.ly/2pUqK6z>

### **Mere allegations of infidelity insufficient to rebut the legal presumption of paternity**

The Delhi High Court increased the burden of proof on the husband to rebut the presumption that a child born to a married woman during subsistence of marriage or within 280 days of severance is the legitimate child of the husband. This presumption of paternity is vital for claims of maintenance, to rebut which, the court said that a husband must establish compelling case of non-access to the wife. Therefore, bald allegations of infidelity would not lead a court to impose a DNA test to prove paternity. The court reiterated the established principles, that even if a DNA test proved otherwise, a husband living with a wife during a time of conception would be presumed the legal father of the child.

*Citation:* *W vs. H and Ors*, MAT App.(F.C.) 17/2016 and CM No. 5064/2016, MANU/DE/2216/2016

*Source:* <http://bit.ly/2cxsQaG>

### **Orissa High Court allows magistrates to issue ex-parte interim order for temporary custody of child**

In a criminal revision petition involving the granting of custody of a five-year old child to the mother by ex-parte interim order, the Orissa High Court upheld the granting of custody contingent on the condition that there is a circumstance of exigency, which can only be considered if the application prima facie suggests the commission of domestic violence.

*Source:* <http://bit.ly/2pimwJt>

*Citation:* *Vinay Gupta v. SaveriNayak*, 2016 SCC OnLineOri 862

### **High Court of Chhattisgarh decrees that assets left by deceased husband can be proceeded against in petition for maintenance**

The High Court of Chhattisgarh decreed that the assets left behind by the husband can be proceeded against for the satisfaction of a decree of maintenance, irrespective of their subsequent

transfer to his legal heirs. The Family Court order against which the appeal was made in this court had granted maintenance to the divorced wife but declared that she could not claim permanent alimony as her husband had died. However, the High Court remitted the matter back to the lower court stating that, since no other decree gets extinguished, a decree for alimony also does not terminate with the death of the husband but may be satisfied as against the assets left behind by him in the hands of his legal heirs. The proper course for the executing court therefore would be to direct parties to provide full particulars of all movable and immovable properties belonging to the husband so that the amount of permanent alimony is recoverable from these. Though the heirs are not personally liable, they were found to be liable to the extent that they were in possession of the assets. The High Court directed them not to transfer or create a third-party interest in the immovable properties till the time that the executing court resolves the matter.

Source: <http://bit.ly/2opwSTN>

Citation: *Arial I. Kumar v. Shrimati Shikha Kumar*, 2016 SCC OnLineChh 1458

### **Delhi High Court rejects interim maintenance for a professionally qualified woman capable of sustaining herself**

Interpreting the object of Section 24 of the Hindu Marriage Act, the Delhi High Court refused to award interim maintenance to a Chartered Accountant claiming maintenance for herself and her two children. The petitioner was claiming 3 lakh rupees per month. The fact that she had a successful practice and could maintain herself for thirteen years was considered as indicative of her self-sufficiency. The Court, however, awarded the claimant Rs. 22,900 per month towards the maintenance of the two children.

Citation: *Rupali Gupta vs. Rajat Gupta*, 2016 SCC OnLine Del 5009

Source: <http://bit.ly/2oNQzYI>

### **High Court of Madhya Pradesh holds that wife living separately from husband without 'sufficient reason' is not entitled to maintenance**

Responding to a revision petition filed against a family court decision, the High Court of Madhya Pradesh ruled that since the wife was unable to prove the charge of harassment it cannot be held that she was forced to leave her matrimonial home under too much harassment. The Court noted facts such as that there were no allegations of harassment during the first week of residence in her matrimonial home, but that the allegations were made regarding the next twelve days; the lack of complaints made to police authorities or the brother. The judges thus felt that she could not be said to have been forced to leave her matrimonial home, and thus was living separately without reason.

Source: <http://bit.ly/2hDf9J1> , <http://bit.ly/2opEXbb>

Citation: *Anil Jain vs Smt. Sunita*, 2016 SCC OnLine MP 6368

### **MATERNITY BENEFITS AND LABOUR**

### **High Court directs Maharashtra Government to set up State Coordination Committee for granting benefit of child care leave**

The Bombay High Court directed the state of Maharashtra to set up a coordination committee for granting benefit of child care leave. In a writ petition, the petitioner sought directions against the state government for not providing child care leave, when she was in fact entitled to the child care leave under the Central Civil Services (Leave) Rules, 1972. The respondent argued that no such provision exists under the leave rules of State Government at par with the Central Civil Services Rules and that the functioning of the Government will be affected if a large number of women government servants go on leave. The court directed the respondents to grant leave to the petitioner for 730 days for bringing up and welfare of a disabled daughter. It also directed the State Government to constitute State Co-ordination Committee which shall take decision whether to grant child care leave with pay or not.

Citation: *Deepika Sagar Nersekar v State of Maharashtra*, 2016 SCC OnLine Bom 2762.

### **High Court of Uttarakhand holds that contractually or temporarily employed government servants are entitled to maternity leave**

Responding to a petition for maternity leave filed by a contractually employed lecturer of sociology, the High Court of Uttarakhand stated that maternity leave is key for maternal and child health and family support. The judges located maternity benefits in the context of the broader struggle against social injustice, poverty and gender inequality by seeing it as a form of social insurance.

Accordingly, they directed the State to grant maternity leave to the petitioner with full pay and to grant all female employees maternity leave with full pay for 180 days; even those working on contractual basis, ad hoc/tenure or temporary basis. Further, at least 60 days' maternity leave was to be granted to daily wage female employees working for more than 240 days' in a block of 12 months calendar with full wages. Other directions included the requirement of every establishment of 50 or more employees to have crèche facilities and the right of every mother to visit the crèche/nursing care at least four times daily, including the interval for rest allowed to the employees. Male employees are also entitled to paternity leave.

Source: <https://indiankanoon.org/doc/84071403/>

Citation: *Smt. Dr. Deepa Sharma vs State of Uttarakhand And Others*, 2016 SCC OnLineUtt 2015

### **Supreme Court clarifies principle of 'equal pay for equal work' for all employees, whether temporarily or regularly engaged**

The Court unilaterally ruled that the principle of equal pay for equal work applied to all nature of employment, and therefore covered people temporarily engaged as daily wage workers and other casual employees. The bench ruled that all employees are entitled to minimum pay and dearness allowance. The Court also said in a welfare state, someone who is compelled to work at a lesser wage cannot be said to do so voluntarily.

Citation: *State of Punjab vs. Jagjit Singh*, 2016 SCC OnLine SC 1200

Source: <http://bit.ly/2eaF2KT>

### **TARGETTED VIOLENCE**

### **Supreme Court holds armed forces accountable for ‘encounter’ deaths**

A two-judge bench of the apex Court directed that every death caused by forces in insurgency areas should be comprehensively enquired into, whether the victim was a terrorist, militant or insurgent, noting that even alleged ‘enemies’ as citizens of the country were entitled to fundamental rights under Article 21 of the Constitution. The contention of the government that such an order would demoralize troops was countered by a reminder of the equally demoralizing reality experienced by civilians living under the fear of guns in a democracy.

This judgment is significant for striking at the immunity to security forces under the Armed Forces Special Powers Act, 1958, in wake of which several un-investigated disappearances and deaths in disturbed areas are reported. The ruling is thus a fitting response to the plea of hundreds of families in Manipur for a probe by the Special Investigation Team into 1528 alleged fake encounter cases involving the Army and the police.

*Citation: ExtraJudl. Exec.Victim Families vs Union Of India &Anr, WRIT PETITION (CRIMINAL) NO.129 OF 2012*

*Source: <http://bit.ly/2oYluRX>, <http://bit.ly/2o6IpvI>*

### **Supreme Court directs all government authorities to strictly implement the SC/ST Act 1989**

Responding to a public interest petition seeking a writ of mandamus to the Union Government to implement a national, the Supreme Court took cognizance of the continued large-scale violation of rights of Dalits and other minority groups despite Constitutionally guaranteed rights and the objective of social equality. The Court said that the Central government was as responsible as State governments to ensure that the Act was effectively implemented. Both levels of government were therefore directed to strictly enforce the legislation and also formulate schemes to spread awareness and provide free legal aid to members from the SC and ST and other minority communities.

*Source: <http://blog.sconline.com/post/2016/12/20/central-and-state-governments-directed-to-strictly-enforce-the-scheduled-castes-and-scheduled-tribes-prevention-of-atrocities-act-1989/>,*

*Citation: National Campaign on Dalit Human Rights v. Union of India, 2016 SCC OnLine SC 1488*

### **Calcutta High Court directs State Government to address the practice of witch-hunting**

In a case where the petitioners were driven out of their village on the suspicion of practicing witch-craft, the Court set out guidelines for the State Government to address witch hunting in West Bengal. The directions included the need to form a multi-disciplinary committee of experts to look into and report on the prevalence of the practice with a special emphasis on tribal areas. The court directed the Government to post intelligence officers and constitute special cells of police, for conducting surveillance to detect and file criminal charges against those perpetuating witch-hunting; it also directed that victims be given medical, psychological help and protection as vulnerable witnesses of the crime; recommending that the state government consider a Comprehensive Victim Compensation Scheme under the Code of Criminal Procedure. The judgment imposes a duty upon State officials to take cognizance of the practice, as well as takes steps towards making the justice more victim centric.

Citation: *Smt. Moyna Murmu v. State of West Bengal*, 2016 SCC OnLine Cal 4272

Source: <http://bit.ly/2b0iRIL>

### **Supreme Court calls on the Central Government to explain the lack of legislative safeguards from custodial torture**

UPA ex-law minister Ashwani Kumar's PIL to the Supreme Court seeks court direction for a law to punish police for custodial torture. His committee had recommended a comprehensive law to prevent custodial torture in 2010 but the Prevention of Torture Bill, 2010 had failed to get passed. Till date, India does not have any legislation that defines 'torture' or deals with the reality that people in custody are often tortured for information. This is despite the fact that the country is a signatory to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Source: <http://bit.ly/2dqxPuI>, <http://bit.ly/2dfWUqj>

### **CIVIL LIBERTIES**

### **Supreme Court upholds Bombay High Court decision that ban on women entering the sanctum sanctorum of Haji Ali Dargah is unconstitutional**

A group of Muslim women petitioned the Bombay High court after one individual was prevented from entering the sanctum of the Dargah to offer prayers. Rejecting the Dargah's contention of women's safety, the court held that the ban was in fact an excuse to avoid taking other safety measures. The court held the denial of entry to violate the fundamental rights of women guaranteed by under Articles 14, 15 and 25 of the Constitution.

The Supreme Court gave the Haji Ali Dargah Trust two weeks time to allow women pilgrims inside the sanctum sanctorum at par with men. The Trust offered to relay the flooring in the dargah, and was told that any failure in completing the entire process after four months of the order could be taken up by aggrieved in the High Court.

Bombay High Court Citation:

*Dr. Noorjehan Safia Niaz v. State of Maharashtra*, 2016 SCC OnLine Bom 5394

Supreme Court Citation:

*Haji Ali Dargah Trust vs. Dr. Noorjehan Safia Niaz*, 2016 SCC OnLine SC 1199

Source: <http://bit.ly/2eq63Nh>, <http://bit.ly/2bD43zL>

### **Supreme Court and Bombay High Court hold that banning entry of women into temples discriminates against women**

While hearing the PIL which is challenging the prohibition of entry of women into the Shani Shignapur temple, the Bombay High Court directed the state government that it has a duty to protect the fundamental rights of women and to prevent the gender discrimination on the entry to temples. The court said that any person who imposes restriction on entry in temple will face six-month jail term under the law. It asked the state government to implement the provisions of Maharashtra Hindu Places of Public Worship (Entry Authorization) Act, 1956 by directing the Superintendent of Police and the Collectors by ensuring its compliance. It also asked the state

government to publicize the law among the general public. If the state government fails to do so then the High Court will take some action.

Meanwhile the Supreme Court in the Sabrimala temple case said that religious practices banning the entry of women in the temple are danger to gender justice and will have to pass the constitutionality test in the court of law. The court also sought to look into the previous judgments which upheld the ban on the entry of women in temples.

Source: <http://bit.ly/2oNKZFj> , <http://bit.ly/2oNKZFj>

### **Bombay High Court strikes down criminalisation possession and consumption of beef in Maharashtra as infringement of right of privacy**

Upholding the constitutional validity of Maharashtra Animal Preservation (Amendment) Act, 1995 (that received presidential assent 20 years later in 2015), the Bombay High Court struck down three controversial provisions of the Act as infringement of right of privacy, as being integral aspect of personal liberty protected by Article 21 of the Constitution. The Amendment Act sought to extend the bans on the slaughter of calves and cows, to bulls and bullocks, prohibit the transport, sale and purchase and disposal of cows, bulls and bullocks for the purpose of slaughter. It also sought to prohibit the possession of beef per se whether or not it was obtained from the state or elsewhere, shifting the onus of proof on the accused. On 20 writ petitions filed by farmers, lawyers, students, film makers, the Court has struck down Section 5D of the Act that criminalises the possession of beef brought from outside Maharashtra and 9B that put burden of proof on the person accused of possessing beef, holding these provisions to be in intrusion in the privacy of an individual's home and the right to eat food of one's choice. The court however upheld the power of a competent authority to enter, stop and search any vehicle used for the export of cow, bull or bullock and seize it; and also the provision that no prohibited animal can be transported for slaughter or with the knowledge or likelihood of it being slaughtered and the ban on purchase, sale or disposal of flesh.

Citation: *Shaikh Zahid Mukhtar and Ors. V. State of Maharashtra and Ors*

### **Supreme Court mandates commission of committee to address long pending issue of right to shelter of homeless persons in urban areas**

Responding to two decade-old writ petitions concerning the right to shelter of homeless persons in urban areas, the Supreme Court expressed dissatisfaction with the steps taken by the Government of India in terms of implementation of the Scheme of Shelters for Urban Homeless and the guidelines issued under them. They noted that despite availability of funds and mechanisms, there was no real improvement on the ground. In light of the urgency of the approaching winter, the Court suggested constitution of a Committee with Justice Kailash Gambhir as its Chairman. The role of the Committee would be to ensure physical verification of available shelters, verify compliance with operational guidelines, inquire into the reasons for slow progress and non-utilization of funds allocated, and also issue suitable recommendations to the State Governments to ensure that at least temporary shelters are provided for the homeless in the urban areas to protect them during the winter season. The State Governments were also directed to ensure compliance with the recommendations along the time frame indicated by the Committee.

Source: <http://bit.ly/2fJbGVW> , <http://bit.ly/2oShBfx>



Citation: *E.R. Kumar v. Union of India*, 2016 SCC OnLine SC 1256

### **REPRODUCTIVE RIGHTS**

#### **Supreme Court and Mumbai High Court assert that decisions relating to medical termination of pregnancy should be based on the health of the mother, and therefore are her prerogative**

In two separate judicial developments, the right to health and wellbeing of a pregnant mother was asserted at the cost of the restrictive provisions of the Medical Termination of Pregnancy Act, 1971. In the first case of a 24 week pregnant rape-survivor, life-threatening congenital conditions were deemed as relevant by the Supreme Court to allow termination of pregnancy. The second judgment, passed by the Bombay High Court, said that a mother who was pregnant for 12-20 weeks has a right to undergo termination of pregnancy if she felt that continuation of pregnancy would cause grave injury to her physical and mental health.

Aside from extending the concept of injury to mental health, the court also said that termination of pregnancy rights were not contingent on marital status, recognizing that pregnancy is closely related to the mother's body and has a profound impact on her life, health and mental well-being. This is why any decisions around pregnancy should be a woman's sole prerogative, irrespective of her marital status, as part of Article 21 of the Constitution.

*Citation:* Ms. X. vs. Union of India, 2016 SCC OnLine SC 745 (Supreme Court judgment)

High Court on its own Motion vs. The State of Maharashtra, MANU/MH/1886/2016 (Bombay High Court judgment)

*Sources:* <http://bit.ly/2aoJQzd> (Supreme Court), <http://bit.ly/2dlegTa> (Bombay High Court)

#### **Supreme Court issues directions to enhance effectiveness and implementation of legislations prohibiting sex-selection**

The Supreme Court has passed extensive directions in response to a writ petition contending that the sex ratio in most States have decreased and that the aims and objectives of the Pre-Conception & Pre-Natal Diagnostic Techniques Act (PC-PNDT Act) 1994 have therefore not been realised. Recognizing the mushrooming of pre-natal diagnostic centres as indicative of the persisting scourge of female infanticide, the Court lamented the violence and injustice meted out to women in the country. The two-judge bench justified taking affirmative action in light of the inherent equality of both sexes in the Constitution, and thus passed directions which placed duties on a range of authorities including States and Union Territories, statutory authorities, appropriate Courts, judicial officers, State Legal Service Authorities and legal authorities.

*Source:* <http://bit.ly/2pUnc4b> , <http://bit.ly/2oY6DXJ>

*Citation:* *Voluntary Health Association of Punjab v. Union of India*, 2016 SCC OnLine SC 1244

#### **Supreme Court mandates the Central Government to actively end mass-sterilization camps as they violate the reproductive freedoms of vulnerable persons**

Responding to a PIL filed by a health-rights activist, the Supreme Court directed the Central Government to end mass-sterilization camps. The PIL was filed by Devika Biswas after 53

women underwent a sterilization procedure under highly unsanitary conditions in a district in Bihar in a two-hour session overseen by only one surgeon.

The judges observed that the sterilisation procedures endanger the right to life under Article 21 of the Constitution, as they affect the right to health and reproductive rights of a person. In a significant first, Comment No. 22 on the Right to Sexual and Reproductive Health was referred to.

Admonishing the approach of setting informal utilitarian targets at the cost of the reproductive freedoms of vulnerable, the court made supplementary directions, including mandating the government to increase the compensation for sterilization deaths “substantially”, as well as to mandatorily explain to the patient, in his or her local language, the impact and consequences of a sterilization procedure. Specifically, the Central government was directed to persuade State Governments to stop holding sterilization camps, and finalize the National Health Policy by the end of 2016.

Citation: Devika Biswas vs. Union of India (UOI), MANU/SC/0999/2016

Source: <http://bit.ly/2opDaTF>

### **Bombay High Court directs blocking of internet searches relating to sex-selection**

In pursuance of an agreement by Google India, Yahoo! India and Microsoft Corporation (I) Pvt. not to host and publish information relating to ‘gender selection’, the apex Court said that the three companies must develop a technique that ensures that any advertisement or search introduced into the system will not be projected or seen, through the method of ‘auto-block’. The device will ensure that no one can enter/see any advertisement or message that is prohibited under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Proposed key words like ‘gender selection’, ‘prenatal sex selection’ and ‘baby gender selection’ would trigger only a warning.

Citation: Writ Petition(s) (Civil) No(s). 341/2008

Source: <http://bit.ly/2cC58aV>

### **CHILDREN**

### **SC directs Union Government to take firm steps for addressing the growing problem of drug-usage among children**

Responding to a public interest petition seeking a writ of mandamus to the Union Government to implement a national plan of action to protect children from drug-abuse, the Supreme Court noted the presence of multiple different statements of policy but the lack of a comprehensive and collaborative formulation. Drawing from India’s international obligations, the three-judge bench declared that there was need for a national data-base on the number of victims to enable a realistic assessment of the nature of policy interventions required. They demanded that the Union Government take certain immediate measures such as the formulation of a national action plan for children, the creation of a curriculum for awareness generation under the aegis of the New Education Policy 2016 and a standard operating procedure for enforcing the penal Juvenile Justice Act 2015.

Source: <http://bit.ly/2hzkXQi>

Citation: *BachpanBachaoAndolan v. Union of India*, 2016 SCC OnLine SC 1467

### **SC refuses to extend protections of Juvenile Justice Act for those who commit grave and heinous offences**

Responding to the issue whether the appellants were juveniles at the time of commission of the offence, in a case of murder where the accused were now between 35 and 40 years of age, the Supreme Court said that there was a margin of some years even with medical opinions as to age. They refuted the contention that the accused were children even by their very appearance, saying that if that were so, they would have been dealt with accordingly by the concerned juvenile court. Saying that since the burden lay on the juvenile, a blind mechanical view as to age could not be adopted solely on the basis of medical opinion.

Source: <http://bit.ly/2gFWbha>

Citation: *Mukarrab v. State of U.P.*, 2016 SCC OnLine SC 1413

### **Delhi Police Commissioner issues internal circular requiring all police officers to report and register missing child information on web-portals within 24 hours**

Referring to the mandate of Juvenile Justice Act, 2015, the Delhi Police commissioner issued a circular requiring that police officers report missing children and register details on the official web page within 24 hours of the child being found separated from parents. If this practice was violated, it would be a criminal offence, and could lead to imprisonment upto six months and a fine of Rs.10,000.

Source: <http://bit.ly/2pUifbw>

## **DISABILITY**

### **Supreme Court rules 3 percent quota for persons with disability in all central government posts**

A petition filed by S.K. Rungta (the only visually impaired senior counsel in India) as well as Rajan Mani (of Disability Law Initiative) challenged the recruitment policy of the state run broadcasting agency Prasar Bharati. The policy restricts reservation for persons with disability to only the initial level of recruitment, but not the promotion based higher levels of office. The Supreme Court rejected the government's stance that the persons with disabilities (PWD) have no right to demand reservation at to promotion based offices, based on the precedent set in the *Indira Sawhney & Ors v. Union of India* case that held reservation should be confined to recruitment at the initial level only, not at the stage of promotions.

Holding the *Indira Sawahney* case inapplicable, the Court noted that the basis for reservation for PWD under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 cannot be based on grounds of religion or caste. The purpose of the Act cannot be frustrated by prescribing a mode of recruitment for grounds other than disability. Therefore, the three per cent reservation should be provided to PDWs in all posts and services under the Government of India.

*Source:* <http://bit.ly/29jYxRj>

**Supreme Court orders Spice Jet to compensate disability activist for forcibly de-boarding her on account of her cerebral palsy**

In recognition of the maltreatment often meted out to disabled persons, the Supreme Court took a firm stand on the rights of disabled persons. The case was filed by Jeeja Ghosh, a disability-rights activist living with cerebral palsy, who had been prevented from attending a conference in Goa as she was asked to de-board the aircraft on account of her disability.

The Court said that humiliation and emotional trauma of this nature amounted to violence on human dignity and infringed on the fundamental rights available to all persons under Article 14 and 21 of the Constitution. Further, guidelines were issued. These include points on requiring that all airports procure assistive equipment in consultation with the Department of Disability Affairs, as well as the incorporation of complaint mechanisms and training/sensitization of staff.

Citation: Jeeja Ghosh vs. Union of India, 2016 SCC OnLine SC 510

*Source:* <http://www.livelaw.in/people-disabilities-also-right-live-dignity-sc/>