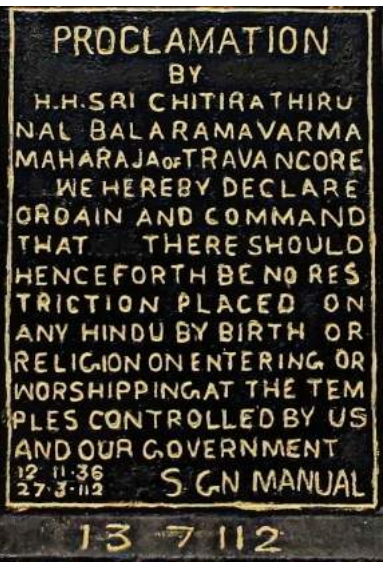
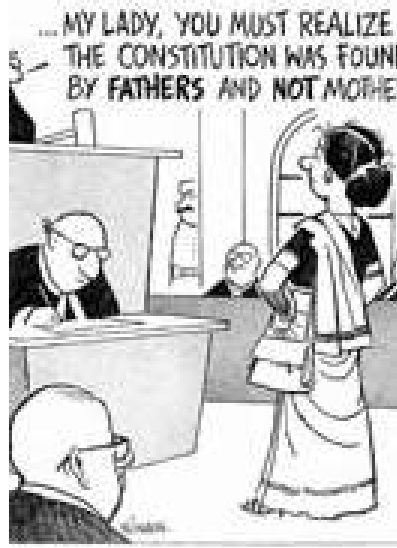




2017

# THE BOGOTA DECLARATION

#TAXJUSTICE  
#WOMENSRI



## Annual Newsletter Digest 2017



Partners for Law in Development



## Contents

<b>CONTENTS.....</b>	<b>1</b>
<b>UPDATES FROM THE UN .....</b>	<b>7</b>
<b>Treaty Bodies .....</b>	<b>7</b>
General Recommendation no. 36 on girl’s and women’s right to education issued by CEDAW7	
General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 made by CEDAW .....	7
Human Rights Committee rules against Australian law that bars married trans persons from officially changing their sex .....	7
<b>Independent Mechanism and Reports.....</b>	<b>8</b>
Cultural rights of women .....	8
Violence against women .....	8
Child, early and forced marriage.....	9
Discrimination against women in law and practice .....	9
Non-discrimination in the application of death penalty .....	9
Extreme poverty and human rights .....	9
The right to freedom of peaceful assembly.....	10
Trafficking in persons.....	10
Freedom of religion or belief .....	10
Rights of people with disabilities.....	10
Human rights of older persons .....	11
Rights of unaccompanied migrant children .....	11
Protection against violence based on SOGI released .....	11
Plan to end harmful practices related to witchcraft proposed.....	11
<b>Office of the United Nations High Commissioner for Human Rights.....</b>	<b>12</b>
OHCHR publishes reports on the gender digital divide; racial discrimination and its impact on women; best methods to promote women’s equal nationality rights in law and practice .....	12
UN Missions to Ukraine, South Sudan, and Central African Republic release reports .....	12
<b>War Crimes Tribunals .....</b>	<b>13</b>
Sexual violence against own armed forces qualifies as a war crime, decision further affirmed by ICC Appeals Chamber .....	13
ICC Trial Chamber II awards victims individual and collective reparations in Katanga case. 13	
ICC Pre-Trial Chamber II decided not to refer South Africa’s non-cooperation to the ASP or UNSC in Al-Bashir case .....	14
Hissène Habré, former dictator of Chad, convicted of war crimes by Extraordinary African Chambers.....	14

‘Butcher of Bosnia’ Ratko Mladic convicted of genocide .....	14
First-ever Opinion Tribunal set up on Myanmar.....	14
<b>United Nations Development Programme .....</b>	<b>15</b>
UNDP releases Human Development Report 2016 .....	15
Report on legal gender recognition in Asia released by UNDP.....	15
<b>Other Updates .....</b>	<b>15</b>
Study on intimate partner violence released by UNESCWA .....	15
USA cuts funding to UNFPA.....	15
Equal Pay International Coalition (EPIC) launched.....	16
ECOSOC votes to webcast all open sessions of the Committee .....	16
UN entities release joint statement on discrimination in healthcare settings .....	16
WHO releases guidelines for healthcare workers on responding to sexual violence .....	16
WHO launches manual to strengthen health sector responses to survivors of violence .....	17
Expanded Yogyakarta Principles released on their 10th anniversary.....	17
The Bogota Declaration on tax justice for women.....	18
Fact-finding mission on Myanmar appointed by Human Rights Council.....	18
Appointments.....	18
UN appoints Special Representative on sexual violence in conflict.....	18
UN advocate for the rights of victims of sexual exploitation and abuse.....	18
UN appoints Independent Expert on sexual orientation and gender identity.....	19
<b>INTERNATIONAL LEGAL DEVELOPMENTS .....</b>	<b>19</b>
<b>Asia.....</b>	<b>19</b>
Pakistan enacts Hindu Marriage Act, 2017, rejects proposal to raise minimum age of marriage to 18.....	19
Taiwan became first Asian country to legalise same-sex marriage .....	20
Nepal and Bangladesh witness attacks on independence of judiciary .....	20
Philippines introduces sexuality education in schools, lifts ban on oral contraceptives but blocks condom distribution.....	20
Philippines passes SOGIE Equality Bill, and Nepal introduces draft bill on rights of LGBTI people.....	21
Supreme Court of Nepal allows citizens to change their birth-assigned sex.....	21
Hong Kong Court of Appeal allows grant of spousal visa to homosexual women.....	21
Turkey mulls ban on surrogacy, restrictions on other Assisted Reproductive Technology.....	21
Kyrgyzstan enacts new laws on domestic violence, Russia meanwhile relaxes the same in favour of perpetrators.....	22
Saudi Arabia permits women to drive, enter stadiums; access to essentials still limited.....	22
Indonesian court convicts politician under blasphemy law .....	22

Nepal criminalises isolation of menstruating women and convicts army personnel of rape...	23
Qatar adopts new law on domestic workers .....	23
South Korea and Indonesia uphold LGBT rights, but Indonesia seeks to outlaw their representation on television .....	23
Transgender Chinese man wins first-of-its-kind labour discrimination case .....	24
Turkey allows Muslim clerics to conduct civil marriages despite protests.....	24
Petition to bar consensual sex outside marriage rejected by Indonesian court.....	24
Japan urged to end forced sterilization on transgender persons.....	25

## **Beyond Asia.....25**

Marriage with rapist no longer sufficient grounds to exonerate offence of rape in Tunisia, Jordan, Lebanon, and El Salvador.....	25
European Court of Justice allows religious symbol bans; Austria and Quebec ban face veil in public spaces .....	25
Quebec court partly suspends contentious face-veil ban.....	26
Chile revokes complete abortion-ban, while the Dominican Republic rejects proposal to criminalise abortion.....	26
Ohio outlaws' abortion of foetuses with Down's syndrome .....	26
Germany and New York State enact law prohibiting child marriage .....	27
Tunisia lifts decades-old ban on Muslim women marrying non-Muslim men.....	27
UK Supreme Court holds that Northern Irish women are not entitled to free abortion services .....	27
Child sex offenders to be named as such in US passports .....	28
Amendment to Sierra Leone's Citizenship Act.....	28
Kenyan legislature amends education law, makes distribution of sanitary pads compulsory. 28	
Turkey: ECHR rules that disallowing women from using their maiden name is discriminatory .....	28
Same-sex marriage legalized in several countries, Haiti votes to ban it.....	28
Egyptian parliament amends inheritance laws .....	30
Mauritania releases new 'apostasy' draft law.....	30
ECOWAS court passes first judgment on the Maputo Protocol in the Case of 4 Women vs. Nigeria .....	30
President of Tanzania calls for arrest of pregnant schoolgirls.....	31
European Court of Human Rights ends forced sterilisation for gender recognition – Finland refuses to comply while Sweden agrees to compensate .....	31
Malta introduces third gender marker in official documents and rejects attempts to privilege families founded by heterosexual unions over homosexual ones.....	31
Canadian Parliament criminalises hate propaganda against gender variant individuals; Australia criminalises SOGI-based intimidation .....	32
New Zealand and Tasmania vote to expunge historical convictions of homosexuality .....	32

Brazilian court overrules resolution that prohibited ‘conversion therapy’ on LGBT individuals .....	32
European Parliament passes resolution on combating sexual harassment and abuse in the EU .....	33
Austrian Supreme Court rules in favor of same-sex marriage .....	33
Court permission no longer required for gender transition hormone therapy in Australia ....	33
Hungarian Ombuds finds rejection of lesbian woman’s application to adopt unlawful .....	34
UK Court of Appeal quashes order denying parental rights to transwoman .....	34
German courts mandates introduction of third gender category in public documents .....	34
Mexico formulates “code of conduct” to mitigate intimidation based on SOGI .....	34
US Court of Appeals holds that companies cannot discriminate against LGBTI people .....	35
Egypt, Hungary and Ukraine crackdown on foreign-funded NGOs .....	35
Greece, Colombia, and South African High Court enable change of gender status, including within heterosexual unions .....	36
ECHR affirms differential treatment of male and female convicts on grounds of parenthood	36
British court denies heterosexual couple the option of choosing civil partnership over “patriarchal” marriage .....	37
Tunisia and Kenya move towards abolishing forced anal examination to determine sexual orientation .....	37
<b>NATIONAL DEVELOPMENTS .....</b>	<b>37</b>
<b>Legislative Developments .....</b>	<b>37</b>
Three health related laws enacted: Mental Healthcare Act; Maternity Benefits (Amendment) Act; and the HIV AIDS (Prevention and Control) Act .....	37
Madhya Pradesh enacts law to prescribe death penalty for rape of girls aged 12 years and below .....	38
<b>Judgments/Orders .....</b>	<b>39</b>
Supreme Court .....	39
Supreme Court holds that right to privacy is a fundamental right .....	39
Supreme Court declares instant triple talaq invalid .....	39
Supreme Court holds that minor wife can prosecute husband for rape .....	39
Supreme Court decides to revisit verdict that had directed setting up of ‘Family Welfare Committees’ for 498A cases .....	40
Husband’s consent irrelevant for obtaining abortion, holds Supreme Court .....	40
Six-month cooling off period for mutual divorce held as directory, not mandatory, by Supreme Court .....	40
Supreme Court’s decisions raise questions about consistency in relaxation of restrictions on women’s right to abortion .....	41
High Courts directed to implement the POCSO Act .....	41

Divorced wife can claim maintenance despite desertion .....	41
Inconsistency in award of death penalty in cases of Jyoti Singh and Bilkis Bano raises questions about the understanding of ‘rarest of the rare’ doctrine.....	42
Supreme Court to review the constitutionality of adultery law .....	42
Parsi woman challenges the absence of a mediation process in Parsi Marriage and Divorce Act.....	43
High Courts.....	43
Allahabad HC holds anti-Romeo squads valid, and eating food of choice is aspect of Right to Food.....	43
Sikkim HC declares all orders under Sikkim Succession Act, 2008 null and void .....	44
Punjab and Haryana HC suspends sentence for rape on account of victim’s promiscuity, grants bails to three convicts, Supreme Court stays decision.....	44
Gujarat HC grants girl’s custody to female friend on account of their desire to stay together .....	44
Jharkhand and Bombay High Courts adopt opposing positions on second and third trimester abortions.....	44
Kerala HC rules on inter-religious marriages and women’s autonomy.....	45
Rajasthan HC issues directions on religious conversions, inter-faith marriages .....	46
J & K High Court decries harassment of adult women who exercised their right to choice in marriage .....	46
Kerala HC rules prohibition of women working at liquor shops is unconstitutional.....	46
Retraction of the woman’s complaint is insufficient grounds to quash rape allegation, holds Delhi HC .....	47
Delhi HC holds that desertion in itself cannot be a valid ground for divorce, ‘constructive desertion’ a better indicator.....	47
Punjab and Haryana HC decrees that husband cannot deny his wife maintenance on the basis that she earns more.....	47
Bombay HC holds that Hindu law does not confer property rights upon “illegitimate” children, but considers prolonged cohabitation sufficient evidence for ‘marriage’ .....	47
Central Information Commission holds that victims of sexual harassment must be provided case information within 48 hours.....	48
Delhi HC rules that evidence of harassment immediately before death is not necessary to prove offence of murder for dowry .....	48
Vodafone fined for violation of Supreme Court’s Vishakha Guidelines .....	48
Madhya Pradesh HC holds that benefits under the Maternity Benefit Act must extend to contractual workers .....	49
Compassionate appointment cannot be denied on grounds that the daughter of deceased is married .....	49
Chhattisgarh HC holds that Additional Sessions Judge has jurisdiction to award compensation under POCSO .....	49

Pursing employment against a husband's wishes does not amount to cruelty, holds Allahabad HC.....	50
Gujarat HC to examine the use of Sec. 377 by wives for marital rape .....	50
Inference of 'false' case cannot be drawn from mere acquittal of husband in domestic violence case, holds Chhattisgarh HC .....	50
Kerala HC upholds suspension of school students accused of public display of affection..	50
Delhi HC questions civic bodies about sensitization to menstrual hygiene .....	51
Kerala HC upholds woman's 'right to dignity' as a mother.....	51
Bombay HC directs that a three-member committee be set up to assess the modified Manodhairya scheme.....	51

## **News and Events.....52**

India presents third UPR at Human Rights Council,.....	52
India ratifies key ILO conventions to end child labour.....	52
New Parliamentary report on transgender rights finds crucial gaps in draft bill, government ignores criticism – reintroduces unmodified bill .....	52
Acid attack survivors to be included under the Persons with Disabilities Bill.....	53
Parliamentary Panel releases report on Surrogacy (Regulation) Bill, 2016 .....	53
Bill to criminalise instant triple talaq passed by Lok Sabha .....	53
Ministry of Health and Family Welfare publishes draft rules under Mental Healthcare Act, 2017.....	53
Union Budget increases allocation of funds for women's development and healthcare .....	54
Expert panel suggests pension for widows from the age of 18, instead the current 40 .....	54
National Health Policy cleared by Cabinet.....	54
Guidelines by Ministry of Water and Sanitation on gender with regard to sanitation .....	54
Sexual harassment electronic box (SHe-Box) launched for registering complaints of sexual harassment at the workplace.....	55
Madhya Pradesh government offers Rs. 2 lakh to those who marry widows to encourage widow remarriage.....	55
Himachal Pradesh and Odisha join Punjab, Haryana, Jharkhand, and Meghalaya in implementing the Anand Marriage Act .....	55
India opposes move to link gender with trade.....	55

## Updates from the UN

### TREATY BODIES

#### **General Recommendation no. 36 on girl's and women's right to education issued by CEDAW**

The Committee on the Elimination of Discrimination Against Women (CEDAW) submitted general recommendation no. 36 on girls' and women's right to education in its sixty-eighth session and highlighted that education of girls and women is one of the most effective investments for sustainable and inclusive development. The recommendation focuses on two critical education targets that need to be achieved: (a) ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes; and (b) eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

The recommendation further mentions the Education 2030 Framework for Action that was agreed upon by the global education community to accompany the Sustainable Development Goals (SDG) agenda which acknowledges that 'gender equality is inextricably linked to the right to education for all' and that achieving this 'requires a rights-based approach' which ensures 'that both female and male learners not only gain access to and complete education cycles, but are empowered equally in and through education.' The general recommendation recognizes the critical gap between the legal recognition of girls' and women's right to education remains critical and its effective implementation calls for further guidance and action on Article 10 of the Convention.

CEDAW/C/GC/36

Source: <http://bit.ly/2E33YB8>

#### **General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 made by CEDAW**

The CEDAW committee has, through general recommendation No. 35, reiterated general recommendation No. 19 on gender-based violence against women, and provided further guidance to state parties in accelerating its elimination. Through this recommendation, the Committee has urged state parties to strengthen the implementation of their obligations in relation to gender-based violence; ratify the Optional Protocol to the Convention and examine all remaining reservations to the Convention with a view to their withdrawal. The Committee has also recommended that state parties take measures in the areas of law reform, prevention, protection, prosecution, reparations, punishment, and redress; data collection and monitoring; and international cooperation to accelerate elimination of gender-based violence against women.

<http://bit.ly/2vH6vgf>

#### **Human Rights Committee rules against Australian law that bars married trans persons from officially changing their sex**

In its first decision on official gender markers, the UN Human Rights Committee declared that the NSW Births, Deaths, and Marriages Registration Act of 1995, which does not permit



married persons to change their sex on their birth certificates, is in violation of international human rights law. The case was brought before the Committee by a trans woman, whose request for change of sex on her birth certificate was rejected repeatedly on the grounds that she was married. The Committee held that this resulted in arbitrary interference in her private life, and also noted that a law that differentiates between married and unmarried individuals who have undergone a sex affirmation procedure is discriminatory in nature.

Source: <http://bit.ly/2maE5rS>

## INDEPENDENT MECHANISM AND REPORTS

### *Cultural rights of women*

In her report to the Human Rights Council, the Special Rapporteur in the field of cultural rights considers how the rise of fundamentalism and extremism threatens the enjoyment of human rights worldwide. She argues that cultural rights can play a key role in combating fundamentalism and extremism and argued against State austerity measures that often affect only education and culture. Special note was made of the systematic international efforts to thwart the rights of women and queer persons – be it through organized religions or ultranationalists.

She also released a second report on the impact of fundamentalism and extremism on the enjoyment of cultural rights of women specifically. The report calls attention to cultural rights and equality of women, that are routinely violated through imposition of strict dress codes, restrictions on reproductive rights, and the right of girls to education. In the context of India, the report covers targeting of women writers, artists and rationalists, cow related lynchings, regulation of women's mobility and dress as well as love jihad; as well as resistance movements like #NotInMyName.

The report draws attention to the manner in which sanctions on funding for modern contraceptives and opposition to use of condoms “*places a certain ideology above the well-being of women*”. It expresses concerns about “*imposition of dress codes*” as this promotes the idea of women being stereotypically subordinate in the society, with limited control over their bodily autonomy. The report calls for promoting a culture of women's equality and dignity, and calls upon states to prevent cultural rights violations by prohibiting funding of extremist groups, repeal discriminatory laws, and remove obstacles to functioning of civil society organisations.

Source: <http://bit.ly/2s3D1GQ>; <http://bit.ly/2w4TrBg>

### *Violence against women*

The Special Rapporteur on violence against women released a report on the adequacy of the international legal framework on violence against women. The report explores the causes and consequences of sexual violence and undertakes an analysis of the international legal framework on the same, and addresses the debate on the merits of introducing a new legal instrument. While appreciating the premise of the legal framework that violence against women is an extreme form of discrimination and a human rights violation, and commending the adoption of general recommendation No. 35, the SR acknowledges that the current legal framework is complex, fragmented and in some ways convoluted in its application, including with regard to its implementation at the regional and national levels. At the same time, she

warns that adoption of a new legal instrument may result in isolation of legal provisions from the structural causes of discrimination against women.

Source: <http://bit.ly/2IHYarB>; <http://bit.ly/2vH6vgf>

#### *Child, early and forced marriage*

The Human Rights Council adopted a resolution to prevent child, early, and forced marriage through prohibitive legislation. The resolution underscores the need to support already married girls, adolescents and women through education, and catch-up education for those who may have dropped out of school, as well as through the establishment of shelters, among other measures. The resolution also emphasises the importance of universal access to sexual and reproductive healthcare services, information, and education in preventing and responding to child, early, and forced marriage.

Source: <http://bit.ly/2EGQPC0>

#### *Discrimination against women in law and practice*

The Working Group on discrimination against women in law and in practice released its report on good practices for the elimination of discrimination in the field. In the face of the profound backlash posed to equality by fundamentalism and misogynistic populist voices, the report emphasises the value of identifying good practices to uphold human rights. Amongst these, the report highlights that international human rights standards and constitutional standards for women's equality should be incorporated into legal framework, and laws inconsistent with these be repealed or modified, without exceptions based on cultural grounds. It also recommends gender analysis of existing and draft laws through the input of diverse stakeholders, and reiterates the importance of fulfilling rights.

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

#### *Non-discrimination in the application of death penalty*

The 36<sup>th</sup> session of the HRC, chaired by Benin, Belgium, Costa Rica, France, Mexico, Republic of Moldova, Mongolia, and Switzerland, adopted a resolution advancing equality and non-discrimination in the application of death penalty, particularly in the domain of adultery and same-sex relations. This is the first mention of adultery in any UN resolution, either by the HRC or the General Assembly. The council expressed serious concern that the death penalty is disproportionately applied to women, the economically disenfranchised, and other vulnerable populations. The United States voted against this resolution despite previous national support of antidiscrimination resolutions. India also voted against the resolution.

Source: <http://bit.ly/2gVc4VG>; <http://bit.ly/2DJKMst>; <http://bit.ly/2Dn0dtP>

#### *Extreme poverty and human rights*

In a report submitted to the UNHRC by the Special Rapporteur on extreme poverty and human rights, socio-economic rights received strong support. The historical negligence of socio-economic rights was linked to the failure of sustainable development in a heavily capitalist world economic structure. The Special Rapporteur called for the legal recognition of these rights at the domestic level, the creation of institutions, and the creation of structures of accountability. Re-orienting legal and institutional focus towards socio-economic rights

has implications for women and other groups that have been marginalised by the existing situation.

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

### *The right to freedom of peaceful assembly*

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has submitted a report to the UNHRC on the status of assembly and association rights in the year 2016. The report started with a note of caution from the Special Rapporteur about the global struggle that has been witnessed through the increased clampdown on civic freedoms and a push for assembly and association rights to promote these values. In discussing India's restrictions on foreign funding, the report states that the FCRA legislation does not comply with international law in the aspect that its restrictions on funding are not minimal or necessary. The Special Rapporteur also submitted a legal analysis to the Indian government arguing for better compliance with international law.

Source: <http://bit.ly/2kLVe9r>

### *Trafficking in persons*

The Special Rapporteur on trafficking in persons, particularly women and children released a report on the efforts of multi-stakeholder initiatives and industry coalitions to address trafficking in supply chains. The recommendations are aimed at strengthening voluntary standards on trafficking in persons, the assurance processes used by multi-stakeholders to improve detection and remediation of cases, and domestic legislation on business transparency regarding efforts to combat trafficking in their supply chains.

Source: <http://bit.ly/2CSee1t>

### *Freedom of religion or belief*

The report of the Special Rapporteur on freedom of religion or belief outlines efforts to mainstreaming gender in the mandate's approach by focusing on discrimination based on gender and gender identity, as well as instances where gender-based discrimination is justified on the grounds of religious liberty. The report cites examples such as violence against women or members of the LGBTI community, forced marriage, female genital mutilation, forced conversion, honour killing, enforced ritual prostitution, sexual slavery, all of which are justified on the ground of religious tradition. However, it clarifies that it would be erroneous to assume incompatibility between the right to freedom of religion and a woman's right to equality as individuals.

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

### *Rights of people with disabilities*

The Special Rapporteur on rights of people with disabilities released a report on the challenges faced by girls and young women with disabilities with respect to sexual and reproductive health and rights. The report calls for putting an end to forced sterilization and other procedures that infringe upon their sexual and reproductive integrity. The report highlights the manner in which sterilization, hysterectomies and oestrogen treatments were carried out against their will at the request and with the consent of judges, healthcare

professionals, family members or legal guardians. The report placed emphasis on the need to make sex education and health services accessible to all women with disabilities in order to promote feelings of control and facilitate autonomous decision-making among girls and young women with disabilities.

Source: <http://bit.ly/2D7gGiq>

#### *Human rights of older persons*

The HRC also adopted a resolution which focuses on the protection of the family, and the role of the family in supporting the protection and promotion of human rights of older persons. This resolution has been critiqued for its definition of family, as it reinforces ageist stereotypes by assuming all older people live within families, and that families everywhere provide critical support to their older members. The resolution also fails to take into account violence within family, and does not address the issue of control and harm, including that of a gendered nature, perpetuated within the family.

Source: <http://bit.ly/2ACsEOa>; <http://bit.ly/2D6dBiw>

#### *Rights of unaccompanied migrant children*

The Human Rights Council Advisory Committee submitted its report on the issue of unaccompanied migrant children and the threats to their human rights, in order to assist State parties in fulfilling their commitments as specified under the Convention on the Rights of the Child and other related human rights treaties. The report recognises that international migration has a differential impact by gender in most countries, and emphasises the gender considerations that heighten the vulnerability of girls, LGBT children, and adolescents to sexual exploitation and other gender-based violence. The report also highlights the gendered nature of migration itself, such as the high demand for female migrants for domestic work. The International Organisation for Migration, in its recent report, has also highlighted that most sex-trafficking victims who arrive in Europe are underage girls from Nigeria.

Source: <http://bit.ly/2mb9N8e>; <http://bit.ly/2zoSK7Q>

#### *Protection against violence based on SOGI released*

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity prepared his first report. The report looks at the legal framework; identifies multiple, intersecting, and aggravated forms of violence and discrimination; and recommends support for international cooperation to assist national efforts. It contains recommendations to help prevent and overcome protection gaps that exacerbate violence and discrimination, namely, decriminalisation of consensual same-sex relations; effective anti-discrimination measures; legal recognition of gender identity; depathologisation; socio-cultural inclusion; and promotion of education and empathy.

Source: <http://bit.ly/2g1TZo7>, <http://bit.ly/2rHDUG8>

#### **Plan to end harmful practices related to witchcraft proposed**

Over a hundred United Nations officials collaborated with international experts in Geneva to establish effective means of combating human rights violations related to witchcraft. Officials advocated that measures must be comprehensive while enshrining inalienable human rights. Examples of concrete measures discussed include strengthened data collection,

grassroots collaboration with traditional health practitioners, and the regulation of “independent faith-based practices”. The approach will integrate legislative action with the improvement of socio-economic livelihoods and significant community engagement. The initiative is a part of the larger UN action plan to end all forms of violence against women under the 2030 Agenda for Sustainable Development.

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

## OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

### **OHCHR publishes reports on the gender digital divide; racial discrimination and its impact on women; best methods to promote women’s equal nationality rights in law and practice**

The United Nations High Commissioner for Human Rights published a report titled ‘Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective.’ The report outlines the complex economic, socio-cultural, and legislative barriers to online access for women. In a special reference to online violence against women, the report calls for urgent state action for the removal of unlawful content. The report stresses the need for overcoming these barriers through addressing the underrepresentation of women in STEM sectors, embedding gender equality and diversity as core values in employment policies, integrating information and communications technology in the curricula for girls, and combating online violence against women.

The UNHCHR also published a report titled ‘*Impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls.*’ This report analyses the ways in which several grounds of discrimination intersect and the impact that they have on the full realisation of women’s human rights.

Finally, the UNHCHR published a summary workshop report to showcase good practices for the promotion of women’s equal nationality rights in law and in practice, which serves as a proposal to the 36<sup>th</sup> session of the Human Rights Council. Based upon the inputs received from participants at the workshop, the report outlines the various manifestations of gender discriminatory nationality laws, and declares that reform of nationality laws, and other discriminatory laws, is required to ensure the enjoyment by women of equal nationality rights.

To this end, the report suggests strategies for governments to ensure successful law reform, such as aligning nationality laws with other non-discriminatory domestic laws, a multi-sectoral approach led by strong political leadership, stakeholder consultations, and so on. The report emphasises the importance of effective implementation, and outlines the factors that may restrict the same.

Source: <http://bit.ly/2kMnOeo>; <http://bit.ly/2Ffhdzs>, <http://bit.ly/2CQIF94>

### **UN Missions to Ukraine, South Sudan, and Central African Republic release reports**

The United Nations Human Rights Mission to Ukraine released its report on the impunity in widespread sexual violence in Ukraine, committed in the context of armed conflict. The report documents cases of conflict-related sexual violence committed against both men and women who were detained by either Government forces or armed groups. The report

states that sexual violence is severely under-reported, and medical and state institutions lack the knowledge and skills to provide assistance to survivors of sexual abuse.

The [report](#) by the UN Mission in South Sudan and OHCHR found that throughout the fighting that occurred in July 2016 between the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO), both sides ignored international human rights and humanitarian law. The report lays special emphasis on the violation of women's and children's rights. According to the report, SPLA and SPLM/A-IO continue to target women and children, and in particular, Nuers with tribal markings on their foreheads. The report emphasises the need for accountability and justice for those human rights violations, and urges that the Hybrid Court for South Sudan be operationalised by the African Union.

This [mapping report](#) by the UN Human Rights Office and the UN Mission in the Central African Republic (MINUSCA) has documented patterns of serious violations of international human rights law and international humanitarian law by successive government forces, various local and foreign armed groups, as well as international and foreign defence forces. The report, mandated by the UN Security Council, documents 620 incidents, including multiple accounts of gang rapes of women and girls as young as five. While the report recognizes the challenging security situation in the Central African Republic, it recommends that some steps be taken immediately to initiate transitional justice processes, including the development of a national approach to human rights vetting of security and defence forces

Source: <http://bit.ly/2iEbr7u>; <http://bit.ly/2D7TFM7>

## WAR CRIMES TRIBUNALS

### **Sexual violence against own armed forces qualifies as a war crime, decision further affirmed by ICC Appeals Chamber**

Trial Chamber VI of the International Criminal Court (ICC), in the case of *The Prosecutor v. Bosco Ntaganda*, found that it has jurisdiction over counts 6 and 9 (alleged war crimes of rape and sexual slavery of child soldiers). Rejecting the Defence argument that war crimes do not include crimes committed by members of an armed force against members of the same armed force, the ICC Trial Chamber VI found that limiting the scope of protection is contrary to the rationale of international humanitarian law, which aims to mitigate the suffering resulting from armed conflict. The Chamber concluded that “there is never a justification to engage in sexual violence against any person.” The Appeals Chamber also noted that international humanitarian law not only governs actions of parties involved in the conflict in relation to each other, but also with protecting the vulnerable and those who do not actively participate in the hostilities. It also emphasised that the application of its jurisdiction only requires that the conduct in question “*took place in the context of and was associated with an armed conflict.*”

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

### **ICC Trial Chamber II awards victims individual and collective reparations in Katanga case**

Germain Katanga, former leader of an armed group in the Ituri province of the Democratic Republic of the Congo had been found guilty of being an accessory to crimes against humanity and war crimes, including rape and slavery, in May 2014. The ICC Trial Chamber II awarded 297 victims individual and collective reparations in the form of symbolic

compensation of USD 250 per victim, and collective support in housing, income generating activities, education aid, and psychological support.

Source: <http://bit.ly/2EQHkeM>, <http://bit.ly/2myZRri>

### **ICC Pre-Trial Chamber II decided not to refer South Africa's non-cooperation to the ASP or UNSC in Al-Bashir case**

The International Criminal Court held that South Africa failed to comply with its obligations by not arresting and surrendering Omar Al-Bashir to the Court while he was in South African territory, as his immunities as head of state did not apply in a state that is a signatory to the Rome statute. However, the violation was not referred to the Assembly of States Parties or the UN Security Council.

Omar Al-Bashir had been accused of five counts of crimes against humanity (murder, extermination, forcible transfer, torture, and rape), two counts of war crimes (intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, and pillaging), and three counts of genocide against the Fur, Masalit, and Zaghawa ethnic groups in Darfur, Sudan.

Source: <http://bit.ly/2stp9pQ>

### **Hissène Habré, former dictator of Chad, convicted of war crimes by Extraordinary African Chambers**

The EAC, a special tribunal in Senegal established by the African Union and Senegal to try war crimes committed in Chad, sentenced Hissène Habré to life imprisonment for crimes against humanity, war crimes, and torture, including sexual slavery, sexual violence, and rape, from 1982 to 1990. During his tenure, Habré used the police and army to spread terror amongst the population. Thousands were tortured and murdered. Significantly, this is the first time that a court in Africa not set up by the United Nations has found that rape and sexual violence against women is a form of torture.

Source: <http://bit.ly/2v1kagP>

### **'Butcher of Bosnia' Ratko Mladic convicted of genocide**

The United Nations' Yugoslav war crimes tribunal convicted military chief Ratko Mladic of genocide and crimes against humanity, and sentenced him to life imprisonment for the atrocities committed during the 1992-1995 war.

Mladic, 75, was found guilty of commanding forces responsible for barbaric crimes including, but not limited to the fatal three-year siege of the Bosnian capital, Sarajevo, and the 1995 massacre of approximately 8,000 Muslim men and boys in the eastern enclave of Srebrenica, which was Europe's worst mass killing since the second World War. A three-judge panel convicted him of 10 of 11 counts in a powerful culmination of a monumental search for justice in the Balkans. Although the decision comes 22 years after Mladic's egregious crimes at Srebrenica, he was arrested only in 2011 with his trial beginning in 2012.

Source: <http://bit.ly/2EIJblZ>; <http://bit.ly/2BeC1os>

### **First-ever Opinion Tribunal set up on Myanmar**

The Rome based Permanent People's Tribunal (PTT) set up its first Opinion Tribunal on Myanmar. The people's tribunal was set up in response to the requests made by Myanmar's Rohingya and Kachin victims who have alleged genocide, war crimes and crimes against

humanity by the troops of the Myanmar government. The Tribunal on Myanmar is coordinated by a steering committee made up of Rohingya, Kachin and Burmese human rights campaigners in cooperation with the PTT Secretariat in Rome. The tribunal was held at the University of Malaya in Malaysia in September.

Source: <https://tribunalonmyanmar.org/about/>

## **UNITED NATIONS DEVELOPMENT PROGRAMME**

### **UNDP releases Human Development Report 2016**

The United Nations Development Programme released the Human Development [Report](#) of 2016 titled 'Human Development for Everyone,' which addresses global human developmental challenges. The report's five basic messages include: universalism as a key to human development, various groups still suffer from basic deprivation, need to focus on analytical issues and assessment perspectives, need to implement policy options to achieve human development and need for reformed global governance with fairer multilateralism. The five countries with the highest level of human development, gender development, and lowest amount of gender inequality are Norway, Australia, Switzerland, Germany, and Denmark.

Source: <http://bit.ly/2niumB7>

### **Report on legal gender recognition in Asia released by UNDP**

The United Nations Development Programme (UNDP) released a study titled Legal Gender Recognition of Transgender People: a Multi-Country Legal and Policy Review in Asia which highlights that a majority of transgender people across the Asia-Pacific region have not been able to obtain any official identification documents that reflect their gender identity. The report further mentions that the lack of gender recognition has led to widespread social exclusion, stigma, discrimination and violence towards individuals who are seen to deviate from gender norms because their gender identity and/or expression does not coincide with their sex assigned at birth. The report further takes cognizance of the existing laws, policies and practices related to legal gender recognition for transgender people in nine countries in Asia: Bangladesh, China, India, Indonesia, Malaysia, Nepal, Pakistan, Philippines and Thailand.

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

## **OTHER UPDATES**

### **Study on intimate partner violence released by UNESCWA**

The UN Economic and Social Commission for Western Asia released a study exploring intimate partner violence (IPV) with particular attention to its economic impact. The study is focused in the Arab region and provides an evidence-based, comprehensive understanding of the human rights and socio-economic impact of intimate partner violence. The study explores links between IPV and social, cultural, economic, and health factors. It also acknowledges the continuum of forms of violence which include violence in private and public spaces, by husbands and other family and community members, as well as State actors.

Source: <http://bit.ly/2z3iiYh>

### **USA cuts funding to UNFPA**



Continuing its crackdown on organisations that provide and facilitate access to abortion services, the USA administration announced that it would be substantially reducing the financial aid extended to the United National Population Fund (UNFPA). The United States was the fourth largest voluntary donor to UNFPA in 2015. With previous United States contributions, UNFPA was combating gender-based violence and addressing maternal deaths in the world's most fragile settings, in areas of conflict and natural disasters, including Iraq, Nepal, South Sudan, Syria, the Philippines, Ukraine and Yemen. This decision has been denounced by UN Women, in view of the UNFPA's life-saving efforts to protect the health of women and girls and their families.

Source: <http://ind.pn/2nZwRII> and <http://bit.ly/2nBBANd>, <http://bit.ly/2ETVfy5>, <http://reut.rs/2DhRGUG>, <http://bit.ly/2oSTRql>

### **Equal Pay International Coalition (EPIC) launched**

The International Labour Organisation, UN Women, and Organisation for Economic Cooperation and Development launched the Equal Pay International Coalition (EPIC). With a vision to achieve gender equality at the workplace, EPIC acts as a multi-stakeholder coalition to contribute to the realisation of target 8.5 of the Sustainable Development Goals – to achieve equal pay between men and women for work of equal value by 2030. In an ILO-Gallup world survey, it was found that women across the world, irrespective of regions, sectors, or countries, were paid less than men. The Coalition aims to multiply the outreach and impact of existing partnerships and “achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value” by 2030.

Source: <http://bit.ly/2xsDJ6w>

### **ECOSOC votes to webcast all open sessions of the Committee**

ECOSOC, the parent body of the NGO Committee that accredits NGOs to the UN, voted to webcast all open sessions of the Committee. This was in response to recommendations of some concerned NGOs regarding the practices followed by ECOSOC. This new move will enable several low revenue NGOs, whose representatives cannot attend the sessions in New York, to monitor its functioning, thus improving transparency and accountability.

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

### **UN entities release joint statement on discrimination in healthcare settings**

Several entities of the UN released a joint statement on ending discrimination in healthcare settings. The statement calls for a review of laws that criminalise or otherwise prohibit gender expression, same-sex conduct, adultery, and other sexual behaviour between consenting adults; adult consensual sex work; drug use or possession of drugs for personal use; sexual and reproductive health care services, and calls upon all stakeholders to support States in putting in place guarantees against discrimination in law, policies, and regulations; support measures to empower health workers and users of health services through attention to and realization of their rights, roles and responsibilities; support accountability and compliance with the principle of non-discrimination in health care settings; and implement the United Nations Shared Framework for Action on Combating Inequalities and Discrimination.

### **WHO releases guidelines for healthcare workers on responding to sexual violence**

WHO released guidelines to enable health care providers respond effectively to children and adolescents (up to 18 years of age) who have been sexually abused with compassionate and respectful care. A 2011 study estimated that 18% of girls, and 8% of boys worldwide have experienced sexual abuse. The guidelines recommend that healthcare providers place the best interests of children and adolescents first by assessing and promoting their safety; ensuring confidentiality and privacy; offering choices in provision of care; respecting their autonomy and wishes; and addressing the specific needs of boys and girls with additional vulnerabilities, such as LGBTI adolescents, children and adolescents with disabilities, and those from low socio-economic groups and indigenous populations, and ensuring provision of care to them without discrimination.

Source: <http://bit.ly/2AEUMzW>; <http://bit.ly/2hbelJI>; <http://bit.ly/2y4AleB>.

### **WHO launches manual to strengthen health sector responses to survivors of violence**

On the occasion of International Day for Elimination of Violence Against Women (25th November), World Health Organisation (WHO) launched a new manual to help health managers and policy-makers to strengthen health systems to deliver better quality of care to women who have been subjected to violence.

The manual is based on the WHO's clinical and policy guidelines for "Responding to intimate partner violence and sexual violence against women" (2013) and acknowledges violence against women as an issue of gender inequality, a major public health problem and a grave human rights violation. Women subjected to violence are more likely to seek health care though they usually would not disclose violence as the underlying reason for seeking care. Therefore, health care providers have an important role to play in identifying women who experience violence, and responding to them with empathy. In order for health care providers to be able to respond appropriately, health systems need to be strengthened so that women receive high-quality and respectful care.

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

### **Expanded Yogyakarta Principles released on their 10th anniversary**

On the occasion of the 10th Anniversary of the Yogyakarta Principles, a group of 33 international human rights experts released a set of new principles on International human rights law pertaining to sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) to call for renewed action worldwide against violations and discrimination and re-assert the commitment to universal human rights. The new principles reflect significant developments both in the field of international human rights law and in the understanding of violations affecting persons of 'diverse sexual orientations and gender identities', as well as recognition of the often-distinct violations affecting persons on grounds of 'gender expression' and 'sex characteristics'.

The Yogyakarta Principles plus 10 add to the original 29 Yogyakarta Principles and set out nine additional Principles that cover a range of rights, dealing with information and communication technologies, poverty, cultural diversity, extension of protection of gender characteristics and expression in all levels of administration and justice. The principles further aim at ensuring legal recognition of changing genders and providing justiciable rights and remedies to ensure protection from all forms of contemporary social, legal and economic discrimination and exploitation of the LGBTI community.

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

### **The Bogota Declaration on tax justice for women**

In collaboration with Tax Justice Network and the Global Alliance for Tax Justice, Public Services International launched the ‘Bogota Declaration on Tax Justice for Women’s Rights’ in December 2017. Sometime in early 2017, researchers, advocates, public service trade unionists and activists from the tax justice and women’s rights movements organised a global meeting of leading organisations and thinkers and the Bogota Declaration on Tax Justice for Women’s Rights, was a result of this meeting, The aim of the meeting was to establish and confirm powerful, common positions that will strengthen concerted actions over the following years and shift the narrative on tax justice for women’s rights.

The Bogota Declaration on Tax Justice for Women’s Rights aims to demands rights for women which can be realised through structural, systemic, cultural and fiscal policy changes. The tax justice movement, global trade unions, civil society and the women’s movements have been highlighting the impact of regressive tax policies and financial secrecy on women’s fundamental human rights and taking action to change the narrative.

Source: <http://bit.ly/2CsWM3h>

### **Fact-finding mission on Myanmar appointed by Human Rights Council**

The Human Rights Council initially appointed Ms. Indira Jaising (Chair), Ms. Radhika Coomaraswamy, and Mr. Christopher Dominic Sidoti as members of the fact-finding mission on Myanmar. However, Ms. Indira Jaising stepped down and was replaced by Marzuki Darusman, a former attorney-general of Indonesia who has previously conducted rights investigations on North Korea. The mission was tasked with establishing the facts and circumstances of the alleged human rights violations against the Rohingyas in the Rakhine State, at the hands of military and security forces. While the Council had encouraged the government of Myanmar to cooperate with the fact-finding mission, the government has publicly dissociated itself from the resolution. The visa requests of all the members of the mission have also been subsequently rejected. However, the members of the mission were able to gather accounts from many different villages across northern Rakhine state and successfully completed the mission on 27<sup>th</sup> October, 2017.

<http://bit.ly/2tsMECO>; <http://reut.rs/2rfizY4>; <http://bit.ly/2lrV3UT>

### **Appointments**

#### *UN appoints Special Representative on sexual violence in conflict*

Pramila Patten of Mauritius was appointed as the Special Representative on Sexual Violence in Conflict at the level of Under-Secretary-General, by the UN Secretary General. Having served since 2003 as Member of The Committee on the Elimination of all Forms of Discrimination Against Women, Ms. Patten brings solid and diversified judiciary expertise in sexual and gender-based violence as well as women, peace and security. The office of the Special Representative on Sexual Violence in Conflict has six priority areas, including ending impunity for sexual violence in conflict, protection and empowerment of civilians, increase recognition of rape as a war tactic, mobilize political and national ownership, and harmonize the UN’s response to sexual violence in conflict.

#### *UN advocate for the rights of victims of sexual exploitation and abuse*

Jane Connors, an Australian law professional and a long-time human rights advocate, was appointed as the first United Nations advocate for the rights of victims of sexual exploitation and abuse. As Victims' Rights Advocate, she supports an integrated strategic response to victim assistance in coordination with relevant UN system actors. She works with government institutions, civil society, and national and legal human rights organizations to build networks of support to help ensure that the full effect of local laws, including remedies for victims, are brought to bear.

### *UN appoints Independent Expert on sexual orientation and gender identity*

The United Nations Human Rights Council appointed Victor Madrigal-Borloz as the new Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. The Independent Expert on sexual orientation and gender identity has the responsibility to assess the implementation of existing international human rights instruments, raise awareness around violence and discrimination against persons on the basis of their sexual orientation and gender identity, engage in dialogue with States and other stakeholders and work with them to encourage implementation of laws and measures that reduce violence against individuals on the basis of their sexual orientation and gender identity. The Expert is also responsible for conducting capacity-building and promoting international cooperation to support States and national efforts to combat discrimination.

Mr. Madrigal-Borloz currently serves as the Secretary-General of the International Rehabilitation Council for Torture Victims (IRCT), and spent many years in the Inter-American Court and Commission of Human Rights. His work will build on the efforts of Vitit Muntarbhorn, the Thai international law professor who was appointed as the first Independent Expert on Sexual Orientation and Gender Identity in September 2016. Source: <http://bit.ly/2Dh6QcM>

<http://bit.ly/2pX32b6>, <http://bit.ly/2CC7qCu>

## **International Legal Developments**

### **ASIA**

#### **Pakistan enacts Hindu Marriage Act, 2017, rejects proposal to raise minimum age of marriage to 18**

A bill to regulate marriages of minority Hindu population became law in Pakistan after getting approval from the President and being unanimously passed by the National Assembly. The landmark law aims to protect marriages, families, mothers and their children while safeguarding the legitimate rights and interests of Hindu families. It provides for procedures relating to restitution of conjugal rights, judicial separation, void and voidable marriages, termination of Hindu marriage, financial security of the wife and children, alternate relief in termination of marriage and termination of marriage by mutual consent.

On October 11<sup>th</sup>, United Nations International Day of the Girl, the Pakistani Senate rejected a bill to raise the minimum age for a woman to legally marry from 16 to 18 on the basis that it was “un-Islamic” and “contrary to Islamic injunctions”. The bill was intended to combat the frequent marriages between girls as young as 10 years old with significantly older men. Such unions not only jeopardize the physical safety and well-being of the young girls but also deprive them of education and the right to self-determination. The bill stated that the leading cause of death for girls aged 15-18 years is pregnancy.

Source: <http://bit.ly/2pqp9ph>; <http://bit.ly/2ykSAzP>; <http://bit.ly/2xI7k9b>

### **Taiwan became first Asian country to legalise same-sex marriage**

In a landmark case filed by gay rights activist Chia-Wei Chi, Taiwan's Court of Grand Justices held that the provisions of the Civil Code relating to family that do not allow two persons of the same sex to marry are in violation of the people's freedom of marriage, emanating from the right to sound development of personality and the right to human dignity, as well as the people's right to equality under of the Constitution. The court directed the Taiwanese legislature to make statutory provisions for same sex marriage within two years, failing which same sex couples will be able to register their marriages anyway.

This decision made Taiwan the first state in Asia to permit same sex marriage. However, concerns remain about the manner in which 'marriage' has been interpreted by the Court, i.e. as a permanent union of "*two persons of the same sex ... of intimate and exclusive nature for the committed purpose of managing a life together.*" Given the conspicuous absence of any reference to children in the definition, commentators argue that it accords considerable leeway to the legislature to develop a civil partnership regime for same-sex couples, while reserving the 'privilege' of marriage for heterosexual couples.

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

### **Nepal and Bangladesh witness attacks on independence of judiciary**

In a welcome move, the Supreme Court of Nepal issued an interim order against an impeachment motion against the country's first woman Chief Justice, Sushila Karki, and directed the Legislature-Parliament to put the motion on hold, allowing her to return to the bench. Ms Karki had been accused of being partisan, breaching the principles of separation of power, influencing her fellow Justices and failing to fulfil her duties in the judiciary efficiently. Civil society activists in Nepal and all over Asia strongly condemned the suspension, given Ms. Karki's strong stance against corruption and criminal activities during her tenure. This has been considered another instance of political interference in the judiciary, given Nepal's history of political interferences in civil positions.

The first non-Muslim Chief Justice of Bangladesh, Surendra Kumar Sinha, resigned, purportedly under pressure from the executive, after he led the Supreme Court to a landmark verdict on judicial oversight and declared that the law passed by the Parliament that empowered the legislature to investigate and remove judges for incapacity and misconduct, was unconstitutional. A few days before his resignation, the former Chief Justice had been accused of money laundering and corruption, resulting in his sudden departure from the country.

Source: <http://bit.ly/2u8idDg>; <http://bit.ly/2zcekA2>

### **Philippines introduces sexuality education in schools, lifts ban on oral contraceptives but blocks condom distribution**

In January, the President of the Philippines issued an executive order to implement gender-sensitive sexuality education in schools. However, while health ministers recognize that HIV is prevalent among younger people who indulge in risky clandestine sexual behavior, certain senators felt that distributing condoms among the youth would only encourage sex between them. Accordingly, they chose to block the much-needed public health initiative.

The Philippine Food and Drug Administration (FDA) revoked a supreme court order from 2015 that had temporarily banned 51 female hormonal contraceptive products by establishing

that these contraceptives do not induce abortion. The temporary restraining order (TRO) was issued by the Supreme Court (SC) on contraceptives more than two years ago and was based on a petition by a pro-life group, alleging that all hormonal contraceptives were abortifacient, and aimed at having these vital commodities totally banned from the market. This move will address the significant shortfall of contraceptives available to women, especially those belonging to lower-income groups.

<http://bit.ly/2posrvM>, <http://bit.ly/2IKBUuM>

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

### **Philippines passes SOGIE Equality Bill, and Nepal introduces draft bill on rights of LGBTI people**

The Philippines House of Representatives approved the SOGIE Equality Bill on its second reading, advancing the legality of the measure to criminalise and penalise discrimination based on sexual orientation, gender identity, or expression (SOGIE). The bill cites fifteen forms of discrimination action including denial of access to public, health, or education services, harassment of any kind including over social media, or forced psychological examinations to alter one's SOGIE. The bill mandates a minimum fine of P100,000 and potential jail time.

Nepal constituted a five-member board to identify the issues and problems of gender and sexual minorities, and make the necessary recommendations to government. The draft bill has provisions for legally changing gender identity, same-sex marriage, adoption and enumeration in national census. It ensures the right to participate in political affairs, right to access, right to opportunity, right to employment, right to education, right to health, right to social security and other rights without any social discrimination. It also has provisions to safeguard the community from discrimination in all government services and facilities.

Source: <http://bit.ly/2zQk9in>; <http://bit.ly/2qROrh7>

### **Supreme Court of Nepal allows citizens to change their birth-assigned sex**

The Supreme Court of Nepal issued a ruling which enables Nepali citizens to apply for their citizenship documents to reflect their gender identity rather than birth-assigned sex identity. The Supreme Court reaffirmed article 12 of the Constitution, ensuring citizenship on the basis of identity. The Court also asserted their support of individuals with different sexual orientation to live freely in accordance with their identity. The legislation will need to be followed by separate laws for the amendment of gender on all official documentation and educational certificates.

Source: <http://bit.ly/2xang4r>

### **Hong Kong Court of Appeal allows grant of spousal visa to homosexual women**

In a unanimous decision, the Hong Kong Court of Appeal held that the Immigration Department's refusal to recognize the UK civil partnership of a homosexual woman and grant her visa was unlawful and amounted to indirect discrimination on the basis of sexual orientation, gender, and the nature of the relationship between the spouses. However, as same-sex marriages are not recognized in Hong Kong, the Court emphasized that granting a dependent visa to the woman must not be read as an official validation of same-sex unions.

Source: <http://bit.ly/2wil9KG>

### **Turkey mulls ban on surrogacy, restrictions on other Assisted Reproductive Technology**

The Turkish government proposed a draft law that seeks to ban surrogacy by Turkish citizens, including abroad, and also seeks to prohibit “mediation,” “assistance,” “encouragement” or “advertisement” for the same. The draft law also seeks to outlaw in vitro fertilisation unless the couple is married and cannot reproduce biologically. Discussions around Assisted Reproductive Technology have had a controversial history in Turkey, with religious hardliners arguing against it on the grounds that it contains elements of adultery and polygamy.

Source: <http://bit.ly/2A8VpCP>; <http://bit.ly/2xOgz7S>

### **Kyrgyzstan enacts new laws on domestic violence, Russia meanwhile relaxes the same in favour of perpetrators**

The Kyrgyzstan legislature enacted a Law on the Prevention and Protection against Family Violence, which replaces the 2003 law on domestic violence. It includes measures for protecting victims, and strengthening police and judicial response to domestic violence. It has been welcomed as a progressive piece of legislation, as it takes into account reports of implementation gaps, including CEDAW Concluding Observations of 2015 and UN Women report on “Access to Justice” (2015).

The law recognizes ‘economic abuse’ in addition to physical and psychological abuse. It also requires police to register a domestic abuse complaint from anyone, not just the victim. The process for obtaining a protective order has been made simpler. The statute also states that domestic violence offenders will no longer be eligible for a permit to purchase or possess weapons, and the existing permits of convicted offenders will be revoked. Significantly, the law lays special emphasis on behaviour correction programmes for perpetrators.

In February, the Russian Parliament passed law reducing criminal liability for ‘moderate’ domestic violence towards women and children. As per the new law, exceptions have been provided to offences of family violence for incidents that do not include broken bones or require hospitalization, as long as they are not repeated within a year. The penalties are minimal, such as 15 days of administrative arrest or compulsory community service.

Source: <http://bit.ly/2piVz94>; <http://bit.ly/2r7hmjW>; <http://bit.ly/2jUeweH>

### **Saudi Arabia permits women to drive, enter stadiums; access to essentials still limited**

The Saudi King issued decrees legalizing driving of cars by Saudi women, and permitting them to enter sports stadiums. The former decree orders the creation of a ministerial body for the purposes of implementation, and stipulates the necessity of applying these changes in a manner compliant with Sharia standards. The latter decree will open three previously male-only venues at Riyadh, Jeddah, and Dammam to families. These amendments come as part of several initiatives of the kingdom to increase access to public spaces for women through modernizing reforms, though not without opposition from influential clerics. The decision is in line with the Crown Prince’s ambitious vision of bringing in significant reforms to the country. Although the kingdom appears to be relaxing some norms as part of its sweeping “Vision 2030” plan for bringing in significant economic and social reforms, the guardianship system for adult women remains in place, limiting their unfettered access to obtaining travel documents, accessing healthcare, etc.

Sources: <http://bit.ly/2ydpNP3>; <http://bit.ly/2gNw5Ko>

### **Indonesian court convicts politician under blasphemy law**

Jakarta's Governor Ahok Tjahaja Purnama was sentenced to two years of imprisonment for violating the country's discriminatory blasphemy law. A Christian politician, he was charged with blasphemy in 2016, after he made a reference to a Quranic verse which was perceived as disrespectful. This prosecution was extensively used by militant Islamist groups to polarise the electorate in the run up to the gubernatorial election, which Ahok lost.

The Indonesian law against blasphemy, contained in article 156A of the Indonesian Criminal Code, punishes deviations from the central tenets of the six officially recognized religions with up to five years in prison. The blasphemy law has been used to target members of religious minorities and traditional religions.

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

### **Nepal criminalises isolation of menstruating women and convicts army personnel of rape**

Nepal's Parliament voted unanimously to criminalise the practice of *chhaupadi*, which entails banishment of menstruating women, including after childbirth, from their homes. Practicing this custom will now invite a prison sentence of three months, or a fine of NPR 3,000.

Rooted in the belief that menstruating women are unclean, the custom of *chhaupadi* affects not only the physical mobility of menstruating women, but also their right to choice in food, thus increasing their susceptibility to various diseases including diarrhoea, pneumonia and respiratory diseases. Banishing new mothers and infants also leads to higher rates of maternal and child deaths.

In a first of its kind conviction, a District Court in Nepal convicted three army officers of rape and murder of a 15-year-old girl. This is the first time that a civilian court in Nepal convicted army personnel for crimes committed during the 1996-2006 conflict. This judgment has come after persistent advocacy of the UN Human Rights Office and other human rights organizations. However, none of the officers were present in the Court and it still remains to be seen whether they will be arrested and serve their sentences.

Source: <http://bit.ly/2fuoJOH>; <http://bit.ly/2pmrUac>

### **Qatar adopts new law on domestic workers**

The Emir of Qatar ratified Law No.15 on service workers in the home ("Domestic Workers Law"), thus adopting a law on labour rights for domestic workers for the first time in the country. The law guarantees workers a maximum 10-hour workday, a weekly rest day, three weeks of annual leave, and an end-of-service payment of at least three weeks per year. The lack of an enforcement mechanism in the law, however, is likely to impede the implementation of the law.

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

### **South Korea and Indonesia uphold LGBT rights, but Indonesia seeks to outlaw their representation on television**

The Supreme Court of South Korea directed the government to allow an LGBT rights organisation 'Beyond the Rainbow Foundation' to legally register itself as a charity, ending the organisation's three-year struggle against discriminatory rejection by government agencies on the ground that the foundation's main purpose of promoting LGBTI rights was different from and opposed to the object of permission for incorporation. Each agency of the



government involved, including the Seoul Metropolitan Government, the National Human Rights Commission, and the Ministry of Justice maintained that LGBT rights were not within their purview.

As denial of permission severely curtailed the ability of the Foundation to receive tax-deductible donations and operate in full compliance with the law, it filed a lawsuit with the Seoul Administrative Court.

Indonesia accepted two recommendations made during its universal periodic review regarding LGBT rights. The recommendations pertain to ensuring a safe and enabling environment for all human rights defenders, and implementing freedom of expression, association, and assembly with an emphasis on non-discrimination, especially for LGBT people.

Yet, a proposed draft bill seeks to outlaw the use of LGBT representation or characters on television. The bill subjects every public broadcast on the subject to be approved by an external censorship body and if passed, such a law will drastically reduce reporting, documentaries, and films with any connection to LGBT subject matter.

Source: <http://bit.ly/2xuHMjb>; <http://bit.ly/2zZEvGN>; <http://bit.ly/2iJ1QbF>

### **Transgender Chinese man wins first-of-its-kind labour discrimination case**

A Guiyang court ruled that the gender of an employee could not be treated as a ground for terminating their employment. In this case, a transgender man was fired from his job at a health services firm, after several of his colleagues told him that he “looked like a lesbian” and might damage the company’s reputation. The Court held that termination of his services solely on the ground of his gender orientation was in violation of the litigant’s equal employment rights, and directed his former employer to pay damages equivalent to \$297 to him.

Source: <http://wapo.st/2maKZ02>

### **Turkey allows Muslim clerics to conduct civil marriages despite protests**

Activists and opposition politicians raised concerns over a marriage law that will now allow Muslim clerics to conduct civil marriages, amidst the fear that the law will lead to an increase in the number of child brides. The move has been described as a blow to women’s rights and secularism. Previously, only state officers in branches of the family affairs directorate were allowed to conduct marriages.

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

### **Petition to bar consensual sex outside marriage rejected by Indonesian court**

Indonesia’s constitutional court rejected a controversial petition to bar all consensual sex outside of marriage with a narrow margin of five out of nine judges voting against the petition in the world’s biggest Muslim-majority country. The petition was put forward by a group of conservative academics and activists who had demanded that definition of adultery should apply not just to married couples but to anyone in a marriage or outside it – effectively making all sexual relations outside of marriage a criminal offence. The group further wanted the law to consider homosexual sex as rape and criminalise sexual activity amongst minors. Rights activists hailed the court’s move as they had feared that the petition brought forth by

the conservative group would increase moral policing and discrimination, particularly against the gay community in Indonesia.

Source: <http://reut.rs/2CBEA6>

### **Japan urged to end forced sterilization on transgender persons**

Human Rights Watch and other rights-based groups urged Japan to end forced sterilisation on transgender community in the country. Despite taking some positive steps to reduce discrimination against the LGBTI community, Japan's legal gender recognition procedure- which allows transgender people to be recognized as their gender identity- requires applicant seeking legal gender change to be single, above 20 years of age, be without children below the age of 20, undergo psychiatric evaluation to be diagnosed with 'Gender Identity Disorder' and be sterilized. Law 111 of 2003 requires applicants seeking gender-change to "permanently lack functioning gonads" which amounts to forced sterilisation- a practice that has been condemned by health and rights activists for the longest time.

Source: <http://bit.ly/2i9d5qb>

## **BEYOND ASIA**

### **Marriage with rapist no longer sufficient grounds to exonerate offence of rape in Tunisia, Jordan, Lebanon, and El Salvador**

The provision that allowed rapists to escape penalty by marrying their victims was repealed by Jordan, Lebanon, Tunisia and El Salvador in their respective legislations. For many years, civil society activists had pointed out how the provision was often misused, especially in poor, rural areas where parents married their minor pregnant daughters to rapists in order to avoid shame, and out of fear of bringing up the child alone. Some believed this provision was necessary for the protection of women's honour, while civil society activists and women's rights groups saw this as a gross violation of human rights. The move to repeal the provision was hailed as a major human rights victory.

Sources: <http://bit.ly/2u0Dlf2>; <http://bit.ly/2wRUNA6>; <http://bit.ly/2uE942k>; <http://tmsnrt.rs/2xMzIMx>

### **European Court of Justice allows religious symbol bans; Austria and Quebec ban face veil in public spaces**

The European Court of Justice ruled that companies may bar staff from wearing Islamic headscarves and other visible religious symbols under certain conditions, setting off a storm of complaint from rights groups and religious leaders. In its first ruling on a volatile political issue across Europe, the ECJ found that a Belgian firm, which had a rule barring employees who dealt with customers from wearing visible religious and political symbols, may not have acted in a discriminatory fashion when dismissing a receptionist wearing a headscarf. A campaign group backing the women said the ruling could shut many Muslim women out of the workforce.

The Austrian legislature enacted a new law to ban the *niqabs* and *burqas*. Although the law bans all face coverings, including scarves, it has been widely understood as targeting Muslim women. The ban also imposes a hefty fine of €175 for every violation. Austria is the fifth European country to ban the burqa, after Belgium, Bulgaria, France and Switzerland.

The province of Quebec in Canada passed a contentious law that would make it illegal for Muslim women, and other individuals, who cover their faces to receive public services,

including riding public buses. The legislation on religious neutrality also known as Bill 52 was passed with a margin of 65-51 and will require citizens to uncover their faces in order to avail or give public services. It applies to all provincial and municipal employees including doctors, nurses, teachers, daycare workers and public transit workers. The law received serious criticism from Muslim women living in the province who feel “targeted” by the establishment.

Source: <http://bit.ly/2pVJLIZ>, <http://bit.ly/2pVJLIZ>; Case: <http://bit.ly/2qRMVM1> and <http://bit.ly/2qIMhmu>; <http://bit.ly/2fHPn6W>; <http://bit.ly/2yqFO3x>

### **Quebec court partly suspends contentious face-veil ban**

A Canadian Court suspended part of the controversial law that banned face coverings in the province of Quebec. The Supreme Court of Quebec suspended section 10 of Bill 62 that barred individuals from covering their faces while receiving or giving public services such as riding a public transport or visiting a doctor. The legal challenge filed civil liberties argued that Bill 62 is violative of the constitutional rights of Muslim women who would be forced to remove their religious coverings in order to receive public services and that it "directly infringes on the freedom of religion of individuals". The groups also said the law will encourage xenophobia, harassment and discrimination. The Quebec government plans to release directives in order to accommodate religious beliefs under Bill 62 by next summer.

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

### **Chile revokes complete abortion-ban, while the Dominican Republic rejects proposal to criminalise abortion**

Chile’s abortion law was amended in August 2017 to decriminalize abortion in the limited circumstances of risk to the life of the pregnant woman; pregnancy resulting from rape; or non-viability of the foetus, but was challenged immediately thereafter in Court for being unconstitutional.

Under articles 342 (3) and 344 of the old law, an abortion initiated by a pregnant woman or another person was punishable by up to five years in prison, irrespective of the grounds for the same. Before the adoption of the new law and the court’s ruling, Chile was one of very few countries in the world where abortion was criminalized with no exceptions.

The Parliament of the Dominican Republic rejected an amendment to the Penal Code which sought to criminalise all abortions under any circumstances, except to save the life of the pregnant woman after all efforts to save both her and the foetus have failed. The President had earlier vetoed this amendment on the ground that any amendment to the abortion law must provide wider grounds for abortion. While the amendment was approved by a majority of the legislators, it failed to meet the special majority standard required to pass a law that had already been vetoed by the President. Although the vote is said to be a victory for women’s right to bodily autonomy in the Dominican Republic, the current law continues to be severely prohibitive in nature, as it does not allow termination of pregnancy in all circumstances.

Source: <http://bit.ly/2F9IzH4>; <http://bit.ly/2CScjKs>

### **Ohio outlaws’ abortion of fetuses with Down’s syndrome**

The state of Ohio recently enacted a law that would make the abortion of fetuses detected with Down’s syndrome illegal. The legislation also prescribes felony charges against

physicians who perform the procedure, while exempting the woman from the same. The law, said to be in consonance with the state's Down Syndrome Non-Discrimination Act, is expected to severely restrict access to abortion in the state, given that the syndrome is usually detected within 15-20 weeks of gestation. Many have argued that the law does nothing to support families taking care of members with Down's syndrome and interferes with a woman's ability to take a decision. A similar legislation in Indiana was struck down by a District Court Judge for being unconstitutional.

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

### **Germany and New York State enact law prohibiting child marriage**

The state of New York enacted a new law prohibiting marriage for 14-16 year olds, while permitting 17 year olds to marry with parental and judicial consent. Under the previous law, the minimum age for marriage in New York was 18, but the law allowed children of 16 and 17 to marry with parental approval, and children of 14 and 15 to marry with permission from a judge and their parents.

Adopting a different position, German legislature enacted a new law which completely prohibits marriage of those below 18 years of age. Earlier, adolescents in the age group of 16-17 could marry with court permission. This legislation also nullifies existing marriages involving minor parties who were under the age of 16 at the time of marriage. Commentators believe that this is intended to target marriages solemnised outside of Germany, particularly in immigrant communities. The law allows for exceptions in cases of "hardship" in which the initially underage spouse has since reached adulthood and confirms that they want to remain married.

Source: <http://bit.ly/2rH6nO3>; <http://bit.ly/2sQ2SUn>

### **Tunisia lifts decades-old ban on Muslim women marrying non-Muslim men**

Tunisia recently abolished an archaic law which prohibited a Muslim woman from marrying a non-Muslim man. The move comes as part of a larger movement to empower women by enabling them to freely choose a spouse. Before this amendment, non-Muslim men wishing to marry a Muslim woman were required to convert to Islam prior to the union for it to be legally recognized.

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

### **UK Supreme Court holds that Northern Irish women are not entitled to free abortion services**

The Supreme Court of the United Kingdom, by a 3:2 majority, held that the Secretary of State for Health's failure to provide access to Northern Irish to free abortion services under the English National Health Service (NHS) was not unlawful, as the Secretary was entitled to take into account Northern Ireland's democratic decision to not fund abortion services. Based on a disturbing interpretation, the Court held that differential treatment of the citizens of UK residing in Northern Ireland was not in violation of the human rights arising from the European Convention on Human Rights. This interpretation essentially calls to question whether suspension of fundamental human rights of a section of citizens will be upheld by Courts because of popular majoritarian sentiment.

Citation: R v. Secretary of State for Health, [2017] UKSC 41

Source: <http://bit.ly/2ruB4ap>

### **Child sex offenders to be named as such in US passports**

Registered child sex offenders in the US now have to acquire passports that identify their past crimes. The US State Department will revoke the passports of registered sex offenders; they will then be required to apply for a new passport that will bear a “unique identifier” of their status. The State Department said that the language in the passports “will not prevent covered sex offenders from departing the United States, nor will it affect the validity of their passports.” The move has drawn severe criticism of over-criminalisation and witch hunt, given that it taints individuals who have served their sentences under law, for life. In any case, the definitions of child sexual abuse in the US is problematic in many instances, and the assumption that abuse is a product of deviance rather than social structures of power, makes this move condemnable at many levels.

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

### **Amendment to Sierra Leone’s Citizenship Act**

The Sierra Leone legislature amended its Citizenship Act to allow both women and men equal rights in conferring nationality on their children. Prior to this critical reform, the Citizenship Act of 1973 denied the children of Sierra Leonean women who were born abroad the right to acquire citizenship of Sierra Leone. The right was only reserved for children of male citizens. This reform is a critical step towards ending statelessness and an obligation under the international Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Source: <http://bit.ly/2CSg0R9>

### **Kenyan legislature amends education law, makes distribution of sanitary pads compulsory**

The Kenyan legislature amended the Basic Education Act, which now places an obligation upon the government to provide “free, sufficient, and quality” sanitary pads to girls in state schools. The amendment comes after a long campaign by school girls to make sanitary pads free, given that lack of access to menstrual hygiene products is said to be one of the primary reasons for low attendance and high drop-out rates amongst adolescent school girls in Kenya.

Source: <http://bit.ly/2CSg0R9>

### **Turkey: ECHR rules that disallowing women from using their maiden name is discriminatory**

In the case of *Leventoğlu Abdulkadiroğlu v. Turkey*, the European Court of Human Rights unanimously held that disallowing married women from using their maiden name alone amounts to a violation of the right to respect for private and family life, and the right against discrimination enshrined in the European Convention on Human Rights. Turkish laws compel women to adopt their husband’s surname, while men can continue to use their original surnames after marriage. In this case, the ECHR awarded damages to each of the affected women, who had approached the court seeking relief.

Source: <http://bit.ly/2Ek8P0l>

### **Same-sex marriage legalized in several countries, Haiti votes to ban it**

Same-sex marriage legalised in Finland, Bermuda, Germany, and Denmark’s Faroe Islands, Chile introduces bill for the same, and Haiti votes to ban gay marriage. Colombia legally recognises union between three men.

In March, Finland joined 13 European countries which have marriage equality laws. Same-sex couples in the country will now be able to marry and adopt children. The move was opposed by far-right groups but the Parliament voted with a large majority to uphold the law.

The Bermuda Supreme Court ruled that same-sex couples are entitled to be married under the Marriage Act of the territory. The notice of intended marriage of the petitioner and his fiancé had been rejected by the Registrar. The court held that such rejection amounted to unlawful discrimination on the basis of sexual orientation. Terming the perspective of marriage being predicated upon heterosexual procreation and marriage being the main and most effective means of rearing healthy, happy, and well-adjusted children as “insular,” the court opined that it was out of step with the Bermuda of the 21st century.

German MPs voted to legalise same-sex marriage by 393 to 226 votes at the German parliament Bundestag. The vote had four abstentions and was followed by debates reflecting age-old arguments over marriage equality. Since 2001, same-sex couples in Germany have been able to enter into civil unions, but were not allowed to marry. The new law, which is expected to take effect before the end of the year, will also allow married, same-sex couples to adopt children.

The Faroe Islands became the final Nordic country to recognise marriage equality and legalise same-sex marriage. The islands, regarded as a territory of Denmark, had authorized same-sex marriage the previous year itself but required a change in law for its legislation from the government of Denmark in order for it to be put into practice. The Danish Parliament approved the legislation to allow for the islands’ rule, in a vote approval of 108-0.

The Faroese legislation did not include religious weddings as they feared that the Christian population might oppose the measure for legalising same-sex marriage.’

On August 28<sup>th</sup>, 2017, the President of Chile introduced to Congress a bill which will legalize marriage between same-sex partners. This legislation is a development from the 2015 Congress approval of same-sex civil unions. The President advocated for the bill stating that it is “not ethical nor fair to put artificial limits on love”. The President further pledged to bring a fully-drafted marriage bill to legislators by the end of 2017. It is not clear if the gay marriage bill will pass through congress before the end of her term in March 2018.

The Haiti senate voted to not only criminalise gay marriage, but also any public demonstration of support for homosexuality. The approved bill, which is yet to be signed into law, states that parties, co-parties and accomplices of a homosexual marriage can be punished by three years in prison and a fine of about USD 8,000. The bill also criminalises “any public demonstration of support for homosexuality and proselytizing in favour of such acts.” The ambiguous wordings of the bill raised concerns about the impact that such a law may have on the rights of homosexual persons in Haiti.

A public notary in Medellín, Colombia, authorized the union between three men, declaring that the three of them constitute a family and are each others’ legal partners. Colombia’s constitutional court had approved marriage equality in 2016, and had in 2015 granted same-sex couples the same adoption rights as heterosexuals. However, such moves invited a backlash from conservatives, who in 2017 attempted to trigger a referendum to overturn the adoption ruling. Attempts have also been made for a disciplinary investigation into the Medellín notary who legalized the union.

Source: <http://bit.ly/2ISewMF>; <http://bit.ly/2EijTeo>; <http://bit.ly/2qCsYMX>;

<http://bit.ly/2COiVtg>; <http://nbcnews.to/2D5S8Gd>; <http://bit.ly/2szbXUw>

### **Egyptian parliament amends inheritance laws**

The Egyptian Parliament passed a law guaranteeing women's right to inheritance after over a year's process on amending the 1943 inheritance law. Egyptian women for the longest time have been deprived of the right to inheritance due to patriarchal context within that impede implementation of such rights. Article 49 of the new law states that anyone who deliberately denies the heir, be it a man or a woman, their legal share of the inheritance or confiscates a document confirming this share, shall be jailed for six months at least and be subject to a fine. This step does not change the conception or application of the inheritance laws, but increases penalty for preventing inheritance to ensure enforcement. A majority of women in Upper Egypt and rural areas are denied this right despite their legal entitlement to inheritance

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

### **Mauritania releases new 'apostasy' draft law**

Mauritania proposed a new 'apostasy' draft law that would make death penalty mandatory for the crime of "insulting" or "mocking" God, the Quran or the Prophet Muhammad. The approved draft legislation would eliminate the possibility under the current law, of substituting a prison term for death penalty if the offender repents promptly. Mauritania's current penal code, in article 306, imposes the death penalty for apostasy but allows for a lighter penalty if the defendant repents. Mauritania moved to strengthen a law criminalising apostasy and blasphemy, after a court in the West African nation ordered the release of a local blogger who faced the death penalty for allegedly criticising the Prophet Muhammad. An amendment to Article 306 of the country's penal code sanctions death penalty for "every Muslim, man or woman, who ridicules or insults Allah", his messenger, his teachings, or any of his prophets, "even if [the accused] repents". Showing repentance will no longer prevent the death penalty from being applied for blasphemy and apostasy.

Source: <http://bit.ly/2EWIM1h>

### **ECOWAS court passes first judgment on the Maputo Protocol in the Case of 4 Women vs. Nigeria**

The Economic Community of West African States (ECOWAS) Court passed the first judgement in the case of four women who were abducted and assaulted sexually, physically, verbally and unlawfully detained at different times between January 2011 and March 2013 at the hands of the Abuja Environmental Protection Board (AEPB) and other government agencies, such as the police and the military. They were arrested and accused of being prostitutes simply on the grounds that they were found on the streets at night. The Court held that these arrests to be unlawful and in violation of the freedom of liberty, noting that branding women as prostitutes constituted verbal abuse and violated their right to dignity. The Court found that there were multiple violations of articles of regional and international treaty law - the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT); and the Universal Declaration of Human Rights (UDHR). This is the first time an international court has pronounced on violations of the Maputo Protocol.

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

### **President of Tanzania calls for arrest of pregnant schoolgirls**

Civil rights activists in Tanzania accused the government of “promoting a culture of human rights violations” after the President pardoned two men who had convicted for raping ten primary school children aged between six and eight years of age, along with thousands of other prisoners. The news of their release coincided with calls for the arrest of pregnant schoolgirls with the regional commissioner justifying the step as it will force the girls to testify against those who impregnated them. The president had earlier called for pregnant girls to be banned from schools.

Source: <http://bit.ly/2iW1gnC>

### **European Court of Human Rights ends forced sterilisation for gender recognition - Finland refuses to comply while Sweden agrees to compensate**

The European Court of Human Rights found that the sterilisation requirement in legal gender recognition violates human rights. Setting the legal precedent for Europe, the decision will force 22 European countries using the infertility requirement from a person seeking legal gender recognition, to change their laws. This historic decision is delivered in three joined cases against France about the lack of self-determination of transgender individuals in the country. The court, however, denied that forced medical examinations ordered by the national court or a mental health diagnosis contradict the Convention, which has upset transgender activists.

The Finnish government rejected the recommendations made by the UN Human Rights Council to reform the ‘Trans Act’. The current law mandates that those wishing to legally change their gender identity status must undergo forced sterilization and mental screening. The UNHRC recommendations included revision of the Trans Act by abolishing the need for sterilization or other medical treatment or diagnoses, and development of a transparent and efficient gender recognition procedure. Both recommendations were rejected.

The Swedish Minister for Public Health announced that the government has agreed to financially compensate forcibly sterilised trans people with the amount of \$26,000 each. The compensation will be available for anyone who was forcibly sterilised by the Swedish state from 1972-2013 in order to comply with the previous requirements of the Swedish legal gender recognition act. It’s believed that nearly 800 people were affected by the law. The decision was welcomed by Transgender Europe (an organisation working exclusively on transgender rights in Europe) as the first time a state has recognized forced sterilization of transgender persons as a human right violation.

Source: <http://bit.ly/2qgXpaL> and <http://bit.ly/2qRTq0m>; <http://bit.ly/2gU4hHQ>; <http://bit.ly/2mPZ31q>

### **Malta introduces third gender marker in official documents and rejects attempts to privilege families founded by heterosexual unions over homosexual ones**

The Maltese Minister for European Affairs and Equality, alongside Parliamentary Secretary for Reforms, Citizenship and Simplification of Administrative Processes announced that citizens of Malta may now apply to have their gender identity marked as “X” on all official documentation, including passports, identity cards, and residence permits. Those wishing to change their identity marker must take an oath before a notary. Malta is the second European Union member state to introduce this option for its citizens in an effort to move towards greater equality. The “X” option became possible after the approval of the LGBTIQ Action Plan 2015 by the Maltese Cabinet.



The government also declined the Nationalist Party's (NP) proposed amendments to the Marriage Equality Bill which wanted to retain the terms 'mother', 'father', 'husband', and 'wife' in Maltese law. Malta's Equality minister said that such modifications "implicitly undermine the concept of equality and create distinctions between different couples". The opposition minister from NP criticised the move to abolish terms like 'mother', 'father', 'husband' and 'wife' from the Maltese law entirely in the favour of gender-neutral terms such as 'spouse' and 'parent'. However, the Maltese Prime Minister said that he will not accept any recommendations to the Bill by the NP that distinguishes between homosexual and heterosexual people in any manner and refused to accept amendments that "defeat the purpose of equality".

Source: <http://bit.ly/2yVwwgr>; <http://bit.ly/2CS1PL0>

### **Canadian Parliament criminalises hate propaganda against gender variant individuals; Australia criminalises SOGI-based intimidation**

Canada enacted a law to amend the Canadian Human Rights Act and add gender identity and gender expression to the list of prohibited grounds of discrimination. It also amends the Criminal Code to extend the protection against hate propaganda to any persons who are distinguished by gender identity or expression. The law also states that offences motivated by bias, prejudice or hate based on gender identity or expression constitutes an aggravating circumstance for the purposes of sentencing.

The Australian government proposed emergency laws to ban discrimination, vilification, or intimidation of any person during and in respect to the same-sex marriage campaign. The special provisions came in the wake of social disturbances based on the marriage-equality plebiscite and sought to protect against harm based on sexuality, gender identity, intersex status, religious conviction, or political stance. The emergency law expired upon the conclusion of the same-sex marriage postal survey in November.

Source: <http://bit.ly/2qFDwei> ; <http://bit.ly/2gW2YrL>; <http://bit.ly/2xWSxaz>

### **New Zealand and Tasmania vote to expunge historical convictions of homosexuality**

The Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Bill was introduced in the Parliament of New Zealand. If passed, this law will permit men convicted of consensual homosexual conduct, or the families of such men who have since died, to seek the deletion of their conviction from official records. Further decision will be taken on a case-by-case basis by the Secretary for Justice to determine whether the specific conviction would still be considered illegal today. The Bill was first presented to the Parliament after a petition by Wiremu Demchick acquired 2100 signatures.

The Upper House of Tasmanian Parliament unanimously passed legislation to expunge the record of those convicted of same-sex activity and 'cross-dressing' under historical laws. Many in the chamber offered apologies to the individuals and families impacted by the previous laws criminalizing LGBT activities. Under the proposed legislation, individuals may apply to the Justice Department for the clearing their criminal record. The bill, however, does not acknowledge those offences which may have been committed as a response to police discrimination under the historical laws. The bill is currently awaiting assent.

Source: <http://bit.ly/2m7RgJ5>; <http://bit.ly/2xzbOih>

### **Brazilian court overrules resolution that prohibited 'conversion therapy' on LGBT individuals**

A Brazilian court overturned the 1999 decision by the Federal Council of Psychology to prohibit “conversion” therapy, sometimes referred to as ‘sexual orientation change efforts’ or ‘reparative therapy’, that seeks to change an individual’s sexual orientation or gender identity and expression. The court ruled in the favour of a psychologist who was stripped of her license in 2016 for describing homosexuality as a “disease” and for offering discredited and inhumane treatments for LGBT people. The ruling approves “conversion therapy” and advocates for further research into the practice. The Federal Council of Psychology released a statement confirming that they will legally contest this decision as it “opens the dangerous possibility of the use of sexual reversion therapies”.

Sources: <http://bit.ly/2yWYtlq>;

### **European Parliament passes resolution on combating sexual harassment and abuse in the EU**

The European Parliament, by 580 votes to 10 and with 27 abstentions, adopted a resolution on combating sexual harassment and abuse in the EU. The Parliament condemned all forms of sexual violence and harassment, whether it be physical or psychological, and noting the fact that these acts are too easily tolerated. The Parliament also asked the Commission to submit a proposal for a directive against gender-based violence as well as a comprehensive EU strategy to resist the same. It highlighted the relevance of dedicated training and awareness-raising campaigns regarding existing formal protocol on reporting sexual harassment in the workplace, along with establishing procedures of accountability and active engagement of men for the purpose of prevention in response to the underreporting of sexual harassment.

Further, sexual harassment within the Parliament itself was explored, by installing specific structures and internal rules to address the issue, including advisory committees that will handle complaints from both members and staff. Member States too were advised to evaluate the matter of sexual harassment in their own national parliaments.

Source: <http://bit.ly/2r9k75z>

### **Austrian Supreme Court rules in favor of same-sex marriage**

Although civil partnerships have been allowed since 2010, the Constitutional Court of Austria termed the law barring same-sex marriage as unconstitutional. Same-sex marriage is likely to be legal from January 1, 2019. The ruling also allowed the couples involved in the challenge considered by the Court to marry immediately. The Court observed that “the distinction between marriage and civil partnership can no longer be maintained today without discriminating against same-sex couples”, and that allowing the two institutions to be separate implies an inherent inequality. Civil partnerships will, however, still be available and will soon be an option for heterosexual couples too.

Source: <http://bbc.in/2nwTUw7>; <https://ind.pn/2iSgQo9>

### **Court permission no longer required for gender transition hormone therapy in Australia**

An Australian Family Court held that teenagers no longer require the authorisation of the court to undergo stage 2 of hormone therapy, which is irreversible in nature, for gender dysphoria. In earlier cases, Australian courts had held that since the treatment was

irreversible, it was necessary for the Court to assess the ability of the minor to consent to the treatment, and therefore, parental consent was not sufficient. However, opposition against this requirement had been building, not only because of the costs of and delay caused by the process, but also because it was considered intrusive and insensitive.

Re: Kelvin [2017] FamCAFC 258

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

### **Hungarian Ombuds finds rejection of lesbian woman's application to adopt unlawful**

A report by the Commissioner for Fundamental Rights found that the decision of Hungarian authorities to reject the adoption application of a same-sex couple amounted to unlawful discrimination based on sexual orientation. The two women's application to adopt a 16-month-old Roma girl was rejected on the grounds that it would infringe upon the child's right to protection and care.

Hungary introduced recognition for same-sex couples in 1996 in the form of cohabitation, and since then has granted many rights that are available to heterosexual couples. Notable exceptions are parenting rights such as access to assisted reproduction, second parent adoption, and joint adoption.

Source: <http://bit.ly/2B4cmOc>

### **UK Court of Appeal quashes order denying parental rights to transwoman**

The Court of Appeal reversed a High Court judgement which prevented a transgender father, belonging to an ultra-Orthodox Jewish community, from having direct contact with her five children. The tight-knit Haredi community in Manchester had threatened to ostracise her family if they had any contact with her once it was found she was living as a woman. The judges of the Court of Appeal overturned the "stark, deeply saddening and extremely disturbing" judgement of the High Court and ordered the issues to be reconsidered by another High Court judge.

Source: <http://bit.ly/2CK5g2I>

### **German courts mandates introduction of third gender category in public documents**

The Federal Constitutional Court of Germany held that the civil status law, which does not provide a third gender category for registration, is violative of the right to privacy, and thus incompatible with the constitution. The Court directed the legislature to within a year, create a new regulation to provide for registration of one's gender in the third category, or do away with public documents altogether. In 2013, Germany became the first European country to allow the registration of newborns as neither male nor female. This ruling will take the initiative for legal recognition of trans persons further by allowing for the creation of a third category of gender in legal documents.

1 BvR 2019/16

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

### **Mexico formulates "code of conduct" to mitigate intimidation based on SOGI**

Mexico's Ministry of Health established specific guidelines for all healthcare providers across the country to ensure respectable and equitable treatment of the LGBTI community. The code of conduct is the product of a broad participatory process that incorporated

government health structures as well as representatives of civil society and the LGBTI community. The code of conduct mandates a zero-tolerance policy for discrimination in health centres and for the promotion of LGBTI-focused sexual and reproductive health campaigns. It also provides training programs for healthcare providers in public health facilities in order for them to provide respectful and anti-discriminatory treatment to LGBTI patients.

Source: <http://bit.ly/2yeJu9g>

### **US Court of Appeals holds that companies cannot discriminate against LGBTI people**

The full 7th U.S. Circuit Court of Appeals in Chicago ruled that companies cannot discriminate against their LGBT employees because of their sexual orientation. The Court observed that discrimination on the grounds of sexual orientation amounts to sexual discrimination, and therefore is covered under existing federal law known as the Civil Rights Act. The judge observed “I don’t see why firing a lesbian because she is in the subset of women who are lesbian should be thought any less a form of sex discrimination than firing a woman because she’s a woman.”

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

Judgment: <http://bit.ly/2pmjTSN>

### **Egypt, Hungary and Ukraine crackdown on foreign-funded NGOs**

Egypt enacted a law to regulate civil society organisations, requiring them to seek permission to form “a state appointed administrative entity” to carry out their operations. The administrative entity will have the power to determine whether an NGO’s work is in line with the government’s development and social welfare plans. Civil society groups will be required to report on information about their funding and programmes, as well as seek permission from the authorities for any activities, including conducting surveys. NGOs will also require government permission before working with foreign organisations. The law is likely to result in the closure of several CSOs, despite growing need for essential services delivered by them, including education and healthcare.

In a parallel but related development, the Cairo Criminal Court passed an interim order for freezing assets of Nazra for Feminist Studies, a women’s human rights organisation. Several cases had been instituted against pro-democracy NGOs in 2011 post the Arab Spring; some of these dormant cases were revived by the Cairo Criminal Court in 2016 at the insistence of the state. This illustrates the global trend in authoritarianism that seeks to stifle independent voices and information on human rights.

The Hungarian parliament too approved a law that imposes strict regulations on foreign funded NGOs in the country. Ostensibly passed to curb money laundering and terrorism funding, it is believed that the law will be used to stifle dissent, discriminate, and delegitimize NGOs.

The new law requires that organisations that receive more than €24,000 a year as foreign funds should register as “foreign-supported organisation.” They will be required to list any foreign sponsors providing them with more than about \$1,800 a year. The reporting requirements for foreign funded NGOs have been enhanced, and the Rules provide for closure in case of non-compliance.

The Ukrainian government amended its e-declaration law on financial disclosures to include all NGOs. The law mandates stringent reporting requirements with respect to the funding and

expenditure of NGOs. Earlier in the year, the legislature had enacted another law, purportedly for curbing corruption, which requires anti-corruption activists to register their assets, bringing even investigative journalists, foreign board members, and unrelated subcontractors within its purview and subject to disclosure law. This move is being seen as a continuation of the global trend of NGOs being brought under the scrutiny of state governments.

Source: <http://bit.ly/2sFFFmF>; <http://bit.ly/2tyf8L8>; <http://reut.rs/2s6cwSb>; <http://on.ft.com/2nGAHGj>; <http://bit.ly/2tIFybm>

### **Greece, Colombia, and South African High Court enable change of gender status, including within heterosexual unions**

Amidst strong opposition from the Greek Orthodox Church, the Greek government passed a legislation that will enable its citizens to determine and change their gender identity legally on all official documents without the need for psychiatric evaluation or medical intervention. The law will allow trans individuals to affirm their desired gender identity from the age of 15 and is aimed at squarely ending the marginalization of people whose perceived gender identity did not correspond with that assigned at birth.

In the case of a 17-year-old trans male, the Constitutional Court of Colombia ruled that a minor may update their gender identification on official documents under certain circumstances. The individual in focus resides in the United States with his family and sought to change his gender marker to correspond with his gender identity for his US citizenship applications. The Supreme Court responded to the request stating that gender transition changes applied to official documentation can only be done at the legal age. In contrast, the Constitutional Court acknowledged the gender transition and approved the individual's request for updated sex markings on his certificates. This was the first case in Colombia of gender identity change by a transgender.

The Western Cape High Court in South Africa ruled that individuals in legally-recognized marriages may amend their gender identification and update all legal documents without dissolving their marriage. The case centred on three women and their female spouses who pursued the department of Home Affairs in court after having their applications to change their gender identities rejected. The couples were married under the 1961 Marriage Act, which pertains to heterosexual unions, while same-sex marriages are only recognized under the 2006 Civil Union Act.

Prior to this ruling, married individuals who wished to legally change their gender identity were required to divorce their spouse in order to avoid same-sex marriage. The Western Cape High Court Judge emphasized on the importance of the Alteration of the Sex Description Act that should be implemented in a manner compliant with the Constitution of South Africa to respect the lives and ensure the right to identity of transgender persons.

Source: <http://bit.ly/2yY13Zy>; <http://bit.ly/2tEMTZJ>; <http://bit.ly/2yeXRdZ>; <http://bit.ly/2iLbiLN>; <http://bit.ly/2gMNnHj>

### **ECHR affirms differential treatment of male and female convicts on grounds of parenthood**

The European Court of Human Rights held that differential treatment of male and female convicts in the stay of execution of their prison sentences on the grounds of parenthood is not discriminatory. In this case, the application for stay of execution of prison sentence by the father of a child under the age of one was rejected by Romanian courts, as this ground for stay was available only to women. In his appeal to the ECHR, it was declared that the

exclusion of men from this provision was not discriminatory as there was a reasonable relation between the specific characteristics of early motherhood and safeguarding the child's best interests.

Citation: Alexandru Enache v. Romania ECHR 292 (2017)

Source: <http://bit.ly/2hwUm8f>

### **British court denies heterosexual couple the option of choosing civil partnership over “patriarchal” marriage**

A British couple lost their battle in the Court of Appeal for the right to enter into a civil partnership instead of a conventional marriage, which they consider as having patriarchal baggage. As per the Civil Partnership Act of 2004, only same-sex couples are eligible to enter civil partnerships in the UK. A government representative said that a decision had not yet been taken about whether or not to extend civil partnerships to heterosexual couples. After public consultations and a debate in Parliament, it was decided to see the effect extending marriage same-sex couples had on civil partnerships before arriving at a final decision. The judge's description was described as “unimpeachable”.

Source: <http://ind.pn/2m74Sn8>

### **Tunisia and Kenya move towards abolishing forced anal examination to determine sexual orientation**

At the 36<sup>th</sup> session of the Human Rights Council, Tunisia accepted the recommendation to ban forced anal examinations as a means of determining sexual orientation. The State Minister declared that authorities will no longer be permitted to impose these examinations without consent of the individual involved. While judges and authorities may still recommend the examination, ‘suspects’ are entitled to reject such directions without inviting aspersions of homosexuality. Following the revolution against the dictatorship in 2011, the country has been moving towards democracy, and with that, enhanced respect and protection for the LGBT community. However, same-sex activity remains punishable by three years of incarceration.

In a similar move, the Kenyan Medical Association (KMA), issued a statement in support of the National Gay and Lesbian Human Rights Commission (NGLHRC) campaign against forced anal examinations in Kenya. The statement comes in the wake of a Governing Council meeting wherein the NGLHRC concerns were voiced. The KMA statement resolved to condemn and discourage any form of forced examination of clients; advice practitioners would adhere to the Code of Ethics and Professional Conduct in all client interactions; called upon the national government to ensure safe and secure healthcare environments; and organise a forum on the health needs of the LGBTIQ community.

Sources: <http://bit.ly/2gM58qe>; <http://bit.ly/2zPYzdU>

## **National Developments**

### **LEGISLATIVE DEVELOPMENTS**

**Three health related laws enacted: Mental Healthcare Act; Maternity Benefits (Amendment) Act; and the HIV AIDS (Prevention and Control) Act**

The Parliament enacted the Mental Healthcare Act, 2017 which will replace the Mental Health Act, 1987. Enacted with a view to fulfilling India's obligations under the United Nations Convention on the Rights of Persons with Disabilities, this Act takes a rights-based approach, and recognises the agency of mentally ill persons. The Act prohibits practices such as forced sterilisation, electro-convulsive therapy without muscle relaxants, and chaining of mentally ill persons. In addition, it enables persons suffering from mental illnesses to make advance directives about the nature of treatment that they may receive once incapacitated to make such decisions. Significantly, this Act also raises a presumption of 'severe stress' to safeguard persons who may have attempted suicide, from prosecution under Sec. 309 of the IPC.

The Maternity Benefits Act, 1961 was amended to increase the duration of maternity leave entitlement from 12 to 26 weeks. However, the Act does not allow women with more than two children to avail of more than 12 weeks of maternity leave for subsequent pregnancies, thus furthering the two-child norm of the government. Commissioning and adoptive mothers of children of less than three months are also entitled to maternity leave of 12 weeks. The Act requires every establishment with fifty or more employees to provide crèche facilities within a prescribed distance. It also makes provisions for 'work from home' projects. While these amendments are welcome, they leave out of their purview a majority of women who work in the unorganised sector, and are thus not covered by this Act.

The HIV AIDS (Prevention and Control) Act, 2017 prohibits discrimination against persons with HIV and AIDS in (i) employment, (ii) educational establishments, (iii) health care services, (iv) residing or renting property, (v) standing for public or private office, and (vi) provision of insurance, provides for informed consent and confidentiality with regard to their treatment, places obligations on establishments to safeguard their rights, and creates mechanisms for redressing their complaints. The Act prohibits the practice of compulsory HIV testing as a pre-requisite for obtaining employment or accessing healthcare and also seeks to prevent and control the spread of HIV and AIDS.

Source: <http://bit.ly/2Fcc3UJ>

### **Madhya Pradesh enacts law to prescribe death penalty for rape of girls aged 12 years and below**

The Madhya Pradesh legislature passed an amendment to the Indian Penal Code to prescribe death sentence as the highest punishment for rape of girls aged 12 and below; becoming the first state where those convicted of such rapes will face the death penalty. The bill also seeks to increase the punishment for offenders convicted for a second time of forcefully disrobing a woman. Under the present law, only such sexual assault that results in death or permanent vegetative state of the victim is punishable with death. Otherwise, only repeat offenders can be sentenced to death. The Protection of Children from Sexual offences Act, 2012 does not prescribe death as the maximum sentence for any of the offences therein.

The bill proposes changes to sections 354, 376 and 493 of IPC and Sections 29, 110, 198 and 437 of CrPc. Apart from introducing death penalty for rape, the bill also seeks to amend section 493 of the IPC to introduce the offence of establishing sexual relations upon a false promise of marriage. Called the Dand Vidhi (Madhya Pradesh Sanshodhan) Vidheyak, 2017, the bill is yet to receive Presidential assent.

Source: <http://bit.ly/2DjThg4>

## JUDGMENTS/ORDERS

### Supreme Court

#### *Supreme Court holds that right to privacy is a fundamental right*

A nine-judge constitutional bench of the Supreme Court unanimously held that the right to privacy is a fundamental right and finds recognition in Articles 14, 19, and 21 of the Constitution. The issue of whether an inalienable right to privacy is recognized in the Constitution was referred to this bench by a smaller bench before which the question of validity of the 'Aadhar card scheme' is pending.

While the main issue was decided unanimously by the bench, the issue of contours of the right to privacy has been dealt with differently in each of the six opinions rendered by the Court. The court has explicitly recognized the feminist critique of the separation of public and private spheres in law, and has thus construed the right to privacy as not only privacy of one's physical body, but also informational privacy, and the right to privacy of choice and autonomy over fundamental personal choices. Significantly, in a detailed opinion, the Court has expressed its disagreement with the reasoning in the case of *Suresh Kumar Koushal v Naz Foundation* which recriminalized homosexuality, underscoring the importance of recognising the privacy rights of all individuals regardless of their sexual orientation.

While the exact components of the right to privacy can only be determined on a case to case basis, the Court set forth a strong framework that may have wide ranging implications, not only on data privacy laws, but also in areas such as mandatory reporting of offences, criminalization of non peno-vaginal sexual intercourse, reproductive and sexual health rights, matrimonial laws, the right to choice of food, and so on.

Source: <http://bit.ly/2vqOUb8>; <http://bit.ly/2xuWJxM>

#### *Supreme Court declares instant triple talaq invalid*

In the landmark judgment of *Shayara Bano and Ors v Union of India and Ors*, the Supreme Court by a 3:2 majority held that divorce through *talaq e-bidat*, or instant *triple talaq*, is invalid in law. The Court upheld the settled view that personal law cannot be tested against the Constitution, and the validity of a particular practice must therefore be drawn from the source of a particular religion, in this case, the Quran. This understanding of personal law thus continues to hold that un-codified personal law is above the Constitution, and cannot be declared unconstitutional/ invalid for violating fundamental rights.

Yet, this judgment is celebrated as its an outcome of multiple petitions by Muslim women's rights groups, and has had declared yet again, instant *triple talaq* as unconstitutional.

Citation: *Shayara Bano and Ors v Union of India and Ors*[Writ Petition (C) No. 118 of 2016]

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

#### *Supreme Court holds that minor wife can prosecute husband for rape*

In a PIL seeking harmonization of the sexual assault laws under POCSO and IPC, the Supreme Court held that a minor wife can prosecute her husband for rape. This judgment allows non-consensual sex with a wife under 18 years of age to be prosecuted as rape, thus



aligning the provisions on statutory rape with marital rape. Consequently, the marital rape exception to Sec. 375 of the IPC is now applicable only to adult married women.

Citation: Independent Thought v. Union of India and Anr. W.P. (C) No. 382/2013  
Source: <http://bit.ly/2gViwIK>; <http://bit.ly/2gViwIK>

*Supreme Court decides to revisit verdict that had directed setting up of 'Family Welfare Committees' for 498A cases*

The Supreme Court had directed that for a period of six months, no arrests will be made in cases registered under Section 498A of the Indian Penal Code unless evidence of tangible physical harm and injury is produced by the complainant wife. 498A is a cognizable and non-bailable offence. Surmising that most such cases are filed in the heat of the moment by women who seek to harass their husbands, the SC had directed the establishment of 'Family Welfare Committees,' for overseeing and clearing every such case for prosecution by examining the facts of each case.

The judgment was criticised for perpetuating the myth that most women jump into matrimonial litigation impulsively, and file false criminal cases against their husbands and in laws to harass them and extort hefty alimony amounts. This decision was also widely criticised for diluting legislative mandate and the principles of the criminal procedure code.

However, another bench of the Supreme Court agreed to revisit this verdict on the grounds that the directions of the Court in that case may be in contravention of procedural criminal law as contained in the CrPC.

Citation: Rajesh Sharma v. State of U.P., 2017 SCC OnLine SC 821

Nyayadhar v. Union of India & Ors.

Source: <http://bit.ly/2EIz8NW>; [bit.ly/2Alirta](http://bit.ly/2Alirta)

Source: <http://bit.ly/2Ek4IBa>

*Husband's consent irrelevant for obtaining abortion, holds Supreme Court*

The Supreme Court concurred with a decision of the High Court of Punjab and Haryana, where the court had upheld a woman's sole and inalienable right to give birth or terminate pregnancy, regardless of her husband's consent. This was in response to a petition filed by the man seeking damages from his wife for undergoing abortion without his knowledge or consent. Dismissing the appeal, the High Court had held that the decision of the mother to consent to matrimonial sex did not extend to consent to conceive a child, and therefore a husband could not force his wife to continue a pregnancy against her will.

Anil Kumar Malhotra v. Mangla Dogra and Ors.

Source: <http://bit.ly/2AW2cEb>; <http://bit.ly/2xvf2mR>; <http://bit.ly/2AW2cEb>

*Six-month cooling off period for mutual divorce held as directory, not mandatory, by Supreme Court*

The Supreme Court held that the six-month cooling off period that a married couple seeking divorce by mutual consent is required to wait for under the Hindu Marriage Act, is merely directory, and not mandatory. Family Court judges can now waive this period provided that the parties have been living separately for a year before applying for divorce, and all efforts

for reconciliation have failed. The cooling off period of six months was incorporated as a pre-condition to mutual consent divorce to enable reconciliation of the parties, and has been criticized for unduly delaying relief to parties, with the misplaced objective of preserving the institution of marriage.

Citation: Amardeep Singh v. Harveen Kaur C.A. No. 11158/2017

Source: <http://bit.ly/2zbeC92>

*Supreme Court's decisions raise questions about consistency in relaxation of restrictions on women's right to abortion*

In a case where the petitioner sought permission for abortion apprehending danger to her life after discovering that her foetus suffered from 'anencephaly', a condition where foetal skull bones remain unformed, the Supreme Court relied on the report of a medical board to conclude that continuing the pregnancy posed a risk to the life of the pregnant woman. Although the pregnancy was in its 24<sup>th</sup> week, the bench decreed that the woman was allowed to terminate her pregnancy in light of these circumstances. The decision is significant as it places value on the autonomy of women to make decisions about their reproductive health, instead of the moral argument of preserving life regardless of consequences.

Developing a confusing jurisprudence on the right of women to terminate a pregnancy after 20 weeks, the Supreme Court refused to allow a woman who had been pregnant for 27 weeks to abort the foetus in another case. The woman had petitioned to the Court seeking exemption from the 20-week rule under the Medical Termination of Pregnancy Act, 1971, on grounds that the foetus had been diagnosed with several deformities and disorders. Relying upon the medical board's findings that the time period for which the baby would survive could not be ascertained, and because there was no threat to life of the petitioner, the Court dismissed her petition.

Citation: Meera Santosh Pal v. Union of India, 2017 SCC OnLine SC 39; Sheetal Shanker Salvi v. Union of India, Writ Petition (Civil) No.174 of 2017

*High Courts directed to implement the POCSO Act*

Noting the non-implementation of Section 32 of the Protection of Children from Sexual Offences Act (POCSO), the Supreme Court directed High Courts of 12 states and two Union territories to take suo motu action and appoint special public prosecutors to deal with cases of child sexual abuse. Section 32 of the POCSO Act requires State Governments to appoint Special Public Prosecutors for every special court under the Act, to ensure speedy and sensitive handling of cases under this Act.

Citation: Gaurav Kumar Bansal v. Union of India and Ors, Writ Petition (Civil) No. 203 of 2017

*Divorced wife can claim maintenance despite desertion*

The Supreme Court, upholding an order of the Himachal Pradesh High Court, granted maintenance to a divorced wife who had deserted her husband. Her husband had obtained divorce on the ground of desertion, and opposed her maintenance petition on the strength of an exception under Sec. 125(4) of the Criminal Procedure Code. This subsection states that a woman is not entitled to maintenance if she refuses to cohabit with her husband without any

reasonable cause. Reiterating its earlier position, the Court stated that a divorced wife also falls within the purview of Sec. 125 CrPC, and is thus entitled to maintenance.

Citation: Manoj Kumar v. Champa Devi, Special Leave to Appeal (Crl.) No(s).10137/2015

*Inconsistency in award of death penalty in cases of Jyoti Singh and Bilkis Bano raises questions about the understanding of 'rarest of the rare' doctrine*

In an appeal against the death penalty by the four convicts in Jyoti Singh's gang rape, the Supreme Court upheld the original sentence. The homicidal gang rape of a 23-year old girl in Delhi led to momentous public outrage, propelling the enactment of longstanding reforms in criminal laws relating to sexual assault in March 2013. Unfortunately, the demand for harsh punishments and death penalty has persisted in public and judicial discourse despite evidence showing that certainty of prosecution rather than harsh punishments is the best form of deterrence. The Trial Court in awarding capital punishment to the accused justified it on grounds that the brutal gang rape was an affront to the "collective conscience" of the country. The Delhi High Court and now the Supreme Court have upheld the death sentences.

The case of Bilkis Bano's gang rape (where several murders were also committed) brings out the inconsistencies in awarding the death penalty. The gang rape occurred as part of the 2002 riots in Gujarat, when Bilkis was five months pregnant. The truck in which she and her family were travelling was attacked by an armed mob that killed fourteen family members including her daughter and mother, gang raped her, and left her for dead.

The case was successfully prosecuted only on the National Human Rights Commission's petitioning the Supreme Court that directed the CBI to probe the matter, shifting the case to Maharashtra in 2004 to ensure an unbiased trial. This case is significant, being not only the sole conviction for gang rape in communal riots, but also one where state officers were convicted for tampering with evidence. Bombay HC upheld the conviction of eleven accused in the Bilkis Bano gang rape case, and overturned the acquittal of seven others – five policemen and two doctors, who have been convicted of tampering with evidence and not performing their duties.

While it is laudable that the Bombay HC rejected death penalty upon the accused persons, this case brings out inconsistencies in the legal rationale for 'rarest of rare' case on which death penalty is justified.

Mukesh and Ors v State of NCT of Delhi 2017(5)SCALE506 [Supreme Court of India]

Jaswantbhai Chaturbhai Nai and Ors. v. State of Gujarat and Ors. MANU/MH/0889/2017 [High Court of Bombay]

Source: <http://bit.ly/2pMQJxH>; <http://bit.ly/2ty8p3G>; <http://bit.ly/2tYVYIZ>

*Supreme Court to review the constitutionality of adultery law*

The Supreme Court issued a notice to the government in a petition challenging the constitutionality of Section 497 of the IPC. The three-judge bench noted that only the man with whom adultery is committed is criminally liable under the provision, which exempts the wife from criminal liability. The bench also noted the discrimination between husband and wife, given that only the husband can initiate action for his wife's adultery, but the wife cannot initiate criminal action against her husband. Finally, alluding to the 'consent clause' of the section, which exempts the adulterer from criminal liability if the husband's consent is proved, the bench opined that this amounts to 'subordination of women,' and thus needs to be

tested against constitutionally guaranteed rights. The Supreme Court has previously upheld the constitutionality of this section in three different cases.

Joseph Shine v. Union of India, 2017 SCC OnLine SC 1447

Source: <http://bit.ly/2rbydDz>; <http://bit.ly/2Dfw9jC>

*Parsi woman challenges the absence of a mediation process in Parsi Marriage and Divorce Act*

A Parsi woman moved the Supreme Court questioning the validity of several provisions of Parsi Marriage and Divorce Act. The petitioner had moved a Parsi matrimonial suit early last year seeking dissolution of her 11-year-old marriage. She claims that the procedure under the 1938 personal law was exasperatingly cumbersome, involving a system much like a jury, as specified under section 46 of the Act, and granted no access to the mediation and settlement available to Hindu women under the family court system.

Naomi Sam Irani v. The Union of India and Sam Shapoor Irani

Source: <https://goo.gl/SNKCKA>; <http://bit.ly/2D6N4ke>

## High Courts

*Allahabad HC holds anti-Romeo squads valid, and eating food of choice is aspect of Right to Food*

Two separate public interest litigations sought intervention of the Allahabad High Court in restraining the anti-Romeo Squads of the UP government from ‘moral policing,’ in face of reports and videos showing an over-reach of powers in the way they targeted and humiliated young couples in public places.

The first PIL was dismissed on the grounds that government orders clearly prohibit moral policing, and that the name of the squads was not per se justiciable. Refusing to pass a direction on the issue of squad personnel uploading images and videos of young couples on social media, the court held that that surveillance can involve capturing of images and videos. Subsequently, another PIL was filed seeking directions to the state government to frame rules, laws and guidelines in respect of Anti-Romeo Squads, and to establish a monitoring authority for the squads. Reiterating its earlier decision, the court dismissed this petition.

The Allahabad High Court also held that the right to choice of food falls within the fundamental right to food. This observation was made by the Court while granting relief to the petitioner, whose application for renewal of license for selling goat meat was not reviewed by the municipality.

Criticising the lack of response to the Petitioner’s application, the Court noted that the State’s approach to cattle slaughter had the effect of prohibition on the trade of the Petitioner, and was in violation of his fundamental rights under Article 19 (livelihood) and 21 (life) of the Constitution of India. This decision is significant, given the crackdown of the State government on slaughterhouses in UP, and the ban on beef imposed by several state governments.

Citation: Gaurav Gupta v State of UP, P.I.L. (Civil) No.6779 of 2017; Rituraj Mishra v Govt of UP, P.I.L. (Civil) No. 6907 of 2017; Saeed Ahmed v. State of U.P., Misc. Bench No. 6871 of 2017

*Sikkim HC declares all orders under Sikkim Succession Act, 2008 null and void*

As reported by PLD in its May-June newsletter, several Sikkimese women had filed a petition in High Court challenging the Sikkim Succession Act, 2008 for being discriminatory as it denies equal property rights to women married to non-Sikkimese men, or those who have acquired foreign citizenship. The Sikkim High Court declared all orders arising from the application of the said Act as null and void on the ground that it has not yet been notified by the State government. The Court did not rule on the constitutionality of the statute, as it has not yet been brought into force.

Source: <http://bit.ly/2m5Eivy>

*Punjab and Haryana HC suspends sentence for rape on account of victim's promiscuity, grants bails to three convicts, Supreme Court stays decision*

The Punjab and Haryana High Court suspended the sentence of three persons convicted of aggravated rape, gang rape, criminal conspiracy, criminal intimidation, and obscenity, and granted them bail, on the grounds that the facts of the case spoke to an alternative story of a casual relationship with friends, which had taken an unfortunate turn due to the promiscuity of the victim and the voyeuristic tendencies of all parties involved, including the victim. The bail order was widely criticized for disparaging the character of the victim, blaming her for the sexual assaults, and flouting procedural norms by going into the merits of the case in an application for suspension of sentence. The Supreme Court has stayed this decision of the High Court.

Citation: Vikas Garg and Ors v. State of Haryana [Cr.M.No.23962 of 2017; Cr.M.No.26910-11 of 2017; Cr.M.No.26930 of 2017]

Source: <http://bit.ly/2h61hYR>

*Gujarat HC grants girl's custody to female friend on account of their desire to stay together*

In a case where two girls approached the Gujarat High Court through a Habeas Corpus petition expressing their desire to live with each other, the judges granted one of the girls custody rights over her friend. The Muslim girl from Ahmedabad alleged being sexual harassed and intimidated by her family, after which she had moved into the shelter home where she met the other petitioner who was Hindu. The shelter home staff had objected to the latter girl bringing her gifts, so the two filed a habeas corpus petition with the Gujarat High Court to get the Ahmedabad girl released. Laudably, the judges placed priority on the fact that the girls were adults of sound mind and thus free to decide on their own.

Citation: Charmiben Gajanandbhai Vyas v. State of Gujrat, Special Criminal Application (Habeas Corpus) no. 9851 of 2016

*Jharkhand and Bombay High Courts adopt opposing positions on second and third trimester abortions*

The Jharkhand High Court held that medical termination of pregnancy after the statutorily stipulated twenty-week period is permissible in cases where carrying the pregnancy to term would harm the mental health of the pregnant woman. In doing so, the Court adopted a wide interpretation of Sec. 5 of the Medical Termination of Pregnancy Act, which permits abortion after 20 weeks in cases where the pregnancy poses a threat to the life of the woman. In this case, a 15-year-old had approached the court for termination of a pregnancy resulting from sexual assault. Considering the social repercussions and trauma that the girl may have faced as a result of the sexual assault and pregnancy, and in view of medical opinion that termination did not pose a risk to her life, the Court allowed the girl's petition.

The Bombay High Court, however, adopted the opposite view in a similar case. In that case, a minor girl's father approached the court for abortion of a 27-week-old foetus on the grounds that the foetus was a conception of rape, and carrying the pregnancy to term would cause grave injury to the girl. However, the court refused to allow the petition given the medical boards opinion that no abnormality was detected in the then viable foetus, and the girl should be directed to continue the pregnancy with obstetric and psychological support.

Citation: *Minor through her mother v. State of Jharkhand* W.P. (Cr.) No. 399 of 2017 (High Court Jharkhand); *Danbahadur Rajkaram Yadav v. State of Maharashtra and Anr.* W.P. No. 3874/2017 (High Court of Bombay)

Sources: <http://bit.ly/2infNIy>; <http://bit.ly/2gh56tY>

#### *Kerala HC rules on inter-religious marriages and women's autonomy*

The High Court of Kerala handed over the 'custody' of an adult woman of sound mind to her father, and nullified her marriage to a Muslim man. The father of the 24 year old woman had filed a writ petition to seek her custody, after she left her parent's home and converted to Islam. The marriage was solemnised during the pendency of the case. Constantly referring to the woman as 'detenue,' and treating the woman's choice of marrying a Muslim man as unfavourable, the court granted her custody to her father, nullified her marriage, ordered an enquiry into the background of her husband, and ordered an investigation into the activities of an organisation that had allegedly forcibly converted the woman in question to Islam.

This judgment was rightly criticised for dismissing an adult woman's agency through statements such as, "a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways", and in implicitly accepting the communal theory of 'love jihad.' This decision was challenged by the husband of the woman in a special leave petition before the Supreme Court, in which the Supreme Court directed the investigation of Hadiya's marriage. The Supreme Court had appointed the principal of the college in which Hadiya is studying as her guardian, but has not reinstated her marriage.

Following the Hadiya case, the Kerala High Court, in another case of a young adult women eloping with her partner with the intention of marrying him, ruled in favour of the girl's choice while continuing to exercise severe restrictions over her movement and autonomy. In this case, the parents of the adult woman registered a case of kidnapping and sexual assault against her partner, and filed a writ petition seeking her custody, on the ground that the accused had a criminal background and their daughter was incapable of choosing a partner. Despite the girl's statement that she was in a relationship with her partner and intended to marry him, the High Court directed her to undergo a psychiatric evaluation. While the court ultimately held that she, as an adult, was entitled to marry a person of her choice, it nevertheless directed her to remain in a shelter home until the solemnization of her marriage as the Court did not consider it possible to send her along with her partner as an unmarried

woman. During her stay at the shelter home, the Court directed that her parents alone would be allowed to interact with her.

In yet another case, a division bench of the Kerala High Court warned against the branding of every inter-faith marriage as ‘love jihad.’ In this case, the love marriage of a Hindu woman and a Muslim man, which was staunchly opposed by the girl’s parents, resulted in the lower courts handing over the custody of the woman to her parents, who then forced her to stay in a re-conversion centre. She described the violent practices prevalent in re-conversion centres. The court directed that she be set at liberty to join her husband, and directed the closure of all forced conversion and re-conversion centres.

Citation: Asokan K.M. v. The Superintendent of Police [WP (CrI.) No. 297 of 2016]; T.M. Shareed and Anr. v. Abdulla K.B. and Ors. [WP (CrI.) No. 213 of 2017 (S)]; Anees Hameed v. State of Kerala [WP (CrI.) No. 313 of 2017]

Source: <http://bit.ly/2wo6ce1>; <http://bit.ly/2ifhXw>

#### *Rajasthan HC issues directions on religious conversions, inter-faith marriages*

The Rajasthan High Court held that in a case involving marriage performed after conversion, where the conversion is in contravention of the guidelines that govern it, the marriage may be declared voidable at the aggrieved party’s behest. The guidelines, laid down by the court to tackle ‘forced conversions,’ state that only an adult can undergo religious conversion, mandate prior intimation of conversion to judicial authorities, public notification of such proposed conversion, and solemnisation of marriage only after one week of said conversion.

Chirag Singhvi v. State of Rajasthan D.B. Habeas Corpus No. 149 / 2017

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

#### *J &K High Court decries harassment of adult women who exercised their right to choice in marriage*

The High Court recently addressed a petition wherein the petitioner had brought to the notice of the court the continual harassment that she and her husband were subjected to following their inter-caste marriage. She stated that despite having married after attaining the age of majority, out of her own free will without any undue coercion, the respondents had framed false criminal cases against her husband with the help of the police. Referring to the role played by inter-caste marriages in weakening the caste system, the Court granted police protection to the couple and directed that action be taken against those involved in harassing them.

Zubida Akhter v. State of Jammu and Kashmir, 2017SCCOnLineJ&K712

Source: <http://bit.ly/2B4xrbp>

#### *Kerala HC rules prohibition of women working at liquor shops is unconstitutional*

Responding to a petition challenging the constitutional validity of provisions of the Kerala Abkari Shops Disposal Rules, 2002 which prohibit women from being employed in liquor shops, the Court ruled that such rules were in violation of Article 14 and 15 of the Constitution. The petitioners had claimed that they had participated in the selection process and had been ranked well, after which they were dis-entitled merely on the ground of gender.

Sanuja. B v. Kerala State Beverages Corporation Ltd., 2016 SCC OnLine Ker 28105

*Retraction of the woman's complaint is insufficient grounds to quash rape allegation, holds Delhi HC*

In a case where a woman prosecutrix had consistently alleged sexual assault by an employer in her statement to the police and the magistrate, the Delhi High Court chose to ascertain whether her statement was subsequently withdrawn under threat or pressure. The Court said that it would be unsafe to quash FIR proceedings on the basis of a retraction and that it would have to be ascertained during trial as to how and in what circumstances the statement was retracted.

*Citation: Dilip Kumar v. State (NCT of Delhi), 2017 SCC OnLine Del 6576*

*Delhi HC holds that desertion in itself cannot be a valid ground for divorce, 'constructive desertion' a better indicator*

In a case where the legality of a divorce decree was being scrutinized, the judges noted that desertion in itself was not sufficient to grant divorce because often one spouse is forced to leave due to the conduct of the other. The Delhi High Court set aside the decree of a lower court, which had granted divorce on a misreading of the evidence submitted by the husband, claiming that the wife had left the matrimonial home without his consent and had refused to return upon multiple requests.

The Court further acknowledged that the wife never wished to bring the matrimonial ties to an end but was in fact forced by the conduct of the husband to leave the matrimonial home. Therefore, it was the husband who was responsible for constructive desertion. The court went on to observe that desertion was not a withdrawal from a place but rather from a state of things and was a repudiation of all obligations of marriage and so could not be tested by merely ascertaining which party left the matrimonial home first.

*Citation: Nisha Rani v. Sohan Singh Nehra, 2017 SCC OnLine Del 6404*

*Punjab and Haryana HC decrees that husband cannot deny his wife maintenance on the basis that she earns more*

In a case where a husband petitioned the High Court to reduce the maintenance he was required to pay his wife by a lower court, the grounds were that the wife was already earning more than him. The High Court however found that the wife was entitled to enjoy the same amenities of life as she would have been had she been staying in the matrimonial home, and took into consideration the inflating prices of daily needs and also the costs of educating children. The challenge of societal pressure that she would be facing was also mentioned.

*Citation: Amit Kumar v. Navjot Dubey, 2016 SCC OnLine P&H 12523*

*Bombay HC holds that Hindu law does not confer property rights upon "illegitimate" children, but considers prolonged cohabitation sufficient evidence for 'marriage'*

The Bombay High Court ruled that an "illegitimate" child must provide evidence of marriage between her biological parents to claim protection conferred by Sec. 16 of the Hindu Marriage Act. In this case, the petitioners, children from the second 'marriage' of the deceased, sought a share in his property. However, the first wife of the deceased contested



their claim on the grounds that Sec. 16 of the Hindu Marriage Act, which confers legitimacy upon children born in void or voidable marriages, can be invoked only if evidence of solemnisation of marriage is produced.

While the court accepted this argument, it considered the fact of prolonged cohabitation between the biological parents of the petitioners, and the fact that the petitioner's birth certificates bore the name of the deceased as sufficient evidence of his 'marriage' with their mother. The decision of the court is significant, in that it broadens the scope of section 16 by relaxing its evidentiary requirements, thus bringing within its fold intimate relationships in the nature of marriage.

Citation: *Indubai Jaydeo Pawar v. Draupada @ Draupada Jaydeo* Review Petition No. 19 of 2016 in First Appeal No. 577 of 2015 [High Court of Bombay]

*Central Information Commission holds that victims of sexual harassment must be provided case information within 48 hours*

The Central Information Commission ruled that information on sexual harassment cases should be provided to the victims within 48 hours under the Right to Information (RTI) Act, as it pertains to their "life and liberty" under Section 7 (1) of the Act. The Appeal under consideration by the CIC was filed by a woman who had complained of an instance of sexual harassment at workplace and had filed an RTI application to know the status of the same, was denied information on the grounds that the case was still under investigation. The Commission opined that the complainant was deprived of her right to information, as guaranteed to her under two Acts i.e., Right to Information Act, as well as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Citation: *Dr. Kirti N. Borkar v. PIO, ESIC, New Delhi* CIC/BS/C/2014/000265 [Central Information Commission]

*Delhi HC rules that evidence of harassment immediately before death is not necessary to prove offence of murder for dowry*

The Delhi High Court refused to set aside the conviction of a man in a case of dowry death merely on the ground that no harassment had occurred immediately before the incident. Justice Gupta noted that the essential ingredients for prosecution under Section 304B are: (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

The court notes that the accused had demanded gifts from the deceased's brother two days before the incident as dowry. This demand was sufficient to satisfy the third ingredient of the offence, and harassment "soon before" was not anonymous with "immediately" before the death of the victim. The Court therefore upheld the sentence of seven years of rigorous imprisonment imposed upon the husband of the deceased.

Citation: *Ashok v. State of NCT of Delhi* CRL.A. 433/2013 [High Court of Delhi]

*Vodafone fined for violation of Supreme Court's Vishakha Guidelines*

The Bombay High Court imposed a fine of Rs. 50,000 on the company Vodafone for failing to constitute a complaints committee in accordance with the Supreme Court's guidelines in the 1997 case of Vishakha v. State of Rajasthan. The quantum of the fine is analogous to the amount that the company would have been required to pay under the Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 for not constituting an Internal Committee.

Citation: Renuka Mukherjee v. Vodafone W.P. No. 1348 of 2001 (High Court of Bombay)

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

*Madhya Pradesh HC holds that benefits under the Maternity Benefit Act must extend to contractual workers*

The Madhya Pradesh High Court ruled that maternity leave should be granted to contractual employees, putting them at par with regular employees. In this case, the state was denying maternity leave on the basis of the contract of appointment which stated that maternity leave can be granted to contractual workers only upon the completion on one year of service. The judge noted that as per Section 27 of the Maternity Benefits Act, irrespective of the nature and tenure of employment, the employer is legally bound to provide all benefits and facilities which are required by a woman for childbirth.

Citation: *Smt. Archana Pandey v. State of Madhya Pradesh, Writ Petition No. 15523 of 2016, [High Court of Madhya Pradesh at Jabalpur]*

*Compassionate appointment cannot be denied on grounds that the daughter of deceased is married*

A cooperative bank refused to grant compassionate appointment to a woman on the ground that she was married at the time of her father's death. This order of the bank was challenged by the Petitioner as being in violation of several fundamental rights, including the right to equality.

Holding in favour of the Petitioner, the High Court of Madras held that appointment could not be denied on the ground of marriage of the petitioner. The Court highlighted the role that women play in managing both their natal and marital homes. Given that the petitioner and her husband had been caring for her mother, while her brothers were living separate lives, the Court ordered that the Petitioner be granted compassionate appointment.

Citation: *The Joint Registrar, Cooperative Bank Ltd v P Asothai and Ors, W.A.(MD) No.1042 of 2016 and 122 of 2017 and C.M.P. (MD) No.6078 of 2016*

*Chhattisgarh HC holds that Additional Sessions Judge has jurisdiction to award compensation under POCSO*

The Chhattisgarh High Court noted that an Additional Sessions Judge trying cases under the Protection of Children against Sexual Offences (POCSO) Act, 2012 would have the same power as a Special Judge to award compensation to a child victim of sexual offences. The Court placed reliance on Section 33(8) of the POCSO which confers power on the Special Judge to direct payment of compensation to the victim for rehabilitation or the mental trauma caused.

Citation: State of Chhattisgarh v. Dilip Verma and Anr., Cr.M.P.No.528 of 2017 [High Court of Chhattisgarh]

*Pursing employment against a husband's wishes does not amount to cruelty, holds Allahabad HC*

In an appeal from a family court decision which had granted divorce to husband on the grounds that the wife had subjected him to cruelty by taking up gainful employment against his wishes, the Allahabad High Court observed that a wife working against the wishes of a husband or his family is not 'cruelty,' and does not entitle him to divorce. Emphasizing on due process of law, the court laid out various considerations that would constitute cruelty.

Smt. Gurpreet Kaur v. Sh. Rajeev Singh

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

*Gujarat HC to examine the use of Sec. 377 by wives for marital rape*

The Gujarat High Court is set to examine the question whether a wife can initiate prosecution against her husband for unnatural sex punishable under Section 377 of the Indian Penal Code. Terming marital rape as a 'disgraceful offence', the Gujarat High Court is set to examine the question whether a wife can initiate prosecution against her husband for unnatural sex punishable under Section 377 of the Indian Penal Code. The Court asked three questions mainly pertaining to whether offences generally charged under Section 377 and 376 of the IPC could constitute an offence of cruelty under section 498-A of the IPC.

Nimeshbhai Bharatbhai Desai v. State of Gujarat

Source: [bit.ly/2AnjV3r](http://bit.ly/2AnjV3r); <http://bit.ly/2D8wLU6>

*Inference of 'false' case cannot be drawn from mere acquittal of husband in domestic violence case, holds Chhattisgarh HC*

In an appeal from a Family Court decision, in which divorce was granted to the husband on the ground that his wife had made false criminal allegations of domestic violence against him, and this amounted to cruelty, the Chhattisgarh High Court held that the husband was not entitled to a divorce. The court held that mere acquittal of the husband cannot be used to draw the inference that the allegations of the wife were false. 'Misuse of 498A' has increasingly become a common allegation in matrimonial cases, and has in the past been held as conduct amounting to cruelty against the husband.

Durga Bai v. Narayan Sinha, 2017 SCC OnLine Chh 1246

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

*Kerala HC upholds suspension of school students accused of public display of affection.*

The Kerala High Court upheld the suspension of a boy and girl student for their alleged public display of affection in the school and through social media. Although the state child rights panel had ordered the school to take the students back, this decision was struck down by the High Court on the ground that the school principal was an autonomous decision making authority, and there was no illegality in his decision which was motivated by a desire to maintain and sustain the standard and reputation of the school. While the court advised the

school authorities to balanced approach, considering the educational aspirations of the students suspended, it was suggested that fines as a way to deter other students from engaging in similar behavior. The decisions of the school authorities and the Court have been widely criticized for encouraging moral policing of students.

Sebastian T. Joseph and Anr. v. Kerala State Commission for Protection of Child and Ors. WP(C).No. 32325 of 2017 (M)

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

*Delhi HC questions civic bodies about sensitization to menstrual hygiene*

In a writ petition regarding the lack of access to information, knowledge, and education regarding menstruation and menstrual hygiene in Delhi, the Delhi High Court made various directions to the district municipal corporations in Delhi for the implementation of the Rashtriya Kishor Swasthya Karyakram (RKSK), so far as it relates to the sensitization of adolescent girls about menstrual hygiene, and distribution of free sanitary napkins to them. The Court demanded status reports on provision of separate toilets for girls in schools from the New Delhi Municipal Corporation, and also directed the Ministry of Health and Family Welfare, as well as the Delhi government to allocate funds to the municipal corporations to disburse free sanitary napkins to girls enrolled in municipality run schools.

Setu Niket v. Union of India and Ors. W.P.(C) 5909/2017

Source: <http://bit.ly/2mHX795>

*Kerala HC upholds woman's 'right to dignity' as a mother*

The Kerala High Court upheld the plea of a woman against her termination from service on account of her long absence from service as she needed to look after her child suffering from mild autism. The court held that no service regulations can stand in the way of a woman claiming protection of her fundamental right of dignity as a mother, further emphasizing that the government should come up with a legislation to protect employees from discrimination at workplace due to their family responsibilities.

Source: <http://bit.ly/2D9s78b>; <http://bit.ly/2kDkPCo>

*Bombay HC directs that a three-member committee be set up to assess the modified Manodhairya scheme*

Bombay High Court directed that a three-member committee be set up to look into the changes made to the Manodhairya scheme by Maharashtra government in August this year. The said scheme provides compensation for victims of sexual assault and acid attack. Under the changes made to the scheme, the amount of compensation to the victims was raised from Rs. 3 lakh to Rs. 10 lakh. However, Aadhar card has been mandatory to avail compensation and only 25 per cent of the amount will be given to the victim and the remaining 75 per cent will be kept in fixed deposit for 10 years. In case the victim is a minor, the period of fixed deposit will be 20 years. Clearly, the modifications made to the scheme fail to take into account the insufficiency of the initial compensation given, for covering all the medical and legal expenditures. The Committee will be responsible for recording the opinions and suggestions of all the stakeholders, including NGOs that are working this area, and come up with a model scheme for compensation to these victims.

Source: <http://bit.ly/2zWx5mN>

## NEWS AND EVENTS

### India presents third UPR at Human Rights Council,

India presented its third Universal Periodic Review (UPR) at the UN Human Rights Council in Geneva on 4th May, 2017. The Government of India received recommendations on a number of gender and sexuality issues, including sexual violence, LGBT rights, girls' education, child marriage, forced sterilisation, domestic violence and marital rape. In its reply, the government of India cited facts and figures as well as legal and policy level steps taken to improve the situation of these various issues. In September 2017, the government of India "accepted" 152 recommendations of the total 250 recommendations, while "noting" the other 98. Read PLD's statement on the government's report [here](#).

### India ratifies key ILO conventions to end child labour

India ratified two key conventions on child labour at the International Labour Conference in Geneva, a step towards complete prohibition of child labour. This was done months after amendment to the Child Labour Act and includes Convention 138, which sets minimum age for admission to employment and Convention 182, which penalises and prohibits the worst form of child labour. National Sample Survey Office's survey of 2009-10 puts the number of child workers at 4.98 million. With ratification of these two ILO conventions, India has ratified six out of eight core ILO conventions, with the other four core International Labour Conference conventions relating to abolition of forced labour, equal remuneration and no discrimination between men and women in employment and occupation, thus reaffirming its commitment for promoting and realising fundamental principles and right at work.

Source: <http://bit.ly/2t3UP4x>

### New Parliamentary report on transgender rights finds crucial gaps in draft bill, government ignores criticism – reintroduces unmodified bill

The Social Justice and Empowerment Committee released its report on the draft [Transgender Persons \(Protection of Rights\) Bill](#). Since the introduction of the draft bill in August last year, various human rights organizations and activists had raised concerns over some of its provisions.

The new report addresses the concerns raised, noting the bill's failure to properly define discrimination, its silence on penalties for those who violate transgender rights, and the absence of an option for transgender people to bring a complaint if they are mistreated or abused. The report concludes that the draft law fails to properly protect transgender people from rape and sexual assault, as transgender persons remain at risk of arrest and prosecution because [section 377](#) of the Indian Penal Code criminalizes same-sex sexual relations. The report slams the bill's definition of transgender people as "unscientific and primitive," and one which "completely misunderstands trans identities" and severely restricts their right to self-identify.

The Transgender Persons (Protection of Rights) Bill, 2016 was reintroduced in the Lok Sabha by the government without the changes that had been demanded by the trans community, resulting in widespread protests. The bill, a watered down version of a private member bill that was cleared by the Rajya Sabha in 2014, is in conflict with the principles of self-determination laid down by the Supreme Court in the landmark judgement of *NALSA v. Union of India*, in addition to criminalising traditional means of livelihood.

Source: <http://bit.ly/2qE1Xc3>

Source: <http://bit.ly/2B5VjLI>

### **Acid attack survivors to be included under the Persons with Disabilities Bill**

Acid attack survivors have been added to the Persons with Disabilities Bill (PWD) along with persons afflicted with Parkinson's disease, increasing the list of infirmities listed in the bill from 19 to 21. The amended bill entitles every child between 6 and 18 years with "benchmark disability" the "right to free education". It has also increased reservation in higher educational institutions and government jobs from 3% to 4%. The bill has proposed a fund to provide financial support to the disabled.

<http://bit.ly/2fRCEIF>

### **Parliamentary Panel releases report on Surrogacy (Regulation) Bill, 2016**

The Parliamentary Panel released a [report](#) critiquing the Surrogacy (Regulation) Bill, 2016. While the report suggested that surrogacy in India must be regulated, referring to the socio-economic differences and power differential between the surrogates and the intending parents, it criticized the bill on many counts. The bill limits the availability of surrogacy services to couples who had been married for more than five years within a certain age group, and allowed only 'altruistic' or uncompensated surrogacy by close family members, which the report notes can lead to oppression of vulnerable female relatives in the context of unequal gender relations within the family. According to the Parliamentary Panel Report, the option to avail of the services of a surrogate must not be limited to married couples or to close family members. Further, a national database of surrogacy cases is to be maintained and tracked in order to ensure compliance with regulations on surrogacy.

Source: <http://bit.ly/2FbTv79>

### **Bill to criminalise instant triple talaq passed by Lok Sabha**

The Muslim Women (Protection of Rights on Marriage) Bill, 2017, was passed by the Lok Sabha. The primary objective of the bill is to criminalise the pronouncement of triple talaq, by prescribing a punishment of up to three years of imprisonment for the same. The bill also provides for custody and maintenance rights of the wife upon such a pronouncement, although questions arise about the conflict between these provisions with the current law. The proposed legislation met with widespread opposition from women's groups, for further diluting Muslim women's rights. Opponents have also pointed out the futility of incarcerating men for unilateral divorce, especially when such divorce have no legal validity, instead of focusing on women's economic rights. The practice of triple talaq has been declared invalid, including for being un-Islamic, by successive Supreme Court judgments.

Source: <http://bit.ly/2D67jyp>

### **Ministry of Health and Family Welfare publishes draft rules under Mental Healthcare Act, 2017**

Ministry of Health and Family Welfare issued draft Rules and Regulations under the Mental Healthcare Act, 2017. Apart from stating the procedure for registration of mental health establishments, method of constitution of the Mental Health Review Boards, the rules delegate the responsibility of setting up half-way homes, sheltered accommodations, supported accommodations, hospitals and rehabilitation establishments to State governments,

in accordance with the standards laid down in the Rules. They also state the procedure for accessing one's medical records.

<http://bit.ly/2iKXAbu>; <http://bit.ly/2zZGjiS>

### **Union Budget increases allocation of funds for women's development and healthcare**

The Union Budget allocated a tremendous amount for Delhi Police's share of the Nirbhaya Fund, from 3.4 crore rupees in 2016-17 to 28.9 crore rupees in the 2017-18 period. The allocation was welcomed by the Delhi Police, who had written to the Home Ministry about requirements like CCTVs, police infrastructure, and women empowerment activities.

The Delhi Commission for Women received an increment from 7 crore rupees to 20 crore rupees. At the Central level, the Ministry for Women and Child development received a 20% increase in budget allocation and The *Indira Gandhi Matritva Sahyog Yojana* scheme also saw an increase from 634 crore rupees to 2700 crore rupees. The *Beti Bachao Beti Padhao* program was also given an overall budget of 200 crore rupees this year.

The National Health Mission which covers most primary healthcare centres also got a hike of 3000 crore rupees.

Sources: <http://bit.ly/2oz7KhM>; <http://bit.ly/2qhA1pr>; <http://bit.ly/2kuWsYv>

### **Expert panel suggests pension for widows from the age of 18, instead the current 40**

An expert panel headed by former finance secretary Sumit Bose recommended that widows be eligible for a one-time grant for remarriage and waivers for education fees and skill development. The group suggested that widows should receive pension from age 18 instead of the current 40. The proposal is a move towards improvement of welfare as it calls for the universal coverage of pension schemes and also the annual revision of the amount based on a calculation of Consumer Price Index. The panel also notes that extending widow pensions to the age group of 18-39 would also assist those women with young children.

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

### **National Health Policy cleared by Cabinet**

The union cabinet cleared the National Health Policy which puts forward a concrete framework for universal healthcare. The Policy also suggests policy directives to make drugs and diagnostic facilities available across the country. The Policy seeks to involve the private sector to make healthcare services widely available. Reducing maternal and infant mortality finds special mention in the policy. Highlighting the resource crunch in this sector, it also recommends raising the public health expenditure from 1.2% of GDP to 2.5%. Critics have pointed out some of the gaps in the policy, that include: restricted capability of mandated agencies to deliver on any identified objectives, financial limitations of existing institutions to perform assigned roles and lack of a clearly-drawn, outcome-based action plan.

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

### **Guidelines by Ministry of Water and Sanitation on gender with regard to sanitation**

The Ministry of Drinking Water and Sanitation issued guidelines with the objective of promoting inclusivity in sanitation. Recognising the role of women in realising the goals of the Swachh Bharat Mission's Open Defecation Free village programme, the guidelines recommend ensuring the active involvement of women, especially in leadership positions. Significantly, the guidelines recognise that trans persons ought to have the choice to use the

toilet of their choice. They also state that toilets should be designed for easy use by aged persons, persons with disabilities.

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

### **Sexual harassment electronic box (SHe-Box) launched for registering complaints of sexual harassment at the workplace**

The Ministry of Women & Child Development launched an online complaint management system titled Sexual Harassment electronic–Box (SHe-Box) for registering complaints related to sexual harassment at the workplace, purportedly, to ensure effective implementation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (the SHW Act), 2013 by encouraging reporting through ease of access to an online portal. Currently, the facility has been provided to Central government employees only. Concerns over confidentiality have been raised, given that the Act envisages a safe and confidential process of redressal through an Internal Complainants Committee. The portal can be accessed at <http://www.wcd-sh.nic.in/>

<http://bit.ly/2CSPZ48>

### **Madhya Pradesh government offers Rs. 2 lakh to those who marry widows to encourage widow remarriage**

What seems like endorsing widow remarriage but according to many, reinforces stigma around widowhood - the Madhya Pradesh government offered a monetary incentive of Rs. 2 lakh to those who marry a widows between the age of 18-45 years, - on condition that it be the man's first marriage and the couple registers their marriage in the District Collectorate. Earlier in July, the Supreme Court had directed the Centre to frame a policy to encourage widow remarriage.

Although well intended, such initiatives play on the cultural assumptions connected with widowhood and marriage, linked as these are to the social irrelevance of women. Rather than explore unconventional ways of challenging the stigma of widowhood, such initiatives only reinforce the necessity of marriage for women's social survival.

<http://bit.ly/2yVVB8j>

### **Himachal Pradesh and Odisha join Punjab, Haryana, Jharkhand, and Meghalaya in implementing the Anand Marriage Act**

The Delhi Sikh Gurudwara Committee announced that Odisha and Himachal Pradesh have become the latest states to implement the Anand Marriage Act, joining Punjab, Haryana, Jharkhand and Meghalaya. The Anand Marriage Act was enacted in 1909 by the British Imperial Legislative Council to legally recognise the marriage ceremony Anand Karaj, practiced among Sikhs. The Parliament had passed the Anand Marriage (Amendment) Bill in 2012 which allowed Sikhs to register their marriages under the Anand Marriage Act instead of the Hindu Marriage Act of 1955.

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

### **India opposes move to link gender with trade**

India, an influential member of the World Trade Organisation, was amongst the minority that chose not to endorse a declaration seeking women's economic empowerment in trade, despite nearly three-fourths of the members backing the same. India stated that while it supports



gender equality, it could not submit that gender is a trade-related issue. Further, Indian officials expressed their apprehensions that advanced countries would not only use their high standards in gender-related policies to curb exports from developing countries, but also indirectly restrict the developing world from incentivizing their women citizens as part of measures to address development challenges.

Source: <http://bit.ly/2rdv5aa>