



**FIVE-DAY NATIONAL LEVEL WORKSHOP ON
CONTEMPORARY
DEVELOPMENTS IN THE LAW RELATING TO
VIOLENCE AND DISCRIMINATION AGAINST WOMEN**

19TH TO 23RD JUNE 2018, GOA

**Five-Day National Level Workshop on
Contemporary Developments in the Law Relating to
Violence and Discrimination against Women**

19th to 23rd June 2018, Goa

**Organized by
HUMAN RIGHTS LAW NETWORK
And
The Centre for Constitutional Rights**

In Collaboration with:

Prayas, India, National Alliance for Maternal Health and Human Rights (NAMHHR), IPAS Development Foundation, Manuski, Karnataka Janaarogya Manch, DEHAT, Population Foundation of India, Women Power Connect, Right to Food Campaign, Jawaharlal Nehru University Students Union, Alliance for Sustainable and Holistic Agriculture, Sappho for Equality, Naga Mothers Association, Jharkhand Anti Trafficking Network, Mahila Jagran Kendra, Srijan Foundation, Anveshi Counselling Centre, Tata Institute of Social Sciences- Mumbai, Shakti Vahini, Sangat, Goa University, VM Salgaocar College of Law



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Finally, we would like to thank HRLN's founder Colin Gonsalves, for his constant, fierce, unapologetic work on behalf of all marginalized and vulnerable communities in India for the past three decades.

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Five-day National level Workshop on contemporary developments in the law relating to violence and discrimination against women was organized by Human Rights Law Network and the Centre for Constitutional Rights in collaboration with various other organizations from across the country. It was held at St. Joseph Vaz Spiritual Renewal Centre from 19th - 23rd June, 2018.

The training was for lawyers, activists, researchers, survivors and students from across the country on how law addresses the issues such as violence, marital rape, forced sterilization, sexual harassment in universities etc. that faced by women and the various section of the society. The training commenced with a warm welcome by Mr. Colin Gonsalves, Founder, Human Rights Law Network. Mr. Colin welcomed participants from all across the country.

INTRODUCTION:

From the 19th to the 23rd June, 2018, Human Rights Law Network (HRLN) hosted a five-day course in Goa in collaboration with various partner organizations, featuring a myriad of lawyers, activists, community-based organizations and universities that are at the forefront of women's justice initiatives in India and South Asia. Presentations, workshops, panel discussions, and film screenings will centre around the broad themes of reproductive rights and violence against women, but will cover a spectrum of interrelated identities, such as women in prison, refugee women, transgender women, Dalit women, Tribal women, women in the media, women in universities, women with disabilities, and women in conflict zones. Issues will include contraception, abortion, coercive sterilization and hysterectomies, dowry death, custodial violence, manual scavenging, human trafficking, the two-child norm, women's reservation, sexual harassment in the workplace and universities, domestic and sexual violence, and honour killings. A consistent theme throughout these discussions will be past cases and judgments, and how to take forward future public interest litigation petitions pertaining to such issues.

The aims of the course are as follows:

- To harness a more intersectional approach to women's justice initiatives and facilitate partnerships, networks and collaborations amongst individuals and organizations
- To further the use of law in upholding and defending women's rights across India and the use of the law in ensuring access to justice
- Discuss and understand key legislations related to prevention and prohibition of violence against women
- Address violence against women within the larger framework of those laws, which acknowledges gender inequality and a spectrum of gendered violence against women and young girls.

DAY 1 [19.06.2018]

Opening Remarks

Speaker: Colin Gonsalves, Senior Advocate, Human Rights Law Network

(Colin Gonsalves is a designated Senior Advocate of the Supreme Court of India and the founder of Human Rights Law Network (HRLN). He specializes in human rights protection, labor law and public interest law. He has been awarded Right to Livelihood Award for the year 2017. Considered a pioneer in the field of public interest litigation in India, he has brought several cases dealing with economic, social and cultural rights. Most of these cases, decided by the Supreme Court, have been set as precedents.)



Mr. Gonsalves thanked and appreciated all the participants for being a part of the training. He emphasized on the importance of creating a network of all the lawyers and activists that have come from over 15 states across the country, which he intends to create through this conference. He briefly talked about the various issues that will be picked up in the course of the 5 day training and also emphasized on the aim of the meeting.

“Today, we will not crib about what is wrong, what we will do instead is form a network of all the lawyers and all the activists present here, and together we will come up with an action plan, a solution to curb the problems that we are facing. It’s high time we stop cribbing about what is going wrong and take action towards making those wrongs, right.”

Keynote Lecture

Speaker: Kamla Bhasin, Sangat

(Kamla Bhasin is a social scientist by training, Kamla Bhasin has been actively engaged with issues related to development, gender, education, media and others since 1970. Currently, she works with Sangat – A Feminist Network as Adviser as well as JAGORI, A Women's Resource and Training Centre and Jagori Rural Charitable Trust as an active member. She is the South Asia Coordinator of One Billion Rising, a global campaign to end violence against women and girls; Co-Chair of the worldwide network Peace Women Across the Globe; and member of South Asians for Human Rights (SAHR). Prior to this, she worked with the Food and Agriculture Organization of the United Nations for 27 years. Kamla Bhasin is deeply engaged with issues related to



gender, development, peace, identity politics, militarization, human rights and democracy and seeks to explore and articulate connections between these issues and to promote synergies between different movements. Her main work is at the South Asian level, and has included capacity building of South Asian and other young activists and networking amongst civil society organizations in South Asia. She has also been conducting gender sensitization workshops for senior non-governmental organization leaders and managers, government officials, police personnel, and members of Parliament in various countries in South Asia. Kamla Bhasin has written extensively on gender, women's empowerment, participatory and sustainable development, participatory training, media and communication. Most of her books are written for activists and development workers. She has also written a large number of songs and slogans for the women's movement, books for children, and has created many posters and banners for various people's movements. She is committed to the creation of a peaceful, democratic and pluralist South Asia.)

Kamla Bhasin spoke of the importance of solidarity among organisations, and addressing the participants said that with each other's support and the use of law we can bring about a change for the better in our country. She also spoke of how the Law comes after the crime is committed, and questioned the audience probing them to think as to why crime happens at all, what is the root cause of violence and discrimination. She said, **“When we speak so proudly of**

our Asian Values, we never talk of killing our women, our daughters. This has been going on since 1947 and the sex ratio has been going down ever since.

To come up with a solution we first need to dig deeper into the problems and understand the root of it.

Talking of Indian Women, Kamla Bhasin also talked of the labour of women at home which is seen as insignificant, when calculated amounts to about 11 trillion dollars. Not only is their labour considered insignificant but also their existence, for a woman is always seen as someone's daughter, someone's wife. For this Kamla Bhasin said, ***“My constitution tells me that no one owns you.”*** In conclusion she said, ***“Culture is seen as something permanent, the technology in your house might change, but the culture for women remains static. People make culture, culture doesn't make us. Culture needs to change with time.”***

Forced Sterilizations: Supreme Court decision in Devika Biswas' Case and its Follow Up

Background: In 2012, Human Rights Law Network and petitioner Devika Biswas filed the landmark public interest litigation petition *Devika Biswas v. Union of India & Ors* in the Supreme Court. This petition concerned the highly coercive, target-driven sterilization camps that were taking place in the State of Bihar and across India. These camps rounded up impoverished women, typically from Scheduled Castes and Tribes, and sterilized them in barbaric and highly unsanitary conditions, without their consent. This practice formed part of the Government of India's oppressive 'family planning' programme, which was leaning towards population control methods rather than practices that enabled reproductive autonomy.

In January, 2012, a sterilization camp was conducted in the Arharia district of Bihar, sterilizing 53 women within 2 hours in unhygienic and cruel conditions. This camp was organized in a government school by Jai Ambe Welfare Society, and

authorized by Bihar state. The respective public interest litigation petition highlighted the oppressive practices employed by the state to achieve sterilization targets, which was discouraged by the National Population Policy 2000, which had championed reproductive health and autonomy. It also mainstreamed the notion of sterilization being viewed as a 'population control and stabilization measure' by the healthcare personnel rather a way of safeguarding a woman's reproductive rights. The petition sought monetary compensation, directions for safety of patients, and guidelines for terms of operations amongst other things.

In a landmark judgment, the Supreme Court aligned reproductive rights with the Right to Life enshrined in Article 21 of the Indian Constitution, and asserted that the Respondents had violated this right by way of violating the right to health and reproductive rights, which can be read into Article 21. The Court held that the freedom to exercise reproductive rights includes the right to make a choice regarding sterilization on the basis of informed consent and free from any form of coercion. The remarks made by the Supreme Court here further asserted the judgment of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors*, where it was held that the rights to health and reproductive rights are to be read into Article 21.



Speaker: Sarita Barpanda

(Sarita Barpanda has been working in the development sector for last twenty five years, and has wide ranging experience in the field Sexual Reproductive Health and Rights, HIV/AIDS, Public health Population Development, Gender justice, Human Rights at State, national and international level. She has worked in State Government of Orissa and Government of India in various capacities. She was Country Programme Adviser for Interact Worldwide 2005-12, an UK based organization that primarily focused on Reproductive and Sexual Health across continents. Sarita is one among few development experts who combines a strong micro-research with

macro Policy and programmes. She is passionate about her work and has provided technical support and knowledge to European Union, DFID and Government of India.)

The speaker highlighted the fact that the practice of Forced Sterilization from what she has seen in her 10 years of working on cases of forced sterilization, is that it's very common in many states of India. The figures for the year 2013-2014 shows that the Govt. spent about 90% of the allotted budget on female sterilization and only 0.01% was spent for contraceptives. This proves how women centric the Family Planning Policies are.

Ramakant Rai vs. Union of India

UP, Bihar and Maharashtra witnessed sterilization camps being set up indiscriminately, these camps lacked pre and post operative care. Abuse and violence by the health care providers was evident with the way the women were lying on the floor and thrown out of the camps. No incentives were given either. Failure to comply with the guidelines of informed consent before carrying out the sterilization procedure was also evident. Injustice was being done to the poor and underprivileged women. Minors, i.e. girls aged 17 were also made to undergo the sterilization procedure. In one hour one doctor carried out 80 procedures with the same laparoscopy. After the landmark judgement in the Ramakant Rai case, the government set up guidelines to be followed while carrying out each procedure. It has also been found that many ANM's are under the pressure to reach their targets often dug holes and buried all of the contraceptives so that the patient would have no other choice but to undergo the sterilization procedure.

Devika Biswas Vs. Union of India

In a Govt. School in Bihar, at 2 am in the night around 53 women underwent sterilization procedure. The women largely belonged to the SC/ST community. It was found that the procedures followed violated the guidelines that were given after the Ramakant Rai vs. Union of India case. After the procedure the women were given painkillers, and later the same night the place was vacated. Instead of being questioned on their actions the doctors were instead appraised.

Devika Biswas thus carried out a fact finding and filed a case in the Supreme Court of India.

The Speaker in conclusion emphasized on the need to understand how important such judgements are that have brought a change in the guidelines of the government and she feels that as activists and lawyers that are aware about this it's our duty to make people aware about such judgements and the kind of impact it has.

Using the Law to Improve Access to Contraceptive information and Services

Background: In January 2018, Human Rights Law Network along with petitioner Bihar Voluntary Health Association filed a public interest litigation petition in the Supreme Court of India regarding the lack of access to contraceptive information and services across the country. As of 2010, the unmet need for contraception amongst married women aged 15-49 stands at 21.3%, according to the 3rd District Level Household and Facility Survey. This rate soars to as high as 55.5% in States such as Meghalaya.

Despite this, the Government of India has committed to increased spending and dissemination of contraceptive information and services. At the 2012 London Family Planning Summit, India pledged to spend Rs. 12,000 Crore of federal funding from 2012 to 2020 on family planning. However, upon a perusal of the Ministry of Health and Family Welfare's expenditure, the family planning budget has decreased from Rs 79977.25 lakh in 2015-2016, to Rs 77665.45 lakh in 2016-17 – nowhere near the spending plan that was committed to. In addition to this, 85% of the budget has been allocated for sterilization out of which 71.1% of the budget has been for the female sterilization procedure. There is therefore a total absence of commitment to a range of contraceptive methods, and a biased focus on female sterilization.

In 2011, the Government of India announced a new 'doorstep delivery' service under the National Health Mission, in which underserved communities would receive a basket range of contraceptives at their doorstep, delivered by ground-level healthcare workers called Accredited Social Health Activists (ASHAs). However, data collected through follow-up surveys demonstrates that this service is either negligible or non-existent in many areas, and many ASHAs are poorly educated on contraception and rarely have the full basket range of contraceptives. Furthermore, the incentive-driven nature of the scheme for ASHAs means that they are regularly pushing women to undergo sterilization procedures rather than to opt for spacing methods of contraception (such as condoms or oral contraceptive pills), because they receive a higher incentive payment for the same. Attitudes such in this result in a highly skewed contraceptive method mix across the country, where a colossal 75% of contraceptive users opt for female sterilization, compared to a mere 11% condom usage. The onus of contraception thus falls on women in the form of a highly invasive, irreversible procedure.



Speaker: Y K Sandhya Sahyog

(Dr. Sandhya has been trained in social medicine and community health from Jawaharlal Nehru University. She has experience of working on sexual reproductive health and rights and plays a significant role in advocating with Officials of the Ministry of Health and Family Welfare, the Secretariat of the Parliamentary Standing Committee of Health and Family Welfare and the National Human Rights Commission.)

Reproductive rights are the rights of individuals to decide whether to reproduce and have reproductive health. It also includes the right to access to information or education about Sexually Transmitted Diseases (STDs), Sexually Transmitted

Infections (STIs), access and knowledge of contraceptives and also protection from practices such as Female Genital Mutilation (FGM). Recognition of the reproductive rights aids in reducing the maternal mortality rate, infant mortality rate and also safeguarding a woman's body against other gross violations.

The UK Government and the Bill & Melinda Gates Foundation, with the support of UNFPA and other partners, hosted a ground breaking international Family Planning Summit in London in July, 2012. The aim of the Summit was to launch a global movement to give an additional 120 million in the world's poorest countries access to lifesaving family planning information, services and supplies by 2020 protection information. Increasing access will enable these women and girls to choose whether, when and how many children to have.

Principles undertaken at the Summit:

- Universal access to voluntary family planning information, services and supplies; within the context of broader programmes to achieve sexual and reproductive health and rights and the health-related MDGs
- Equity by ensuring the poorest and most vulnerable women and girls has the same access to quality services and supplies as those in developed countries
- Country owned and led, focussed on national priorities, conditions and needs
- Targeted at the poorest countries and on high impact, sustainable interventions designed to favour access for the poor
- Additional financing which is flexible for use by country systems in support of family planning objectives and can join country-level pooling arrangements as appropriate
- Catalytic investments which trigger greater domestic financing and policy and delivery commitments
- Partnership at the country level including with the non-state sector as an important contributor to service delivery

- Innovation in financing, systems and service delivery, including integration, and addressing quality and demand side barriers
- Funding for efforts that can transform family planning and deliver results with capacity to extend to the broader continuum of care for RMNCH
- Commitment to results, transparency and accountability.

Identification of the barriers to adopt Family Planning Services:

- Focus should also be on Male sterilization and not just female sterilization
- Long term and mid-term family planning schemes
- India focuses mostly on population reduction
- Focuses on target based approach
- Lack of autonomy of women
- 46.5 % are aware about the side effects of using contraception.
- Forced sterilization

The Family planning approach of the Govt. in India is more target based and the major focus is on female sterilization, there is no participation of the male population. There is also no awareness among the people about other spacing methods available. Neither are the women aware that the ASHA workers are in possession of the contraceptive facilities. The idea of informed consent is also missing as the doctors are so driven to meet the targets that they only focus on the sterilization procedure.

Speaker: Zahra Wynne

(Zahra has worked on a range of issues, including access to contraception, unsafe abortion, child marriage, Rohingya refugees, and gender-based violence. She co-wrote and edited HRLN's recent publication on child marriage, which featured research in several different states. Recently, along with a team she visited eleven Rohingya refugee camps across Delhi and Haryana to document reproductive health

violations taking place, which was then compiled into a comprehensive report and submitted to the Supreme Court of India as evidence adjoining a petition. Additionally, she regularly speaks at consultations in states such as Nagaland, Arunachal Pradesh, and Odisha on a variety of reproductive rights issues. Before working at HRLN, Zahra interned with UN Women India, in the Ending Violence Against Women unit, where she helped organise an international Anti-Human Trafficking Consultation, co-wrote a report for the Government of Japan on the Safe Cities Free of Violence against Women and Girls project in Delhi, Bhopal and Mumbai. She has also volunteered for the Anti-Trafficking Legal Project, compiling research on human trafficking in Kenya, and Hibiscus Initiatives, providing support for incarcerated foreign national and ethnic minority women in the now closed Holloway Prison, London. She holds a Bachelor's Degree in Political Science from the University of Bristol and a Graduate Diploma in Law from BPP Law School, London.)

National Health Mission had a vision of reducing maternal mortality rates and reducing sex selection tests with counseling by trained ANMs and ASHA workers. Unwanted pregnancy leading to unsafe abortion and due to the unawareness among women the risk of STDs also increases.

For this the speaker gave a few suggestions:

- Access to a wide range of both spacing and limiting methods of contraception for both men and women.
- Information regarding the availability and variety of contraception to be given to both men and women.
- Awareness on how different forms of contraception work and their side effects.

A fact finding mission was conducted by a team of HRLN and the following were the findings:

- ASHA workers show a lack of adequate training and are therefore spreading misinformation regarding CIS.
- There is more focus on female sterilization and for the same Incentive payments are given, therefore driving promotion of female sterilization, and no focus is given to male sterilization.
- There is a shortfall of almost 350,000 ASHA workers.

- CIS is not being delivered in many poor, rural communities.
- Unmet need for CIS has been increasing instead of decreasing.

The speaker also shared the National Health Mission plan regarding CIS which is as follows:

- 'Family planning services would be utilized as a key strategy to reduce maternal and child morbidities and mortalities in addition to stabilizing population'
- 'All states would be encouraged to focus on promotion of spacing methods, especially Intra-Uterine Contraceptive Devices (IUCDs)'
- 'Male involvement including male sterilization would be promoted'
- 'Distribution of contraceptives at the doorstep through ASHAs and other channels will be actively promoted'
- 'Improved family planning service delivery including access, availability and quality of services; counseling services through dedicated counselors; improved technical competence of the providers and increased awareness among the beneficiaries would be ensured'

The lack of CIS in India has led to the following consequences:

- Unwanted Pregnancy
- Adolescent Pregnancy
- Unsafe Abortion
- Sexually Transmitted Diseases
- Maternal Mortality
- Infant Death

The methods of contraception available in India:

- OCPs
- ECPs
- Condoms
- IUDs

- Male Sterilization
- Female Sterilization

Petition: Bihar Voluntary Health Association vs. UIO (2018)

HRLN and BVHA recently filed a PIL in the Supreme Court demonstrating that both the Central and State Governments and Union Territories have failed to address and ensure adequate access to CIS, citing high levels of unmet needs, budget cuts, population control rather than reproductive rights based approaches and disproportionate focus on female sterilization as evident shortfalls. The focus was on the result of the shortfalls like: high maternal mortality rates and infant mortality ratios, adolescent pregnancy, STI/Ds, coercive sterilization and unsafe abortions.

The speaker concluded the session with the suggestions that Asha workers should first be equipped with all the knowledge and training necessary to deliver the information and services related to contraception in India. Also, the instruments should be made available for the same.

Legal Strategies for the Enforcement of the Prohibition of Child Marriage Act

Background: Child marriage has been illegal in India since the 1929 enactment of the Child Marriage Restraint Act. The Prohibition of Child Marriage Act, 2006, now governs the issue of child marriage. Despite its clear illegality, the issue continues to proliferate across the country, heavily concentrated in certain districts and states such as Bihar, Rajasthan, Karnataka, and Tamil Nadu. Although the Act strictly prohibits the practice of child marriage with the punishment of prison sentences, the implementation of the Act is poor, which allows the practice to continue – with community leaders and police officials even being complicit in the practice.

It is estimated that child marriage affects 27% of girls in India, who are married off before they turn 18. Child marriage is inextricably tied to issues such as poverty, lack of education, and misogyny. The practice then traps the parties into these vicious cycles, as girls are heavily encouraged to drop out of education once married, meaning they are unable to find more lucrative forms of employment, thus compounding them into a continued cycle of poverty. Additionally, notions of 'purity' and 'honour' pressure girls and their families to marry the daughters off young, with the fear that they will bring 'shame' onto the family if they have sex out of wedlock, or are even suspected of the same.

As of now, the Act states that the legal age for girls to get married is 18, which rises to 21 for boys. This stipulation has long been controversial, with people questioning the reasoning for this age gap depending on gender. This compounds the widely recognized fact that child marriage disproportionately affects girls. Additionally, a key section of the Act – Section 16 – which states that all states must appoint Child Marriage Prohibition Officers (CMPOs), has been found to be largely unimplemented. For its recent PIL in the Supreme Court of India on the poor implementation of the Act, HRLN filed RTIs in all states of India to garner data on child marriage and to enquire as to the functionality of the CMPOs. Shockingly, the only state with CMPOs who work full time without any other delegation is Haryana. All other states either had a total absence of CMPOs, or had CMPOs who had simply been delegated the role on top of existing duties – some with duties so far removed from the issue, such as tax officers. This glaring lack of implementation formed a key demand of HRLN's PIL.

Speaker- Jayna Kothari (Centre for Law and Policy research)

(Jayna is a co-founder of CLPR. She is a partner at Ashira Law, a Bangalore-based law firm and practices as a Counsel in the Karnataka High Court and the Supreme Court of India. She graduated from University Law College with a B.A. LL.B degree and read the BCL at Oxford University. Jayna has been awarded the Wrangler D.C. Pavate Fellowship in Cambridge University.

Jayna's research and practice interests include constitutional law, including the right to education, health and housing, gender, disability rights, environmental law. Her book,

“The Future of Disability Law in India” was published in 2012 by Oxford University Press and is one of the first books on disability law in the country.)

The speaker, Jayna Kothari, shared her thoughts on how legal strategies can be used to enforce the prohibition of child marriage act, 2006. The PCMA 2006 prohibits marriage where the girl is below the age of 18 years and the boy is less than 21 years of age.

Voidable marriages

- Child marriages are voidable at the option of the child/either child.
- A petition to nullify the marriage is to be filed within two years of the child attaining majority.
- Even minor children may void their marriage, through a guardian or next friend.
- When a minor child is taken or enticed from his/her lawful guardian.
- When a minor child is compelled (by force or deceit) to go to a place.
- When a minor child sold for marriage, sold after marriage, trafficked or otherwise used for immoral purposes.

The judges are often not aware of the presence of the PCMA 2006. A girl was forcefully married at the age of 10 by two boys in her neighbourhood. When the family got to know about the act for the protection of such cases, they approached the court. The judge was not aware of the PCMA act. We therefore see that even if the law is there people are not fully aware of its provisions. Questions were raised as to what the girl will do, where she will go. But these questions are already addressed by the PCMA act. The speaker further believes that all child marriages should be banned and there should be no need to visit the court for the annulment of the marriage.

The speaker also highlighted the following legal strategies for implementation of the PCMA.

- Filing annulment petitions – to annul child marriages already solemnized
- Seeking injunction orders – to stop child marriages
- Maintenance, protection from domestic violence, custody orders
- To activate the CMPOs and police officers
- Child marital rape – to file criminal cases under Section 376
- Push for legal reform – to make child marriages void (like Karnataka)

The speaker concluded the discussion stating that PMCA is a secular act and also provides authority to the officers appointed by the government for creating awareness.

Speaker- Deepika, Advocate

The speaker initiated the discussion with a personal incident where a friend of hers was married at the age of 15 years and when she got pregnant at the age of 16, her husband succumbed to death. The point speaker highlighted here is that the legal way is not the right way to disapprove child marriage as a concept. At the age of 15 years, the girl is very young and not experienced/mature enough to take care of herself and if in case she gets pregnant at this point of time, it will be really difficult for her to handle herself and her child. What the speaker meant was we should educate the girl child and focus more on making her independent so that she can take care of herself.



Abortion Rights: The Medical Termination of Pregnancy Act, 1971, Amendment Bills, 2014 and 2017

Background: Abortion services in India have been legal since the enactment of the Medical Termination of Pregnancy Act (MTP) in 1971, which provides for abortion up until the 20th week of pregnancy at the discretion of a doctor, if he or she believes that: the pregnancy will cause serious physical or mental injury to the women; the child will suffer from serious disabilities; the pregnancy is the result of rape; or the pregnancy is the result of a failed method of contraception used by a married woman and her husband to prevent pregnancy.

Despite the MTP Act, women in India still face arbitrary restrictions when it comes to accessing abortion services. Firstly, the parallel existence of The Pre-

Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT), 1994, which prohibits the use of technology in determining the sex of a fetus in an effort to curb sex selective abortion means that many doctors will often refuse to perform an abortion if a woman is over 12 weeks pregnant or if the woman already has girl children, fearing that they will be penalized due to sex selection. The strict adherence of the PCPNDT Act thus results in the denial of services provided under the MTP Act. Secondly, medical practitioners themselves are often highly misinformed of the provisions of the MTP Act, or allow their personal biases to cloud their judgment in delivering impartial medical advice and services. For example, many Indian women report being denied abortion services due to not having the consent of their husbands, despite the act specifically stating that this is not needed, and report being denied services due to being unmarried – which is also not a prerequisite for an abortion. In general, the public is highly misinformed about abortion, with many believing it to be totally illegal. Awareness of the right to an abortion, especially in rural areas with poor education and health indicators, can be worryingly low. The direct effect of all of the above is an epidemic of unsafe abortion in India, which can result in severe complications, and even death – indeed, 8% of maternal mortality cases in India are caused by unsafe abortion.

In addition to this, the limiting of abortion services to the 20th week of gestation means that women are forced to approach either the High Courts or finally the Supreme Court to request an abortion. The judgments in such cases lack consistency. In July 2017, a 10-year old who had been the victim of rape at the hands of several family members was denied an abortion by the Supreme Court in her 28th week of pregnancy, with the Court ruling that an abortion would 'not be in the girl's interest'. On the other hand, another case in July 2017 where an adult woman in her 26th week of pregnancy detected severe fetal abnormalities resulted in the Supreme Court allowing for the abortion, ruling that the medical board were correct in concluding that the birth of the fetus would cause 'severe mental injury' to the mother. The question here is why it was

decided in the same month by the Supreme Court that a ten-year old victim of rape giving birth would not constitute 'severe mental injury', but this case would? These questions demonstrate that the 20-week limitation takes away from the reproductive autonomy of Indian women and puts the decisions regarding their bodies into the hands of judges – often male – who are enabled to make arbitrary decisions on their behalf, often demonstrating a lack of understanding of reproductive health and justice.

Due to cases such as those set out above, there have long been calls to amend the MTP Act, which in the 47 years since its enactment finds itself becoming increasingly outdated and regressive compared to abortion law in other nations. In 2014, a bill was put forward to amend the MTP Act, especially the current provisions of Section 3. It called for abortion to be given 'on request' to women when the pregnancy does not exceed twelve weeks (i.e. there is no need to prove potential for injury, rape, or contraceptive failure), and for abortion be allowed up until the 24th week of pregnancy in the current scenarios that allow for abortion (grave injury to physical/mental health of mother, rape, and contraceptive failure). It also proposed to amend Section 3 of The MTP Act to provide that "the length of pregnancy shall not apply" a decision to abort a foetus diagnosed with "substantial foetal abnormalities as may be prescribed. In 2017, another amendment bill was proposed. It again called for the gestation period where abortion is to be permitted to be extended from 20 weeks to 24 weeks. Neither of these amendment bills has come to fruition, and groups continue to advocate for changes to be made to the Act to extend the gestation period and to allow women to attain abortion on request rather than at the discretion of a medical provider. Advocacy is growing with cases of minor rape victims falling pregnant attracting substantial media coverage, and frustration growing with women having to leave their fate in the hands of judges, who have no medical training.

A woman's right to choose whether to continue a pregnancy or not is an integral part of reproductive rights. The Republic of Ireland, in a landmark

referendum, recently voted to repeal the 8th Amendment of the Constitution of Ireland which outlawed abortion services. The referendum was a landslide result, with 66.4% of voters choosing to repeal the regressive provision. Nevertheless, across the world, nations are increasingly demonstrating anti-abortion sentiments, linked to both religion and culture. Such sentiments cause women to bear the brunt of ideological differences, and often pay for it with their lives.

Speaker: Medha Gandhi

(Medha Gandhi is the Director , Policy at IPAS. Medha joined IDF in 2012 to lead the policy initiative and manage active engagement with government officials with a focus on advocating for increasing access to safe abortion services. In this role, she also leads the portfolio for engaging with partner organizations to advocate for CAC integration in the larger maternal health agenda. She has worked in the field of maternal health for over a decade, and her experience ranges from implementing large-scale programs at the community level to policy advocacy for improving maternal health services in India. Medha has previously worked with the Ministry of Health and Family Welfare, CARE India and CEDPA. She has a bachelor's degree in Psychology and a master's degree in Social Work.)



Medha Gandhi introduced the audience to the history of how abortion rights have evolved over the years. During the 1800s under the IPC and the CrPC abortion was considered a punishable crime for the woman and the provider. Through the 1960s to 1970s abortion laws were liberalized across the US and Europe. Finally in 1971 the MTP (Medical Termination of Pregnancy Act) was passed in India after the Shanti Lal Shah Committee Report. The MTP Act has

legalized abortion in India, it decriminalizes the abortion seeker and also provides for safe abortion services for women.

The MTP Act is not to control or sanction Family Planning, it is more of a social Act. There are women who will want abortion regardless of their pregnancy. Unsafe Abortion is a major reason for about 8-10% of maternal deaths. But over the years the country has witnessed a decline in the Maternal Mortality Rate. She concluded stating an important provision of the MTP Act, saying that only the woman's consent is required to undergo the abortion procedure.

Speaker: Sneha Mukherjee (Advocate, HRLN)

When should a women be allowed to undergo abortion, Sneha Mukherjee cited instances where there was danger to the life of the mother if she were to go through with the pregnancy, and another instance where the doctors had informed that the



there was no chance of the foetus surviving even if the mother decides to go through with the pregnancy, and the women wanted to go through with the abortion but couldn't as they were past 20 weeks into their pregnancy. She questioned the audience saying, **“what is more important, the life of an existing life or that of a potential life?”** Abortion should be allowed or not should also depend on whether the foetus would survive or not and also whether the woman's life be affected.

She spoke of another case where a 13 years old girl was pregnant from rape, and was denied the right to abortion on the grounds that the child was healthy. The fact however remains how will the girl who is 13 years old, be able to bear a child and will she be able to provide for the child. The pregnancy could also pose a risk to the 13 year old girl's health.

The amendment in the Act is awaited so that people won't have to turn to the court each time they wish to undergo abortion. It is also important that awareness reaches the people so that they realise that abortion is a safe practice.

Obstetric Violence and Disrespectful Care: Public Interest Litigation filed in Guwahati High Court

Background: The term 'obstetric violence' was originally coined in Venezuela, in the International Journal of Gynaecology and Obstetrics. It is defined as 'the appropriation of the body and reproductive processes of women by health personnel, which is expressed as dehumanized treatment, an abuse of medication, and to convert the natural processes into pathological ones, bringing with it loss of autonomy and the ability to decide freely about their bodies and sexuality, negatively impacting the quality of life of women.'¹

Expanding this definition, one can look to what is termed 'disrespectful and abusive care' or 'D&A', especially during childbirth and maternal care. The White Ribbon Alliance notes that D&A constitutes 'interactions or facility conditions that local consensus deems to be humiliating or undignified, and those interactions or conditions that are experienced as or intended to be humiliating or undignified', and can generally manifest in seven ways: as

¹ Perez D'Gregorio, R. (2010). Obstetric violence: a new legal term introduced in Venezuela, *International journal of Gynaecology and Obstetrics*: 111(3), 201-202.

'physical abuse; sexual abuse; verbal abuse; stigma and discrimination; failure to meet professional standards of care (i.e. lack of informed consent and confidentiality, painful examinations and procedures or failure to provide pain relief, and neglect and abandonment); poor rapport between women and providers; and health systems constraints.'²

Across India, Human Rights Law Network has documented instances of obstetric violence through fact-finding missions and subsequently filed petitions. Instances have included healthcare professionals slapping and beating women when they cry out in pain during childbirth, verbally abusing them by screaming at them, treating patients appallingly or negligibly due to their Caste or Tribal status, imprisoning women in the hospital if they cannot pay specific fees, and touching them in invasive and sexually charged ways (e.g. vaginal penetration) with no prior warning or consent.

Speaker: Tushita Mukherjee, Researcher, Prayas

(Tushita has been working with an advocacy and non-profit organization called Prayas based in Rajasthan. Prayas is the state convener of Jan Swasthya Abhiyan



(People's Health Movement) and even I am a member of JSA (Jan Swasthya Abhiyan). Prayas and JSA (Jan Swasthya Abhiyan) have been working tirelessly to bring down the out of pocket expenditure of people seeking health services. My work at Prayas is to do

² White Ribbon Alliance, *Disrespect and Abuse in Childbirth and Respectful Maternity Care*, available online at https://www.whiteribbonalliance.org/wp-content/uploads/2018/01/6422_RMC-DA-Brief-Final.pdf, accessed 29th May 2018.

with health rights violation, sexual and reproductive rights, and access to medicines. She is working in the capacity of a project coordinator with responsibilities such as working on case studies, filing public interest litigations in courts, organizing consultations, and publications. This project is being carried out in collaboration with an NGO called Human Rights Law Network (HRLN) based in Delhi.)

The speaker Tushita Mukherjee talked about obstetric violence and also attempted to understand where this violence stems from, why are there incidents at the hospital where the staff is abusive and ignorant towards their patients. She spoke of how during our childhood we internalize violence as a medium to enforce our will upon others without realising the psychological impacts it leaves on the other person. In relation to this, the speaker remembered a similar instance where her grandmother scolded her mother and threatened her that if she cries the consequences will be harsher than you can think. The hospital staff also comes from a similar background and hence the frustration comes out in the form of violence.

Violence is any action or word intended to hurt a person. Incidents of violence are very common in the hospital as remarked by speaker. She has often heard women complaining that the nurse commented on their sexual life saying “**karte waqt dard nahi hua jo ab ho raha hai**”. The speaker also believes that the staff has the audacity to make such remarks is because there is no fear of law among the nurses and doctors because they know the worst that could happen to them is either they get transferred or suspended for few days. This violence, the speaker feels, often gets normalized and the women don't bother much thinking about it because they know it's common and they might fall prey to it as well.

Speaker-Debasmita Ghosh, Advocate, HRLN

The speaker looks at obstetric violence as gender based violence which occurs during facility-based obstetric care that leads to violation of women's rights including right to equality, freedom from discrimination and integrity, health and reproductive autonomy. According to the speaker, obstetric violence can be

manifested through the denial of treatment, the disregard of a woman's needs and pains, verbal humiliations, physical violence, invasive practices, unnecessary use of medication, forced medical intervention detention in facilities for failure to pay etcetera. The speaker believes that obstetric violence is not only restricted to the medical environment but it is also prevalent in the household. When a woman bears a girl child, she is treated indiscriminately by the members of the house but exactly opposite to this is the case when a woman gives birth to a boy child.

**Using the Law to enforce Indian Public Health Standards:
Snehalata Singh @ Salenta & Ors. Vs. State of U.P. and others
AND Sandesh Bansal Vs. State of MP**

Background: *Snehalata Singh @ Salenta & Ors. v State Of U.P. and Others:* The writ petition No. 14588 of 2009 was filed under Article 226 of the Constitution of India, as a Public Interest Litigation, highlighting pathetic conditions of medical services in State of U.P, with special reference to the personal experience of petitioner Snehalata Singh, a poor woman brick kiln labourer who was traumatised and neglected in the primary health centre, leading to an obstetric fistula. Snehalata was returned back home without treatment for fistula leaving her to face incontinence of urine and faeces.

A public interest litigation filed in the Allahabad High Court highlighting the pathetic conditions of medical services in the state, with specific reference to Snehalata Singh. The PIL raised the following issues of concern; the petitioner Snehalata was admitted in Purkanji Public Health Centre on February 13, 2007 for delivery. However soon after her delivery she was discharged. Salenta soon found out that the negligent and disrespectful treatment and care that she had received in the PHC had left her with fistula (a condition which occurs if a woman's labour becomes obstructed and creates a hole between the bladder

or the urethra and the rectum due to the constant pressure of the foetus, which renders her incontinent).

The PIL further noted that Salenta that she was referred from one hospital to another but the treatment was ineffective. Her condition remained undiagnosed till May 2007. A hospital in Muzaffarnagar Hospital diagnosed her with a Urethra- Vaginal Fistula but failed to provide her with any services due to paucity of funds. Despite repeated request to the district officers, she did not receive any treatment. Finally on February 2008 Snehalata was finally operated upon at the King George's Medical College, Lucknow, and finally after a month in March 2008 the catheters were removed.

After this arduous, painful and humiliating process of attempting to seek treatment, HRLN filed a petition on her behalf, which pointed out that Right to health has been held to be an integral facet of meaningful right to life. In a landmark judgment on March 9, 2018 the High Court of Allahabad while hearing the case took a stern stance against the pathetic standards of healthcare in the state and commented *"If in one word we have to describe State Medical Services, it is quite apt to use the word for its functioning on its destiny and fate — 'Ram Bharose',"*

The judgment further directs among several things increased vigilance and inspection of hospital standards, unfilled vacancies of medical and paramedical staff, non availability of drugs and services in the hospitals. The court further noted that "though huge funds are spent in the name of welfare medical services undertaken by State but fact is that those services are not available to real needy people but swelling pockets of those who are supposed to serve."

To fix this, the court directed the CAG to establish a specialized audit team, which, in different phases and period, will audit medical colleges and hospitals

within a year's time and look at the pattern of fund utilisation, deficiencies and illegalities so that swift action can be taken against responsible authorities.

Further, taking note of the behaviour of government employees 'who frequently avail better private medical services and claim reimbursement from the state exchequer', the court said that "no special VIP treatment" would be given to anyone, including high-level officials, political executives and dignitaries, and asked them to avail medical services from government hospitals like every other citizen.

Sandesh Bansal vs. State of MP: In this case, the High Court of Madhya Pradesh passed a landmark final judgment in the case of *Sandesh Bansal v. Union of India* (PIL) W.P. 9061/2008, recognizing that a woman's right to survive pregnancy and childbirth is a fundamental right protected under Article 21 of the Indian Constitution. Filed in 2008 by Sandesh Bansal, a health activist and member of the Jan Adhikaar Manch, as part of Human Rights Law Network's national strategy to use litigation as a means of addressing India's high maternal mortality & morbidity, the case sought accountability for the government's failure to respect, protect, and fulfill the rights of pregnant women. Advocate Jayshree Satpute, who argued the final hearings in the matter noted the judgment as a "a significant step forward for women's health in India, as a growing number of High Courts have begun to recognize reproductive rights as fundamental rights and order life-saving reliefs."



Speaker: Rajdev Chaturvedi on Snehalata Singh @ Salenta & vs. State Of U.P. and Others)

(Rajdev Chaturvedi, from Healthwatch, Uttar Pradesh is also a member of the quality assurance committee (QAC) in the district of Azamgarh.)

Mr. Chaturvedi started by talking about Salenta, a pregnant woman and the hardships she had faced while and after giving birth. A mother is entitled to her rights like free treatment, free delivery and free medicines; she is also supposed to get Rs 1400 under JSSK scheme introduced by the government. But in this case, a rather different treatment was being served where after the child was born she was asked to pay some money. Her husband paid for the baby. After 4 days she went back to the hospital and the hospital sent her back home. She went to Haridwar then she was admitted for 6 days. After some time she felt better and went home. And again, she experienced complications like vomiting. She had to visit the Hospital again. She was then referred to the CMO of Lala Lajpat Rai. She was informed that she would be operated upon, she would go for the operation but the operation did not happen. They then asked her to pay 20,000 in the government facility. So it took one year for them to

operate on her, she kept going for the operation but they didn't conduct the procedure. On 5th February, she was to be operated upon. On 22nd February, she was discharged. On 11th March she was called again, then again on 24th April. The tube that was attached was to be removed but they didn't remove it. On 9th May 2018 they decided they must go to the court. They had been going from hospital to hospital only to get denied of the surgery she required again and again. The case was of 2007. He filed a case finally in 2018. For 10 years they had been going from hospital to hospital. Allahabad court finally came out with a judgement stating that the staff needs to be looked at in all of the states of UP.

Medicine is not available; people have to therefore buy them from the hospital. ANC, PNC was not given. The police were also questioned. Now the trauma centres are functioning perfectly, the judge told the advocates to go see it for themselves. There was no compensation given for this. The petition was filed with the purpose to bring about a change for the good in medical institutions and also immediate treatment for the woman, so no compensation was demanded for.

Policy, scheme is like the promise of the government. ***"PIL is like a political weapon used against them."*** We go to the high court, put forward our demands.

Speaker: Hillson M. Angam, Advocate, HRLN

Speaking of the health facilities available in Manipur, Hillson mentioned that every kind of service was run in a single room, and in the room, there were four beds. In Manipur, there are very less hospitals. And the ones that are there, are in inhuman conditions. There are 5 district hospitals. After filing the PILs the high court came up with a committee of lawyers to inquire into the conditions of these hospitals and to submit a report. They submitted a report to the High

Court. In lieu of that, the high court passed an order that the security forces should be removed from the health centres and the schools.

Film screening – My Abortion Story by Amy Brenneman

(Brief on the movie: When she was 21, actress Amy Brenneman (The Leftovers, Judging Amy) chose to have an abortion. Here, she talks about how she made that very personal decision, and why every woman's right to choose if and when to have children must be protected and celebrated.)

Day 2 [20.06.2018]

Rape & Sexual Assault:

The Criminal Law (Amendments) Act, 2013

Background: Sexual violence in India and across the world is not a new phenomenon – women have borne the brunt of male violence since as far back as records go. Nevertheless, the infamous gang rape and murder of Jyoti Singh– immortalized as *Nirbhaya* – that took place on a bus in South Delhi in December 2012, catapulted the conversation about rape and gender violence into the Indian public consciousness. Following mass protests and demonstrations across the country, and an outcry from women and men alike demanding that the Government implement measures to guarantee the safety of Indian women, the three-member Justice Verma Committee was formed with the task of submitting a report containing recommendations for amendments to the Indian Penal Code and relating legislation that governs crimes against women. Headed by Justice Verma, the former Chief Justice of India and Chairman of the National Human Rights Commission, the committee took a mere 29 days to put together and submit a 630-page report.

The report contained many recommendations which were formulated after careful consideration of some 80,000 petitions and requests submitted by various women's rights groups and activists, some of which were enshrined in the Criminal Law (Amendments) Act, 2013. Through the Act, changes were made to Indian Penal Code, Indian Evidence Act, 1872, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Indian Penal Code now contained new assaults, including specifically acid attack, attempted acid attack, act with intent to disrobe a woman, stalking, voyeurism, and sexual harassment – as recommended by the committee. The definition of rape under Section 375 of the Indian Penal Code was also extended outside the realm of vaginal penetration, to include acts of penetration of the vagina, mouth, anus, or urethra. The punishment for rape was also increased, now with the potential to result in life imprisonment.

However, key recommendations made by the Justice Verma Committee did not materialize by way of legislation. One particular provision that was ignored was the recommendation of criminalizing marital rape, which to date, remains legal in India as a specific exception to Section 375. Additionally, the Justice Verma Committee report recommended that, due to the number of sexual offences committed by armed forces in conflict areas such as Jammu & Kashmir, the Armed Forces Special Powers Acts such as the 1990 act applying to Jammu & Kashmir must be reviewed, and security forces must come under the remit of criminal law rather than martial law. Nevertheless, this recommendation was ignored by the Act as AFSPA powers remain unchallenged, thus the Act falls short of holding all perpetrators of gender-based violence accountable for their actions.

Since the 2012 Delhi gang rape and the subsequent enactment of the Criminal Law (Amendments) Act, 2013, incidences of sexual violence have actually increased, according to the National Crime Records Bureau 2016 report. There

were 24,923 incidents of rape in 2012 compared to 34,651 incidents in 2015. Similarly, assault on women with the intent to outrage her modesty has almost doubled, from 45,351 incidents in 2012 to 82,422 in 2015. Overall, the total crimes against women in India increased from 244,270 incidences in 2012 to 327,394 incidents in 2015. However, it is necessary to question whether this increase is indicative of an actual increase in incidents, or whether the growing public discourse on sexual violence in India and growing calls for women to speak out and report such crimes is leading to far higher rates of reporting. The latter demonstrates a turning point in the stigma that is often leveled against women for reporting sexual offences; for fear that it will damage their 'honour' or relations in their communities.

Nevertheless, whilst amending laws, increasing punitive measures and creating new offences is a step in the right direction regarding sexual violence in India, it is rendered useless if there is poor implementation and a lack of will to enforce such changes by actors such as the police and the judiciary. Despite incidents of rape running into the hundreds of thousands, in 2016 only 18,552 cases were completed at trial, and there were only 4739 cases convicted, as compared to 13,813 cases acquitted or discharged. The conviction rate for rape thus stands at an abysmal 25.5%. The conviction rate for 'cruelty by husband or his relatives' is even lower, at 12.2%, and the rates for assault on women and assault on Women with Intent to Disrobe are similarly low, at 19.2% and 16.3% respectively.

Without an institutional will, progressive laws that govern rape, sexual assault and sexual violence in general prove useless. It is essential to bring policy and both systematic and communal implementation into line with existing legislation.

Speaker: Anita Abraham

(Anita Abraham is a lawyer and has been litigating in the Courts in Delhi for the last 12 years. She worked as an Additional Public Prosecutor for the N.C.T. of Delhi in the High Court of Delhi, from August 2015 till April 2018. Her main areas of legal practice have been criminal law and matrimonial law. Prior to being a State Counsel, she was on the panel of the Delhi High Court Legal Services Committee for several years. She has worked on gender and human rights issues over the years. In May 2018, she shifted from Delhi to Bangalore and is currently in private practice in Bangalore.)



Abraham started talking about the Gender neutral recommendation that was not taken into account in the Criminal (Amendments) Act, 2013. Therefore, sexual assault against homosexuals and transgenders was not included in the Act. Death penalty for such heinous crimes was not taken into consideration. There have been numerous instances where a woman who was a victim of such crimes goes to the Police to file a complaint and the approach of the police is very casual. Even after the registration the accused isn't arrested immediately. In comparison to the number of complaints registered the ones acquitted are less. The women is often seen as a liar by the society, what the society fails to see is the reality of how common such incidents are where the woman is taken advantage of. Sexual harassment in workplaces is also very common.

Speaker: Vageshwari Deswal

(Dr. Vageshwari Deswal, B.A. (Gold-medalist), LL.B. (Gold-medalist), University Topper and recipient of University merit scholarship during her graduation and the prestigious National merit scholarship throughout her LL.B. and LL.M., teaches Criminal Law at Law Centre-II, Faculty of Law, University of Delhi. During her LL.M. she was nominated as a member of MD University Court for her academic brilliance. During her teaching experience of twelve years she is credited with the publication of more than a dozen articles and Book reviews in leading law Journals. She has prepared case materials and e-lessons for students of LL.B., LL.M. and Legal Literacy course run by Delhi University. A life member of prestigious institutions such as Indian Society of International Law and the Institute of Constitutional and Parliamentary Studies, she is also the Treasurer of All India Law Teachers Congress. She is closely associated with Gender Sensitization programmes conducted by WDC, DU and NGO Umang.)



Amendments made in the IPC:

- **Section 100 - the right of private defence of the body extends to causing death**

“The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

- First- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
- Secondly- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
- Thirdly- An assault with the intention of committing rape;

- Fourthly-An assault with the intention of gratifying unnatural lust;
- Fifthly- An assault with the intention of kidnapping or abducting;
- Sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release
- **Seventhly- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."**

- **Section 166A - Public servant disobeying direction under law**

Section 166A: Whoever, being a public servant,-

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

As per Schedule 1 of The CrPC, 1973 refusal to register an FIR in any of the above offences is a cognizable and bailable offence.

- **Section 166 B - punishment for non treatment of victim**

Section 166B: Whoever, being in charge of a hospital, public or private,

whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

- **Section 326A and 326B : Voluntarily causing grievous hurt by use of acid etc.**

- **Section 326A.** Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:
- Provided further that any fine imposed under this section shall be paid to the victim.

Voluntarily throwing or attempting to throw acid

- **Section 326B.** Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.
- Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or

burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

- Explanation 2.— For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

- **Section 354A - Sexual Harassment and Punishment for Sexual Harassment**

1. A man committing any of the following acts—
 - a. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - b. a demand or request for sexual favours; or
 - c. showing pornography against the will of a woman; or
 - d. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

- **Section 354B**

Assault or use of criminal force to a woman with the intent to disrobe

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

- **IPC Section 354C : Voyeurism**

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have no expectations of being observed by a perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of term which shall not be less than one year but may extend up to three years and shall also be liable to fine, and be punished on the second or subsequent conviction with imprisonment of either description for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine

Exp. 1- For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victims genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public

Exp. 2- Where the victim consents to the capture of the images or act, but not to their dissemination to third persons, such dissemination will be an offence

- **Section 354D - Stalking**

(1) Any man who-

- follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- monitors the use by a woman of the internet, email or any other form of electronic communication,
- commits the offence of stalking, Provided that such conduct shall not

amount to stalking if the man who pursued it proves that- It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or

- It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- In the particular circumstances such conduct was reasonable and justified.
- Punishment: First conviction 3 years, subsequent conviction 5 years.

● **Section 370 - trafficking of a person**

1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by
First.— using threats, or
Secondly.— using force, or any other form of coercion, or
Thirdly.— by abduction, or
Fourthly.— by practising fraud, or deception, or
Fifthly.— by abuse of power, or
Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.— The expression “exploitation” shall include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in a determination of the offence of trafficking.

2. Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to

fine.

3. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
4. Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.
5. Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.
6. If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.
7. When a public servant or a police officer is involved in the trafficking of any person then such public servant or police officer shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life, and shall also be liable to fine.'

- **Section 370A - Exploitation of a trafficked person**

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which

shall not be less than three years but which may extend to five years, and shall also be liable to fine.'

● **Section 376 - Punishment for Rape -**

Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

1. Whoever,—

a. being a police officer, commits rape—

- within the limits of the police station to which such police officer is appointed; or
- in the premises of any station house; or
- on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

- g. commits rape during communal or sectarian violence; or
- h. commits rape on a woman knowing her to be pregnant; or
- i. commits rape on a woman when she is under sixteen years of age; or
- j. commits rape, on a woman incapable of giving consent; or
- k. being in a position of control or dominance over a woman, commits rape on such woman; or
- l. commits rape on a woman suffering from mental or physical disability; or
- m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

- **Section 376A - Punishment for causing death or resulting in persistent vegetative state of victim.**

376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

- **Section 376C - sexual intercourse by a person in authority**

Whoever, being—

- a. in a position of authority or in a fiduciary relationship; or
- b. a public servant; or
- c. superintendent or manager of a jail, remand home or other place of

custody established by or under any law for the time being in force, or a women's or children's institution; or

- d. on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

- **Section 376D - Gang Rape**

- When a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than 20 years but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
- Provided further that any fine imposed under this section shall be paid to the victim.

- **Section 376E - Punishment for repeat offenders**

Whoever has been previously convicted of an offence Punishable under Section 376 or Section 376A or Section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be Punished with imprisonment for life which shall mean Imprisonment for the remainder of that person's natural life, or with death.

Marital Rape: PIL filed in the High Court

Background: In addition to Section 377 of the Indian Penal Code, the marital rape exception to Section 375, which states that a man cannot rape his wife, continues to be one of the final bastions of regressive Indian laws, which activists have been struggling to overturn for decades. With the exception of child brides who are under the age of 18, the Indian Penal Code clearly states that forceful sexual intercourse when married is not rape. This clearly signals the lack of bodily autonomy that Indian women are legally granted once married.

Section 375's 'exception' states that: 'Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

Section 376 states that: 'Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age'.

The National Family Health Survey conducted in 2015-16 reflects that marital rape does occur, with over 5% of women reporting forced sexual intercourse by their husbands, but the remaining stigma regarding speaking up about sexual violence and the fact that many people in India are unaware that rape can even occur within a marriage, results in chronic underreporting.

Sadly, but unsurprisingly, there is a glaring lack of political will to criminalize marital rape. Prominent public figures and politicians alike have chided the suggestion as 'inviting the police into the bedroom' and – ironically – claiming that 'half of all Indian men will be rapists if marital rape is criminalised'. The guises of tradition, the notion of the obedient and subservient wife, and norms

of masculinity and patriarchy prevent women from being able to assert bodily autonomy once married.

In the aftermath of the Delhi 2012 gang rape, the Justice Verma Committee included the recommendation of criminalizing marital rape in its report that was submitted to the Government, due to increasing pressure from women's rights groups. However, this was one recommendation that was not enshrined into law through the Criminal Law (Amendments) Act, 2013.

Speaker: Olivia Bang, Advocate, HRLN

The speaker Olivia Bang initiated the discussion with questions which need to be reflected upon. Questions such as, what do you feel is the fine line between consensual sex and rape, should the age factor be decided by the state, should the consent be between the state and the individual or between the two individuals involved in sex, what according to you is the institution of marriage, is marriage a license to have sex?



The speaker cited the definition of rape in the context of marriage: sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age is not rape. Marital rape is still not part of our penal code. Marital rape has been defined in 1935 while in India it was introduced only recently.

She read and discussed few key points from a judgement named Independent thought Vs. UOI (2017 10 SCC 800)- if you are 18 years or less and you are married, the sexual acts or sexual intercourse committed by your husband will not be considered rape.

It is quite clear that the rapist remains a rapist and the marriage with the victim does not convert him into a non-rapist. Similarly, a rape is a rape whether it is described as such or is described as penetrative sexual assault or aggravated penetrative sexual assault. It must be remembered, the speaker stated, that those days are long gone when a married woman or a married girl child could be treated as subordinate to her husband or at his beck and call or as his property.

The speaker shared an exception to section 375 of the IPC that creates an artificial distinction between a married girl child and an unmarried girl child with no real rationale and thereby does away with consent for sexual intercourse by a husband with his wife who is a girl child between 15 and 18 years of age.

The speaker highlighted that merely because child marriages have been performed in different parts of the country as a part of a tradition or custom does not necessarily mean that the tradition is an acceptable one nor should it be sanctified as such. Times change and what was acceptable a few decades ago may not necessarily be acceptable today. There is therefore no doubt that the impact and effect of Exception 2 to Section 375 of the IPC has to be considered not with the blinkered vision of the days gone by but with the social realities of today. Traditions that might have been acceptable at some historical point of time are not cast in stone. If times and situations change, so must views, traditions and conventions. In effect therefore the practice of early marriage or child marriage even if sanctified by tradition and custom may yet be an undesirable practice today with increasing awareness and knowledge of its detrimental effects and the detrimental effects of an early pregnancy. Should

this traditional practice still continue? We do not think so and the sooner it should be given up, it would be in the best interest of the girl child and for society as a whole.

The speaker stated the term Constitution morality which forbids us from giving an interpretation to exception 2 to section 375 of the IPC that sanctifies a tradition or custom that is no longer sustainable. The view that marital rape of a girl child has the potential of destroying the institution of marriage cannot be accepted. Viewed from any perspective, there seems to be no reason to arbitrarily discriminate against a girl child who is married between 15 and 18 years of age.

The speaker concluded the session with the suggestion that, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to Section 375 of the IPC to now be meaningfully read as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

Coercive Hysterectomies: The Use of Law

Background: A hysterectomy is a major surgery performed upon one or more of a woman's reproductive organs, usually involving the surgical removal of the cervix, uterus or womb, fallopian tubes or ovaries. Due to its invasive nature and effect in ending fertility, it is generally supposed to be a 'last resort' surgery, only performed on women who are no longer of a fertile age or on those in a critical condition with no other options available. Despite this, hysterectomy procedures are rampant in India, and the majority of the procedures are coerced, in that the patients do not consent to the procedure. In Andhra Pradesh, hysterectomies are the second most common surgical procedure amongst rural women, second only to caesarean section deliveries.

The average age for a hysterectomy in Andhra Pradesh is shockingly low, at just 29 years. These particularly target Tribal populations and those from Scheduled and Backwards Castes. Shockingly, these women are often made to pay for surgeries themselves, at rates of over Rs 17,000 – a huge amount for those working as daily wage labourers. In the aftermath of the surgery, women are often unable to continue with work and thus suffer a huge loss of earnings. There are reports of women suffering from ailments that are completely unrelated to their reproductive organs, such as stomach pains or normal vaginal discharge, who are subsequently compelled to undergo hysterectomies.

Women also report that in the aftermath of the surgery, they can face increased levels of domestic violence due to sexual issues. An article in the public health journal *Health Policy and Planning* notes that ‘qualitative research suggested that weak sexual and reproductive health services, a widespread perception that the post-reproductive uterus is dispensable and lack of knowledge of side effects have resulted in the normalization of hysterectomy. Hysterectomy appears to be promoted as a first or second-line treatment for menstrual and gynaecological disorders that are actually amenable to less invasive procedures. Most women sought at least two medical opinions prior to hysterectomy, but both public and private providers lacked equipment, skills and motivation to offer alternatives.’³

It is alarming to note the clear correlation between these unnecessary practices and profit opportunities for medical practitioners, under health insurance schemes and through private healthcare avenues, to the detriment of women’s reproductive health.

Speaker: Dr. Narendra Gupta, Prayas

(A physician by training Narendra Gupta has worked extensively at the grassroots level with tribal and other marginalized communities in western India. He has been active in planning and implementing community based health care models, training health care providers and community representatives in socio-epidemiologically informed health

³ Desai, S; Campbell, O MR; Sinha, T; Mahal, A; and Cousens, S. (2016) ‘Incidence and determinants of hysterectomy in a low-income setting in Gujarat, India’, *Health Policy and Planning*, 32(1) pp. 68-78

care delivery systems. For about three years, he directed and scaled up a very large volunteer-based programme of the Government in the state of Rajasthan to promote birth spacing and earlier for three years functioned as full time adviser to CAPART of the Ministry of Rural Development of Govt. of India to incorporate disability and health concerns in rural development programme.

He has advised and trained government health managers, administrators and judiciary on gender & health, inequities in health and related issues. He was one the most active members on campaign for universal free availability of essential and life saving medicines which led to a scheme for free medicines and diagnostics to all in the state of Rajasthan. As a member of the Planning Commission of India's working group on drugs for the 12th five year plan and the member of the Advisory Group on Community Action constituted by the National Health Mission of the MOHFW, Govt. of India he has extensively promoted community led health initiatives and strategies past research scholar of the Centre for Population and Development Studies of the Harvard School of Public Health for reduction in out of pocket health spending in the country. A, he has travelled to many countries and is a faculty of the International People's Health University and a member of the Governing Board of the Rajasthan State Institute of Health & Family Welfare besides being member of other committees.



Dr. Narendra Gupta works through Prayas, a voluntary organisation at Chittorgarh and Centre for Health Equity at Jaipur.)

Hysterectomy, the removal of the uterus, is the leading reason for non-obstetric surgery among women in many high-income settings. It has severe adverse implications for the women affecting her mental and physical health and wellbeing. Forced hysterectomies have become more rampant after State sponsored insurance schemes have provided higher amounts to private hospitals for these surgeries. More often doctors and private hospitals target SC,

ST and Below Poverty Line women. Reproductive tract infection in India is one of the highest in the world. The doctors threaten the patients saying that if they don't get their uterus removed there is high risk of cancer. They treat the uterus as a dispensable tool. 1/3 of the hysterectomies carried out in the world are unnecessary and in India the figure is about 2/3. The issue of unnecessary hysterectomies needs to be regulated by the rule of law.

An excerpt from the documentary on the rampant hysterectomies carried out in India directed by Vijayakumara S. and Teena Xavier was screened.



The documentary shows us the testimonies of women that have been victims to such forceful hysterectomies. It takes us through their testimonies and finally ends with them realising that this is not acceptable and they thus decide to have a protest against this. The major outcome is that the responsible doctors are booked. After all these incidents the government has also taken into notice such matters and have also become active on this issue. The misuse of hysterectomies in insurance, when seen from a medical point of view, it is very

unethical that the doctors are so profit oriented that they prioritize their profits before making sure that proper health care is being provided.

In Chhattisgarh they found that Hysterectomies were done forcefully without proper information given to the patients. For this numerous cases were filed. Taking this into account, an inquiry committee was set up by the Chhattisgarh High Court. Based on the report by this inquiry committee the license of 5 doctors was to be cancelled but the Karnataka Medical Council failed to act upon it. We are still fighting towards it.

There is also no provision for a compensation for women that fall prey to such practices of forceful hysterectomies. The compensation is necessary considering the consequences of carrying out such procedures when not necessary and the conditions they are carried out in.

Maternity Benefits and the Food Security Act

Background: As per the International Covenant on Economic, Social and Cultural Rights (ICESC), the Right to Food is a human right. This explicitly protects the right of all human beings to be free from hunger, food insecurity and malnutrition. India is a signatory to the ICESC, and yet it ranks 74 out of 113 major countries in terms of food security. Data retrieved from the 4th National Family Health Survey conducted in 2014-15 demonstrates that 53% of women in India are anemic, including 50.3% of pregnant women. Additionally, 22.9% of Indian women are underweight, which rises to 26.7% in rural areas.

In 2013, the National Food Security Act (often referred to as the Right to Food Act) came into force. The Act intended to provide subsidized food grains (including rice, wheat, and other whole grains) to approximately two thirds of India's population, in an effort to challenge poverty and food insecurity across the nation.

The Act served to unite various food and nutrition schemes into one legally enforceable document, including the Midday Meal Scheme, the Integrated Child Development Services Scheme (ICDS), and the Public Distribution System. Under the Act, those eligible for the Public Distribution System are entitled to 5kg per month of various grains, at heavily subsidized rates. Additionally, pregnant women, lactating mothers, and certain categories of children are eligible for daily free cereals.

A scheme that has been brought under the National Food Security Act, 2013, that covers maternity benefits is the Pradhan Mantri Matritva Vandana Yojana (PMMVY), previously Indira Gandhi Matritva Sahyog Yojana (IGMSY). It is a conditional cash transfer scheme for pregnant and lactating women of 19 years of age or above for first live birth. It provides a partial wage compensation to women for wage-loss during childbirth and childcare and to provide conditions for safe delivery and good nutrition and feeding practices. In 2013, the scheme was brought under the National Food Security Act, 2013 to implement the provision of cash maternity benefit of ₹6,000 stated in the Act.

Presently, the scheme is implemented on a pilot basis in 53 selected districts and proposals are under consideration to scale it up to 200 additional 'high burden districts' in 2015-16. Originally, all pregnant women of 19 years of age and above were eligible for conditional cash transfer benefits of ₹4,000 to be paid in three installments, except those who receive paid maternity leave. After the implementation of National Food Security Act the amount has been revised to ₹6,000 to be paid in two installments of ₹3,000 each.

Other maternity benefit schemes include Janani Suraksha Yojana (JSY) and Janani Shishu Suraksha Karyakaram (JSSK), which promote free institutional delivery, free medical supplies, and eliminate out of pocket expenditure that is incurred through hospital and travel expenses during and shortly after

pregnancy. Despite the existence of such schemes, implementation of the same has been demonstrated to be poor. In several fact finding missions, HRLN has discovered pregnant women and lactating mothers who have received no assistance due to bureaucratic errors or a lack of bank account, and who have had to incur high levels of out of pocket expenditure just to deliver their babies in a health facility.

A *LiveMint* article investigated the poor rates of success of JSY in particular since the advent of the scheme. It noted that in the decade since the scheme's launch: 'The percentage of women benefiting from post-natal checkups within 48 hours of delivery has increased by only 2.5 percentage points. The proportion of pregnant women consuming iron and folic acid tablets/syrup (IFA) for at least 100 days is little changed, according to the government's version of the RSOC data. An earlier report leaked by *The Economist* showed that this indicator had actually fallen by 7 percentage points. Crucially, a minimum of three antenatal visits is very important to monitor the health of a pregnant mother. While this yardstick shows a 13 percentage point improvement at the national level, in many states, it has actually worsened.'

Additionally, the article notes that: 'The JSY's implementation hinges on the performance of so-called Accredited Social Health Activists or ASHAs, who receive cash to track pregnant women and bring them to government or private accredited healthcare centres for delivery. Regardless of whether the ASHA had scheduled antenatal visits, the woman gets the bulk of the payment once the child is delivered in an institutional setting. A smaller portion of cash is released after the ASHA completes a post-natal visit, but given the effort required to locate the mother, cost of travel, and others, it's likely that ASHAs chose not to focus on this. It is the very incentive structure of the JSY that is responsible for the lack of progress of other indicators.'

Other reasons behind the poor implementation of such schemes include poor and dilapidated health infrastructure, and cultural barriers to factors such as institutional delivery.

Speaker: Aditya Shrivastava, Right to Food Campaign

(Aditya Shrivastava has been working on the right to food for over six years in different roles and capacities. He has worked as the Legal Adviser with Supreme Court Commissioners on Right to Food in India. Aditya has also been working on several cases related to the right to food and also assisted the senior counsel in the Right to Food case in the Supreme Court. He is a member of the Right to Food Campaign in India, which is a nation-wide network of organisations and activists. His key area of interests are legal and policy interventions on issues of poverty, food security and urban homelessness. Aditya also coordinates the CSO Support Cell which is an initiative to address the shrinking spaces for civil society and the attack on NGOs. Aditya is also manager of the Civic Participation Initiative which provides strategic and technical support to community leaders and grassroots human rights activists.)

The speaker had earlier worked on the right to food case with Mr. Colin Gonsalves after which the court monitored a lot of schemes like the Public Distribution System, Mid Day meal scheme and later on the of Food Security Act 2013. The preamble of the act says that right from the home the state would provide access to adequate quantity of quality food at affordable prices in a government school or a government sponsored scheme. Apart from all the schemes that were monitored by the Supreme Court the court also held that every pregnant woman and lactating mother should get minimum cash assistance of not less than Rs. 6000 after the act came into effect on 5th of July,2013, as it would compensate for the wages lost during the time of pregnancy. But the cash entitlements have not been implemented all over the country as it is being implemented in only 53 districts throughout the country.

From 2013 till 2017 January the Act was limited to 53 districts the scheme was challenged on behalf of PUCL for lack of implementation and there had been some changes in the scheme. On 31st December 2016 Narendra Modi

government decided that it should be given all over the country. Hence budget calculations were done but it was realised that the budgetary allocation were not sufficient and there was requirement of Rs. 14000 crores. In the present budget government has reduced and said that it had to cover only 50 lac women but there are 1.5 crore women that get pregnant every year. The present scheme has a provision of rs. 5000 and the rest of amount rs. 1000 is given through another scheme called as Janani Suraksha Yojana whose objective is to promote institutional deliveries which is divided in two based on rate of institutional deliveries rs. 1400 is for low performing states and Rs. 600 for high performing states.

There is a huge deficit in the functioning of JSY scheme. As women receive their first installment when they register themselves at AWC the next installment of rs 2000 is when the women get their first ANC checkup but 1.15 crore women would therefore be removed from this installment. The third installment is given when the child birth is registered and given the requirement of immunization. The worst part of the scheme is that earlier a similar scheme called the Indira Gandhi Matritva Vandana Yojana had the provision of Rs. 6000 and the scheme was applicable for two live births but now through PMMVY the amount given is only Rs. 5000 and the applicability has been restricted to only the first live birth which will exclude a large chunk of women. The women who are in need of the scheme the most are deprived of much needed entitlements. Debahsmita had filed couple of cases in Guwahati where the women fulfilled all the criteria but they didn't receive their cash entitlement. We can always conduct a research and approach the court whenever needed.

Speaker: Albertina, Goa

Upon interaction with the AWC workers, it was found that AADHAAR has been made mandatory for the women to avail the benefits but they cannot have an AADHAAR due to lack of permanent address. The Food Security act is not just about distribution of food grains what it doesn't talk about is the quality of food

grains. It does however has a mechanism like a District Grievance Redressal Officer and District Vigilance Committee. There are also state food commissions to ensure that the act is implemented. As every woman cannot go to the court so to make it accessible the act has made something very close to the court. There can be a great law but it cannot be delivered itself like for namesake there is a body which had been given work and roles. Different people have different diets, food security can't be only in food grains. The argument for right to life of the women should be ensured, the larger sense of food security is considered as depletion of resources. Fundamental rights are guaranteed by the constitution but the directive principles are those which can be enforced in due course of time. The state can't carry out acts without the depletion of its resources, the grains are being polluted and there is a need to tackle this issue. Historically women have the burden to take care of the men and it needs to make a case on a wider concept of food security.

The problem of food security is very big as more than half of the children are underweight and children from 6 to 23 months old only 9% are able to get adequate diet. On 8th March 2018, Poshan Mission was launched to provide nutrition to children but not adequate budget to support it. It's not that the country is not self sufficient, it's just that people don't have the cost bearing power. There is a rising trend of obesity. The schemes that are present are far less than what is required and the fact remains that quality food is required to be provided.

There cannot be any definite definition of hunger death as the cause is not definite. Starvation or hunger deaths are not defined but people are trying to find a suitable definition as it doesn't happen in an instant instead it takes months and years, the heart stops functioning because the person had been starving for so long, and they call it heart attack. Through autopsy however it can be established. Verbal autopsy is another way which is through speaking

with the neighbours of the concerned person to check on their nutritional intake.

In UP people are not given ration until and unless they buy a Patanjali product, which has now become a prerequisite for them to be able to avail their ration. people can approach the court regarding this, the testimonies of the people would be proof enough.

The migrant population also gets excluded from being able to avail the maternity benefit schemes. The Public Distribution System says that only citizens are entitled to a ration card. Attempts are being made to file an application in the ongoing cases for the provision of ration to the Rohingya refugees.

The Transgender Judgement of the Supreme Court

Background: In 2014, the Supreme Court of India passed a landmark judgment in the case of *National Legal Services Authority v. Union of India*, declaring the existence of a 'third gender' for transgender people, and reiterating that the fundamental rights enshrined in the Indian Constitution extended to transgender people. It also declared the right to self-determination, that is, the right to determine oneself as male, female, or as falling under the third gender. In addition to this, the Court affirmed that transgender people be granted reservation status within the education and employment sectors, due to their treatment as economically and socially backwards classes.

Despite the move towards greater legal recognition and protection for the transgender community in India, a recent symposium in February 2018 on legal support for accessing transgender rights, held by Human Rights Law Network and the Saathi Foundation, found through consultation with a variety of members of the transgender community that not only have there been severe failures in the implementation of the NALSA judgment, but that the judgment

itself is inherently flawed. In practice, this NALSA has proved to be extremely confusing and lacking in many areas. In the 130-page judgment, there was no mention of the following words: FTM (Female to Male), MTF (Male to Female), Transwoman, Transman, Intergender, Bhaiya, Babu, Kotha, FTK (Female to Kotha), Thirunambi, Genderqueer, Gandabasaka. In some parts of the judgment, it even seems to conflate transgender people with inter sex people. The judgment calls on the transgender community to be considered 'socially and economically backward' so that the transgender persons can avail the few benefits provided to other backward communities. This clubbing of caste based discrimination (considering the similarities to legislation surrounding Scheduled Castes and Tribes) and gender based discrimination excludes the deep rooted problems faced by both communities.

The Rights of the Transgender Persons Bills was introduced as a private member's bill by Tiruchi Siva in December 2014 following the NALSA judgment. This bill was unanimously passed in the Rajya Sabha, but never debated in Lok Sabha. The Bill passed in the Rajya Sabha had many progressive clauses including the creation of institutions like the national and State commissions for transgender people, as well as transgender rights courts. However, the version of the bill presented to Lok Sabha in August 2016 had undergone considerable revisions. Some key problematic areas that the bill presents are:

- a) The legislation identifies transgender people as being 'partly female or male; or a combination of female and male; or neither female nor male'. This definition is a considerable departure from the original bill's intention to cleanse society of the stigma it placed on transgender people.
- b) Moreover, it eliminates the option of identifying as either male or female, thus undermining the right self determination of gender.
- c) The bill creates a burdensome process for the recognition of identity of sexual minorities. Individuals have to submit themselves to a medical examination by a District Screening

d) Committee conspiring of a Chief Medical Officer, a psychiatrist, a social worker, and a member of the transgender community. Hence, this hampers the right of individuals to self identification of their sex. The government is allowed to act as gate keeper in deciding who can and cannot identify as a transgender.

e) The bill does not provide a clear definition of what constitutes as discrimination. It does not provide enforcement mechanism for invoking criminal sanctions when discriminatory behaviour occurs. Also, it has done away with remedial measures to prevent sexual discrimination that were provided in the draft of the original bill.

f) The bill does not address crucial issues of inheritance, property, adoption, marriage rights, reservations or anti-discriminatory provisions, which are critical to enable transgender persons and persons belonging to sexual minorities to live a life with dignity. Key issues that transgender people face - like that of harassment in schools and workplaces, rendering them unable to function within such hostile societies and dropping out - remain unaddressed.

This reflects the callous attitude of the legislature towards the transgender community and their ignorance of previous research, reports, consultations and judicial orders pertaining to the transgender community. It is necessary to investigate and address the loopholes of the NALSA judgment, and advocate for a bill that is in line with the needs of the transgender community, and to devise a plan to challenge the poor implementation of the law that has been displayed subsequent to the NALSA judgment.



Speaker: Rachana Mudraboyina

(Rachna is a transgender activist from Telangana. Over many years, she has been fighting against misconceptions and wrong information about transgenders in the society. Her relentless struggle towards a proper gender sensitization program led her to come up with a recent youtube series - TransVision, that was launched in Telugu, Kannada and Urdu. Her active participation in establishing dialogues with society in regard to transgender issues stands one of a kind and is truly commendable.)

The Supreme Court of India in 2014 passed a landmark judgment in which it was stated that 'one's sexual orientation is the integral part of personality, dignity and freedom.' The National Legal Services Authority (NALSA) v. Union of India case, declared Hijras and Eunuchs as third gender, thereby providing them a legal identity. The speaker questioned this saying if we are the third gender who are the first and the second gender. The Supreme Court in this case gave seven different directions safeguarding the rights of the third gender. She found it funny that the Court felt the need to state that the Constitutional Rights are equally applicable to us.

Essential features of the Judgement:

- 'Transgender persons' have the right to decide their self-identified gender and the Central and State Governments are directed to grant legal recognition of third gender identity such as male, female or as a third gender'.
- the judgment also legally recognizes the people transitioning within male/female binary.
- the members of the trans-community are to be treated as socially and economically backward classes (SEBC) and extended reservation in matters of public employment and education.
- The Central and State Governments have been directed to take proper measures to provide medical care to transgender people in the hospitals and also provide them with separate public toilets and other facilities.

Transgender people still face problems in getting employment in organisations, and even when they do manage to get employment there are no safeguards to protect them from being subjected to harassment.

To provide a legislative backing to the Judgement of the Supreme Court, the Union Cabinet approved the transgender persons (Protection of Rights) Bill, 2016 for introduction in the Parliament.

Features of the Bill:

- the transgender person must obtain a certificate of identity as proof of recognition of identity as a transgender person and to invoke rights under the Bill. Such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee.
- Offences like compelling a transgender person to beg, denial of access to a public place, physical or sexual abuse etc., would attract up to two years' imprisonment and fine.

- provides no reservation in education or employment.
- criminalizes begging and enticement of begging (traditional occupation of Hijras, Joggapas etc.)

For amendments to be made in the bill a few strategies like round-table discussions, moot courts, advocating with the parliamentarians, holding press events, social media campaigns and protests held in different states of India have been undertaken.

As a result the following changes were made to Transgenders Persons (Protection of Rights) Bill, 2018:

- the bill now defines Transgender as “a person whose gender does not match to the gender assigned at birth and includes trans-men and trans-women (whether or not such persons have undergone sex reassignment).
- the requirement of medical screening was dropped.
- the Bill includes the definition of discrimination.
- the Bill provides for civil rights like marriage and adoption.
- includes protection under all criminal laws.
- includes education and job reservations and insurance schemes.
- provides that private insurance must cover the medical expenses of transitioning

The draft of the bill however has not yet been publicly circulated. There is still frequent trans-activism to make amendments in the bill.

- Collectives like Women Against Sexual Violence and State Repression (WSS), National Alliance for People’s Movement (NAPM), Sambora (a transmen group), Telangana Hijra Intersec Trangender Samithi (THITS), Human Right Law Network (HRLN), etc. are advocating changes to the transgender bill while implementing the NALSA Judgement.

- National Institute for Rural Development and Panchayat Raj are working on a national level transgender research and policies while lobbying for changes in the bill.
- NCCI (National Council for Churches in India), is writing manuals for Indian churches on working with trans people.
- Humsafar Trust is working on Transcend, a project to tap corporate social responsibility funds to create livelihood options for trans people.

Speaker: Vicky Shinde, Activist, HRLN

It's been four years since the NALSA Judgement, and Vicky shared with the audience that she feels that day when the judgement was pronounced she was born, as that was when she finally had an identity. After the NALSA judgement Vicky joined HRLN in Mumbai as a Trans-activist. In schools, transgenders are harassed not only by their peers but also the teachers. Vicky is an active participant in programmes that try to sensitize people towards transgenders. In offices they are denied employment on the grounds that they will be a distraction for the rest of the staff. Children are denied admission in schools if they state at the time of the admission that they are transgender. Vicky narrated an incident where a transwoman was abused by doctors at a hospital. She exclaimed that we as a society united still have a long way to go to achieve justice for transgenders.

Speaker: Neel Ghosh, Sappho for Equality

(Neel Ghosh identifies as a transman, and is a member of Sappho for Equality. Neel is the trans-man representative of West Bengal Transgender Development Board).

Neel Ghosh speaks of what it's like to be transgender masculine who's assigned gender at the time of birth was female. **"They are often subjected to rape by their own family members to 'correct them', or they try to get them married forcefully."**

In some cases the voices of trans-masculine people get lost even before they are heard and in some cases the issues are not even recognized. Because of this, trans-masculine persons do not want to come out because of fear. A transman who is already in this process of his female - male medico - legal transition had once told him, **“why do I identify as a transman on my identity card? If people get to know that I was born female and that I’m a trans man then I can get raped. A man doesn’t get raped.”** There is a constant pressure of masculinity on trans men because of this patriarchal society.

Neel comes from an Urban, Hindu, middle class, Bengali family. He was born and brought up in Kolkata and studied in a Bengali medium Christian School for girls. He had always had boyish characteristics and his parents never liked it, and had thought that with time. The situation got even worse when I got into college. His parents stopped talking to him. When his mother found out about Neel she started skipping dinner and also refused to take her medicines saying that she has no reason to live now. For the last 2 and a ½ half years he has now been living alone, and also has been undergoing medico - legal transition and his parents don’t know about it. Now the situation has gotten better as his parents are now in touch with him and know about his surgeries.

As per the NALSA Judgment trans persons can change their names and gender on their identity cards without the documents of their medical transition. It has been 4 years since the Judgment but the Passport authority still asks for the medical documents. Neel also showed an interest in filing a petition for this, and asked for the support of the participants.

Speaker: Sutanuka Bhattacharya, Sappho for Equality

(Sutanuka is an activist-researcher and a member of Sappho for Equality. At present, Sutanuka is pursuing PhD from Ambedkar University, Delhi. Sutanuka also happens to be a member of the West Bengal Transgender Development Board since 2015.)

Sutanuka has been questioned many times if she belongs to the transgender community or not as she feels that she does not look like a conventional woman but she never takes offence for she understands the difference between curiosity and taunting tones.

In 1897 Eunuchs were criminalized. Eunuchs was used as a derogatory term. This act is still prevalent in Hyderabad and Karnataka. In Kochi the trans community got the opportunity to be employed by the Kerala metro. University of Kerala also has a Trans Policy which promises against discrimination, ragging etc. in Odisha an umbrella scheme has been launched to help the trans community and their parents. Post class 10th there are also scholarships available for the trans community, and national pension schemes have also been made available to the trans community. There however are still laws that criminalize transgenders:

- The Immoral Traffic (Prevention) Act, 1956
- Soliciting
- Anti beggary laws
- Section 377 of the Indian Penal Code
- Karnataka Police Act (36A power to regulate Eunuchs)
- Public nuisance, Section 268 of the IPC (just being a trans can cause them to be booked)

The speaker also talked of the absence of the laws that are in favour of the transgender community:

- Sexual assault and anti - rape laws.
- Anti discrimination laws
- Marriage/partnership law
- Inheritance law
- Adoption law

The above mentioned laws are not included in the NALSA judgement and needs to be included to uplift the status of the transgender community

Speaker: Nabila Hassan, Advocate, HRLN

Nabila pointed out that transgenders have existed for as long as humans have existed on this earth, and to provide them an equal standard of living with respect like any other human being there is a lot that needs to be done. For that she put forward a few suggestions:

- Procedure for changing identity should be on the basis of dignity.
- Gender neutral toilets should be made for the transgenders.
- Education (there are barely any transgenders in institutes and schools).
- They should be given Inheritance Rights.
- Protection of traditional practices (their dancing, singing etc.)
- Transgender marriage.
- Segregation and security with dignity in jails and hospitals: no solitary confinement for transgenders. (there is a fear of rape therefore confinements are unsafe).
- Reservation and scholarships in both public and private sectors.
- Uniformity in govt schemes (pensions, housing etc)

She also spoke of the recent case that HRLN had filed regarding the inclusion of a separate category for Transgender community in the PAN card and ITR documents

Speaker: Ankon Biswas, Advocate, HRLN

Ankon was HRLN's first transgender lawyer. He feels that the Govt. hasn't taken any special steps to increase the employment for the Transgender community.

Violence against Dalit and tribal Women:

Judgements from the court and legal strategies

Background: 'Dalits' and 'Tribals', more formally known as members of Scheduled Castes and Tribes, form approximately 16.6% of India's population

according to the 2011 Census of India report. 'Dalit' is a Sanskrit term meaning 'oppressed' and can be translated as 'broken' or 'scattered' in Hindi, which adequately reflects the extreme persecution that members of Scheduled Castes and Tribes face purely on account of their caste status. Despite the formal abolition of the caste system in India and the outlawing of caste discrimination, oppression and segregation still occur across caste and tribal lines.

Using an intersectional analysis, it is clear to see that Dalit and Tribal women face multiple axis of discrimination, on the basis of gender and caste. Rashida Manjoo, a UN Special Rapporteur on violence against women, stated that '[t]he reality of Dalit women and girls is one of exclusion and marginalization...They are often victims of civil, political, economic, social and cultural rights violations, including sexual abuse and violence. They are often displaced; pushed into forced and/or bonded labour, prostitution and trafficking.' Where a member of a higher caste perpetrates sexual violence against Dalit women, there is often severe impunity. Due to this, Dalit women are seen as easy targets for rape and sexual assault, and their access to justice is significantly limited – and their cases are neglected by both the police and the judiciary. The International Dalit Solidarity Network reports that conviction rates for rapes perpetrated against Dalit women is less than 2%, compared to a conviction rate of 25% in rape cases perpetrated against all other women in India.

In a 2016 CNN Report, interviewed Dalit women in Haryana remarked that they could not even send their daughters to school, to fetch water, or to go to fields alone, as they were so worried about the actions of upper caste men who looked at them with 'lustful eyes'. Jyoti, 24, stated '[h]ave you heard upper caste girls getting raped in our community? We are poor and powerless. That's why upper caste men rape our girls. They can get away with anything because they have money and power.' Similarly, Khajani Devi, 60, said that '[U]pper caste men can do anything they want because they know we can't fight

back.' Considering this, impunity and lack of access to justice remains a huge problem that facilitating gendered violence against Dalit women without adequate repercussions'.

Speaker: Manjula Pradeep



(A brazen human rights activist and lawyer, Manjula Pradeep has spent her life defending the rights of India's women and Dalits, the "untouchables" of the Hindu caste system. Ms Pradeep has been involved in human rights work for the past two decades and is one of the foremost women leaders of the Dalit movement.

Ms Pradeep has a master's degree in social work from M.S. University, Vadodara, and also a bachelor degree in law from Gujarat University. She has undertaken training at Women's Global Leadership Institute at Rutgers University, USA. Ms Pradeep is a member of the executive group of the International Dalit Solidarity Network. She is a member of the steering committee of Women in Governance-India (WinG). In 2011, she was selected as a woman peacemaker by Joan B. Kroc Institute for Peace and Justice, University of San Diego. Ms Pradeep is familiar with UN human rights mechanisms and has on many occasions interacted with the UN human rights bodies, the OHCHR, and UN member states. Ms. Pradeep also recently spoke on economic empowerment of Dalit women at the "National Conference – Re-framing Budgets for Dalit Women in India.")

Manjula Pradeep formed a union at the age of 25 which was risky and put her in a very vulnerable position, so she had to leave her home to not put her family at risk and started working in the state of Gujarat. Gujarat is the worst state for minorities in the country. Many of the Tribals and Dalits especially dalit women who live in Gujarat are landless agricultural labourers who are often left out of the economic strata. They had filed many PIL cases in Gujarat High Court for the enforcement of land reforms in Gujarat, the People have formed a coalition of

NGOs to fight but they were not alone as part of movement but were lacking each other's support on the ground there are very few people that are focused on their work. The situation of Adiwasi and Dalits are bad which can be seen but there are certain subdued Dalits even lower in the chain.

In girls college girls were being raped for 10 years, Manjula Pradeep took the custody of such girls who would stay with her for 1 month where they had to handle the trauma, the school was boycotted and the case was represented at some level and it was also published in the newspaper. In another case a pregnant women who had lost both of her hands was raped and the case is going on from 20 years such atrocities require for fast track courts. Chanchal, an acid attack victim died because of severe injuries caused to her. Often it is the patriarchal mindset of the communities that keeps people away from the rights.

One more aspect people need to focus on is when Dalit men are accused. People should take out judgements and see how discriminating they are on the Dalits and Adivasis and it should not be confined to Gujarat only.

As per the cases it must be settled in fast track courts. Two states have a law regarding fast track courts but there is a need for national law there is a need to understand that people should work with legal strategies and one such strategy is training of Dalit women lawyer to fight against sexual trafficking as it is a major issue among the Dalit women.

Speaker: Manisha Marshall, Activist, HRLN

The speaker talked about the current situation of dalit and adivasi women in Haryana and also all over the country. Violence and abuses are not only in the public spaces, government, and administrative institutions but also in their own home. Many cases happen and the condition of the women is getting worst. They are suffering but they cannot speak for themselves because they come from oppressive households and there is a need for people to raise against this

collectively, for an andolan to take place within them and for them to speak up for themselves is a big thing. Whenever there is harassment against women it is difficult for the entire family to live in



the society, that they are compelled to leave their homes so an Andolan becomes necessary.

The speaker had to struggle as she was thrown out of her village and didn't have a formal education and had to learn from her mother. When she had completed her 12th and wanted to go to a college as none of her family member had gone to a college. Because of being a Dalit there home didn't belong to their own family but to the village and there were few instances where she was considered as a criminal. She started working with Adivasi and Dalit women and realized their situation. The Dalit women believe that earth is their culture. There were instances of violence against women of Adivasi and Dalits by CRPF on a daily basis but has there ever been an instance where the government has taken a resolution quickly. There have been 5-6 cases registered in the court by Manisha Marshall for dalit and Adivasi people and the struggle is to make the legal system better for us. She says, **“Struggle can give rise to better norms”**.

Speaker: Young lawyers and activists from Manuski



Chhattisgarh is a huge place and Chhattisgarh as a state is very behind when the status of women in the society is considered. People need to stand together to fight for their right or else no one would do for others. We all want our women to be educated and independent.

SC/ST Atrocities Act came in 1989 and there was new amendment in 2015 based on the atrocities faced. Gujarat Jatiwad with many atrocities being committed on dalit people like A poor woman had gone to a district hospital for an operation and during the operation the doctors left a scissor inside her stomach and after four years the procedure was conducted to remove it from her stomach and later she died. Through HRLN a case was filed against the accused doctor and was punished for it. Another dalit woman was attacked by three people brutally that she had to be admitted in the hospital in a critical condition. Inter-caste marriages in dalits are not allowed. Dalits are not even allowed to stay in good places or where people of higher caste reside, they are

mostly pushed to the outskirts of the city. In educational institutions sexual harassment is suffered by dalit women in particular. The trial of the cases take a very long time as in a particular incident in 1989 there were two people attacked by a mob of which one was a woman and still there is no resolution has been reached even today.

The IPC cases which are filed against atrocities of Dalits are not able to be proved as victim cannot identify the accused or that caste was not mentioned, victim did not belong to Sc/ST and the lack of the inadequate representation of dalit lawyers are also a problem. The doctor refuses to treat the victim, the registration of the FIR is a cumbersome process, and the problem is also in recording the statement and

filing of the charge sheet. Cases go for trial and the victims are not even informed about the same and they face trouble later in the case she had put forth some suggestions such as – most of the times it is very important to have



the special training of lawyers from lower communities.

In an incident of a rape case that happened when the victim was in her final year of engineering college, the lawyers had very little resources as the victim's inaccessibility and lack of supportiveness from victim's family is a major concern

and it is high time that dalits are their own lawyers to represent their communities.



“When I wrote something my worthiness to be raped was discussed.” Chinmayee, a famous singer in Chennai faced

constant abuses online. But actions were taken by the police. The speaker was suggested to save her dignity but Celebrities get the support from the police and have no bounds but for common people no one would pay any heed to the harassment suffered.

Caste and religion are the biggest players in child marriages. While talking about child marriage the speaker pointed out two major reasons for child marriages which are lack of education and poverty.

Human Trafficking: Latest Studies and Information for Development of a PIL in the Supreme Court

Background: According to the US State Department's 2017 'Trafficking in Persons Report', India is a 'source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking.' The report identifies India's largest trafficking problem as bonded labour that can span generations, with workers being forced to work on brick kilns, agricultural settings, factories, and rice mills.⁴ The report states that India is a 'tier 2' country regarding human trafficking, meaning it does not fully comply with the Trafficking Victims Protection Act 2000⁵ minimum standards, but are making significant efforts to bring themselves into compliance with those standards.⁶

The most recent National Crime Records Bureau report states that in 2016 there were 1183 adult female victims of human trafficking in 659 registered cases, and 763 child victims of human trafficking in 340 registered cases⁷. These figures are largely at odd with statements made by the Ministry for Women and Child

⁴ U.S. State Department (2017) 'Trafficking in Persons Report 2017', available online at <https://www.state.gov/documents/organization/271339.pdf>, accessed 17th January 2018

⁵ The Trafficking Victims Protection Act of 2000, as amended provides the tools to combat trafficking in persons both worldwide and domestically. Available online at <https://www.state.gov/documents/organization/10492.pdf>, accessed 17th January 2018

⁶ U.S. State Department Office to Monitor and Combat Trafficking in Persons (2017) 'Tier Placements', available online at <https://www.state.gov/j/tip/rls/tiprpt/2015/243366.htm>, accessed 17th January 2018

⁷ National Crime Records Bureau (2016) 'Crime in India: Statistics', available online at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>, accessed 17th January 2018

Development, who in March 2017 stated that there had been 19,223 women and children trafficked in 2016, with the highest number of victims being recorded in West Bengal.⁸ The NCRB 2016 report finds that the highest number of instances of human trafficking occurred in Jharkhand, with 160 instances, followed by 133 instances in West Bengal, 110 instances in Odisha, and 90 instances in Assam. The highest numbers of victims were in West Bengal and Kerala, with 263 and 257 victims respectively⁹.

Overall, in 2016 there were 918 registered instances of human trafficking, with 1026 people being arrested for human trafficking, 873 people charge sheeted, 56 people convicted, and 93 people acquitted. 525 people were arrested for the human trafficking of children, with 444 of those people charge sheeted, 4 convicted, and 45 acquitted. Of the 147 human trafficking cases that went to trial, 47 cases were convicted and 100 cases were acquitted.¹⁰

The Trafficking in Persons report notes that '[P]rime destinations for both Indian and foreign female trafficking victims include Kolkata, Mumbai, Delhi, Gujarat, Hyderabad, and along the India-Nepal border; Nepali women and girls are increasingly subjected to sex trafficking in Assam, and other cities such as Nagpur and Pune. Some corrupt law enforcement officers protect suspected traffickers and brothel owners from law enforcement efforts, take bribes from sex trafficking establishments and sexual services from victims, and tip off sex and labor traffickers to impede rescue efforts.¹¹ The International Bar Association's 'Human Trafficking and Public Corruption' report notes several recent case studies of officials aiding human traffickers, noting that in 2016 'the Central Bureau of Investigation filed charges against two police officials stationed at the Nedumabassery Airport. The officers stood accused of facilitating the trafficking of women to brothels in the Gulf. One officer allegedly took bribes to allow

⁸ Bhalla, Nita (2017) 'Almost 20,000 women and children trafficked in India in 2016', Reuters, available online at <https://www.reuters.com/article/us-india-trafficking/almost-20000-women-and-children-trafficked-in-india-in-2016-idUSKBN16G29G>, accessed 17th January 2018

⁹ National Crime Records Bureau (2016) 'Crime in India: Statistics', available online at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>, accessed 17th January 2018

¹⁰ Ibid.

¹¹ Ibid.

victims to travel without valid travel documents'. Additionally, in 2014, 'the rescue of four children from a child sex trafficking racket in Puducherry revealed the involvement of a number of police officers. As a result, nine police officers faced rape charges. Six of the police officers absconded.'¹² Clearly, the problem of human trafficking cannot be adequately addressed when law and order officials are contributing to the problem itself and helping perpetrators act with impunity.

Traffickers will often target impoverished communities who experience discrimination based on their economic class, caste, and social status. Traffickers are able to lure women and children away from their homes on the false pretences of lucrative employment, only to be sold into sex slavery or bonded labour. Many domestic workers are victims of human trafficking, receiving little to no salary and abused by their employers.

A 2014 article in the *International Journal of Social Work and Human Services Practice* links the targeting of such communities to low levels of human security, which the UNDP defines as 'protection from sudden and harmful disruption in the patterns of daily life' and 'safety from chronic threats such as hunger, disease and repression'. The author criticizes the common approach of human trafficking as an issue of state security rather than human security – focusing on border patrols and immigration procedures and failing to address poverty, gender inequality, discrimination, and a lack of education, which when ignored often results in victims being re-trafficked.¹³ Human trafficking disproportionately affects Dalit and Tribal communities, as noted by the U.S State Department Trafficking in Persons Report. Rashida Manjoo, a UN Special Rapporteur on violence against women, stated that '[t]he reality of Dalit women and girls is one of exclusion and marginalization...They are often victims of civil, political,

¹² International Bar Association (2016) 'Human Trafficking and Public Corruption', available online at <file:///C:/Users/Zahra/Downloads/Human-trafficking-and-public-corruption-2016-FULL.pdf>, accessed 17th January 2018.

¹³ Uddin, M. B. (2014) 'Human Trafficking in South Asia: Issues of Corruption and Human Security', *International Journal of Social Work and Human Services Practice*, available online at <http://www.hrpub.org/download/20140305/IJRH3-19201859.pdf>, accessed 17th January 2018

economic, social and cultural rights violations, including sexual abuse and violence. They are often displaced; pushed into forced and/or bonded labour, prostitution and trafficking.’¹⁴

Issues also exist within the data regarding human trafficking in India, making it difficult to understand the true scale of the problem. The U.S. State Department is critical of the National Crime Records Bureau for not reflecting the differences between labour and sex trafficking. Additionally, figures on the issue seem to widely vary – with the Ministry of Women and Child Development putting incidents at nearly 20,000 and NCRB only reflecting 918 instances, which suggests severe underreporting of the issue. Section 370 of the Indian Penal Code which criminalises human trafficking itself is also problematic and in need of revising, as ‘[S]ection 370 does not define the “prostitution of children” younger than age 18 as an act of human trafficking in the absence of coercive means, as required by the 2000 UN TIP Protocol, although other statutes criminalize the “prostitution of children.”’¹⁵ Considering this, existing rates of human trafficking stand to be much higher due to this legal loophole.

Speaker: Jitendra Chaturvedi, Dehat

¹⁴ Manjoo, Rashida (2013) ‘A message by UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Side-Event: Dalit women: Working together towards the elimination of multiple and intersecting forms of discrimination and violence based on gender and caste’, available online at http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/UN/HRC/UNSRVAW_Message_for_Dalit_women_side_event_-_040613.pdf, accessed 17th January 2018

¹⁵ U.S. State Department (2017) ‘Trafficking in Persons Report 2017’, available online at <https://www.state.gov/documents/organization/271339.pdf>, accessed 17th January 2018

(Dr. Jitendra Chaturvedi is PG in Social Science and Graduate in Homeopathy having a rich experience of 25 Years with voluntary sector. He is a famous social activist and well known for his efforts towards implementing Forest Rights Act-2006 and child protection issues in the state of UP. He has very good experience of implementing more than 40 projects focused on child rights. In 1989-90, he founded an NGO named Developmental Association for Human Advancement, which is well known as "DEHAT". DEHAT works in worst indicator districts of UP state on child rights and especially on child protection. He is working as Chief Executive of DEHAT, Director for Childline-1098 CCollab for Bahraich and Shrawasti.



He is the founder and India Convenor of Indo-Nepal Child Protection Forum for protecting children of Nepal and India from child trafficking, child labor and child marriages. He is also looking after his responsibilities as State Representative for Uttar Pradesh state of AiH-Alliance for Immunization and Health in India. He has rescued 328 children from trafficking and restored 1618 missing children to the families till date. He is also a Police, Para-military forces and CWC Trainer on Child Protection issues. He was the State Convener of Quality Institutional Care & Alternative for Children [QICAC] Network-Uttar Pradesh (A CRY initiative) for six years (2006-12).)

The speaker introduced the participants to what human trafficking basically is. He says it is forced labor, stopping somebody's freedom, business of humans. Reasons behind it are often sex work, religious traditions, labor exploitation, organ trading, prostitution etc. Human trafficking is the 2nd largest industry after drugs trafficking. The roots of human trafficking is economy driven and demand generated. The reasons are poverty of other, illiteracy and unemployment, bad governance, skewed development.

There are strategies to tackle trafficking like prevention, protection, prosecution. There must be rescue, reintegration and rehabilitation in the society. There are many legal frameworks like Immoral Traffic (Prevention) Act and many more. Government set up a protocol on human trafficking in 2005, to develop an anti

trafficking policy, there must be sign boards everywhere, victims should be lead to their homes, publicity must be given to the issue. In the new bill of 2018 there has been no definition mentioned in the law about Human Trafficking. It is weak on the Labor Trafficking. There doesn't seem any linkage with existing laws. Bills do not mandate for creation of new courts. Bill neglects the role of Police. Major issues in the bill are that the CWCs do not have a space to maintain the privacy. (CrPC 164) In many cases police doesn't let people file the case after the rescue saying where will they take the victim? Victims have to bear the cost of legal procedures. Families face threats from traffickers. Judicial officers are not trained and no provision is mentioned for the same. Ujjawala home is a total failure. Just 14 rupees per day for three meals is given. Women's home is a big issue. The response of family members of the victim is that they weep, curse, hate and forget.

Police response is to take, make, fake and forget. Societal response is jock, mock, laugh and hate. Protection home response is receive and deceive. An ideal response would be to prevent, educate, regulate, rehabilitate and reintegrate.

Speaker : Pooja Rajive. Srijan

Foundation (JATN): *(Pooja holds a Post-Graduate Diploma Certificate in rural development and Master's Degree in Gandhian Thought. Pooja has more than 2 decades of work experience in the social service sector. She is one of the founder members and the President of Srijan Foundation. Her areas of expertise include women empowerment especially gender based violence and counter trafficking. She loves to make friends and listen to music. Presently she is the convener of the Jharkhand Anti Trafficking Network (JATN), which promotes safe migration in a feminist approach and counter trafficking in*



the state of Jharkhand. She through JATN has expressed the context of trafficking and unsafe migration in the Jharkhand in international/ national/regional platforms like GAATW, Government bodies like AHTUs, Police departments, labour department etc. Initiatives like Jharkhand Resource Centre (JRC) and Gender Resource Centre (GRC) also are in action under her leadership. The activities organised under her are innovative and novel in nature. A gender-sensitive approach is seamlessly adopted in everything she does.)

Trafficking in Jharkhand is very prevalent. The speaker talks about the time she was working in a village in Jharkhand where girls were often lured in the name of job opportunities out of the village in the cities and then once they would leave the family would never hear from them. The Srijan Foundation covered about 180 villages in Jharkhand and used streetplays as a method to spread awareness among the people to get them to come forward and talk about the issue. In one village about 306 girls were lost from the village, the family is not aware of the whereabouts of the girls either.

As they worked in the villages of Jharkhand with time their influence became stronger they were also able to help migrants from trafficking. One thing the speaker notice during her time in Jharkhand was that people were hesitant to talk about human trafficking.

The civil society has created a pressure on the people. Often times the speaker remembers questioning the actions of the foundation in stopping migration. They felt they needed to realize the difference between migration and trafficking. They therefore decided to shift their approach in the second phase of their action plan. They would tell people that if they continue farming in their village it would be more profitable. They did this to prevent them from migrating. Destination points for women migrants is Delhi, Bihar, Maharashtra and West Bengal were the most frequented. Adolescent girls who migrate for domestic work faced stigma and verbal abuse in their communities after returning home. 60% migrant worker said they didn't face any abuse. 98% of the migrants did not register before migrating for work while 5% had migrated discreetly without sharing anything with their family.

Present Structure of JATN: A Core committee, A decision making body comprising of 5 NGOs, 13 NGO Partners and Legal Help.

Our key achievements: JATN has successfully build alliances with the organisation like GAATW, Freedom Fund, Change Mantra, HRLN, Geneva Global. Establishment of 79 Migrant Forum in 13 intervened districts of JATN with 795 members. Problems we face is, that community does not come forward and don't want to talk about the abuse because of the societal stigma. We are working with unsafe cases and share with the department. Some gaps come up because of migration steps that state took earlier, so people migrate discreetly.



**Speaker: Nirmal Gorana,
Activist, HRLN**

Nirmal Gorana introduced the two speakers and their work. Jitendra has completed more than 40 successful rescues where about 350-400 children have been rescued by him. He works with people all around the country on the issue of human trafficking. Pooja is from Jharkhand and is a member of Anti Trafficking. He requested everybody to talk not only about the law but also about more steps that we can take. What solutions do we have for human trafficking? Can somebody come up with a solution?

Close supervision of the agencies that provide domestic help might help regulate human trafficking. We also need to need to talk about child rights, and proper education for children.

Rachna: Sex work and human trafficking goes hand in hand in our country. The transgender community marched in 2006 to decriminalize sex work. Instead of rehabilitating sex workers attempts should be made to provide education. In many north eastern states, like in Assam there is a trend wherein many incidents

have come up where RSS goons are taking women and children in the name of work. The CWC needs members that are solution oriented.

Many cases have come up where children are trafficked by their families for a sum of Rs.5-6 Lacs. Trafficking is a mixture of many problems. There is no provision in the government taking preventive measures to stop trafficking. Disaster affected area has a lot of scope for human trafficking. Funds in the villages are not properly utilized. Police has to work ultimately. They do some work, police worked with MUSKAAN, but had put the rescue children as missing children. Police officers also need to have training sensitizing them towards such issues. The most important thing to work is on the preventive issues. ***Shakk karo Sawal karo uttar na mile toh bawal karo.***

Human Trafficking is a violation of section 370 of IPC. We need to see at a personal level if this problem exists in our districts. Whether the agent has a valid license to migrate workers- bonded labour schemes do not properly implement the psychological rehabilitation, for this the court can be approached.

Day 3 [21.06.2018]

The Triple Talaq Judgement Personal Law and the Constitution The Uniform Civil Code

Background: Indian Muslims' personal laws are based upon the Sharia, which is thus partially applied in India. Its laws and legal judgments adapt and adjust Sharia law for Indian society. Having a uniform civil code that governs all citizens, instead of personal laws based on the customs of every religious community, is an ongoing point of debate within Indian mandate. This idea raises the question of whether constitutional protection given to religious practices should extend over those that are not in compliance with

fundamental human rights, such as the triple talaq. This is an important issue regarding secularism in India, which especially became a controversial public issue during the Shah Bano case of 1985.

Shah Bano was a Muslim woman who was married to her husband for 14 years until he decided to divorce her for a younger woman and threw a 62-year-old Bano and their five children out of their house. When he stopped giving her the Rs. 200 per month that she had been promised, she had no means to support herself and filed a petition at the local court. However, according to Sharia law, Bano had ceased to be his wife after he invoked the triple talaq, and he was therefore under no obligation to provide maintenance for her except for a total of Rs. 5400. While the Supreme Court initially ruled in her favour, the Indian National Congress, under Rajiv Gandhi, passed an act titled 'The Muslim Women (Protection Rights on Divorce) Act' to avoid facing decimation in the upcoming Indian general election of 1984. It diluted the Shah Bano judgement and allowed maintenance to a divorced woman only during the period of iddat, or 90 days after the divorce. This case became a politicized public issue focusing on identity politics, by means of attacking specific religious minorities versus protecting cultural identity, even if in direct conflict with fundamental rights.

In August 2017, the Supreme Court passed a landmark judgment in invalidating the practice of Triple Talaq as it pronounced the judgment in *Shayara Bano v. Union of India*.

On October 16, 2015, the Supreme Court addressed whether Muslim personal law practices of marriage and talaq decreases the status of women. In an exceptional move, it registered a suo motu public interest litigation petition to examine whether triple talaq (*talaq-e-biddat*), polygamy and *nikah halala* violates women's dignity and status, which are allegedly permitted under the Muslim Personal Law by virtue of S.2 of Muslim Personal Law (Shariat) Act of 1937.

The challenge was based on Articles 14, 15, 21 and 25 of the Indian Constitution. The 5 Judge Bench decided to take up only the issue of triple talaq. The Order signed by all the five judges, state that by a 3:2 majority, the practice of triple talaq is set aside.

The All India Muslim Personal Law Board contended that triple talaq is a matter related to religion and the Union Government and Supreme Court should leave such matters to the Muslim community. It stated this citing by the Bombay High Court's unchallenged judgment in the *Narasu Appa Mali* case,¹⁶ which states that personal law ought not to be meddled with. One line of argument that was taken by the Petitioners in this regard was that the Shariat Act has codified Muslim law and every one of the provisions contained in the same, consequently if any of its provisions repeals or takes away any fundamental right enshrined in the constitution then the same can be set aside according to Article 13 of the Constitution. The essence of the argument being, after the passing of the Shariat Act, it no longer remains some portion of personal law and subsequently opens itself to challenge for infringement of the Constitution. The Apex court however was split on this issue while Justice Kurien concurred with the perspective of Justice Kehar that the Shariat Act isn't a legislation regulating Talaq (divorce), consequently the same cannot be tried at the anvil of Article 14, Justice Nariman held it otherwise. The most progressive argument was given by Justice Nariman. He held that the operation of Shariat Act lends sanctity to the practice of triple *talaq* and, hence, its validity can be checked on the touchstone of the Constitution. He put to use the test of 'arbitrariness' under Article 14 of the Indian Constitution which deals with right to equality. It can be safely conclude that the Supreme Court missed a chance to conclusively determine whether Personal laws can be tried in light of the fact that they violate fundamental rights.¹⁷

¹⁶ *State of Bombay v. Narasu Appa Mali*, 1951 SCC OnLine Bom 72.

¹⁷ Dr. Sandhya Ram, *Judicial Dichotomy: Analysis Of The Majority Judgments In Triple Talaq Case*, available at <http://www.livelaw.in/judicial-dichotomy-analysis-majority-judgments-triple-talaq-case/> (last accessed on 12 June, 2018)

This judgment has rekindled discussion on a uniform civil code (UCC), one of the unfulfilled 'directive principles' of India's Constitution that would replace the existing separate personal laws for Hindus, Muslims, Parsis and Christians. Those who opposed reforming triple talaq had feared just that, predicting it would pave the way for a UCC.

Speaker: Hasina Khan

(Hasina Khan is the founder of Bebaak Collective, an umbrella organisation of Muslim women's groups in India. Hasina Khan has been a part of women's movement for last three decades. She has also been a member of Awaaz-e-Niswaan.)

In the country the issue of personal laws started gaining momentum in 1986 with the feminist movements. Mary Roy brought Christian personal law in the court, she was the mother of Arundhati and divorced by husband. She came to parental home with her kids and demanded 50% of her parent's property from her brother. Her brother told her that she will get only 5% and also questioned her on why she needs the money since her daughter is already married. How can personal law create such inequality.

Christian community got very defensive due to the filing of case. People feel that their personal laws are being attacked as these laws are connected to the money and people feel that the religion will be compromised but they do not realize that religion and personal law are very different from each other. Mary Roy fought and won the case. Shehnaaz sheikh, the first Muslim woman who filed a case against Triple Talaq as she was divorced by her husband through the triple talaq and she wanted to challenge that hence she



approached the supreme court. The Court asked her how many women are there that have been affected by triple talaq as she didn't have the figures.

The court told her that if the community isn't ready the court can't make any changes. She approached her community and found that there are women that have a problem with triple talaq but the women were not willing to get out of their house so she therefore created a union. In the landmark case of Shah Bano Case she was divorced by her husband at an age where she couldn't get a job or get married again. She approached the Indore court and the husband approached the MP High Court the judgment came in favor of the husband. So Shah Bano approached the Supreme Court and the Court in cases of religion in particular Muslim religion is always very ignorant. The court said the people from the community should come to resolve Shah bano's case and the Muslim Ulema of All India Muslim Personal Board (AIMPLB) was formed in 1972 and was dominated by male conservatives. The idea that Muslims are conservatives and are problematic and don't want change is not true all of the personal laws are equally dangerous. All India Muslim Personal Law Board was called upon by the Supreme Court. Congress to appease Muslim board came up with Muslim Women Protection act 1986 and according to the act the husband has to give a fair and reasonable amount to be given to the wife if he divorces.

The speaker feels that in the last 25 years they have sent such lawyers for women that are divorced by their husband through triple talaq and haven't won a single case. In Bombay high court a woman got a compensation of amount 20,000. The act had made the discussion on Muslim women prevalent and some say that Muslim personal law is worse than the other personal laws but the congress and the All India Muslim personal board feels that the said act has changed the lives of the women for the better.

When people talk about such issues as lawyers people are told not to talk about this openly as it is said that the riots have just happened and the situation could

get vulnerable. The BJP today is Muslim oriented party now because of the Congress and after the BJP came to power and are still told don't talk about it for the fear of riots. When people say that let the community decide who are within that community. We are part of that same community and our voices should be heard. If people are not comfortable with the practice then they should be able to question the practices. There is a need to change our perspective there needs to be a change in the laws for Muslim women the personal laws are gender biased and these laws only talk about marriage and blood relationships and what about the other diversities of law there are multiple identities, relationships but patriarchy is the reality of the society.

The speaker was born and brought up in a Muslim household but she doesn't believe in religion and don't follow it but what about people who don't follow religion should they not have a personal law. Only the heterosexuals that are getting married are benefitting from the personal law. In 2016 a woman from Uttarakhand who was a triple talaq victim filed case in the Supreme Court she also talked to Indira Jaisingh who said this is a very important case that needs to be heard and constitutional rights should also be given to muslim women. ***"The court said that in religion both the men and women should have equal rights, the interpretation of the men is wrong, they feel that this is the divine law. How can common people like us change this law."***

Another argument is that why are they going to the court as it is a divine law and no change can be made it. The BJP sarkaar is trying to help the Muslim women so much and to protect the women they made triple talaq a criminal offence with 3 years imprisonment. But how can you do that if the personal law is saying something else? When the case was won on 22nd August 2017 which was an achievement for all of the people that supported women's movement and again a historical day when the government put triple talaq under criminalization but people requested not to criminalize it as the act has not

been passed in rajya sabha to criminalize triple talaaq but if it is criminalized women will lose their negotiable powers.

The instances of Triple talaaq cases have been shown through data are very less and the cases of triple talaq that occurred before the judgment had given people to challenge those now. Muslim women are only seen in the context of religion but the question should not be seen in the context of religion, this act needs to be criminalized. Gender perspectives are not talked about. Many Muslim women want triple talaaq to be criminalized.

Bebaaq Collective doesn't want Triple Talaaq to be criminalised. What if the criminalization has been challenged and there are monetary issues because of the same. Will this be a right time to bring out a uniform civil code or will it affect the existing personal laws? Is there a provision for the woman and man that have divorced through triple talaaq if they wish to stay together sometime later in life? Islam says that you have the freedom to get married again but through the process of halala. In Supreme Court there was a question on halala when the triple talaaq case was in court the court said that they would only focus on triple talaaq and not halala but there is a case of halala in court and it is still ongoing.

The law commission sent letters to form a uniform civil code this is a very big point of tension in the women's movement but is the government ready to form a uniform civil code but whose uniformity is the uniform civil code talking about if the uniform civil code is only talking about a few topics than again it is a huge problem. If any personal law is not protecting the personal then what is the point of the law. The discussion the government isn't indulging in the laws that are there are very troublesome when we think of it in the context of women. The community keeps changing when we talk about community but who do you mean by the community? Are we not the community? the definition of the

community needs to be defined at each stage. people believe it's easier to solve their problems within the community instead of going to the court.

Acid Attacks: Court Decisions

Background: There are thousands of women in India who are victims of what is now known in our country as “acid attacks”. Acid attacks have horrified the conscience of India over and over again - with survivors who are facing life-changing injuries – both physical and psychological – coming to the frontlines to share their stories, amidst difficulties accessing the legal system, threats and ostracism from their communities, and families driven to bankruptcy supporting recovery costs. These assaults have now become a preferred weapon of violence against women due to their easy access, cheap costs and significant damage, but the price the victims have to pay is exorbitant.

In the landmark case of *Laxmi v. Union of India*¹⁸, a petition was filed by Laxmi, an acid attack survivor. Laxmi was 22-years-old when she was attacked by two men, one of whom she had refused to marry, while waiting for a bus in Delhi's Khan Market. After 4 plastic surgeries, her face has not recovered and requires many more to make her physical appearance a semblance of what it was like before. In this case, the Apex Court issued the direction for the regulation of acid to the State and UT. The court also addressed the problem of compensation. The Apex Court held that Section 357A of the IPC provides for the preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation. The Apex Court directed that the acid attacks victims shall be paid compensation of at least Rs. 3 Lakh by the concerned State Government/UT as the aftercare and rehabilitation cost.

The Supreme Court additionally decided to act and ordered the federal governments to regulate the sale of acid in the country, in 2013. The case of

¹⁸ 2014 4 SCC 427.

'Curbing the sale of Acid' stated that acid should be sold only to people who show a valid identity card and are above the age of 18. Buyers also must explain why they need the chemical and sales will have to be reported to the police within three days of the transaction. Sellers must declare all acid stocks with the local sub-divisional magistrate (SDM) within 15 days. Undeclared stocks could be confiscated and the defaulter fined up to Rs.50, 000. An acid attack is now a non-bailable and cognizance offence.

*In Parivartan Kendra v. Union of India*¹⁹, the apex court took a consideration that despite orders and directions of the same court in the Laxmi case, acid still readily available to most of the population in India. In this landmark judgment, Supreme Court issued a direction that the State Governments/ UT should



seriously discuss and take up the matter with all the private hospitals in their respective State/ UT to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries. The Apex Court said that there is no need to set up a separate Criminal Injuries Compensation Board and the Court also clarified that the State Government/UT

concerned can give even more amount of compensation more than Rs. 3Lakh. The Court also said that the State Government/ UT should take a stringent action be taken against those erring persons supplying acid without proper authorization and also the concerned authorities be made responsible for failure to keep a check on the distribution of the acid.

¹⁹ 2015 (13) SCALE 325.

The Preeti Rathi case²⁰ was the first such order in an acid attack in Maharashtra where a special women's Court sentenced Ankur Panwar, the attackers, to death. The accused was convicted of the charge of throwing acid on Preeti Rathi at Bandra station in 2013 after she chose to pursue her nursing career, declining his proposal for marriage.

The Supreme Court, in the month of May 2018, has approved 'The Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes-2018' according to which the victim of acid attacks 1. In case of disfigurement of face, would get a minimum compensation of Rs 7 lakh, while the upper limit would be Rs 8 lakh; 2. If the injury is more than 50%, a minimum compensation of Rs 5 lakh would be given, while the maximum would be Rs 8 lakh. The scheme also provides for compensation amount in cases of acid attacks where the injury is less than 50% and 20% respectively.

Speaker: Sonia Choudhury

The speaker herself was a victim and a survivor but she would rather call herself a fighter. In 2013 there was a law to regulate the sale of acid but there hasn't been any result so far as cases of acid attack are still common. She had always protected herself from facing the fact that she was a victim of acid attack but now she can talk about it openly. After her attack her parents supported a lot and had to counsel her a lot as normal counselors are ineffective they wouldn't understand the pain. Counseling is only about sharing the pain and understanding yourself. The parents were very supportive. She is mother to a girl she adopted. She believes she is the kind of person that picks themselves after they fall over, and made her weakness into strength. She feels good that people recognize her and she is glad that she got the courage to get out of her room. She remembers an instance where she overheard one of the relatives say, "yeh bekaar ho chuki hai issey zeher pila kar maar do (She is now of no use, give her poison and kill her) but her parents retorted saying that she isn't an object, that

²⁰ *State of Maharashtra v. Ankur Panwar*, decided in September 2016.

can throw away whenever they want to. She told the audience that an acid attack victims shouldn't be afraid of anything and should walk proudly without being conscious and covering their face.

People can still buy acid without an ID which is not the fault of the seller as he isn't aware about it. They need to be made aware. Awareness is a necessity at the moment. When in 2013 she did this exactly in a camp she had gone to a shopkeeper pretending to buy acid. She remembers that the shopkeeper showed her different types of acids which varying effectivity. When later she pointed out the possible consequences of him selling this, the shopkeeper in defence said that these are salt based and aren't harmful.

She told him that If it isn't harmful then he should drink it, but he couldn't do it. She took the time to make him aware of the consequences of the sale of acid, and how people can use them for their own selfish reasons and how a bottle of acid could mean a gain of mere Rs. 20 but for someone else it could ruin their entire life. After all this the shopkeeper told her that he will not sell acid from now on to anyone without ID proof. People don't have to change anyone but should instead change themselves first. The law is already there but the problem is with the implementation of the law. The Speaker also informed everyone that acid is one thing that burns your skin for 24 hours and that it is high time that steps against this crime are taken (sif ek kadam uthana hoga is crime ke against ek kadam uthana hoga).

Speaker: Aruna Tripathy

Steps have to be taken to stop the use of acid. We start from our own homes and move forward by making people around us aware, people like our neighbours, shopkeepers. Try to explain to them that they are violating the guidelines of the Supreme Court.

To even get the 3 lac compensation it is a very cumbersome process. The states are talking about compensation only for the treatment. Soon a PIL will be filed for the same. The victims have to inform the DLSA for the compensation-but the implementation isn't proper the state can compensate accordingly but why is the state putting a cap on the compensation limit and there is no implementation on the regulation of acid by the state.

Speaker: Mohini

The speaker was thrown acid upon in 2005 when she failed to reciprocate the feelings for a guy who claimed to love her. She was with her father in an auto rickshaw when the guy who had been following her on a bike attacked her. She had filed a complaint against the guy. After the attack for the next two weeks she wouldn't step out of the house. In 2013 she found out about the compensation scheme that is there for acid attack victims, which gives such victims a compensation amount of Rs.3 Lacs and wanted to avail it as well. But since her case was of 2005 she was refused the compensation. For 5-6 years she went to a lot of government institution in the hopes to avail the rights of an acid attack victim. Later she found out about HRLN, where she was helped in availing the benefits of the scheme. She was given the compensation and a job in DCW.

The provision for a job to an acid attack survivor is not implemented properly, also the compensation has increased from Rs.3-10 lacs now, but that is not enough even if you give 50 lacs, it still wouldn't be enough to compensate the mental and physical trauma caused to such a victim. She feels that proper rehabilitation should be given to the survivors. The speaker shared that she had faced a lot of problem earlier but is very happy now as she has a good job and a husband that loves her just as she is. She feels that she may have lost her identity earlier but she has now become a new person

Speaker: Farah

The speaker's husband attacked her because she wanted to divorce him and wanted to become independent but the husband did not want the divorce and in anger he threw acid on her. When the unfortunate incident happened and she was rushed to the hospital, the doctors didn't know what to do. They were in a dilemma to whether save her face or eyes and had they known then they could have saved one eye as the acid affects your bones also.

The treatment went on for a very long time even though the person that had attacked her was standing right beside her and she had substantial proof to prove that he was the one who attacked her. The case went on for 4 years and the husband was given a sentence of 3 and half years in prison and the compensation that was received was not enough to pay even for the surgeries. She says that the Government should rehabilitate the victim and also make attempts to make the victim independent. She also said that the hospitals should be better equipped to treat the victims.

Speaker: Kavita

The guy who wanted to marry her threw acid on her because her parents were marrying her to someone else. Her parents in shame asked her to get out of the house. She felt like a burden to her own family. Since the face was ruined people left her alone. She told her family that she would like to fight the case but her parents did not support her. She did file the case and it is still ongoing. She remembers that her parents told her that it must've been her fault that this happened. She feels that, people shouldn't lose hope against the negative comments.

In cases of acid attack a monetary compensation is there but there should also be a mental relief for such victims. The compensation of minimum rs 3 lac is

applicable for everyone and not only people that were victims after the guidelines for the compensation came in. There are not only female victims but male victims as well but the implementation for the same on the ground is zero.



Witch Hunting: Towards a PIL in the Supreme Court

Background: The classical period of witch hunting dates back to the 14th century when certain people were labeled as 'witches' and executed across Europe, Africa and Asia. In India, witch hunting dates back hundreds of years. It emanated in the Morigaon district of Assam which is now infamously known as the 'Indian Capital of Black Magic'. People from far-flung areas would come here to learn 'witchcraft'. Even today, witch hunting is being practiced in the State and has become a burning issue, where predominantly women fall prey to this heinous crime.

Witch hunting involves the branding of victims, especially women as witches, either after an observation made by an 'ojha' or 'bej' or a witch doctor. The

victim who is branded as a witch is subjected to numerous forms of torture, beatings, burns, paraded naked through the village, forced to eat human excrement and sometimes even raped. In some cases their hair is cut off and the victim and their children are socially ostracised and even put to death. The practice of witch hunting is also connected to the prevalence of patriarchal attitudes and an opposition to women's rights over property. Lack of education and health services have contributed to the continuation of this antiquated practice of witch hunting.

When illness, death or financial losses occurred in families, superstition leads many of their neighbours to believe that the cause was evil spells cast on them by others. Those accused of practising witchcraft are often hunted down by the community and the village. Lawyers and police officials said a separate law to deal with such cases was necessary as the sections of the IPC were not enough to deal with these crimes in which the community is often involved. The punishment for leading an individual to commit suicide after intimidating, stigmatising, defaming and accusing them as a witch may be extended to life imprisonment, along with a fine of up to Rs 5 lakh. It also has provisions for imprisonment up to seven years, along with a penalty of up to Rs 5 lakh, for calling a person a witch. States like Bihar, Odisha, Jharkhand, and Maharashtra already had anti-witchhunt legislations in place, but the bill enacted by Assam would have been the strictest.

Incidents of 'witch-hunting' have been on the rise in India in recent years. Guwahati-based lawyer Rajib Kaljita filed a PIL in the Guwahati High Court, which stated that at least 132 people accused of witchcraft had been killed in Assam between 2002 and 2012. There was a glaring absence of any major intervention by the government. Similarly, a PIL was filed in Rajasthan by the National Federation of Indian Women. Branding women as a 'witch' is one of the modes of crime against women in Rajasthan, who are then tortured and

deprived of their properties. Although the Rajasthan Prevention of Witch Hunting Act had been passed in 2015, it was not being implemented.

According to some reports, about 1,000 women have been killed across India in the past decade for "practising witchcraft". According to the Assam Parliamentary Affairs Minister Rockybul Hussain, at least 77 persons were killed and 60 others were injured in witch hunting incidents across Assam since 2010, and 35 of them were women. Though official cases have been filed against witch hunters, not much progress has been made due to absence of witnesses.²¹

On May 8, 2015, the Assam state assembly unanimously passed Assam Witch Hunting (Prohibition, Prevention and Protection) Bill, in a bid to eliminate rising cases of superstition leading to the murder of so-called "witches". This Act provides for more effective measures to prevent and protect persons from witch hunting practices and helps eliminate their torture, oppression, humiliation and killing by a section of the society.

Moreover, the Act prohibits the practice of witch doctors that cause injury and harm. The Act now recognises all cases of witch-hunting as non-bailable, cognizable and non-compoundable. A person practicing witchcraft would be heavily penalised. The punishment for leading a person to commit suicide after intimidating, stigmatising, defaming and accusing as a 'witch' may be extended to life imprisonment and fine up to Rs 5 lakh. The Act also talks about various measures that the administration and police need to initiate along with NGOs and civil society to educate people about witch hunting.

Speaker: Alaka Sahu, Sewa

(Ms. Alaka Sahu ,secretary of Organisation is working since 1989 On women trafficking ,witch hunting, Domestic violence, migration, child trafficking, child marriage, child

²¹ Pranjali Bhonde, It's 2016 But The Practice Of Witch-Hunting & Killing In The Name Of Superstition Still Persists In Assam, available at <https://www.indiatimes.com/news/india/it-s-2016-but-the-practice-of-witch-hunting-killing-in-the-name-of-superstition-persists-in-assam-255657.html> (Last accessed on 12 July, 2018).

abuse ,child rights, acid attack and Reproductive Rights. She is a eminent social worker. For her work she has received best paralegal volunteers award from hon'ble chief justice Orissa high court on dated 6th August in the year 2016 and received best paralegal volunteers award from shree Deepak Misra hon'ble chief justice Supreme court on dated 9th November in the year 2017. Also received Best south odisha eminent lady award on 6th May 2018 from Berhampur university.)

Witch hunting means any women who has been branded as witch by person or persons in belief such women has the power to harm anyone or that she allegedly have such intention or having the belief that she has bad eyes or evil eyes or could do black magic or that she, by mantras can harm people or society at large in any manner.

Legislative provision related to witch hunting

There is no specific and particular national level legislation for witch hunting hence the provisions under the IPC 1860 can be used as an alternative for the victim. The different sections invoked in such cases are Sec.302 which charge for murder, Sec.307 attempt for murder, Sec 323 hurt, Sec376 which penalizes for rape and Sec.354 which deals with outraging a women's modesty.

Legislation about the Witch Hunting in Odisha

The legislation which deals with the witch hunting in Odisha is Odisha prevention of witch hunting Act (OPWH Act) 2013 came into effect on 25th April 2014.

States of India Witch hunt being prevalent

Witch hunting is prevalent in 12 state of India which are situated in state like Jharkhand, Bihar, Haryana, West Bengal, Madhya Pradesh, Gujarat, Odisha, Chhattisgarh, Assam, Rajasthan and UP.

Status of Odisha in the whole country

Odisha remain 2nd in terms of registering numbers arising from witch craft in the country for the past few years this despite promulgation of Odisha prevention of witch hunting Act in 2013 to check the social menace widely prevalent in the tribal dominated-districts of Mayurbhanja, Rayagada, Koraput, Ganjam, Gajapati, Sundargarh, Malkanagiri, Keonjhar.

Cases Registered in Odisha

In 2015, 58 cases were registered which went up to 83 in 2016 an increase of 83% in 2017. 99 cases have already been registered under the OPWH ACT. Keonjhar district with 49 cases is being in hosted of the witch branding violence followed by Nabarangapur were 42 cases have been registered.

Steps taken in order to combat the situation in Odisha

To tackle the cases of witch hunting the Rapid Response Team is working in Block level. At least, 26 RRT teams been set up till now. These RRTs will comprise child development programme officer, medical officer, inspector in charge of police station, one office bearer of block level federation of Self help groups. The teams take steps to prevent any such types of incidents in remote tribal villages and for minimizing offence in collaboration with local police and other agencies besides making awareness activities.

People have been killed in witch hunting as per Government reports

As per the Government, the most recent report indicates that about 339 people were killed in the year 2017 in the name of witch hunting and around 2,500 women murdered for witchcraft during 2001-2014. These data shows the recorded cases, there are many instances which have never been recorded as due to the fear.

Status of different states in witch hunting

As per the report of National Crime Record Bureau (NCRB) 2017, in Jharkhand there were 82 witchcraft related murders in Haryana around 46 cases of witch-hunting was reported, where as in Andhra Pradesh and Odisha 53 cases were reported, in Madhya Pradesh 37, in Chahatisgarh 35, in Maharashtra 41 and in West Bengal and Meghalaya 9 and 11 respectively. According to NCRB, Govt of India the instances of witch hunting has increased when compared to previous years data.

Important Interventions

- Reaching a uniform understanding of the issues.
- Critically analyzing the legal provisions with its impediments.
- Gaining information about the prevalent situation on the issue across various states of the country.
- Facilitating cross learning the key stakeholders.
- Outlining the way forward on awareness building, legal remedy, capacity building and other governance perspectives on prevention, prohibition and redressal of the crimes.

The speaker also talked about a case study from Rajjwara district, where an entire family was buried alive, leaving one girl child. Before the police came they were buried and had died. She went to the police and filed the case against those 9 people that caused this. The court issued death penalty to all the accused and the day after the order came the judge had resigned.

Women are also part in the practice of labeling and killing women and calling them witches the condition are horrible and very sad. In a family of two people when the husband got sick and died the woman was blamed for the death of husband. This is a societal problem and we should solve it amongst ourselves and come forward and do awareness sessions for this. When you say that a woman is a witch. In the case in Pathargarhi where a woman was identified as a witch and the other women stood to oppose them and each women that stood up for her was humiliated. Another case where the woman was brutally beaten up and shown to her family as this is a very complex issue because if a woman is labeled as a witch and is rescued where she should be handed over to her parents.

It's very disappointing to see if the Patthargarhi matter is being politicized are we then not supposed to talk about it in such a forum. Historically people are being labeled as witches but the need is to understand who these women are

and there are very few cases where women are rescued because people only intervene very late. There are many cases where the woman comes to us saying that she has been labeled as a witch and they are thrown out of the villages, these women are mainly single women, widows, as it is easy to label them as witches as they are the most vulnerable section.

These women are also sexually exploited. People have started speaking against them, but we still see that even educated people believe in such superstitions like witches. In another incident in patthgarhi the police had gone with a huge force of atleast 40-50 policemen were they got to know of a girl that has been labeled as a witch, she was rescued and protected. If we get to know about such instances beforehand we should report it to the police. The need is to sit together and come up with a plan of action why should anyone take the label of a witch in a negative sense we should instead take that as a power.

Speaker: Rajive Ranjan, Srijan Foundation (JATN)

(Rajive is a member of the Srijan Foundation. It is a Jharkhand based organisation working for the rights and development of women and children.)

The speaker asked the participants how many of them have heard about witch hunting as witch hunting is not a recent phenomenon in the Indian context people are either considered as goddess or labeled as witches. In Jharkhand is a tribal state and there are many isolated areas where the police can't even intervene.

They only come to pick up bodies after everything is done as reporting of such cases is also very poor. Women are eliminated this way. Jharkhand is at the highest if we look at the cases of witch hunting that are reported. There is no legislation on this in Jharkhand. Bihar was the first state to bring about a law on witch hunting. The entire community of the village is involved in such instances and the modish rationalist society has filed a PIL in the high court.

Khap Panchayat

In many Indian villages decisions are not made individually rather they involve the village elders who constitute the Khap Panchayat. In an incident a 22 years old boy who was a jaat was in a relationship with a 21 year old girl that belonged to a lower caste. They both decided to elope from home since their parents wouldn't agree to the marriage. The matter was brought to the Khap Panchayat and they made the decision that if the boy and the girl don't come back home the two sisters of the girl would be raped. In villages girls are not allowed to use mobile phones or wear jeans by the orders of khap panchayat. They also try to control their sexuality and their will to decide who they want to get married to and how they will get married. The women cannot intervene in the matters of khap panchayat. Women have no power in the decision making process of the Khap Panchayat.



In the Shankar murder case, where a Dalit youth Shankar and Kausalya a Hindu OBC girl fell in love and got married. They were both attacked and while Kausalya sustained serious injuries, Shankar succumbed to the injuries. Of the 11 people accused, 8 were held guilty, and of these 6 were given a death sentence.

Speaker: Manjula Pradeep, Manuski

The speaker remembered that when she was 20, her father's best friend lost his son. They were from the OBC community and she was from the Dalit community. The role of khap panchayat how it is integrated into the Indian society. Dr. Ambedkar remarked *jitna khoon apka saaf hai utne aap shuddh ho*

(how much your blood is clean that much you're pure) and it is men that are controlling the khap panchayat.

A girl from the OBC community fell in love with a guy belonging to another caste and ran away from her house to get married. The guy was economically well off and the girl was poor, but the main issue was not of class but of caste. The girl was happy and they had a kid as well. People said that she made her seed impure and therefore was killed in the middle of the road with a sword. We see that even among the tribes there is hierarchy. The area you belong to and everyone coming from that area is your brother sister. If someone who is from a lower caste breaks any law created by the caste council; the person is outcasted and is ostracized. When we think about khap panchayat we think they are only present in Haryana but they are present all over the country and the question is how can we address such a serious issue. The need is to end caste identity as it is only increasing fear and hatred among people. Even if you bring the law, India does not have the kind of democracy to implement it. India is a caste based country. There were 98 forms for a survey which was conducted to find out about the general public's views about inter-caste marriage, and the shocking reality is when asked 98% of the people that were interviewed said that there should be no inter caste marriages. In Gujarat the people would ask, "What is your mother's milk" to identify the caste that person belongs to.

In the IPC we don't have a provision for honor killings and the conviction is not that tough. In an incident the father that had committed the crime of killing his child for honor, he himself took the weapon and went to the police and gave the weapon to the police and also confessed killing his daughter. During 2002 when they were helping the survivors of genocide in a case where a Hindu woman married a Muslim guy, her throat was slit to save the honor of the Hindus. Educational institutions have failed to sensitize people on this, and the culture has now become that you think before you love. 15 years back the

speaker married a Brahmin girl and the most difficult part was to convince his father because he was scared for his mother if they may harm her. One of his colleagues had also had an inter caste marriage which is a very difficult thing. It is time to change our mindset and think of ourselves as equals. There have been councils set up in more than 500 villages and a campaign is also done to create awareness. The speaker witnessed an incident where a tribal woman was being sexually abused by a Rajput man, when this matter was brought to the Khap Panchayat they did not even let the case be heard and it was dismissed.

In these decisions the entire village is involved in the decision making process. Why is there a need for khap panchayats among the people. An 8 year old girl was raped and the mahila sangathan was very supportive to help the girl get justice and to punish the accused but the khap panchayat did not even let the case be heard and it was dismissed. In Rajasthan there are many alternate khap panchayats running parallelly. The speaker wanted to know if the Supreme Court has given any judgment or order against the khap panchayat. It is in the mindset of the people the places where these exist. In the family the oldest man is seen as someone that has the decision making power and the same is true in the village where the mukhiya in a khap panchayat is someone at a very high position. They don't want any rule of law. The law isn't being implemented because of the caste council that is existing in the villages as they are the governing body and the leaders of such panchayats earn a lot and they also get good food from people. When dalit communities and tribal communities file cases against the other castes they are not even heard and there is grave need to talk about these issues. There are a lot of people that want to get out of it but they are unable to.

Women in Conflict Zones

Background: As the world experiences a diverse proliferation in global armed conflict, one paradigm remains constant – women continue to be disproportionately impacted, ranging from death, injury, and forced

displacement to sexual victimization. Women have historically been subject to extreme crimes in instances of conflict; from the mass rapes in India in the 1947 Partition where the women saw the worst of a collective and mutual Hindu-Muslim vengeance, to Taliban attacks along the border in India and Pakistan where women are brutally beaten and raped.

Kashmiri women are among the worst sufferers of sexual violence in the world, between the militants, the stone pelters, the Indian army and Pakistan; Kashmiri women have been nothing less than an object for violence. Bastar, a town in Chhattisgarh, has been a war zone between the Naxalite-Maoist insurgency and police personnel or political leaders for years. Human rights activists in the area, such as Soni Sori, have related how women are labelled as 'Maoists' without trial and raped in and out of jail by both the policemen and the rebel groups. There are similar stories from Manipur and Nagaland. In the Ayodhya riots of 2002, women were stripped and paraded naked, then gang-raped, and thereafter quartered and burnt beyond recognition. These rapes include that of minor girls, infants, and pregnant women too. For all of these women, their sufferings are not reported in the media. Most importantly, the lack of legal, financial and societal support makes it nearly impossible for them to seek justice.

It is crucial to realise that rapes and crimes committed against women during wars or periods of conflict, whether external or internal, has in most cases little to do with sexual satisfaction. It is perceived as an achievement of power and thus used to humiliate the enemy. The men and the community who are unable to defend and protect their women are considered to be inferior and hence defeated. To quote Kamla Bhasin from her work in 'Women Unlimited,' "Discrimination, that women often have to face in times of peace, gets reinforced in war as the community becomes militarised. Militarism and masculinist values, such as domination, aggression and assertiveness, are closely intertwined. In patriarchic societies, men enjoy control over women's productive power, reproduction, sexuality and/or mobility as well as over property and

other economic resources. It is very common that women are restricted to their homes and have to ask for permission to leave their house. They are also frequently denied ownership and inheritance of property. In fact, women themselves are commonly seen as the property of men." These sentiments are aggravated in conflict zones.

A National Action Plan (NAP) for Women could be the first step in a solution to these problems. The South Asia Women Peace and Security Conference in New Delhi in 2015 was organised particularly to highlight this need. Most speakers at the conference in favour of an Indian NAP were from the Northeast region, who related the brutalities unleashed on many of their women by long years of armed conflict between insurgents and the security forces. Yet, the likelihood for India to bring in an action plan to protect women in conflict situations any time soon seems remote. "The biggest roadblock to having a NAP in India is that the Indian Government doesn't recognise its conflict areas as so. Instead, it refers to them as disturbed areas," states Anuradha Chenoy from Jawaharlal Nehru University's Department of International Studies. The government is not in favour of bringing in such a plan "because it doesn't want any foreign intervention in the areas identified as disturbed," she comments. Another roadblock is that the NAP would be a power-sharing agreement between men and women. In a patriarchal system like India, traditional power bases will be eroded if there is the participation of women in peace negotiations and post-conflict reconstruction.

The legal protection of women in India is unsatisfactory. According to the article 51 A of the Constitution of India: "It shall be the duty of every citizen of India - (e) ...; to renounce practices derogatory to the dignity of women." However, this is far from what is actually upheld by citizens in conflict zones. Many laws for the promotion of welfare and empowerment of women have been enacted by the Parliament and respective state legislatures. Committees for development of women have been founded, and some government work projects have been

planned. The eleventh Indian five-year plan concretely mentions the need to help women in conflict zones.



**Speaker: Edina Devi and Rani Leima,
Extrajudicial Execution Victims Families
Association Manipur**

Edina's husband was picked from their house by the security force and also took his scooter along with them at 8:30 am in morning. She took a phone from one of the friends and called her husband but he didn't answer and she tried calling him again and again then the phone was not reachable. They gathered some people and started searching for her husband and after a long time they heard some news that near some airport there was an encounter and during that time she was pregnant, she married very young she was only 24 years at that time and she already had two children and she was very confused and didn't know what to do.

There was a meeting called for the victims of the extra judicial killing and she also attended the meeting. The people gathered in the meeting formed an organization and for about one year she attended meetings regularly. She had the urge to join the organization. Since she is a single mother people always ask her why are there only three people in the family, where is your husband and she doesn't know what to say. She has faced so many difficulties in her life. She recalls that when she started dressing up well people would talk about how she is dressing up after her husband is gone, and would question if she is trying to get married again. She had cried a lot but she stopped crying and strives for the best for her family.

In the last few years many young heroes are lost we are crying in support of them. All the victim families collectively formed an organization for extrajudicial killings in the district of Manipur and have compiled all the cases, Mr. Colin also supported the people during that time and with his help they have filed a case in the Supreme Court in 2012. In 2013 the order came out that stated that all encounters

were real. In 2017 Supreme Court ordered we are tired waiting for the answer result of these



cases. There is always struggle to get justice every time.

Her husband went out in his scooty but she didn't know where he was going but someone informed that her husband was killed in an encounter. No one told her directly about her husband's death. They informed the newspaper however that my husband doesn't belong to their party and therefore he is an innocent civilian. As a general secretary of the firm he went to the office – but till now we haven't received any of the govt. schemes. The speaker informed the participants of an ongoing campaign to get justice for people who are victims of such fake encounters, she shared a no. - 08030456996 and requested the participants to give a missed call on this no. She recalls she was paralyzed in 2011 due to trauma. I was lying on bed for a year. She wanted to work to get social justice,

Advocate Mukul Sinha and senior advocate Colin Gonsalves gave courage to all the victim families. She recalled Mr. Colin saying, “**People stop crying and started fighting. You will fight till you get justice.**”

Day 4 (22.06.2018)

Legal Defence of Journalists

Background: As of 2017, India is ranked 136 in the world press freedom index among a list of 180 countries. Data collected by the Committee to Protect Journalists – an independent, non-profit organization that promotes press freedom worldwide – shows that 75 journalists have been killed in India since 1992.

Human rights activists in India have come under repeated attacks in recent times. Right to information (RTI) activists have been killed, journalists have been attacked and jailed, media houses have had their offices ransacked, and a number of civil rights activists have been implicated and imprisoned in false cases using oppressive draconian laws. There is an urgent need to protect and defend the human rights activists/institutions in India today.

Despite the growth in the number of newspapers, TV channels and increased access to the web space; freedom of speech and expression which is a fundamental right enshrined in the Indian Constitution (from which the freedom of the press and media derives) is being greatly compromised in India. Three powerful forces – the state, corporate interests, and religious/nationalist extremist forces – seek to abridge, compromise and muzzle the free voice of the media. The attempts to throttle the freedom of expression also continue. Extreme right-wing organizations have attacked media offices frequently in the past few years. Prominent Journalist Gauri Lankesh was shot dead outside her

house in Karnataka. Senior Journalist Malini Subramaniam was attacked in her house in Chhattisgarh. Senior journalists like Sai Reddy in Chhattisgarh, Lenin Kumar in Orissa, have also spent several years in prison for raising their voices against the atrocities of their respective state police and governments. Seema Azad [journalist] was in judicial custody in UP in 2010 and in West Bengal Swapan Das Gupta (a prominent journalist) died while in custody in 2009. While powerful forces file cases against journalists, they receive scant support from media organizations. Stringers are intimidated, harassed by petty government officials and their organisations and fellow journalists too are helpless to support them.

Speaker: Malini Subramaniam, Independent Journalist

(Malini Subramaniam is an independent journalist covering news from Bastar. A trained journalist she worked in the development sector for over twenty years to return to journalism in 2015. She is the recipient of 2016 International Press Freedom Award from the Committee to Protect Journalist, New York and 2017 Oxfam-Novib/PEN International Freedom of Speech and Expression.)

According to Malini Subramaniam, the foremost responsibility of journalists is to uncover and expose the news. However, if they are prevented from fulfilling such responsibility, then democracy is inherently compromised. This is a serious concern.

Malini highlighted the problems faced by women journalists and journalists based on their caste and background. She stated that it is in public knowledge that to divulge and expose corruption or something controversial, one would have to go against the government which proves dangerous to both male and



female journalists. It is additionally difficult for a journalist to justify why the given news in particular is being delved into. She felt that it was necessary to answer why journalists are being targeted.

Malini was a social worker earlier. Her interest for writing incentivized her to write for www.scroll.in in 2015. Subsequently in 2016, she was targeted by individuals who would collect outside her house and enquire on her reasons for writing on Bastar and the rationale for her degradation of Bastar. She was directly threatened by such individuals whilst the police would not outrightly threaten her. Such persons saw such conflicts as an opportunity to attempt protecting their lands- the Maowadi.

According to Malini, in a place like Bastar there is no existent rule of law. Due to the situation in February 2016, Malini had to leave Bastar. At the same time two lawyers were arrested of which one served jail time of two years whilst the other served a year and half. It was explicit that journalists were being targeted back then. Journalists who had the resources had individuals on field doing their work for them. Masculine journalists were beaten and stripped off their clothes. Although they were allowed free movement, it was implicitly restricted due to their lack of clothes. The feminine journalists were interrogated on their identity, the members and composition of their family. This was initially implicitly done by the police by sending secondary individuals. Subsequently, the police would arrive. The police questioned Malini on why her neighbors were unaware of her existence.

When news pertaining to Malini and similar persons was broadcast on local channels, they were labelled as the persons who had been expelled from Jagatpur Village.

Malini wrote on www.scroll.in that if the same news had been broadcast on a local newspaper, it would not have mattered in the same magnitude but given

it was branching out on a national newspaper, the news would be in public domain but it should not spread too much. According to Malini, given she was a woman that wrote and spoke in English, it was relatively difficult to target her. The police van monitored her area for 10-15 days attempting to scare her. She did not have access to www.scroll.in at the time. Because she was aware of the laws, she was confident and in a position to stand up to the police. Due to this, the police felt a certain pressure to be proactive against her. In order to spread awareness, Malini was constantly documenting everything. Given she was not on social media; she was saved from the trolls.

There is no strong local journalist network in the area. In Maharashtra although the protection of journalist laws exists there is a looming question on whether such laws are sufficient in providing protection.

Speaker: Neha Dixit, Independent Journalist



(Neha Dixit is an independent journalist based in New Delhi, India. She covers politics, gender and social justice in South Asia. She has worked with multiple mediums and reported for Al Jazeera, Smithsonian, Caravan, Outlook and others. She is a contributor to the UNESCO Casebook of Investigative Journalism 2011, Zubaan anthology on Sexual violence in South Asia and First Hand: Graphic Non Fiction in India. She has won a multiple awards including Chameli Devi Jain Award for Outstanding Journalist 2016, Kurt Schork Award in International Journalism 2014, Lorenzo Natali Prize for Journalism from the European Commission, 2011 among others.)

Neha has been working as an independent journalist for 6 years. According to her journalists are often

questioned on why they do not report on certain issues. There are 70 people on her team. She stated if henceforth their target audience would be the urban rich in South Delhi. She gave an analogy of a 35-year-old man sitting at home switching in the television and the content he viewed should cater to his liking.

She once asked an investigative executive journalist of a channel whether his target audience comprised of women given its concentration on catering to the masculine gender for a protracted duration. According to him, firstly as per statistics women did not watch the news. Secondly, the politicians decided the news that would air.

In 2013, there was an incident wherein 31 tribal girls (aged between 3 to 11 years) were trafficked from Assam. These girls resided in an area where there no schools nor any medical units. The RSS had set up three camps and had promised the families of the girls that their daughters would be educated and receive facilities which were otherwise unavailable to them. However, these three organization took away the identity proofs of the families prior to taking the girls with them. Simultaneously the families were made to sign a document stating their inability to fend for the girls. Upon Neha receiving such papers and her meeting the families, the RSS attempted to follow and stop her. In reality, 20 of the 31 girls were in Gujarat. They had never been enrolled in any form of classical education. Rather they were taught bhajans. Overtime, they had started losing their dialect and had not picked up Hindi nor Gujrati either. When Neha threatened the RSS that she would call the police. The RSS threatened her by stating that the police person was an RSS member as well. They taunted at her by saying- they knew she would not do anything wrong given she was a Brahman woman and advised her to leave the area.

According to Neha, when male journalists are trolled its usually on ground of them taking money or being corrupt or the like. However, when a female journalist is trolled its usually on ground that she probably slept with him. She

stated that freelancing journalists do not have a press card, thereby becoming difficult to prove themselves.

She highlighted an incident when a case was filed against her and she contemplated whether she should go underground given the threat to attack her. Her case is ongoing. The same pattern is existent. There have been fake encounters. The police have stopped, shot and killed them in jungle areas late at night. Neha was threatened by the SP of Muzaffarnagar when she reported this. There were 19 cases of police encounters in Haryana. When reporting on these cases, the police had sent informers telling them not to communicate with Neha.

Further, the corporate mainstream media is a challenge. It selectively covers media. For instance, the Nirbhaya case was covered however, the rapes in Muzaffarnagar were not. There is a bias, the Dalit representation in media is extremely low. According to the Neha, this issue needs to be addressed and there are five steps that need to be followed when subsequently faced with such a situation.

Speaker: Ritika Jain, Journalist, DNA India

If the corporate structure was affecting Neha in 2012, imagine the structure hindering the journalist's power in the present context.

Ritika Jain is a photo and a legal journalist. She works with companies. Every story she does has to be agreed by the company. Her personal opinions are also considered irrelevant. She feels a lot safe with respect to covering Supreme and District court cases as their statements cannot be tampered with. She considers her work a



safe zone as she has to go through a degree of security, go to court and go to office. Her work usually takes a substantial amount of time with late nights getting extremely difficult.

When she was working with a newspaper, she was the sole legal journalist in the office. The maximum workload was on her. One day, the director came to them and cautioned them to be very careful w.r.t. who they talk to and how they communicate with them.

Ritika has not been a direct victim of sexual harassment. Although she has often been complimented on how pretty she is and the way she dresses. She however, fails to understand how such superficial aspects are linked to her work. She questions why a woman is not complimented for her work but rather her looks. She once had a boss, who travelled a fair bit between Delhi and Mumbai. He would ask her to be present for his interviews. Subsequently, she learnt that the ongoing gossip was speculating her relationship with her boss and that was reason he preferred having her around. One of Ritika's colleagues approach the editor and questioned him on why he spoke to Ritika to this magnitude.

Ritika once covered a story on a Hindu-Muslim boy and girl that wanted to get married. The boy murdered. Ritika did not want the Hindu-Muslim drama wherein the Hindu boy's father stated he would keep Iftaar during Ramzaan. Two days later Ritika's father called her because he wanted to retweet her story. He questioned her whether she connected to such issues and why people were talking so negatively about her. Ritika answered in the affirmative and told him not to read the negative as that was people trolling her. She told him trolling is common. She told him she has to adhere to company views and she agrees to everything in front of them but on paper her penmanship is as per the way she wants.

It is confirmed that the death of the 47 journalists that were killed was on purpose because they were a threat to the state. In 2017, 137 police cases were against journalists. Half of these cases had no relation to the journalist's stories. Further in 2017, 1005 journalists lost their jobs.

How can social protection be provided to such journalists in the form of wages, housing and social security and what are the legal steps to achieve this. About 5-6 days, the state declared the certain private farmland as their own. The Wage Act exists but it is not being implemented. What can be done about this? The poor undergoes a lot of difficulties and struggles to raise their voices. Journalists however have two types of threats. Firstly, the one existent in corporate media companies. Does it strike the consciousness of such journalists when they report on celebrity lehengas or Taimoor's first photograph? This is mockery of media given the media is running the country at the moment. Under the Factory's Act in law, a female can ask for transportation if she is working post 8 o'clock. A PIL has been filed for the non-implementation. Further, corporate ownerships should be regulated and a PIL has been filed for the same.

There is a group of journalists who have been assigned to monitor all actions of Taimoor. Since, millennial women have started accessing the internet with an interest in news concerning wellness, tummy fat loss, how to induce fairness, etc., many independent journalists have their their stories being put on a standstill from being published. Similarly, many organizations do not stand with their reporters. However, The Wire set an example. The cobra post was giving money to spread hindutva, but two Bengal organisations refused. Very few organizations covered the story. The trend is whenever a big-controversial news arises it is diluted by some other news making the headlines. When the situation worsens, stringers are put on the line. Given there is a demand for celebrity news, the corporate set ups are feeding this demand despite it being

demanding by small fraction of society. Simultaneously, there is a group that wants to know about the plight of Dalit women.

What needs to be answered is why is the number of Dalit journalists solely 21. News should not be dictated by what the audience wants. How are the journalists to sustain themselves given it is the corporate sector that employ and pay the journalists? Journalists are constantly sent abusive comments, trolled, sent pictures of private parts- if a journalist sits to respond to each individually when will the journalists get any work done. There is an existing myth that doing good stories is backed by a good revenue model. Crowd funding could be a potential way of highlighting ground breaking news. However, there is an entire generation of journalists that are unaware of ground reporting. To overcome this, journalist students can join organisations so as to equip themselves with what they might face.

The Two Child Norm and the Government Policies

The Supreme Court decisions in Javed's Case

Background: Since 1951, India has seen its population almost quadruple from 360 million to 1.2 billion people, making it the second most populated nation in the world, after China. Despite this, the fertility rate of Indian women has actually decreased by more than half over the last 40 years – falling from 4.97 children born to a woman in her lifetime during 1975-80 to 2.3 for the current period of 2015-20. However, due to the phenomenon of 'demographic momentum' – a tendency for growing populations to continue growing after a fertility decline because of their young age distribution – it will take until at least 2050 for India's population growth to stabilise. Deemed an 'explosion', the substantial growth in population is used as a scapegoat and a largely tepid excuse for almost every problem in India – especially issues surrounding poverty and poor public health facilities.

The two-child norm is seen as an antidote to India's 'population explosion'. Based on a largely misconstrued assumption that poor people living in rural areas and slums have more children, which is ironic given that these are the populations continually denied access to quality, affordable family planning services, the government formulated an idea based on China's highly controversial one-child policy: a two-child norm. This is a policy that would impose punitive disincentives on those who have more than two children. This method targets those intending to run in *panchayat* (local government) elections by disqualifying potential candidates who have more than two children. The hope is that citizens will look at their local government figures as role models, and in turn limit the amount of children they have.

Some Indian states have gone even further to push the two-child agenda, by denying the third child access to public health facilities and education in government schools, confiscating ration cards, and cutting off pregnant women's access to a range of maternity benefits and schemes once they are pregnant with their third child. These measures obviously disproportionately affect poor people, with poor women in particular being disadvantaged. To date, Rajasthan, Andhra Pradesh, Odisha, Maharashtra, Gujarat, Uttarakhand, and Bihar have two-child policies in place, ranging in their degrees of punitive outcomes when breached. As of September 2017, Assam became the eighth state to effect a two-child policy, with possibly the most punitive measures yet – barring anyone with more than two children from running for any kind of elections, holding a government job, or being eligible for government schemes and entitlements, such as nutritional entitlements for pregnant women who are below the poverty line. In October 2017, Jharkhand also announced its intention to follow the two-child norm with regard to eligibility in elections. All of the aforementioned states have high levels of impoverished communities from scheduled castes and tribes, and have bad records with regards to female literacy and school drop-out rates.

Under the two-child policy, parents are cut off from crucial schemes and entitlements that help to alleviate the circumstances of the most deprived people in India. This compounds the problems faced by those poor and uneducated communities, who often have very little access to contraceptive information and services. The two-child norm also contradicts India's commitment to rights-based family planning and fails the self-stated goal of moving away from target-driven, incentive-based population control tactics, as expressed at the Cairo Conference in 1994 and codified in the National Population Policy 2000. This policy specifically identified as its overriding objective the improvement in the quality of lives, and made reference to the need to address unmet needs for contraception. The policy does not mention targets, disincentives, or policies relating to the number of children one can have.

Nevertheless, a Supreme Court blunder has had extremely harmful effects on the poor and marginalised communities of several states of India. When a two-child norm approach was adopted in Haryana, barring those with more than two children from running in *Panchayat* elections, those who were disqualified filed a petition against the State of Haryana, known as *Javed vs. State of Haryana* (2003). The parties before the court failed to explain and assess the complexities of population, family planning, reproductive rights, and bodily autonomy in a nuanced manner, leading to a judgment that relied heavily on obsolete, disproven, obscure and controversial statements regarding notions of population 'explosions.' It quoted research dating back to the 1960s that labelled population growth as 'more dangerous than a Hydrogen bomb', failed to note India's sharp decrease in population growth rate from 1991 – 2001, briefly mentioned the disadvantages that the two-child norm would impose on women and poor people in general, and featured a glaring absence of any Indian population experts, who were unanimous in their view that the impact of the two-child norm on women and the poor would be 'immediate and severe.' The resulting judgment was misleading and misunderstood and led to several

states taking on the two-child norm and disqualifying candidates from running in local elections. Research conducted in Odisha, Rajasthan, Haryana and Madhya Pradesh demonstrates that this directly led to the desertion of wives by aspiring local politicians, the seeking of unsafe abortions, giving up children for adoption, and the initiation of new marriages by male elected members to escape punitive measures.

Speaker: Sarita Barpanda



The first problem is increasing population and disproportionate increase in produce. The second problem is the government's lack of proper distribution of produce. Post the reduction of the 1921 death rate, the second phase started. This phase was characterized by high birth rates and low death rates. There is a myth and misconception that to ensure that the number of poor does not increase, the population needs to reduce. China's fertility rate was comparable to Kerala's total

fertility rate in 1951. This was due to the prohibition of child marriages, a good education and health services. It is unfair to impose state policies on families which forces the families to abandon their third child. Further, as per the national population policy the woman and her womb must be protected. The woman should have the flexibility to decide the number of children she wants. Subsequently, the children should receive a good quality of life. The Population policy should benefit mother and child and the choice should lie with the mother.

Unfortunately, that is not the case. Many states have initiated the two child norm. Bihar, Orissa and Himachal Pradesh have passed orders that persons with more than two children cannot contest in the local elections. Many

organizations have stood up against such order. For example, in the JSY maternity benefit scheme the services will only be provided for the first child. This showcases that the government is attempting to incentivize people towards the two child norm.

After the Supreme Court's Judgement in Javed's case set a bad precedent thereby encouraging the state governments to propose laws in consonance with the two child norm. The two child norm has had a serious impact on women. Women face double edged challenge, decision making in reproduction has not been in women's hands and yet they suffered the consequences of the implementation of the norm directly (as candidates) or indirectly (as spouse of those disqualified). Women were even abandoned by their husbands because they wanted to stand for the elections. We filed a petition in the Supreme Court to direct the government to not go through with the two child norm. The Supreme Court came out with a very strong judgement that at the interest of the nation population control is required. The judges weren't willing to listen to the arguments that could have changed the course of the judgement.

Population growth in the past few years is the lowest the country has ever seen. Ration cards are also distributed keeping in mind the no. of children a family has. If you have upto two children then you will get the red card. People can't hold positions in the government if they have more than two children. Because of this provision no poor person with more than two children can stand for elections. If we look at the data about 80% of the people will be disqualified. A study was done in Punjab and about 21.6% dalits and 45% women are there where the children are more than two in the family. This norm is coercive, and many countries have banned it, but it is still prevalent in India. We therefore wish to challenge it in the High Court. Most affected are the poor dalit, tribals and the OBC women.

The Triple Talaq Judgement Personal Law and the Constitution The Uniform Civil Code an Alternate View

Background: Indian Muslims' personal laws are based upon the Sharia, which is thus partially applied in India. Its laws and legal judgments adapt and adjust Sharia law for Indian society. Having a uniform civil code that governs all citizens, instead of personal laws based on the customs of every religious community, is an ongoing point of debate within Indian mandate. This idea raises the question of whether constitutional protection given to religious practices should extend over those that are not in compliance with fundamental human rights, such as the triple talaq. This is an important issue regarding secularism in India, which especially became a controversial public issue during the Shah Bano case of 1985.

Shah Bano was a Muslim woman who was married to her husband for 14 years until he decided to divorce her for a younger woman and threw a 62-year-old Bano and their five children out of their house. When he stopped giving her the Rs. 200 per month that she had been promised, she had no means to support herself and filed a petition at the local court. However, according to Sharia law, Bano had ceased to be his wife after he invoked the triple talaq, and he was therefore under no obligation to provide maintenance for her except for a total of Rs. 5400. While the Supreme Court initially ruled in her favour, the Indian National Congress, under Rajiv Gandhi, passed an act titled 'The Muslim Women (Protection Rights on Divorce) Act' to avoid facing decimation in the upcoming Indian general election of 1984. It diluted the Shah Bano judgement and allowed maintenance to a divorced woman only during the period of iddat, or 90 days after the divorce. This case became a politicized public issue focusing on identity politics, by means of attacking specific religious minorities versus protecting cultural identity, even if in direct conflict with fundamental rights.

In August 2017, the Supreme Court passed a landmark judgment in invalidating the practice of Triple Talaq as it pronounced the judgment in *Shayara Bano v. Union of India*.

On October 16, 2015, the Supreme Court addressed whether Muslim personal law practices of marriage and talaq decreases the status of women. In an exceptional move, it registered a suo motu public interest litigation petition to examine whether triple talaq (*talaq-e-biddat*), polygamy and *nikah halala* violates women's dignity and status, which are allegedly permitted under the Muslim Personal Law by virtue of S.2 of Muslim Personal Law (Shariat) Act of 1937. The challenge was based on Articles 14, 15, 21 and 25 of the Indian Constitution. The 5 Judge Bench decided to take up only the issue of triple talaq. The Order signed by all the five judges, state that by a 3:2 majority, the practice of triple talaq is set aside.

The All India Muslim Personal Law Board contended that triple talaq is a matter related to religion and the Union Government and Supreme Court should leave such matters to the Muslim community. It stated this citing by the Bombay High Court's unchallenged judgment in the *Narasu Appa Mali* case,²² which states that personal law ought not to be meddled with. One line of argument that was taken by the Petitioners in this regard was that the Shariat Act has codified Muslim law and every one of the provisions contained in the same, consequently if any of its provisions repeals or takes away any fundamental right enshrined in the constitution then the same can be set aside according to Article 13 of the Constitution. The essence of the argument being, after the passing of the Shariat Act, it no longer remains some portion of personal law and subsequently opens itself to challenge for infringement of the Constitution. The Apex court however was split on this issue while Justice Kurien concurred with the perspective of Justice Kehar that the Shariat Act isn't a legislation regulating Talaq (divorce), consequently the same cannot be tried at the anvil

²² *State of Bombay v. Narasu Appa Mali*, 1951 SCC OnLine Bom 72.

of Article 14, Justice Nariman held it otherwise. The most progressive argument was given by Justice Nariman. He held that the operation of Shariat Act lends sanctity to the practice of triple *talaq* and, hence, its validity can be checked on the touchstone of the Constitution. He put to use the test of 'arbitrariness' under Article 14 of the Indian Constitution which deals with right to equality. It can be safely conclude that the Supreme Court missed a chance to conclusively determine whether Personal laws can be tried in light of the fact that they violate fundamental rights.²³

This judgment has rekindled discussion on a uniform civil code (UCC), one of the unfulfilled 'directive principles' of India's Constitution that would replace the existing separate personal laws for Hindus, Muslims, Parsis and Christians. Those who opposed reforming triple talaq had feared just that, predicting it would pave the way for a UCC.

Speaker: Noor

Jehan Shafia Niaz

(Dr. Noorjehan Safia Niaz, co-founder member of Bharatiya Muslim Mahila Andolan (BMMA) and founder and managing trustee of Ashana Trust. She is the one who filed a PIL which led to the revoking of the ban on the entry of women in the



inner sanctum of the Haji Ali Dargah by the high court. She is an MASW from the Tata Institute of Social Sciences, Mumbai, graduated in 1992. She worked as Development Officer with Mahila Arthic Vikas Mahamandal, a Maharashtra State Government Corporation. Thereafter she joined YUVA as Project Coordinator with special focus on the women's groups. She was also involved in a research project on 'Riots, Eviction and

²³ Dr. Sandhya Ram, Judicial Dichotomy: Analysis Of The Majority Judgments In Triple Talaq Case, available at <http://www.livelaw.in/judicial-dichotomy-analysis-majority-judgments-triple-talaq-case/> (last accessed on 12 June, 2018)

Dispossession'. She has worked with SAHARA in Anjuman-e-Islam, an institution working for the educational and social development of the Muslim community. From 1999 till 2008 she worked in Women's Research and Action Group [WRAG] as Project Coordinator and thereafter as the Co-Director. There she worked on developing educational material on Muslim personal law and also initiated and coordinated the Community Outreach Programme, which worked in 30 communities of Mumbai.)

When asked why she felt the need to form her organization, she responded by giving three reasons. Firstly, there was a need to look at the Quran from a woman's perspective cause the Muslim community was not empowered. Secondly, the state had failed since it was not listening to issues concerning to women. Thirdly, Islamic law is guided by the Constitution and the Quran.

When asked why Muslim law is not codified given there is a separate personal law for other communities. She responded that with Sharia law, the identity of the Muslim community and any progressive change was restricted. She said that Muslim were governed by the criminal law but there was a nexus between religious groups and political parties.

According to her, the practices prevalent in Islam included in halala, forced divorced, polygamy, triple talaq and polygamy. The main focus is fill the vacuum. The draft law came in 2014 and since 2017, there have been a series of contributions. Given the Constitution allows personal laws, the Quran was looked at for the 2014 draft law. The law contains the following:

1. The age of marriage as 18 for a girl and 21 for a boy.
2. The Meher amount's determination at the time of marriage.
3. Unilateral divorce was declared illegal and introduced a three-month interim period between the demand of divorce and the actual divorce.
4. Abolishment and criminalization of Halala
5. A legal ban on Muttah marriages
6. The need for polygamy to be abolished

7. Property rights to be equalized across the genders.

Multiple public hearings were undertaken to allow women to voice their opinions. Currently, there is a bill pending in the Rajya Sabha that has been passed by the Lok Sabha. This demand is not unprecedented as other personal laws have previously been codified. The demand is simplistic i.e. codify Muslim family law. Given Muslims are citizens of the country, they have a right to be treated as equal citizens and be governed by their codified personal laws. Regarding the Uniform Civil Code, there is a lot of politics surrounding the issue.

Speaker: Albertina, Goa

The prevalent system in Goa is two-fold. Firstly, each party has an equal right on the property. Secondly, w.r.t. matrimonial property the default system exists. She highlighted that



uniformity does not mean equality. This implies a provision characterized by equality can still be discriminative.

She said that the civil registration of marriage is compulsory however, most persons are unaware of the procedure of marriage i.e. a church marriage registration coupled with the uniform civil code. Hindus too suffer as they are unaware of the procedure, since it requires two visits to the registration office—once for the intention of marriage and the second for the potentiality of objections to the marriage.

Two are main issues- one concerning the law and the other about the system not being partly in place. Other issues too such lack of awareness about marital procedural formalities amongst women. Thus, a woman may consider herself married but due to an incomplete procedure, she will not be entitled to her property at the time of divorce. Further, there is so system in court to enquire and furnish information given she is unaware of the property details. This proves to her right of her inheritance.

She opposes the Uniform Civil Code as its provisions are not just and does not ensure the diversification of all personal laws. Further she believes, validity should not be derived from structural religious systems namely the way of Jammāt (the way of the Lord), rather validity should be a derivation of law.

Meher is conceptually good for financial security. There is a provision that stipulates that the amount must be paid in a year and it is backed by proper procedures and regulations. There is a need to make it more stringent.

Domestic Violence and Dowry Deaths



Background: Domestic violence continues to be a plague upon Indian society, occurring at such a high level that it has almost become accepted as part and parcel of a traditional marriage in some sectors of Indian society. Despite this,

reporting remains abysmally low – in 2016, as per the NCRB data there were a mere 437 reported instance of domestic violence. In light of India's 1.2 billion strong population, this seems inconceivable. Indeed, the significant disparity with the data from the 4th National Family Health Survey is telling, where it was reported that 28.8% of ever-married women had suffered spousal violence.

The Protection of Women from Domestic Violence Act (PWDVA), 2005, was enacted to address the epidemic of violence against women at the hands of their spouses and family members. Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

'Dowry' is an amount of property or money brought by a bride to her husband and his family upon their marriage. In India, this amount tends to be significant. Although the practice of dowry has been outlawed since the 1961 Dowry Prohibition Act, it continues to be widely practiced today, and is the source of a huge amount of gender-based violence, with a husband and his relatives often reacting violently when the dowry they receive is not deemed to be satisfactory. Dowry-related violence is so prominent that 'dowry death' has a specific section (304B) in the Indian Penal Code. Most dowry deaths occur when the young woman, unable to bear the harassment and torture, commits suicide. Most of these suicides are by hanging, poisoning or by fire. Sometimes the woman is killed by setting her on fire by her husband or in-laws; this is known as "bride burning", and sometimes disguised as suicide or accident. Deaths by burning of Indian women have been more frequently attributed to dowry conflicts. In dowry deaths, the groom's family is the perpetrator of murder or

suicide. India has by far the highest number of dowry related deaths in the world according to Indian National Crime Record Bureau. According to the NCRB, there were 7621 instances of dowry death in 2016, and 9683 cases registered under the Dowry Prohibition Act, 1961.

Speaker: Carolina, Goa

According to Caroline, this is a very important topic. She highlights the Protection of Women Against Domestic Violence Act and some of its important sections. The introduction of the Act stipulates that domestic violence although invisible is prevalent at homes. The benefits acquirable from the Act are in the form of custody, maintenance, compensation, etc.

It is sad that the Act has been diluted with even a man being able to file a domestic violence case. The positives of the act are that women can get counselling, the court can ask for family experts, the man and woman can consult them. An important aspect is that the Act is part of the civil law regime.

One aspect in contemplation was the enforceability of maintenance orders and approach if the protection order is violated. Given the act is women centric, women can find and approach a protection officer. The BDO does not work on the weekends, therefore there is a demand for permanent officers. Although the police do not have a role, the officers have to work in tandem with the police officers.

If a woman is thrown out of a house (even if the house does not belong to the husband, the woman has an option between demanding a room in her matrimonial house or demanding a separate accommodation to be provided to her by her husband. Under Section 125 CrPC, the court can attach the salary of the husband as maintenance. Maintenance can also be sought under the Domestic Violence Act.

According to Caroline, one of the biggest achievement pertains to the issue of custody. Earlier, one had to file a matrimonial petition. In Goa it took 2-3 years to reach a resolution. The court was very reluctant to grant relief. Section 31 was the sole criminal provision. Now one can get a protection order on the phone. Protection can be sought for oneself, other women and individuals assisting such women. However, the government of Goa has given 0 women protection under the domestic violence Act.

Speaker: Gayatri Sharma, Women Power Connect

(Gayatri is a lawyer with over twelve years of experience in the area of gender, human rights and development. She has worked on various issues pertaining to women and children including violence against women, human trafficking, advocacy for greater representation of women in parliament, and ending child marriages. She has also worked on cases of aggrieved women dealing with domestic violence and have also been involved in the monitoring and evaluation of the Protection of Women from Domestic Violence Act, 2005 conducted by Lawyers Collective. Presently, she is the programme director at Women Power Connect, a network based NGO. WPC recently completed a study on mapping the quality of services available for survivors of domestic violence in the states of Bihar, Chhattisgarh, Jharkhand, Odisha, and Uttar Pradesh, which was supported by Oxfam. She being a part of this study, traveled to the five states to gauge the impact of the domestic violence laws in the lives of aggrieved women.)

Men are not scared of domestic violence. They are solely scared of being punished under section 498A. There are over 1 lakh cases of cruelty against women. Further, the Supreme Court stipulated that no individual would be arrested under section 498A. This is interesting as the Supreme Court judgment was extremely similar to the government policy on non-criminalizing marital rape. The Supreme court has held that women are also capable of committing domestic violence. Many a times the husband will will not turn up for counselling but when the police orders come, out of fear they arrive.

Often times in domestic violence cases we see that the men abuse alcohol and under the influence of the alcohol they tend to physically hurt their wives. In such instances we find that people blame the liquor for the man's actions when

it's in fact that man that is to be blamed. We ignore the irresponsible behaviour of men and and blame something very abstract.

The Taruna Batra Case can be used in the Court to challenge cases of domestic violence. Domestic Violence is not even reported in villages, here we see that people have started accessing the courts in such cases. A lot of institutions now have a Council for Social Justice and Peace. We have also seen often that Private lawyers tend to prolong the case. This is a criminal Parasitic practice by the lawyers. Drug and Liquor addiction is used as an excuse by men for perpetrating violence.

One of the participants also mentioned that often people believe that it's the men that are inflicting violence on the women, but from the 80 cases that I have done atleast 50 were cases were ones where it was the woman that was inflicting violence on the man. She also informed that under the PWDA Act any victim can file a case. In reply to what the participant said the speaker told her that even if there were cases that she might have done where it was the women that was guilty, there maybe a reason as to why the woman had to resort to such measures and she therefore feels that such cases need to be studied deeply.

Speaker: K. Ajitha, Anveshi Counselling Centre

According to Caroline, this is a very important topic. She highlights the Protection of Women Against Domestic Violence Act and some of its important sections. The introduction of the Act stipulates that domestic violence although invisible is prevalent at homes. The benefits acquirable from the Act are in the form of custody, maintenance, compensation, etc.

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counselling, the court can ask for family experts, the man and woman can consult them. An important aspect is that the Act is part of the civil law regime.

One aspect in contemplation was the enforceability of maintenance orders and approach if the protection order is violated. Given the act is women centric, women can find and approach a protection officer. The BDO does not work on the weekends, therefore there is a demand for permanent officers. Although the police do not have a role, the officers have to work in tandem with the police officers.

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Women in Prisons and Public Institutions: The use of PILs

Background: Women's rights activism has unquestionably gained rapid momentum over the past decade in India. However, the rights of women in prison and other public institutions are often glaringly overlooked. Women in prison fall victim to custodial violence, severe sanitary and reproductive health

violations, and mental and physical abuse. Law professor Shamim Modi, who was arrested amid a string of tribal protests and taken to a prison in Madhya Pradesh's Harda district, spoke of 'no contact with the outside world', 'so much abuse that you don't feel human', and abuse so severe that 'it can make you forget you ever had rights.' Additionally, she noted poor sanitation, little medical or psychological help and constant intimidation, and hostile prison guards who she says invasively searched her.

On June 23 2017 in a Mumbai prison, Manjula Shetye, who was made the warden of her barracks on account of good behaviour, protested against the shortage of food rations. Her complaint against five missing pieces of pav and two eggs led to a horrific aftermath: she was beaten, allegedly assaulted sexually with a lathi driven up her vagina, and then left to die, admitted to a local government hospital only after she fell unconscious.

India's women prisoner population has ballooned 61% over the past 15 years, far outstripping the male growth rate of 33%, but infrastructure growth hasn't kept pace. Women are often confined to small wards inside male prisons, their needs becoming secondary to those of the general inmate population. Their small numbers – they constitute 4.3% of the national population – ensure they remain low on policy priority and hence the coverage of facilities such as sanitary napkins, pre- and post-natal care for pregnant mothers is patchy. In many jails, for instance, pieces of cloth are used in place of pads.

Regarding children, "The well-being of their children is one of the most traumatic and oft-ignored issues affecting women prisoners," stated Dhawan of the prison reform NGO India Vision Foundation. "Inmates, whether undertrials or convicts, need access to a woman counsellor, and this is a need that is almost never met. After her child turns six and is removed from the prison, the woman inmate often has no way of knowing how her child is being brought up or cared for in the outside world, and this alone can be torturous."

Speaker: Anu Narula, Advocate

(Adv. Anu Narula is a Delhi-based Lawyer and has been practicing Divorce Law, Criminal Law and Property law since 25 years.)

If one does not understand the problem, one will not successfully reach a solution. Problems and solutions always accompany each other. The circle continues till the reform reaches its pinnacle.

She is a feminist. She pleads that women and men should not be treated equally in prisons. To explain her stance, she deems it necessary to understand the three broad categorizations of women. Firstly, women from organized crime such as liquor drug trade, flesh trade. Secondly, mothers-in-law and sisters-in-law who are guilty of dowry deaths. Thirdly, the ones suffering from their husbands. This is the worst kind of suffering and one day they reach their thresholds and murder their husbands. This is due to the lack of person present to defend them.



There are three major problems common in all categories. Firstly, the mental health of the prisoners. They suffer from psychosis, depression, child separation trauma. When this stress is highlighted in court, the judges are insensitive about it. The availability of legal aid is in a deplorable condition. Delhi is in a considerably better position relative to other states but India has to be looked at in its entirety. Secondly, the issue of physical and health and hygiene. This includes hygiene pertaining to menstruation, menopause, lack of toilets and ventilation. Thirdly, when mother and sister in laws return home, they are taunted

upon since their in laws do not want them to return. Some often go to old-age homes and whilst others get involved in organized crimes.

She highlights that such women should be taught about certain things. They should have the right to undergo an abortion. Given such women are victims to the atrocities of the jail staff, they should receive compensation.

Women should be given special consideration for bail. What about women that are pregnant and are kept in the prisons? A pregnant woman should be sent somewhere else through bail. Most of the women that are in jail are very neglected. They do get facilities that are infact at times better than what they get at home. There are many schemes in Tihar Jail for the welfare of the prisoners where they get computer education, stenography lessons, music sessions, but there are other jails in other states that are in an even worse conditions. Women don't even get menstrual hygiene products or the maternity benefit schemes in the prisons. Very less women in prisons come from economically sound backgrounds, they also come from suppressed situations and they enjoy the status that they somewhat get in the prisons. There should be special facilities for women, for their reproductive health and hygiene. For anyone below the age of 18 who are counted as minors there are juvenile homes.

Women with Disabilities

Speaker: Dr. Asha Bajpai, Professor, TISS Mumbai

(Currently, Dr Asha Bajpai is a Professor of Law at the Center for Socio Legal Studies and Human Rights in the School of Law, Rights and Constitutional Governance. She is a PhD in Law with specialization on Child Rights. Her PhD thesis was on the 'Best Interest of the Child in the Indian Legal System' She has been involved in, teaching, research, training and legislative reform, for more than three decades.

She was the founder Dean of the School of Law, Rights and Constitutional Governance at TISS. As the founder Dean, she designed and coordinated the unique LLM course on Access to Justice . LLM in Access to Justice is a socially relevant course aimed to prepare community and people's lawyers for social change and legal research.)



We started our journey in 2010. It all started with a newspaper report that stated that 5 intellectually disabled orphans staying at an organisation called Bhog, died of starvation. This newspaper report was presented in front of the Chief Justice of Mumbai and this report was turned into a PIL I was made the Amicus Curiae in the matter. The condition of the children was such that when rescued and provided with food they ate continuously for the next two

days. If this was how intellectually disabled orphans were treated in Mumbai what would the condition of people be like in other districts of Maharashtra.

We therefore conducted a study about such shelter homes in Maharashtra which were about 23 in total. Divisional committees in each district were made consisting of Professors, Doctors and NGOs, and during this study one of the committees found a home where 19 girls were abused physically. It was evident because of the bruises on their hands and legs. We wanted to know what exactly was happening and for this our committee therefore followed them at night and saw that these were leaving the home wearing heavy makeup. The Child Welfare Committee was thus informed to look into the matter deeply and it was found that all 19 of the girls were sexually abused. In another home in Aurangabad it was found that the children were being eating dry wheat to fill their stomachs. The kitchen was locked and the children were eating raw wheat from sacks of wheat kept stacked and used for making dung.

The Children were starving and were not being given food. When we saw the accounts of the organisation we saw that they had milk, bread, fruits etc but none of it was being given to the children staying at the home. What we also found was that many of districts had many homes like in Aurangabad there were 7 homes, but in some districts there were none at all, uneven distribution of homes in the districts. This is because homes are not built according to the needs of the children but instead for political conservation. At that time if the grant given to the homes amounted to 1125, about 825 would be used per child per month. There are a lot of medical needs of intellectually disabled children, which cannot be ignored, but the amount 825, was not sufficient to fulfill their medical needs, along with other necessary needs like food, clothing etc. people in homes are not given any skill courses to get them up on their feets and what is usually the consequence of this is that they never leave the home. From our study we found that about 80% of the population in such homes is of older people aged above 18, and barely 20% is of children, thus resulting in overcrowding of these homes and the limited funds being over distributed and not being sufficient for anyone. People are just waiting for death to come. Child labour was also found in on of the homes during our study. Sexual abuse was also prevalent in boys hostels, and in many of the kids PTSD was evident. After filing PILs we don't just stop after receiving directions we intend to make sure that each of the direction are being complied with.

We were fortunate enough to have judges that were sensitive to these issues and gave positive directions in our favour. Cases of sexual and physical abuse were carried out in the criminal court, for the first time a group of intellectually disabled children that were abused hailing from the same state had appeared for the court together, and gave their evidence in person, and in spite of all of this one tactic used by the defence lawyers was that they would shout at the top of their voices everytime they would speak and this scared the children. But at the end the defence were convicted. Also an exit plan was made to ensure that the children were being sent somewhere safe when the homes were closed and the grants were increased to 2,000. For the children that we found

were sexually and physically abused. These people had been counselled and had also been enrolled in schools. They were not accepted in the schools because the schools did not have an environment suitable for intellectually disabled children. Since they come from a shelter home, they had been put into classes appropriate to their age. But because they had no educational background whatsoever, this also did not work out. Teachers also ridiculed the children and their shortcomings.

The organization made efforts to sensitize the staff and authorities of the school. As a result, one of those very children topped the class. These children have received compensation of Rs 3 lacs each. The school authorities and staff soon got over this and started requesting for a transfer of these special children. The organization then took it on themselves to rehabilitate the children and provided them with education, counselling and prepared a model for others to follow. These children now have aspirations and dreams, just like everyone else.

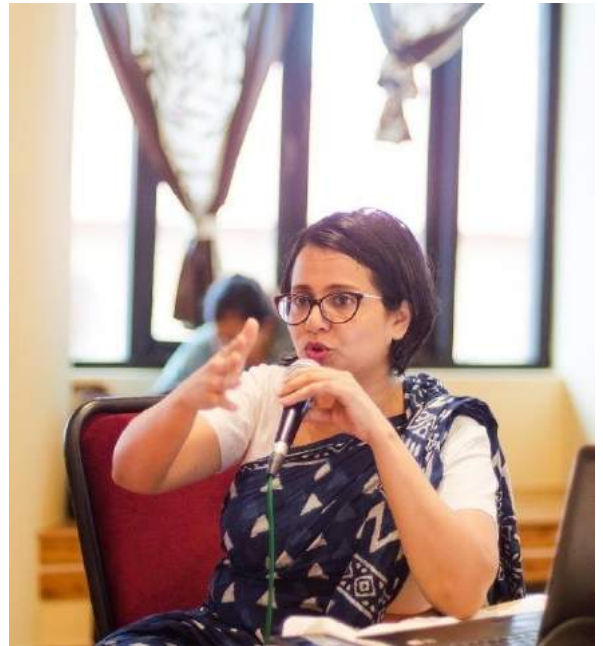
Three girls from this very group of children have pursued a course in hospitality, and now have full time jobs in the same. It has been a long journey for them, from being rescued at 14 years of age to becoming working individuals after having set aside all obstacles of life.

Speaker: Amba Salelkar, Equals Centre for Promotion of Social Justice:

(Amba Salelkar is a Board Member at Equals Centre for Promotion of Social Justice, a disability rights advocacy organization. She has previously worked with Inclusive Planet Centre for Disability Law and Policy and prior to that, as a criminal lawyer in Mumbai with Raja Thakare & Chimalkar. She has special interest in disability law and policy.)

Discrimination on the basis of disability:

“Discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation



Reasonable accommodation:

“Reasonable accommodation” means necessary and appropriate modification and adjustments without imposing a disproportionate or undue burden in a particular case to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

Convention of the right of persons with disability:

Article 6 - section 4: The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

Article 19 - section 5: 1) The persons with disabilities shall have the right to live in the community.

(2) The appropriate Government shall endeavour that the persons with disabilities are

(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living **with due regard to age and gender.**

Article 13:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Article 15:

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Article 16:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the

provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Convention on the rights of persons with disabilities states that no person shall be discriminated against on the grounds of disability but the Rights of persons with disabilities Act, 2016, chapter - 2, section 3, states that no person with disability shall be discriminated upon on the ground of disability unless the impugned act or omission is a proportionate means of achieving a legitimate aim.

Any person or registered organization can file application to the Executive Magistrate

Orders of Executive Magistrate:

Any person or registered organization can file application to the Executive Magistrate

Any person or registered organization can file application to the Executive Magistrate

Executive Magistrates appointed under Section 20, Code of Criminal Procedure, 1970, District:

1. Collector
2. Joint Collector
3. District Revenue Officer
4. Revenue Divisional Officer
5. Tahsildar

The person can be protected in the following ways:

1. Protective custody of the person with disability if the person desires.
2. Maintenance to the person with disability
3. Rescue the person authorizing either the police or the organisation to provide shelter

Criminal Offences (Section 92)

(a) **intentionally insults or intimidates** with intent to humiliate a person with disability in any place within public view;

(b) **assaults or uses force** to any person with disability with intent to dishonour him or **outrage the modesty of a woman with disability**;

(c) having the actual charge or control over a person with disability **voluntarily or knowingly denies food or fluids to him or her**;

(d) being in a position to dominate the will of a child or woman with disability and uses that position **to exploit her sexually**;

(e) **voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device** of a person with disability;

(f) performs, conducts or directs any medical procedure to be performed on a

woman with disability which leads to or is likely to lead to **termination of pregnancy**

without her express consent except in cases where medical procedure for termination

of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman

with disability,

The speaker concluded with highlighting what should be the focus areas of the sector:

1. Disaggregated data to be maintained on gender, disability and other intersections.
2. Government to be held accountable for the failure to include women with disability.
3. A social audit (section 48) required of existing schemes.

Farmer Suicides: Women Farmers

Background: In May 2017, the Central Government informed the Supreme Court that despite a concentrated effort to address the income and social security difficulties that farmers across the country were facing, over 12,000 farmers had committed suicide every year since 2013. Maharashtra topped the list with 4,291 suicides, followed by Karnataka with 1,569, Telangana 1,400, Madhya Pradesh 1,290, Chhattisgarh 954, Andhra Pradesh 916 and Tamil Nadu 606. Together, these seven states accounted for 87.5% of total suicides in the farming sector in the country -11,026 of 12,602.

There are various reasons put forward as the cause of the suicide epidemic amongst Indian farmers, including floods, drought, debt, use of genetically modified seeds, public health, use of lower quantity pesticides due to less investments producing a decreased yield – but there is no general consensus as

to a singular, concrete cause. However, many cite the consistent evidence of greater debt burden and greater reliance on informal sources of credit amongst farmers who commit suicide.

The effect of farmer suicides on women is grossly underreported and misunderstood. Traditionally, Indian society ostracises widows. In the case of 'farm widows', apart from the emotional and psychological trauma of losing their spouse, there is the added stigma associated with suicide and the difficulty in repaying loans.

Widows are left with the burden of their husbands' debts, and are forced to work as indentured servants to repay the debt. The widows were also unlikely to remarry, because other men in the community were unwilling to take on the widows' debts for themselves. When male farmers commit suicide, women are pushed into the primary breadwinner role. Women then struggle to make a living in an occupation characterized by discrimination. While women manage various ancillary activities in agriculture including winnowing, harvesting, and grazing, men usually select crops and manage income. A 2017 Oxfam report states that while more than 40 percent of Indian women work in agriculture, "as women are not recognized as farmers and do not own land, they have limited access to government schemes and credit, restricting their agricultural productivity." Patriarchal traditions and superstitions discourage women from owning land—less than 13 percent of land is owned by women.

Speaker: Ali Zia Kabir Chaudhary, Advocate, HRLN

Women are the main sufferers. If you are a woman before killing you, you will also be raped. So women do suffer more on the basis of cruelty. About 50 journalists have been killed since 1992-2006. From 1995- 2015 about 3,32,000 framers have committed suicide. The



government refuses to accept these as suicides, they say the death was caused by pesticides and not by committing suicide.

The main issue is the climate condition: about 74% farmers commit suicide because of this reason. Delayed monsoon is a problem as farmers depend on it. The government has invested the least when it comes to the farmers. 74% of the rural work is done by women and not men. Whenever we see news or an advertisement talking about the lives of farmers, it is always shown with the face of a man; the women's identity is always missing.

Women are also committing suicide; daughters are also committing suicide so that the family can live. Even to commit suicide women have to think twice because it is a liberal choice and women do not have liberty to do so. If you're a woman farmer you will be paid less. They have no control over property and there are no women farmer leaders. At the end of the day the cups will be washed by the women and the house will also be managed by a woman. After the death of the husband they still will not be identified as farmers, they are looked to be household keepers. Farmers commit suicide because they could not cover the debt, after their death the debt is to be paid by the women, who have no recognition. Only 4 people in the entire village would take a stand for the women. To cover the debt they have to sell everything and even after the debt hasn't been covered then she has no choice left but to work as bonded laborers.

Speaker: Kavita Kuruganti, Alliance for Sustainable and Holistic

Agriculture (ASHA) – recorded audio

(She is associated with a committed, energy-filled, hard-working advocacy platform called ASHA (Alliance for Sustainable & Holistic Agriculture) – ASHA is not an NGO. It is a loose network of committed individuals and organisations working on a common cause: that of protecting our Food, Farmers, Freedom. She is also associated with another network called Mahila Kisan Adhikaar Manch or MAKAM which is a forum for women farmers' rights.

Kavitha is also part of a not-for-profit social enterprise that seeks to revive organic Indian cotton in a garment value chain called TULA.)

She supported herself by being a freelancer. She has number of Women farmers organization. Has worked for dalit farmers. Apart of the social organization she is from she is also listed in 20 top women intellectuals in india by india today.

A broad picture of farmer suicides and women farmers, the combination of these two is pretty distressing. Around 3.3 lac farmers suicides have been estimated of which 19968 are women who committed suicides in the time period of 1995-2016. These numbers are however, manipulated. Apathetic and anti-farmers policies is another reason.

India is developing country and agriculture is one of the most underdeveloped fields. The numbers are changed so that farmers suicides are not to be made the main issue. They are market oriented as by seeds, pesticides and manure. It is expensive and they are the only means to cultivate.the system is becoming more like the zamindari system. The debt burden is the reason as it isn't suitable and its of common knowledge the creditors knocking on the farmers doors and that is shaming the farmers. Farming itself is a very risky form of earning money. The climate is another main drawback. The private sector has taken over and the agricultural industry is thus suffering. The natural disasters and wild animal attacks are another troubles that the farmers face. To cover the cost of cultivation is not even covered and there is no margin if profit.

They do not get their daughters getting married to farmers because their work and profit is unpredictable. Community ethos have eroded and It may not matter to the rich and privileged. The one imp thing that we should remember are shift in government policies. They are insensitive. In trade negotiation they only focus on IT sector and not at all about the farmers. Unregulated private traders, lack of investments. We come from a society where the respect matters the most, that is the weak point of all and as well as the farmers.

Invisibilisation of women farmers

It is because of patriarchy in rural areas as well as urban areas. They have their own limited parameters. They are not identified as farmers. Gender gap is another main reason for this. 70% of the labour is provided by the women. Men come and overlook but the main work is done by women. Kisan bhai, he, his are the terms used to denote farmers and never any female. Farmer suicides of women are named as housewives suicides that also changes the ratio. A farmer is one who has the name on papers, women do not have land under their possession their names are never on paper, therefore they aren't considered as farmers.

Daughters when they commit suicide leave suicide notes that say, they do not want to be a burden in any form. At least one diet will be reduced. This is seen in maharashtra. In Punjab the fathers and sons commit suicide leaving behind the daughters and mothers with all the debt.

The females get no support. The women are facing lots of social stigma by relatives, police and the society. They do not know the loans and the money transfer but still they face all the shame.

They spend nearly a lifetime just to pay the interest. They have got to put up with the govt. if the suicide is genuine or not. They are all alone and have to face insensitive questioning.

Speaker: Ranjhana bharti

Those who did not die, is a book on females whose husbands have committed suicide. They have to fight the government to finish off the debt. Women also worry about their safety, there is no support. These women continue with the same thing the man had to go through. In india property rights are covered by personal laws. Irrespective of what the law says.

Coming back to families, if suicide has been committed by a young man, the young widow is thrown out. There have also been many incidents when land records are not there. If women request property in her own name then also she is denied. We have to see how many women have land in their names?

Land data is not segregated on the basis of gender so it's tough to know how much land the women own. Coming to legal issues specifically, Relief and rehabilitation. Every time you approach the court, you secure a different legal right

It is only now that the UNHRC are actively taking part in it.

Day 5 (23.06.2018)

Speaker: Soni Suri



(Soni Suri is an Adivasi school teacher turned political leader of Aam Aadmi Party in Sameli village of Dantewada in south Bastar, Chhattisgarh, India. She was arrested by the Delhi Police's Crime Branch for Chhattisgarh Police in 2011 on charges of acting as a conduit for Maoists. During her imprisonment, she was tortured and sexually assaulted by Chhattisgarh state police.^[3] By April 2013, the Indian Courts had acquitted her in six of the eight cases filed against her due to lack of evidence. After release from prison, Suri began campaigning for the rights of those caught up in the conflict between Maoist insurgents and the government, in particular criticising police violence against tribespeople in the region.)

Soni Suri is from Bastar Chhattisgarh. When people talk about Chhattisgarh the first thought that comes to their mind is Naxals. She was a teacher in Chhattisgarh which is a big thing among the people there. The state put about 5-6 cases against Soni Suri, and for one of the cases she was acquitted by the order of the Supreme Court. The rest of the cases are still ongoing. In her time in the prison She learned a lot about the plight of her brothers and sisters in the Prisons. From a teacher she was labelled a Naxalwadi. In the prison she was mentally tortured. She was beaten up brutally and was given electric shocks. The speakers kept her courage during her term in the prison, because she know that she had to fight the state against the atrocities it causes the people. Women were being raped in the prisons. If you are a fighter you can't think about winning or losing. There was so much struggle and the lawyers also went through it and they stayed in the village for two days. The judge also saw the atrocities being caused to the people.

Even after having gone through so much, Soni Suri still stands strong, and still fighting. She is not afraid to fight against the State. She was threatened that they will throw acid on her children, her house broken down. Her father was killed by the Naxals. She was thrown acid upon and she suspects that it was the police. The Police have also threatened her saying that she can do whatever she wants she won't be able to do anything. Rumours were spread about Soni Suri that she was sleeping with other men. She knew this was just another one of their tricks to try and scare her so she would just smile and move forward. But now the Policemen are scared, everytime she is in Bastar the Policemen get scared that she will stir up some trouble for the Police.

Journalists are always labelled as Maowadis if they write about Bastar. Even if the tribals are living a good life they would still label them as Naxalwadis. Some are killed and some are put in jail without any apparent reason. The police shoot and kill people for no reason on the suspicion that they might be Naxalwaads or

Maowaads. There are so many cases in the court, people can't even afford lawyers.

Raman singh fought elections, and they told her that she has lost, but she told them that they can call her a naxalwad but she is fighting the elections. She was not hungry for power or seat she just wanted her place here. Through the help of HRLN she has fought a lot of cases. When the forces get to know that people are coming out, they spread force all over the jungle to stop them.

The ISP told her that she won the election. Soni Suri says that when there are no people with you then you must apply the mind. There was an incident where a woman saw her husband being shot in front of her, but she couldn't say anything. When she went to the police, they made a fake case and made the women sign it in agreement. Postmortem wasn't done in the case and for this Soni Suri took a stand against it. And in the case police and doctors were booked. The woman got 12 lakh rupees as compensation.

An Adivasi is not safe when they visit jungle for a festival. They have to ask for permission from camp to enter the jungle. Soni Suri feels that one should never be scared to go to jail or moksh, they should be determined. Even if you go to jail you get to know more about the struggles people faced. I am not scared of the jail or to die.

No one can say that they are safe and secure. The people of Bastar that stand against the atrocities caused, get caught up in trials. Families in Chhattisgarh get caught in fake encounters. They request for portmortem in such cases, the police however would just call the family up and ask them to take the body. The family isn't informed about the post mortem, it should be the responsibility of the police to deliver the body to the family.

A women was asked if she a Maowadi or Naxalwadi, in response she said that she is a mother, to prove that she is a mother she was asked to press milk out of

her breasts. The security forces harass the people especially the women and girls. Once the security forces went to a school into the girl's hostel and sexually molested the girls. A farmer's property was possessed by the CRPF. Comunalism is prevalent in Bastar at the moment because of the presence of the RSS and the coming up of the elections.

When Soni Suri left Chhattisgarh for two months to protect herself from getting arrested wrongfully, she was staying in Delhi. She had a talk with MR. Colin Gonzalves whom she told that she wishes to go back to Bastar and that she wants his help in getting her bail. He told her that even if she managed to get bail there is no guarantee that she'll be safe there. That was when she was approached to join AAP, she said yes to Prashant Bhushan, after he told her that she can continue helping the people of Bastar and they would provide her security. Being just a Social worker there are restrictions to what you can do, but when you're a part of a political party, you get some power. Soni Suri is still very active as a Social Activist. She believes people should go ahead with filing the cases. Orders of the court do have some positive effects. NHRC also has taken account of such cases and they are also providing compensation for a few.

Sexual Harassment in Workplaces and Universities

Background: Compared to 2017 figures, the number of sexual harassment cases across educational institutions in India went up by 40. In the year 2016-17, 149 cases of harassment were reported from various universities across India, up from 94 cases in the year 2015-16, Ministry of Human Resource Development told Parliament on Monday.

The issue of sexual harassment in colleges has been in discussion of late, when a student of a Delhi University college in west Delhi filed a complaint with Vice-Chancellor Yogesh Tyagi alleging sexual harassment by a teacher. The

woman said she was traumatised because of the harassment she was going through.

Student organisations carried out a number of protests after the incident to bring the matter to light. It was during this case only, that the sorry state of dealing with sexual harassment complaints came to the fore. It was found that 70 per cent Delhi University (DU) colleges have Internal Complaints Committees (ICCs) to deal with sexual harassment cases, but they are mostly on paper and students even in those institutions do not have any clue about the mandatory autonomous bodies.

"To obtain the policy of zero tolerance, UGC has taken various measures to ensure the safety of women on campus and programmes for gender sensitisation. The commission had asked all Vice Chancellors/Directors of all institutions of higher learning in the country to review the security arrangements for girls and women in university/college campuses and in girls' hostels," Minister of State for HRD Satyapal Singh said in the written reply in Parliament.²⁴

The victim of sexual harassment in Daulat Ram College had to approach police directly because she was not confident of her case being properly handled by the ICC. She wouldn't be the only one with little institutional support. There are regular allegations of sexual harassment in Delhi University, the latest cases being at Daulat Ram and Bharati colleges, but the institution's redress mechanism is in a shambles, with ICCs in a majority of the colleges not even fully constituted. According to Professor Chirashree Dasgupta, former member of JNU's Gender Sensitisation Committee against Sexual Harassment (GSCASH), students would not normally approach a body if they weren't confident about getting justice from it. "Such bodies have to be democratic, not be comprised of nominated members. This to assure complainants that there won't be any intrusion of the administration into the investigations of complaints. Our system

²⁴ DNA India (2018) 'Sexual harassment cases go up in Indian educational institutions, available online at <http://www.dnaindia.com/india/report-sexual-harassment-cases-go-up-in-indian-educational-institutions-2591129>, accessed 13th June 2018.

was democratic, so many cases, even against teachers, were reported," said Dasgupta. GSCASH has since been overtaken by the mandatory ICC.²⁵



Speaker: Somaya Gupta

(Somaya has been a former student representative in GSCASH (Gender Sensitization Committee against Sexual Harassment), JNU and is pursuing her Ph. D from Jawaharlal Nehru University)

The speaker has been in JNU for two years but she realizes that sexism exists everywhere, and therefore wouldn't defend JNU. She feels women have several layers of privileges and also layers of marginalisation. Women need to be given a safe environment, free of sexual harassment, but this prevention of safety is to stop women from practicing autonomy. This is completely following the ideology of manu maharaj. A woman's custody lies first with her father and then when she's married with her husband. We have come a long way but I wouldn't want to glorify it. The UGC guidelines in 2016 say that any existing mechanism

²⁵ Times of India (2018) 'Sexual harassment cases: Delhi University doing little to make women feel safe' available online at <https://timesofindia.indiatimes.com/home/education/news/du-doing-little-to-make-women-feel-safe/articleshow/62827408.cms>, accessed 13th June 2018.

which was for the redressal of grievances of women being sexually harassed, needs to be set up again as ICC. The ICC does recognize that vulnerable groups are more prone to sexual harassment. The ICC would comprise of two teaching and two non teaching staff, three students in universities that are politically charged spaces. The earlier existing mechanism was the GS Cash which was recently shut down and the ICC was set up.

With the complainant and the accused sitting in the same room the things become so tense between them with the dialogue exchange. A sexual offender in a university is not always a student it can be a teacher as well.

What happened in JNU was that in 2016 when the guidelines came the admin did not realize that they wanted to reconstitute GScash as ICC but on the day of the cross examination the highest executive body declared GS cash as illegal. The case was then taken to the High Court. The room where the meetings of the members of the GS Cash were held was sealed by the admin. The ICC elections were boycotted. A lot of complaints registered before in the GS Cash were either about the members that formed the temporary ICC or are close to the member if the ICC. With the GS Cash was shut down all of the cases were to be taken up by the ICC. many of the complainants had given in writing to the GS Cash that they are afraid of the ICC handling their cases.

Women need to be provided with self defense lessons. The experience of violation is so subtle and gradual that you don't even realize that what's going on is wrong. Steps for prevention need to be taken. Sexual harassment could mean a lot of things.

Speaker: Shewli Kumar

(Shewli Kumar is Associate Professor in Center for Women centered Social Work, School of Social Work, TISS. At present she is the Gender Amity Committee chairperson of TISS. Her areas of interest are child labour and child rights, women and gender issues, specifically with regard to gendered division of labour, work and social protection. Research interests are women and law, work, livelihoods and social policy. She is keenly

involved in working with Dalit women's rights groups and believes in engagement with communities of resistance and marginalities. Lead author of 'Gendered Terrain of Maintenance for Women: Enmeshed Inequalities in Culture and Law (2017)' and several articles in national and international journals. She has an MA in Social Work and Mphil and Ph.D. Degree from University of Delhi, Delhi.)

There is a redressal mechanism for sexual harassment in place at TISS. Attempts are being made to make the campus gender aware. The students feel that the teachers and the staff need the awareness about gender more than they do, but the students also need to become better aware about gender issues. The campus is small and the VC is attentive to the needs of the students and the staff alike, but problems still do exist. The problem in JNU is huge and is a part of the BJP agenda.

A woman is considered the honour of the family, women also think that these issues shouldn't go out of the homes. If we are talking about it we must bring it in the public sphere. We give the power to heterosexual men. These are the people in power positions. Any law that comes for women will be subverted by the people in power. Justice verma commission came when the nirbhaya case happened. Then all laws were reviewed.

UGC regulations can still be used for justice but the sexual harassment law cannot. Preventive work is the role mentioned in all laws. But what the speaker doesn't understand why the higher authorities don't put efforts in spreading awareness. When we don't talk about intersectional issues of gender caste and so on the people will not become aware. A dialogue you may have heard a no. of times, 'us ladke ka career kharaab ho jayega.' Even the faculty who are gender aware and talk about it, their actions at the end of the day do not reflect that equality. Discourse awareness and lot is needed.

Flirting is fine and it's a normal human behavior but that doesn't mean consent to do anything. I can say no to even my husband. Any kind of relationships are fine where consent is presence. Even faculty thinks wrongly and then they turn

around saying why are you wearing shorts. They might talk like they are intellectuals but they will stare in a way that they deserve a slap. We might go to bars and get intoxicated and pass out but that also doesn't give them the consent to touch us or do anything to us. Only yes can be counted as consent. Stop, ask and listen and get consent.

Whoever is in a position of authority they can not be members of internal committee. Because whoever is in power will use it for his/her own good. No nominations are given, a list of the people is given to the director which he can either accept or reject. No local complaints committee are working. SC ST nominations are very important in sexual harassment committee. The students learn and take it back to the student community.

ICC only recommends actions that are ultimately decided by the vice chancellor. The copy of the report should go to the complainant and the accused, but that doesn't happen in practice. Cases against Dalit men become cases of caste and not of harassment. The committees must perform the best practice of an inclusive committee that is laid out by the law. ICC must tell the complainant why the punishment has been lowered but does not occur in practice; however this can be demanded by the complainant. ICC must go beyond recommending action, must follow up and support the complainant to ensure due process is followed. The ICC must process the complaint within 10 days of it being registered but it takes upto 90 days for a full report.

Workplace harassment – the definition of the workplace is far too broad (volunteers, interns, etc.). The ICC must exist in all formal institutions, schools, or at district level when not possible as mandated by the law. It is the responsibility of citizens to make sure such laws are implemented.

ICC and LCC differences – ICC has a specific function to workplaces; those not in specifically defined workplaces like worksite, the LCC must be referred to. District committees must take responsibility to spread the word. Secondly, the

role of the ICC is also to support women in cases of harassment; creates a network of support and must document evidence and cases of misconduct.

Speaker: Twinkle Siwach

(Twinkle Siwach ,is currently pursuing Ph.D in Centre for Media Studies, Jawaharlal Nehru University, New Delhi. Research Interests are Violence against Women and Criminal Law, Human Rights and Role of Media in Contemporary Society. Have completed her Master of Philosophy(M.Phil) in Centre for Media Studies, JNU and Masters in Sociology from JNU. She has been a former student representative in GSCASH(Gender Sensitization Committee against Sexual Harassment), JNU and Former President at The Gender Forum, Kirori Mal College, Delhi University.)



There was a gang rape in 1992 of a woman who was trying to stop child marriage. The judgement that came out for this was negative. In 1997 vishakha ngo took a writ petition where a woman was raped in the office. We have a residential campus but in universities where there is no residential campus, high level meeting with Justice JS verma, educational tuitions – the UGC should procure from the JNU which they have made for their university and that should be adopted by the rest of the universities as well. GS cash was represented by the teachers and students, association head representative and apart from these they have a committee of 24 people.

When attempts were made to have a sensitization meeting, board of students meeting faculty, the chairperson told us we can decide the kind of curriculum and also when such sensitization programs would be held. The speakers that they were informed that people already are aware what gender and gender roles are. Sexism is a reality. In UGC guidelines women employees and students

were told that they have to make a committee for redressal of sexual harassment. When there is also a committee in place in JNU, why should it be replaced. But its is being replaced. The name of the committee was changed to ICC. earlier there was a very democratic model to elect people, but people can now be directly nominated. The 15 women complainants are no longer students of JNU, but this was not addressed by the ICC, the case has been filed in high court. The challenges faced at the university are when students protests the security guards get the freedom to talk to them however they feel like and to also control us when protesting, they would also touch the female students unnecessarily to control them. JNU has a legacy where the students and the teachers have a very pure relationship. The speaker feels that she has had the exposure to learn more out of the classroom.

Manual Scavenging

Background: Manual scavenging is a caste-based occupation involving the removal of untreated human excreta from bucket toilets or pit latrines. It involves moving the excreta, using brooms and tin plates, into baskets, which the workers carry to disposal locations sometimes several kilometers away. The workers, called scavengers, rarely have any personal protective equipment. Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable or deemed too menial by higher caste groups. Their caste-designated occupation reinforces the social stigma that they are unclean or “untouchable” and perpetuates widespread discrimination. Women usually clean dry toilets, men and women clean excrement from open defecation sites, gutters, and drains, and men are called upon to do the more physically demanding work of cleaning sewers and septic tanks.

The employment of manual scavengers to empty "dry toilets" (meaning here toilets that require daily manual cleaning) was prohibited in India in 1993

through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, and the law was extended and clarified to include insanitary latrines, ditches and pits in 2013 through the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

According to Socio Economic Caste Census 2011, 180,657 households are engaged in manual scavenging for a livelihood. The 2011 Census of India found 794,000 cases of manual scavenging across India. The state of Maharashtra, with 63,713, tops the list with the largest number of households working as manual scavengers, followed by Madhya Pradesh, Uttar Pradesh, Tripura and Karnataka.

While there is widespread agreement about the need to end various forms of manual scavenging, all the efforts to do so – including several court directives – have not succeeded in achieving this objective. At the same time, there are very serious lapses regarding rehabilitation and compensation provided to manual scavengers and sewer workers. As Bezwada Wilson, coordinator of the Safai Karamchari Aandolan, stated, “There is clearly a lack of political will on this issue. I have become tired of sending endless letters about non-implementation of court directives, which do not even get a reply from the highest authorities.”

Speaker: K. Obalesha

(Obalesha has worked for decades in the field of health rights, workers rights, and Dalit rights as part of the Safai Karmachari Kavalu Samithi (Sanitation Workers Watchdog Committee) and the People's Health Movement in Karnataka. He works for the eradication of manual scavenging and for right to health, particularly for the Dalit community.)

Manual Scavenger means a person engaged or employed, any individual or a local authority or agency or contractor, for manually cleaning, carrying, disposing of or otherwise handling in any manner, human excreta in insanitary latrine or an open drain, or Pit into which the human excreta from the insanitary latrines is disposed off, or on railway tracks or in such other specs of premises. Manual Scavenging is a caste based and hereditary occupation for Dalits (untouchables) in the Indian subcontinent. Within this system Dalits have been assigned tasks and occupations which are deemed ritually polluting by other caste communities. Manual Scavenging has been assigned as the traditional occupation of a section of SCs, specifically the Madiga and the allied community.



What are the challenges:

Provisions	1993 Act	2013 PEMSAR Act
Prohibition of dry/insanitary latrines	"Dry latrine" as any latrine other than a water sealed latrine	"insanitary latrine", in a more specific manner, as one which requires human excreta to be cleaned or otherwise handled manually, before complete decomposition, either in situ or in an open drain or pit into which the excreta is discharged or flushed.
Definition of	A person employed	a person employed for "manually

Manual Scavenger	for “manually carrying human excreta”	cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which human excreta from insanitary latrines is disposed of, or on a railway track, Before the excreta fully decomposes..."
Prohibition of hazardous manual cleaning of sewer & septic tanks in the 1993 Act	No Provision	Clause 7 prohibits
Penal provisions	1st contravention - upto 1 year of imprisonment, 2000/-	For violation of provisions of prohibition of insanitary Latrines and manual scavenging 1st contravention- up to 1 year of imprisonment and fine up to Rs. 50000/-, or both. Double in case of 2nd and subsequent offences. For violation of provisions of prohibition of hazardous cleaning of septic tanks and sewers 1st contravention- up to 2 years of imprisonment and fine up to Rs. two lakh. In 2nd and subsequent offences - 5 years and fine up to Rs. Five lakh, or both
Offences to be	Cognizable	Cognizable and non-bailable

Cognizable and Non - bailable		
Jurisdiction of courts	Metropolitan courts, magistrate or judicial magistrate of the 1st class.	Executive Magistrate may be conferred powers to the or Judicial Magistrate of the 1st Class
Identification of manual scavengers and their rehabilitation	No provision for survey and identification	Detailed provisions for identification
Implementation mechanism	DM or SDM is to be appointed as executive authority for implementation of the Act.	Appropriate Govt. shall confer powers on local authority and District Magistrates to carry out provisions of this Act.
Vigilance mechanism	Central and State Governments may constitute committee of various kinds	Vigilance and Monitoring Committees shall be constituted at the Sub-division, District, State and Central Levels. National Commission for Safai Karamcharis (NCSK) to monitor implementation of the Act.
Responsibility of Local Authorities to provide Sanitary Community Latrines	No such obligation	Mandatory
Cognizance of offence	Upon a complaint made by a person generally or specially authorized	Upon a complaint made by a person. (clause 10)

	in this behalf by the Executive Authority (Section 17(3))	
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Key outcomes in Karnataka:

- SKKS, and HR Organisation, Social Movements, 10 years tireless advocacy in Karnataka have got a few key outcomes.
- 56 Descend Manual Scavenger families got Rs. 10 Lac for the Supreme Court Judgement
- 45,000 contract sweepers are regularizing as Direct ULB employees from 2017
- 2016 all ULBs, Private Sector and GP sweepers minimum wages were hiked from Rs.6,000 to Rs.8,000.
- All over Karnataka ULBs Safaikaramcharie contract system is banned w e f Aug 2017 (Out sourcing)
- 457 Urban Manual Scavengers identified.
- 472 Rural Manual Scavengers identified.
- 256 identified manual scavengers got OTC Rs. 40,000.
- State, District and sub-divisional vigilance committees formed for monitoring implementation of act.
- Safaikarmachari Development Corporation formed.

Way forward to eliminate this practice:

- A wider campaign by Dalit, Human Rights and Progressive Social Movements for eradication of the practice of manual scavenging is needed demanding a comprehensive implementation of the 2013 Act and 2014 SC judgement.
- The forum demands comprehensive interventions for building dignity and self respect among scavenging community including education, health, housing, alternative skill generation and employment and social security.

- Law has to be effectively enforced. How to break the mindset of the caste in the officials, political class and citizens?
- Government should allocate adequate fund for building UGD and Technology for cleaning drainages and railway tracks.
- Create eco system toilets or flush out sewage system toilets.

Challenges:

- Why is the government not planning for construction of sanitary/ sewage systems across India. Even after thousands of Scavengers have died cleaning manholes?
- Why is Urban Development not ready to convert insanitary latrines to sanitary latrines?
- Why all over India Urban and Rural Development Departments denied to implement the Supreme Court Judgement 2014.
- There are so many celebrities and politicians that are advertising for Swacch Bharat but no one is ready to talk about manual scavenging and people who are scavengers that are suffering from serious health issues and are not provided basic facilities as per the court judgements.

1996 onwards, outsourcing began in urban area where thousands of women still clean and sweep toilets to the day. There are no current solutions to stop Manual Scavengers. Rural areas have a connected system of dry toilets in public areas and homes, but there is no political motivation for rehabilitation programmes for workers or push to identify the workers or build infrastructure. Till the government implements infrastructure through proper allocation of funds, the demand for Manual Scavenger workers will always exist. The prayers in PILs may be for demands for infrastructure updates.

Refugee Women Rights

Background: Despite the fact that India is a host to diverse groups of refugees, the country has no specific laws or cohesive policy for refugees. India is not a

signatory to the 1951 Refugee Convention nor to its 1967 Protocol on the Status of Refugees. Therefore, the protection of refugees is confined to ad-hoc measures taken by the government of India, leaving refugees with little protection for their civil and political rights and virtually no legal provisions for their safety and welfare.

Refugee women, particularly those from the Rohingya Community, experience domestic abuse, sexual violence, and the denial of reproductive rights. They are routinely hired by local Indians as 'domestic help' and subsequently sexually assaulted. They also experience domestic violence at the hands of their husbands, and are forced into pregnancy. Rohingya girls are denied education and sexual harassed. Afghan and Somali refugee women are also regularly sexually harassed, with Somali women in particular experiencing extreme racism as well as sexism.

A recent fact finding mission that saw HRLN's research team visit 11 Rohingya refugee camps across Delhi and Haryana found that the women of the camps were experiencing systematic reproductive rights violations, and there had been many instances of gender-based violence. None of the women had even heard of contraception, let alone been counseled on the same by an ASHA or Anganwadi worker. Women rarely gave birth in a medical facility because their lack of Indian identity cards, such as Aadhaar cards, meant they were routinely denied from hospitals. They and their children were suffering from malnutrition, anemia, and diarrhea. The nutritional status of the Rohingya refugees has suffered without guaranteed access to housing and public relief and assistance programmes, especially among pregnant women and new mothers and their children. In addition to this, the insecure nature of the camps, with makeshift toilets lacking any form of privacy, meant women had been subject to sexual assaults by men both within and outside of the Rohingya community.

Although it may not be a signatory to the Refugee Convention, India's Constitution and various international agreements do not warrant discrimination and violence against refugees to go unchallenged. Indeed, in National Human Rights Commission vs. State Of Arunachal Pradesh & Anr on 9 January, 1996, the Supreme Court stated that Constitutional provisions extend to all people in India, including refugees.

Speaker: Fazal Abdali, Advocate, HRLN

Whatever violence is suffered by a refugee woman is also true for the women that reside in their home country like rape, marital rape, genital mutilation etc. There are many countries where these practices are still prevalent. A refugee woman is subjected to violence not only in her country of origin but also while they are in transit and on their way to the asylum country and also when she comes to the asylum country.



Women are easy targets or so it seems. The perpetrators are often the members of the security forces themselves. The no. of such instances is increasing every day. There are instances where the refugee women are forcefully put into prostitution. Gender prosecution is also a ground for women becoming refugees. The executive committee took a long time to realise that there are women refugees. They said that the refugee laws should be gender sensitive. Some countries follow this convention and there are some that don't. India hasn't signed the convention yet either, however India has signed the international treaty. In our constitution there are two articles that do not differentiate between the residents and non-residents of India. Every human has the right to life and the same has been supported by a no. of judgements.

The refugees are subjected to terrible conditions in the asylum country for being refugees. They are devoid access to basic amenities like water, education etc. When they try to access these amenities they are questioned if they have an ID Card stating their Indian citizenship, and when they fail to do so, they are denied the same. This is a clear violation of article 21. The words used in the article is person and not citizen, therefore being an Indian citizen is not a requirement. The speaker said that he had submitted a status report of the refugees to the Supreme Court, which the Supreme Court finally accepted after 5 years. Finally a good order came and a Nodal Officer was put in and was given the responsibility for ensuring the basic rights of the refugees.

Rohingyas that are settled in Hyderabad face religious hatred from the locals. There is an ongoing case in the Supreme Court for the Rohingyas, there is a stay on the Government's position for now. The Rohingyas don't consider Myanmar their country and therefore they can't be sent back. For the Rohingyas to be able to work they need a long term visa. For the refugees that are identified by the Govt. there are schemes that exist, but for the ones that are identified as refugees by the UN are considered illegal immigrants in India and there are no provisions for them. If someone is staying in India they must be given the basic rights. ***"People are still struggling for survival."***

Speaker: Deepak Kumar Singh, Advocate, HRLN

Jafar Ullah & Anr. Vs. Union of India and Anr. (Writ Petition (C) No. 859 of 2013:

The present Writ Petition has been filed in the public interest under Article 32 of the Constitution of India, relating to serious violations of the Right to Life, maternal health, the Right to health and the Right to basic human dignity of women and families of rohingya community from Myanmar who have suffered persecution, violence and displacement and now live in deplorable conditions in temporary make shift settlements in Delhi and Haryana. That the petitioners over a period of five years have submitted three detailed fact finding reports that illustrate the deplorable condition in which the rohingya people continue

to live and the complete lack of basic amenities, including, clean drinking, education for children, health facilities, hygiene, maternal health care and basic sanitation.

In the case of Rohingya petition at the Supreme Court of India, the Union of India filed their report on the situation of Rohingyas at Delhi and Haryana on 9th May 2018. Accordingly, we filed a status report on behalf of the petitioners on 11th May 2018, reflecting the conditions of the Rohingyas and contradicting the report submitted by the Union of India. The report was supported by the photographs which were taken on 10th May 2018.



It was highlighted on the issues of clean drinking water, sanitation, education, health and subsidised food for the Rohingyas, their children have not been enrolled

due to lack of Aadhar card and also the Rohingyas are not able to access health services due to lack of documentation. The pregnant and lactating mothers are not getting the benefits of the health schemes and due to unavailability of ASHA workers and Anganwadi centre, they are also unaware of the benefits of the institutionalised delivery.

The Hon'ble Court taking into account the reflected the report submitted by the Union in the order and also stated that :

1. As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers.

2. Parents or any relative or a guardian of a child or a patient can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

That most recently, on 15.04.2018, the Rohingya settlement at Kalindi Kunj, Delhi was burnt down in the middle of the night at around 3:30am. The residents managed to evacuate the area before anyone was grievously injured; however, unfortunately, they were not able to gather their belongings in time, which were burnt down. The team of Delhi Disaster Management Authority, South East Delhi, Revenue Department of Government of National Capital of Delhi and various non-governmental organizations, and students.

Public Interest Litigation: The Use of Law

Speaker: Meenaz Kakalia, Advocate, HRLN

The speaker gave a brief history of how PILs came into the judicial system. Post emergency it was realised by the judges that the people did not have access to courts, hence they came up with the idea of Public Interest Litigation. PIL is the litigation for the protection of the Public Interest. Any public spirited person or even a group of individuals can file a PIL under article 32.

Speaker: Rajni Soren, Advocate, HRLN

Many issues of public interest hardly ever reach the courts, and the reason for this is that the people don't have advocates. Also if one were to file a case he/she had to be the one affected. The idea of a PIL is that the issues that are affecting the larger public can now be filed by any person who wishes to. The rule of the court is that if a person is bringing an issue to the court they need not have a motive behind it.

Speaker: L.C. Kranti, Executive Director, HRLN



To draft a PIL you need to keep in mind 4 things

- Prayers - what do you want the court to do? Each prayer should connect to the argument in the petition. For each prayer give an argument.
- Grounds - what are the rights that have been violated?
- Facts - give details about the case like what caused you to turn to the court, what are the problems suffered, and what could be the possible consequences if necessary action isn't taken immediately
- Parties - who are you filing the case against?

Apart from that there are basic technicalities that need to be taken care of like the court fee, which is Rs.250 but if you can't afford it you can request the court to exempt you from having to pay it. You also need to mention that you don't stand to gain directly from this petition. There is a set format for each court that needs to be followed. If you do not have a lawyer to help you out with the format of the petition, you can still file the petition.

In Bombay there is an E-section in the Bombay High court where they guide people in formatting the petitions. The petitioner can also argue for his/her own petition if they wish to, the court also provides legal aid for the ones that can't afford a lawyer. The petitioner is also encouraged to go to the court for regular

follow ups on their even if they aren't arguing it, because even if you have a learned lawyer, as a petitioner you still would know the case better. The speaker also suggested that a very basic understanding of the law also comes in handy. The court takes its time with the action, so we also need to be patient. We also have the option to approach the Supreme Court.

List of Participants

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9	Medha Gandhi	IPAS	Delhi
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11	Aditya Srivastava	Right to Food Campaign	Delhi
12	Gayatri Sharma	Women Power Connect	Delhi
13	Ravi Kant	Shakti Vahini	Delhi
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15	Somaya Gupta	Jawaharlal Nehru University , New Delhi	Delhi
16	Tushita Mukherjee	Prayas , Rajasthan	Rajasthan
17	Jayna Kothari	Centre for Law and Policy Research	Delhi
18	Albertina		
19	Vijayakumar S. and	Karnataka Janaarogya Chaluvalli	Karnataka
20	Teena Xavier	Karnataka Janaarogya Chaluvalli	Karnataka
21	Sonia Choudary	Acid Attack Survivor	Delhi
22	Kavita	Acid Attack Survivor	Delhi
23	Aruna Tripathy	Acid Attack Survivor	Delhi
24	Mohini	Acid Attack Survivor	Delhi
25	Farah	Acid Attack Survivor	Delhi
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28	Fazal Abdali	HRLN, Delhi	

29	Deepak Kumar Singh	HRLN, Delhi	
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31	Jagyasini Mohapatra	Kadam	Odisha
32	Meenal	Sangat	Delhi
33	Kranti Khode	Jansahas	Madhya Pradesh
34	Nimisha Parmar	Navsarjan	Gujarat
35	Yashodha	Sanchaya Nele	Bangalore
36	Mridula Devi		
37	Payal Gaikwad		
38	Sipra Devi	Nivedita Foundation	Gujarat
39	Kiruba Munuswamy		
40	Sandhya Devi	Odissa Dalit Women Foundation	Orissa
41	Kavitha		
42	Divya E	Nagaloka	
43	Utpala Chakma	Manuski	Pune
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47	Sutanuka Bhattacharya	SAPPHO for Equality, Kolkata	West Bengal
48	Amba Salelkar	Equals- Center for Social Justice	Chennai
49	Soni Sori	Activist	Chattisgarh
50	Kamla Bhasin	Sangat	Delhi
51	Rachana Mudraboyina	Transactivist	Hyderabad
52	K. Ajitha	Anweshi Counselling Center, Kerala	Kerala
53	Langpoklakpam Rani Leima	Extra -Judicial Execution Victim Families Assosiaton, Manipur	Manipur
54	Ningthoujan Edina Devi	Extra -Judicial Execution Victim Families Assosiaton, Manipur	Manipur
55	Rosemary Dzuvichu	Naga Mothers Association	Nagaland
56	Manjula Pradeep	Manuski Center	Pune, Maharashtra
57	Narender Gupta	Prayas	Rajasthan
58	Jitendra Chaturvedi	DEHAT	Uttar Pradesh
59	Rajdev Chaturvedi	Health Watch Forum	Uttar Pradesh
60	Rajiv Ranjan Sinha	Srijan Foundation (JATN)	Jharkhand
61	Pooja Rajive	Srijan Foundation (JATN)	Jharkhand

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63	Anita Abraham	Public Prosecutor	Delhi
64	Neha Dixit	Independent Journalist	Delhi
65	Malini Subramanium	Independent Journalist	Karnataka
66	Sushila Kadlak	Bahujan Hitay Pune Project	Pune
67	Sandeep Asawale	Bahujan Hitay Pune Project	Pune
68	Savita Jadhav	Sadhna Institute	Aurangabad
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70	Sinouvasane Perumal	ADECOM Network	Pondicherry
71	Gurulingam Deepa	ADECOM Network	Pondicherry
72	Ramjan Babasaheb Shaikh	Prakash Shikshan Prasarak Sanstha	Sangli
73	Shalini	SICHRM	KARNATAKA
74	Ramayan Yadav	Vigyan foundation	Lucknow
75	Sanjay Mishra	Mahila Gramodyog Sewa Sansthan	
76	Lailt	SATHI	Faizabad
77	Pushpa Pal	Jan Shikshan Kendr	Ambedkarnagar
78	Nasim Ansari	Tarun Chetna	Pratapgarh
79	Sonia Rodrigues	Nari Niketan	Delhi
80	Rushila Rebello	Nari Niketan	Delhi
81	Colin Gonsalves	HRLN	
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101	Chetna Upadhaya	HRLN	Odisha
102	Premlata	HRLN	Manipur
103	Duyu Anga	HRLN	Arunachal Pradesh
104	Afreen Bano Khan	HRLN	Mumbai
105	Rajni Soren	HRLN	Chattisgarh
106	Ajalu Linggi	HRLN	Arunachal Pradesh
107	Devika Nair	HRLN	Mumbai
108	Dinesh Kumar Yadav	Prayas	Rajasthan
109	Sudhindra Kumawat	Prayas	Rajasthan
110	Goverdhan Yadav	Prayas	Rajasthan
111	Vijay Pal Singh	Prayas	Rajasthan
112	Madhav Lal Meghwal	Prayas	Rajasthan
113	Pankaj Garg	Prayas	Rajasthan
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115	Pavitri Manjhi	Dalit AdivasiKisan SangarhSamiti	Raigarh
116	Adv. Jyoti Kumari	HRLN	Jharkhand
117	Adv. Pramila Mehra	HRLN	Jharkhand
118	Rekha Nagda	Prayas	Rajasthan
119	Adv. Dhanwanti Jadav,	HRLN	Gujarat
120	Bhanu Ben Parmar	HRLN	Gujarat

PRESENTATIONS

1

Abortion Scenario in India

By Medha Gandhi

Director Policy

Abortion Scenario in India

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Director Policy
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Abortion Incidence in India

- Annual abortion incidence – 15.6 million
- Annual pregnancies – 48.1 million
- Almost 50% of annual pregnancies unintended
- Abortion rate for India – 47 per 1000 women of reproductive age group



Source: Lancet Global Health 2018

History

- **1800s**
 - IPC and CrPC – abortion a punishable crime for woman and provider
- **1960s and 70s**
 - Liberalization of abortion laws across US and Europe
- **1971**
 - MTP Act passed in India after the Shanti Lal Shah committee report

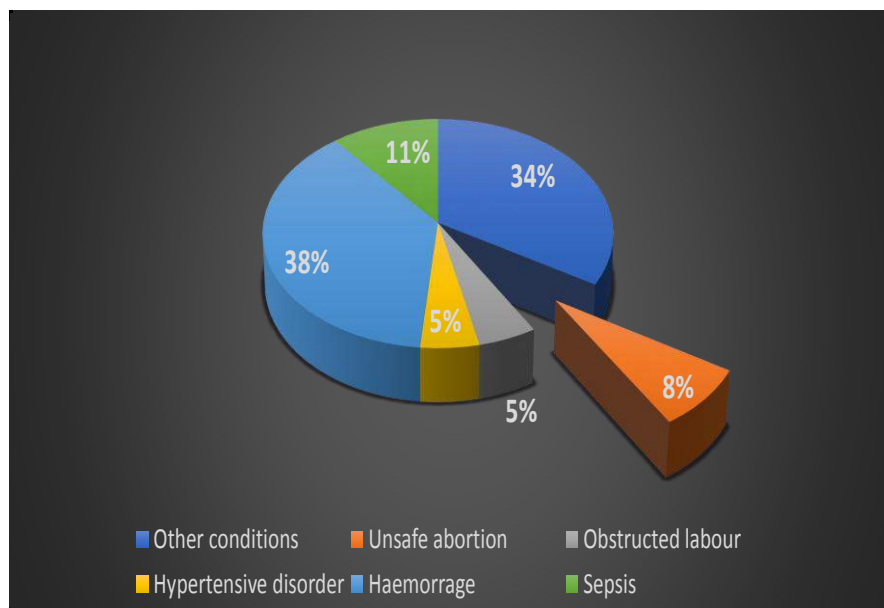
IPC 1860 and MTP Act 1971

- ❑ **Section 314** :Death caused by act done with intent to cause miscarriage.
- ❑ **Section 315**: Any act done with intent to prevent child being born alive or to cause it to die after birth.
- ❑ **Section 316**: Causing death of quick unborn child by act amounting to culpable homicide.

MTP Act offers protection to medical provider, who would otherwise be penalized under IPC.

18/09/2018

Causes of Maternal Mortality in India



Maternal Mortality in India

States	2011-13	2014-16
Assam	300	237
Bihar/Jharkhand	208	165
Madhya Pradesh / Chhattisgarh	221	173
Odisha	222	180
Rajasthan	244	199
Uttar Pradesh / Uttarakhand	285	201
Karnataka	133	108
Maharashtra	68	61
West Bengal	113	101
INDIA	167	130

SRS, 2018

Medical Termination of Pregnancy (MTP) Act, 1971



☐ Legalizes abortion in India.

☐ Decriminalizes abortion seeker.



☐ Provides safe abortion services for women.

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Legal Framework

☐ MTP Act (1971, 2002):

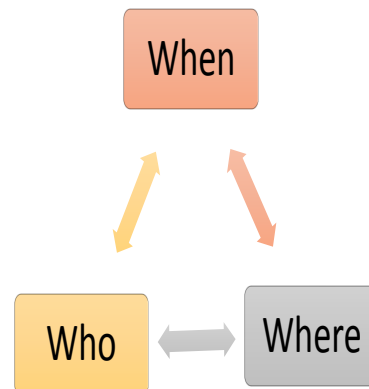
- When & Where can a pregnancy be terminated;

☐ MTP Rules (1975, 2003):

- Who can terminate a pregnancy;
- Training requirements
- Approval process for a MTP site

☐ MTP Regulations (2003):

- Reporting forms & record keeping;
- Custody of forms and preservation of records
- Prevention of disclosure of information



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When can a pregnancy be terminated?

- Continuation** of pregnancy **causes injury** to mental or physical health of a woman.
- Pregnancy is caused due to **Rape**.
- Contraceptive failure** among married women.
- Substantial risk** that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

MTP Act, 1971

Where can pregnancies be terminated?

- Pregnancies can be terminated at:



- A hospital established or maintained by the Government.

or

- A place approved for the purpose of this Act by a District-level Committee (DLC) constituted by the government with the CMO as Chairperson.

MTP Act, 1971

Who can terminate a pregnancy?



A Registered Medical Practitioner (RMP)

- Who has a recognized medical qualification as defined in clause (h) of section 2 of Indian Medical Council Act, 1956.
- Whose name has been entered in a State Medical Register.
- Who has such experience or training in Gynecology and Obstetrics as prescribed by MTP Rules.

MTP Rules, 2003

Training and Experience Requirement

For termination upto 12 weeks

A practitioner who has assisted an RMP in:

- Performing 25 cases of MTP of which;
- at least 5 are performed independently in a hospital established or maintained or a training institute approved by the Government.

Upto 20 weeks of gestation

A practitioner with:

- Degree or diploma in ObGyn
- Completed six months of house job in ObGyn department.
- At least one year experience in the practice of ObGyn at any hospital that has all the facility.

MTP Rules, 2003

Consent and Opinion Requirement

Consent

Up to 20 weeks gestation

- Only the consent of the woman is needed if age is above 18 yrs.
- If she below 18 years or is mentally ill, only then consent of a guardian.

Opinion

- For termination of pregnancy upto **12 weeks**, the opinion of one RMP is required
- For termination of pregnancy between **13-20 weeks**, opinion of two RMPs is required, however, abortion is done by one RMP.

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Who counts as a guardian?

- Under the MTP Act, a minor girl needs consent from her guardian to get an abortion.
- The MTP Act defines guardian as a person “having the care” of the minor person.
- Guardian is an adult, i.e. someone over 18 years of age who accompanies a minor girl to a clinic could be a de facto guardian and could consent to an abortion on the girl's behalf.

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MTP Act, 1971

Exception to the 20 week limit

Section 5 of the MTP Act, 1971:

- The place of termination, upper gestation limit of 20 weeks and opinion of two providers does not apply when it is necessary to conduct terminations anytime during the pregnancy to save the women's life.

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MTP Act, 1971

MTP Act Amendments 2002

- Decentralized the process of approval of a private place to offer abortion services to the district level.
- The word 'lunatic' was substituted by 'mentally ill person'.
- Stricter penalties were introduced for MTPs being done at unapproved site or by uncertified provider.

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District Level Committee (DLC)

20/09/2018

Composition and Tenure of DLC



Composition of the committee:

3-5 members including the chairperson Chief Medical Officer /District Health Officer.

- Surgeon/Gynecologist/Anesthetist.
- Local medical profession or NGO or PRI.
- At least one women member.

Tenure

- Two calendar years.
- NGO members – maximum two tenures.

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Requirements for Approval of a place

For up to 12 weeks:

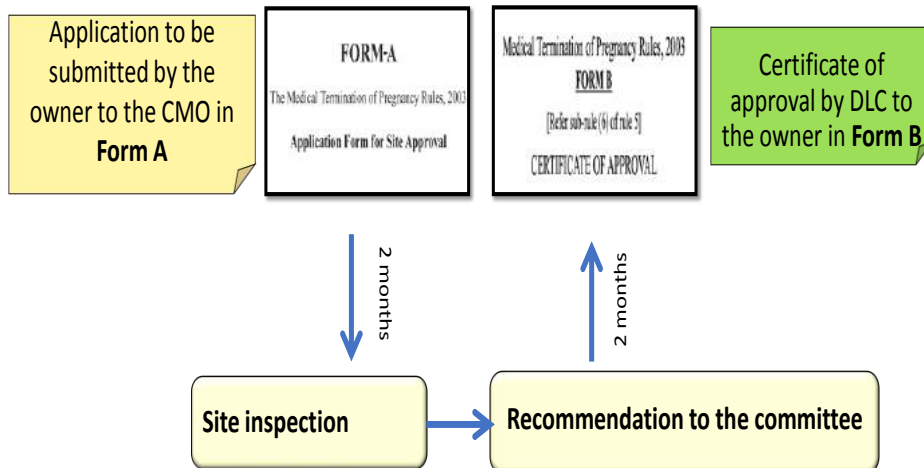
- Gynecology examination/ labor table
- Resuscitation and sterilization equipment
- Drugs & parental fluids
- Back up facilities for treatment of shock
- Facilities for transportation

For up to 12 to 20 weeks:

- **All requirements for up to 12 weeks and plus**
- Operation table and instruments for performing abdominal or gynecological surgery
- Anesthetic equipment, resuscitation equipment and sterilization equipment
- Drugs & parental fluids notified for emergency use, notified by Government of India from time to time

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MTP Site Approval Process



18/09/2018

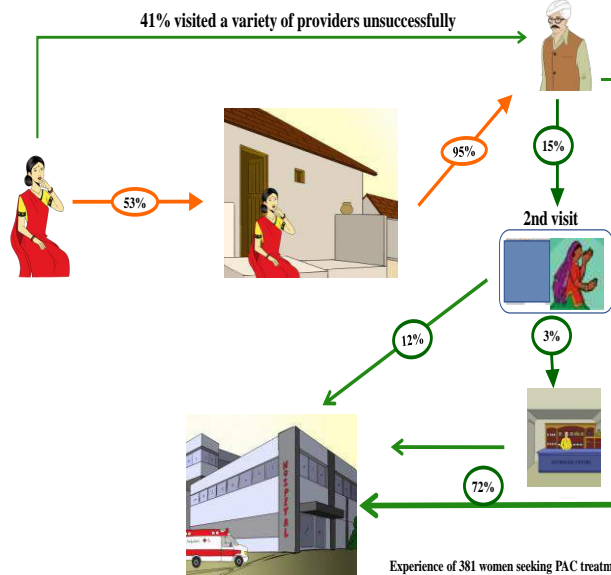
Mandatory Reporting Requirements



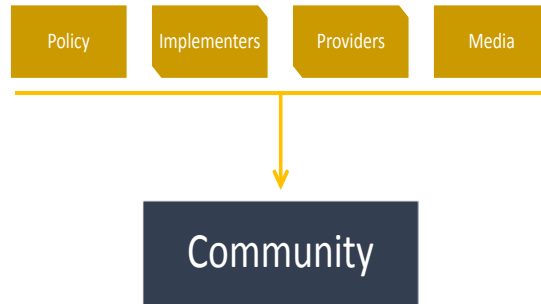
- ❑ **Form 'C':** (Consent Form): The form is used to document consent of the woman.
- ❑ **Form I (Opinion Form):** RMP shall certify opinion in this form within three hours of the MTP.
- ❑ **Form II (Monthly Statements):** Head of the hospital or owner of the place shall send a monthly statement of cases to the CMO of the district in this form.
- ❑ **Form III (Admission Register):** An approved site shall maintain case records in Form III. This register is kept for a period of five years from the date of last entry.

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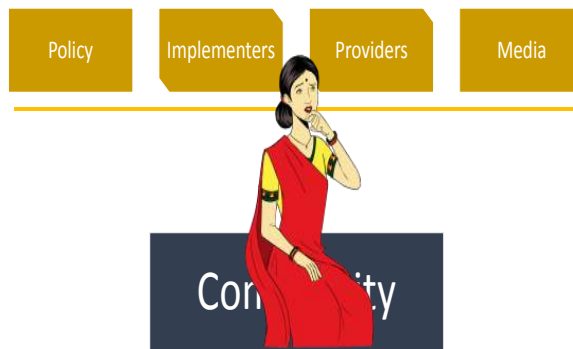
Abortion: A woman's context



Interpretation at different Levels



Interpretation at different Levels



Proposed Amendments to the MTP Act, 2014

- Expanding base of legal abortion providers.
- Increasing access to legal abortion services for women.
- Increasing the upper gestation limit for legal MTPs.
- Increasing clarity of the MTP law.



MTP Act (1971, amended 2002)

- Medically Driven
- Assumption that law would translate into on-ground access
 - Implementation
 - No continued advocacy/monitoring
- MoHFW

PCPNDT Act (1994, amended 2002 ...)

- Feminists/ broad spectrum - "gender justice"
- Continuing vigilance by civil society
- Promoting awareness part of law
- Women and child development

MTP and POCSO

- Enabling law
- Provision for termination of pregnancy regardless of age
- Provisions for confidentiality built in the regulations
- Protection of minors from sexual abuse
- Definition of child is up to the age of 18 years
- Mandatory reporting to concerned authority
- Unintended overlap with MTP Act due to mandatory reporting requirement

POCSO considers sexual intercourse with a minor as rape and therefore requires mandatory reporting by provider. It therefore poses challenges for young women's access to safe abortion services

2

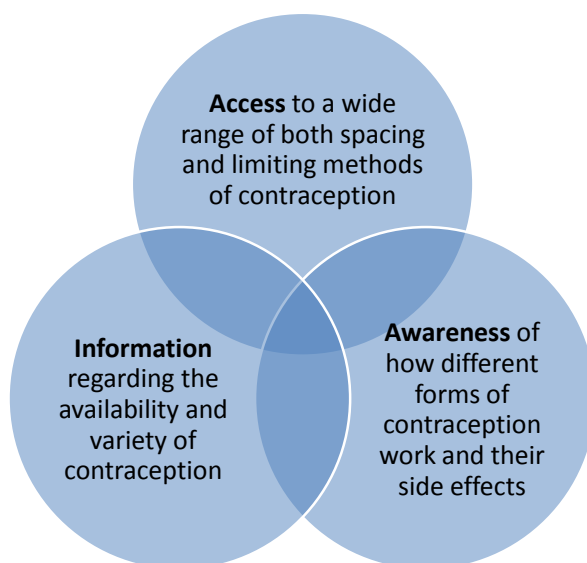
Contraceptive Information and Services in India

A Situational and Legal Analysis

Contraceptive Information and Services in India

A Situational and Legal Analysis

What do we mean by CIS?



HRLN Fact Finding Prior to PIL: The Role of ASHAs in the Delivery of CIS

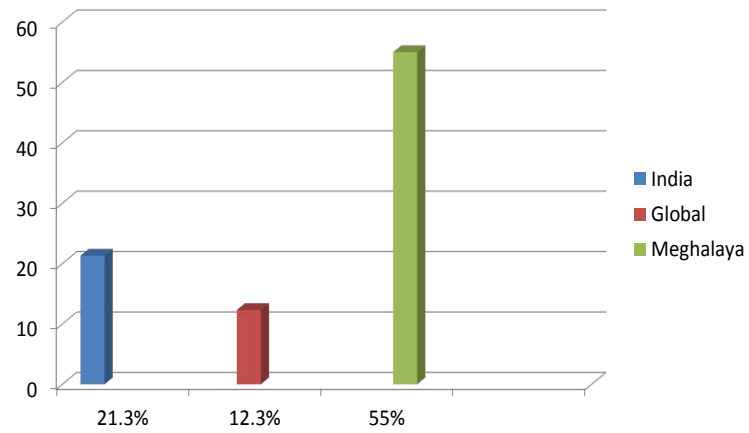
- ASHAs have a lack of adequate training and are therefore spreading misinformation regarding CIS
- Incentive payments driving promotion of female sterilization
- There is a shortfall of almost 350,000 ASHA workers
- CIS is not being delivered in many poor, rural communities
- Unmet need for CIS is increasing rather than decreasing

National Health Mission's Plan Regarding CIS

- 'Family planning services would be utilized as a key strategy to reduce maternal and child morbidities and mortalities in addition to stabilizing population'
- 'All states would be encouraged to focus on promotion of spacing methods, especially Intra-Uterine Contraceptive Devices (IUCDs)'
- 'Male involvement including male sterilization would be promoted'
- 'Distribution of contraceptives at the doorstep through ASHAs and other channels will be actively promoted'
- 'Improved family planning service delivery including access, availability and quality of services; counseling services through dedicated counselors; improved technical competence of the providers and increased awareness among the beneficiaries would be ensured'

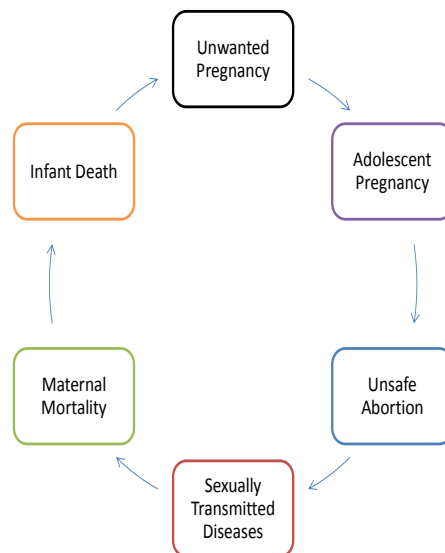
Source: NHM Framework for Implementation 2012-2017

Unmet Need

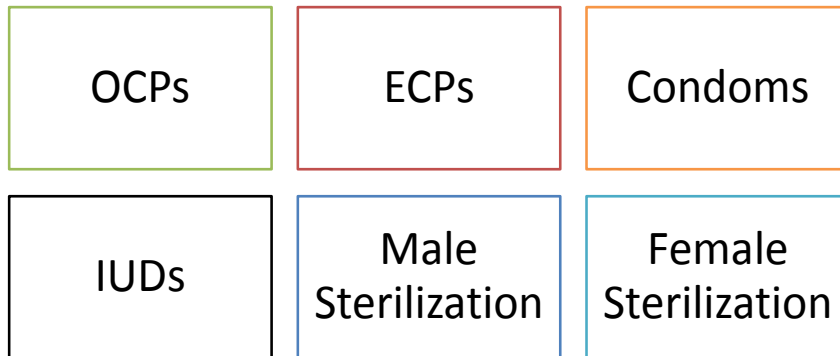


Source: DLHS 3 & DLHS 4, the Lancet

Consequences of a lack of CIS in India

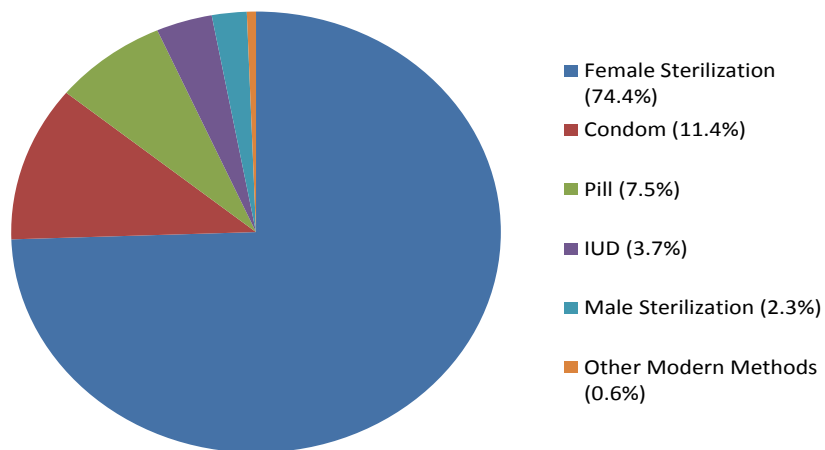


Methods of Contraception Available in India



Source: National List of Essential Medicines of India 2011

Contraceptive Method Mix



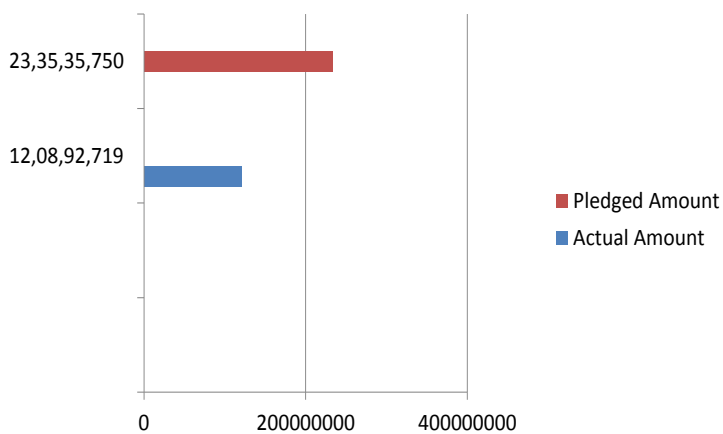
Source: Population Foundation of India

The Family Planning Programme Budget

Currency	2013-2014	2014-2015	2015-2016	2016-2017
INR (lakh)	61999.35	62863.64	79977.25	77665.45
USD	96,399,503	97,728,191	124,333,112	120,739,174

Source: Family Planning Programme Budget 2016, Press Information Bureau, Ministry of Health and Family Welfare

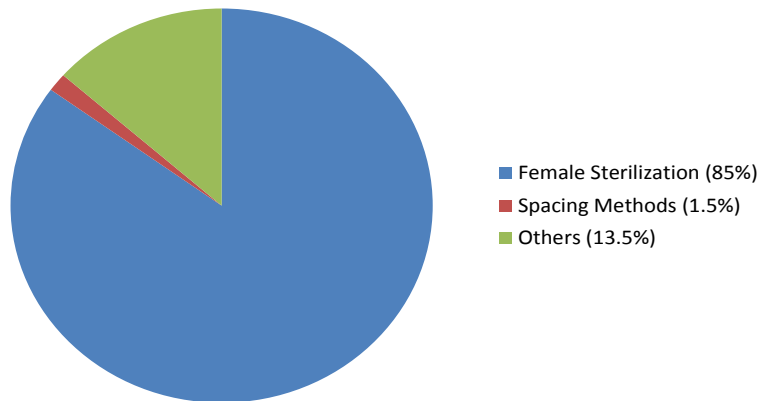
India's Pledged Budget vs. Actual Budget



Pledged Amount: 1500 crore per year
2016-17 Budget: 77665.45 lakh

Source: Family Planning Programme Budget, FP2020 Vision, London Family Planning Summit 2012

Expenditure (%)



Source: Population Foundation of India

Supply of Contraceptives: The ASHA Doorstep Delivery Service and Supply at PHCs and SCs

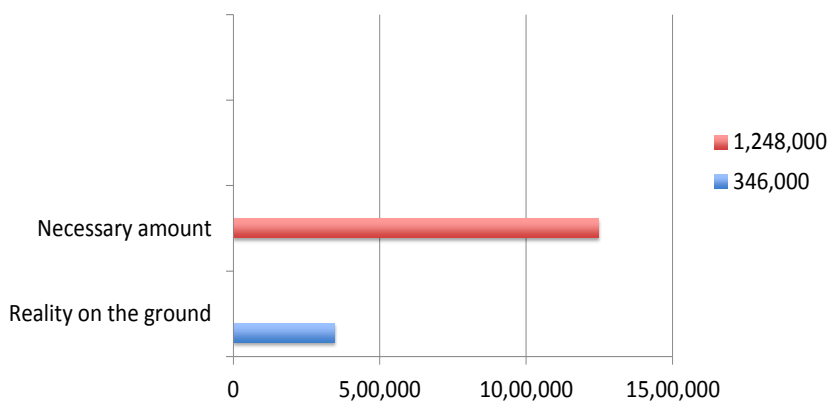
- The Government of India is supposed to supply contraceptives such as condoms, OCPs and ECPs for free at Primary Health Centers (PHCs) and Sub-Centers (SCs)
- In 2011, the Ministry of Health and Family Welfare rolled out a scheme to improve access to CIS by having Accredited Social Health Activists (ASHAs) deliver a variety of contraceptives at the doorstep of households. This initiative was piloted in 233 districts in 17 states with a view to roll it out across the nation

Source: Home delivery of contraceptives (Condoms, OCPs, ECPs) by ASHA at the doorstep of beneficiaries, Press Information Bureau, Ministry of Health and Family Welfare

The Reality

<p>Assam: Essential drugs under the RMNCH+A Matrix not available, ASHA drug kits in short supply</p>	<p>Chhattisgarh: Emergency Contraceptive Pills not available in most facilities</p>	<p>Haryana: OCPs and ECPS have not yet been received by the state in the current year due to budget constraints</p>
<p>Jharkhand: Counseling on spacing methods at SC or PHCs level is non-existent</p>	<p>Karnataka: Continues to target permanent methods instead of spacing methods with a focus on female sterilization</p>	<p>Maharashtra: Family Planning counseling services are not taking place across facilities or during outreach visits</p>
<p>Meghalaya: Home Delivery of contraceptives by ASHAs is almost non-existent and their knowledge and skills on the topic is poor</p>	<p>Odisha: ECPs were not available at most of the facilities, and knowledge of ECPs amongst staff was poor</p>	<p>Uttarakhand: Shortages/stock-outs of essentials such as condoms was seen in many facilities visited</p>

Shortfall of ASHA Workers (1 worker per 1000 people)



The Petition: Bihar Voluntary Health Association v UOI (2018)

- HRLN and BVHA recently filed a PIL in the Supreme Court demonstrating that both the Central Government and all State Governments and Union Territories have failed to address and ensure adequate access to CIS, citing high levels of unmet need, budget cuts, population control rather than reproductive rights based approaches, and disproportionate focus on female sterilization as evident shortfalls
- We focus on the results of these shortfalls: high maternal mortality rates and infant mortality ratios, adolescent pregnancy, STI/Ds, coercive sterilization, and unsafe abortion

Legal Focuses

Indian Constitution

- Article 15 – Right to Equality
- Article 21 – Right to Life

CEDAW

- Article 14(2)(b) – rural access to adequate health care facilities, including information, counselling and services in family planning
- Article 16(e) – the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights

Prayers of the Petition

- Our prayers order and direct the Central and State Governments to:
 - Comprehensively roll out the ASHA doorstep delivery service across the nation, with a full basket supply of contraceptives
 - Address the shortfall of approximately 346,000 ASHA workers
 - Ensure entire basket range of contraceptives are available at all public health care centres
 - Bring down the unmet need from 21.3% to a negligible rate within the next 5 years
 - Bring the Family Planning Budget in line with the pledges made the London Family Planning Summit and in the Family Planning Vision 2020 Initiative
 - Launch a drive promoting male sterilization as a safe, simple and reversible procedure in a move away from female sterilization, an invasive, irreversible procedure
 - Address the significant imbalance between female and male sterilization
 - Launch a drive encouraging condom usage in order to promote safe sex and reproductive rights
 - Implement a mass media campaign to raise awareness regarding CIS

3


CASE STUDY OF TWO IMPORTANT SUPREME COURT RULINGS:

AN ANALYSIS OF THE FALLOUT OF THE FAMILY PLANNING PROGRAMMES IN RECENT TIMES




CASE STUDY OF TWO IMPORTANT SUPREME COURT RULINGS: AN ANALYSIS OF THE FALLOUT OF THE FAMILY PLANNING PROGRAMMES IN RECENT TIMES

- *Despite a six decade old family welfare programme, India's public health officials routinely deny women control over their reproductive choices. Sterilization surgeries leading to serious infections and deaths of young women across the country led to the filing of PIL in the Supreme Court of India.*
- *Several reports and surveys were done on the appalling conditions in Government-run sterilization camps where Government health workers had failed to respect basic dignity of their patients.*
- *These reports highlighted doctor's failure to provide counselling to women being brought for sterilization surgeries, lack of outlining alternative forms of birth control or warn about dangers associated with operation.*
- *These camps failed to respect privacy or confidentiality of women.*



RAMAKANT RAI VS. UNION OF INDIA, W.P (C) NO. 209 OF 2003

- The petition in this public interest litigation (PIL) case, cited practices of female sterilization by the government in the States of Uttar Pradesh, Bihar, and Maharashtra. Each case of sterilization lacked counseling or informed consent, lacked pre and post-operative care, and included unhygienic and unanesthetized operating conditions, sterilization of minors, coercion and cruelty.
- Human Rights Law Network (HRLN) submitted a memorandum in support of its petition to the Indian Supreme Court, citing coercion and abusive practices resulting from poor quality of care in government-run sterilization camps and failure to comply with national guidelines on the performance of sterilization, which establish mandatory procedures for obtaining informed consent.

- 
- The objective behind this petition was to make known the injustice being done to poor and vulnerable women who underwent these procedures without a number of essential rights including informed consent, pre-operative and post-operative care, hygienic facilities, anesthesia when appropriate, and freedom from coercion, cruelty, and sterilization of minors.
 - It was further asserted that the current sterilization conditions violated not only the Guidelines, but also patients' reproductive rights, women's rights, and health rights as articulated in international instruments ratified by India, including the Alma Alta Declaration, CEDAW, the ICPD Program of Action, and the Beijing Platform for Action.
 - The PIL further contended that the current conditions violated patient's constitutional right to health, which is a part of the right to life enshrined in Articles 14, 15, 21, and 47 of the Indian Constitution.

Significance of the case

- The Supreme Court ordered State governments to take immediate steps to regulate health-care providers who perform sterilization procedures, and to compensate women and families of women who suffer complications or death as a result of unsafe sterilizations.
- The Supreme Court directed the Union of India to lay down uniform standards to be followed by the State Governments with regard to the health and age of proposed patients, norms for compensation, the format of statistics, the check list, consent proforma, and insurance.
- Until such time as the Union of India proscribes guidelines governing compensation, the Supreme Court directed States to pay Rs. 1 lakh in case of the death of the patient sterilized, Rs. 30,000/- in case of incapacity and in the case of post-operative complications, the actual cost of treatment being limited to a sum of Rs. 20,000/-.

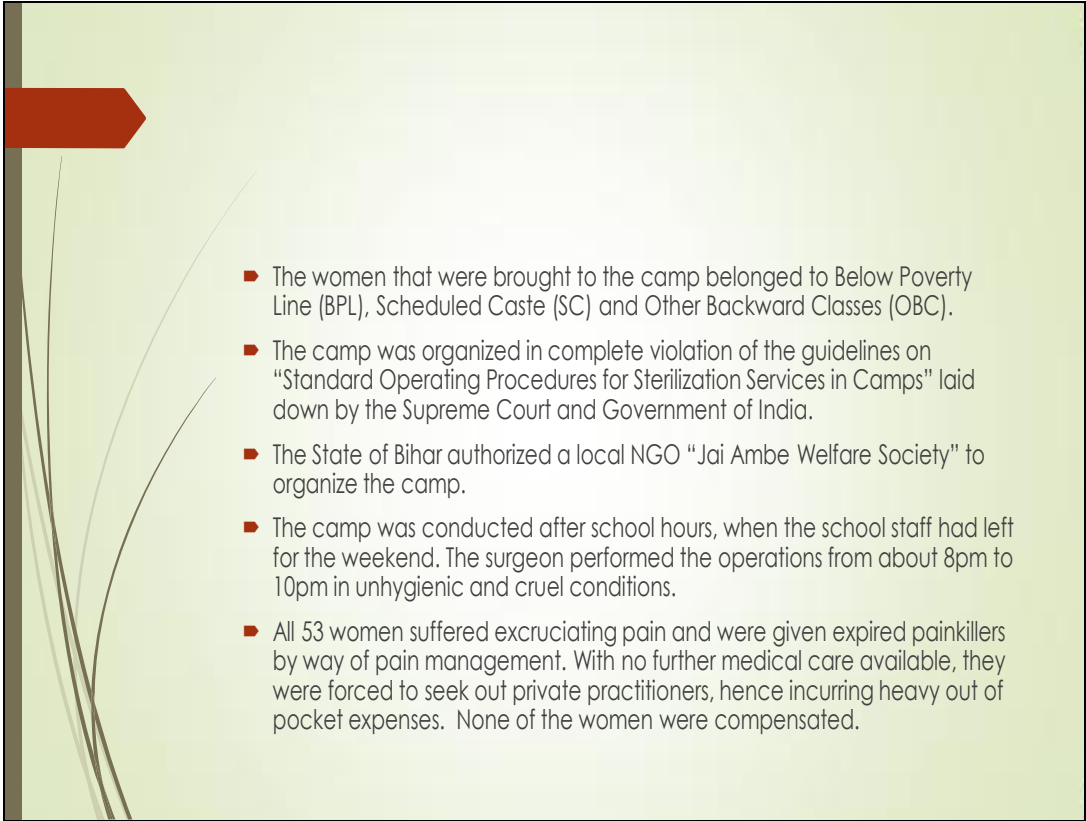
- According to official figures India carried out nearly **4 million sterilizations** during 2013-2014.
- **Out of these officially more than 700 deaths** were reported due to botched surgeries between 2009 and 2012 with **356 reported cases of complications**.
- Though the Government had after the Ramakant Rai judgment adopted standards for conducting safe sterilizations, there was an unseemly haste to meet high state-mandated quotas leading to botched operations and deaths. Newspapers reported horrifying stories of the quality of tubectomy services provided in camps, but authorities disregarded it as an important reproductive health concern.
- One of such similar incidents, which caught much of media attention and subsequently led to the filing of PIL, was "**Devika Biswas vs Union Of India & Others (WPC 95/2012)**."

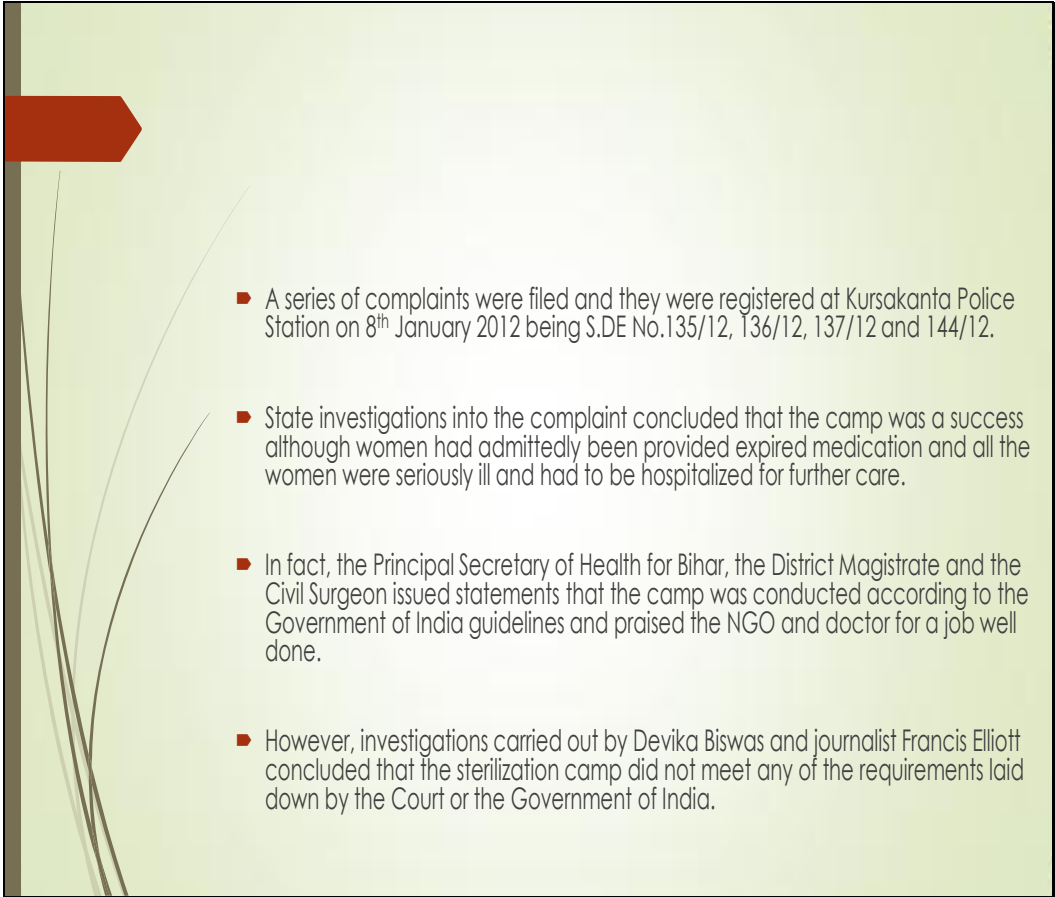
Kaparfora Camp: Araria District, Bihar

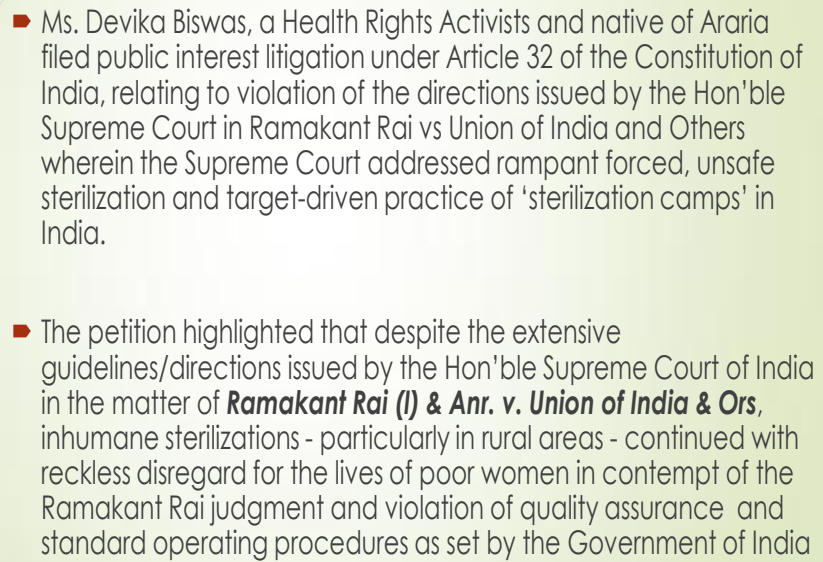
- In January 2012, a sterilization camp was held at a government middle school in the Araria District of Bihar.
- An NGO performed the camp in a government middle school notwithstanding government guidelines specifically forbidding sterilization camps in schools.
- The operations were done under torch light at night with one doctor and a handful of untrained NGO volunteers.
- 53 women in the age group of 18-23 were sterilized in only two hours.
- No water was available to sanitize equipment or to hydrate patients.
- All the patients were put under general anaesthesia instead of local, at great risk to their health.

"19 year old Bikki Devi was operated in 2012 in the sterilization camp in Kaparfora. She lay crying on the ground in pain, with no help, subsequently her husband carried her on his shoulder back home, since then she has been bedridden"



- 
- The women that were brought to the camp belonged to Below Poverty Line (BPL), Scheduled Caste (SC) and Other Backward Classes (OBC).
 - The camp was organized in complete violation of the guidelines on "Standard Operating Procedures for Sterilization Services in Camps" laid down by the Supreme Court and Government of India.
 - The State of Bihar authorized a local NGO "Jai Ambe Welfare Society" to organize the camp.
 - The camp was conducted after school hours, when the school staff had left for the weekend. The surgeon performed the operations from about 8pm to 10pm in unhygienic and cruel conditions.
 - All 53 women suffered excruciating pain and were given expired painkillers by way of pain management. With no further medical care available, they were forced to seek out private practitioners, hence incurring heavy out of pocket expenses. None of the women were compensated.

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- A series of complaints were filed and they were registered at Kursakanta Police Station on 8th January 2012 being S.DE No.135/12, 136/12, 137/12 and 144/12.
 - State investigations into the complaint concluded that the camp was a success although women had admittedly been provided expired medication and all the women were seriously ill and had to be hospitalized for further care.
 - In fact, the Principal Secretary of Health for Bihar, the District Magistrate and the Civil Surgeon issued statements that the camp was conducted according to the Government of India guidelines and praised the NGO and doctor for a job well done.
 - However, investigations carried out by Devika Biswas and journalist Francis Elliott concluded that the sterilization camp did not meet any of the requirements laid down by the Court or the Government of India.

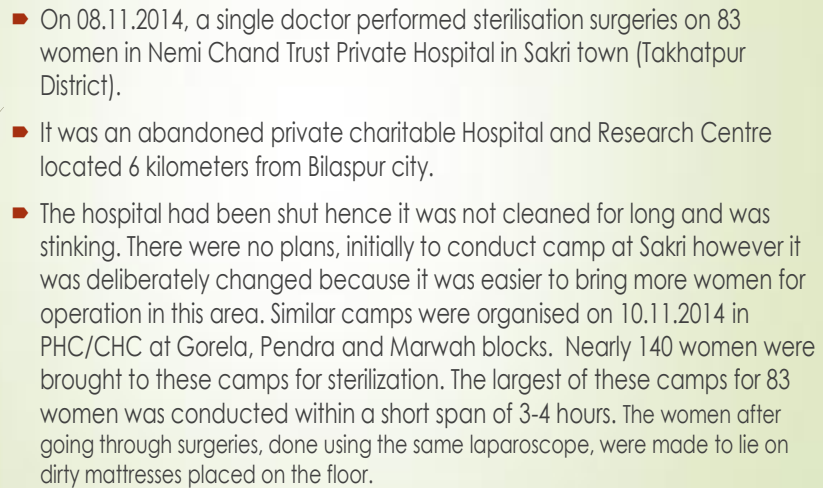
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- Ms. Devika Biswas, a Health Rights Activist and native of Araria filed public interest litigation under Article 32 of the Constitution of India, relating to violation of the directions issued by the Hon'ble Supreme Court in *Ramakant Rai vs Union of India and Others* wherein the Supreme Court addressed rampant forced, unsafe sterilization and target-driven practice of 'sterilization camps' in India.
 - The petition highlighted that despite the extensive guidelines/directions issued by the Hon'ble Supreme Court of India in the matter of ***Ramakant Rai (I) & Anr. v. Union of India & Ors***, inhumane sterilizations - particularly in rural areas - continued with reckless disregard for the lives of poor women in contempt of the Ramakant Rai judgment and violation of quality assurance and standard operating procedures as set by the Government of India

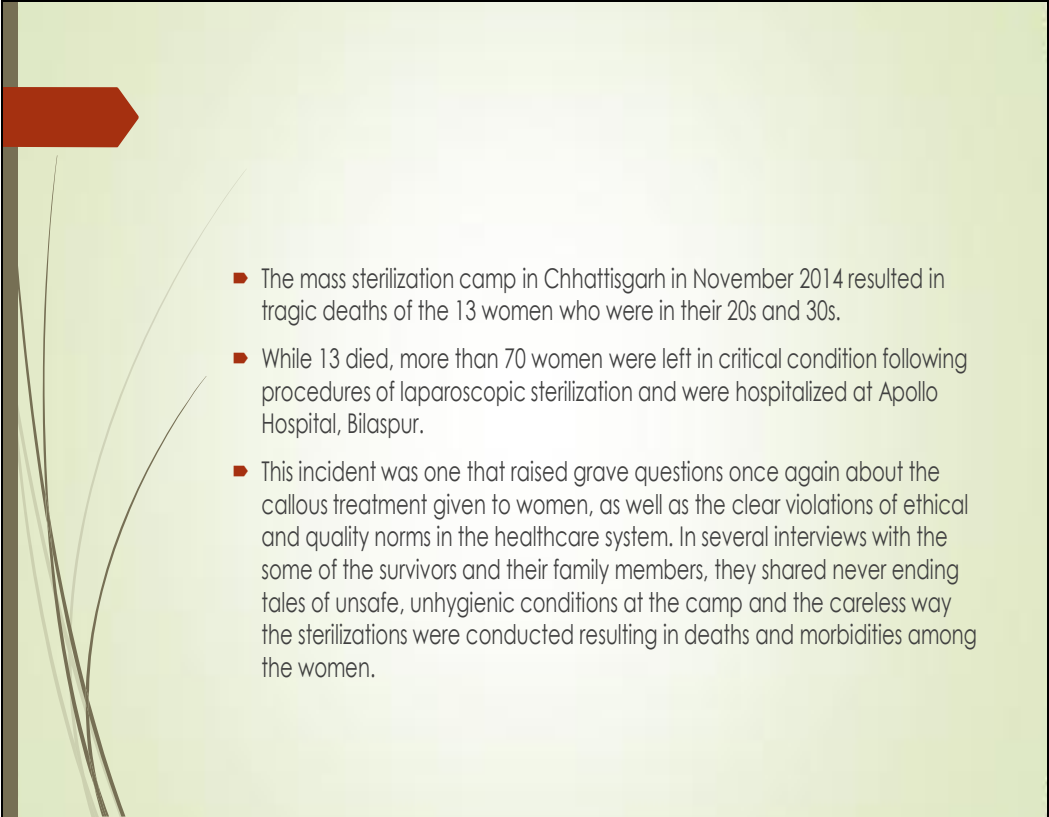
- **Bihar** was not an isolated incident. Evidences of similar rampant fundamental rights violation and deaths in sterilization camps were submitted from states of **West Bengal, Rajasthan, Madhya Pradesh, Kerala, Odisha and Uttar Pradesh**. The situation in **Maharashtra** in districts such as **Nagpur, Chandrapur and Gadchiroli** highlighted the plight of women who were being sterilized in camps with poor infrastructure, unsafe and unsanitary conditions with inadequate basic services on routine basis..
- In **Madhya Pradesh**, some of the district collectors seemed to have tossed the rule book to the winds to meet their targets. The officials lured and misguided protected tribals with dwindling population into sterilization with monetary gain of Rs 1,100 as an incentive. Two of these tribes, Gonds and Korkus, designated "primitive", whose numbers have dwindled by 11% were not spared.
- **"Rehka Wasnik, a poor labourer's wife, and mother of six, was brought to Balaghat the district hospital on February 9 for sterilization. Though she was 12 weeks pregnant with twin girls, the medical team instead of checking her forced her to undergo tubectomy, Rekha died hours after she began bleeding on the operation. Her post-mortem report described "external and internal bleeding" in her uterus from injuries caused by a sharp and pointed instrument as the cause of her death.**


Chhatisgarh Massacare


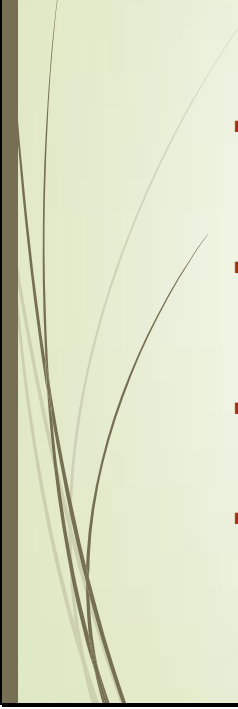


"22 year old Chaiti Bai a mother of two children both under the age of 3 was sick with jaundice and the mitanin/ASHA Worker told her that she could go to the Community Health Center for treatment of her jaundice. The *mitanin* never mentioned sterilization or family planning. Chaiti Bai died after a botched tubectomy operation.

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- On 08.11.2014, a single doctor performed sterilisation surgeries on 83 women in Nemi Chand Trust Private Hospital in Sakri town (Takhatpur District).
 - It was an abandoned private charitable Hospital and Research Centre located 6 kilometers from Bilaspur city.
 - The hospital had been shut hence it was not cleaned for long and was stinking. There were no plans, initially to conduct camp at Sakri however it was deliberately changed because it was easier to bring more women for operation in this area. Similar camps were organised on 10.11.2014 in PHC/CHC at Gorela, Pendra and Marwah blocks. Nearly 140 women were brought to these camps for sterilization. The largest of these camps for 83 women was conducted within a short span of 3-4 hours. The women after going through surgeries, done using the same laparoscope, were made to lie on dirty mattresses placed on the floor.

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- The mass sterilization camp in Chhattisgarh in November 2014 resulted in tragic deaths of the 13 women who were in their 20s and 30s.
 - While 13 died, more than 70 women were left in critical condition following procedures of laparoscopic sterilization and were hospitalized at Apollo Hospital, Bilaspur.
 - This incident was one that raised grave questions once again about the callous treatment given to women, as well as the clear violations of ethical and quality norms in the healthcare system. In several interviews with some of the survivors and their family members, they shared never ending tales of unsafe, unhygienic conditions at the camp and the careless way the sterilizations were conducted resulting in deaths and morbidities among the women.

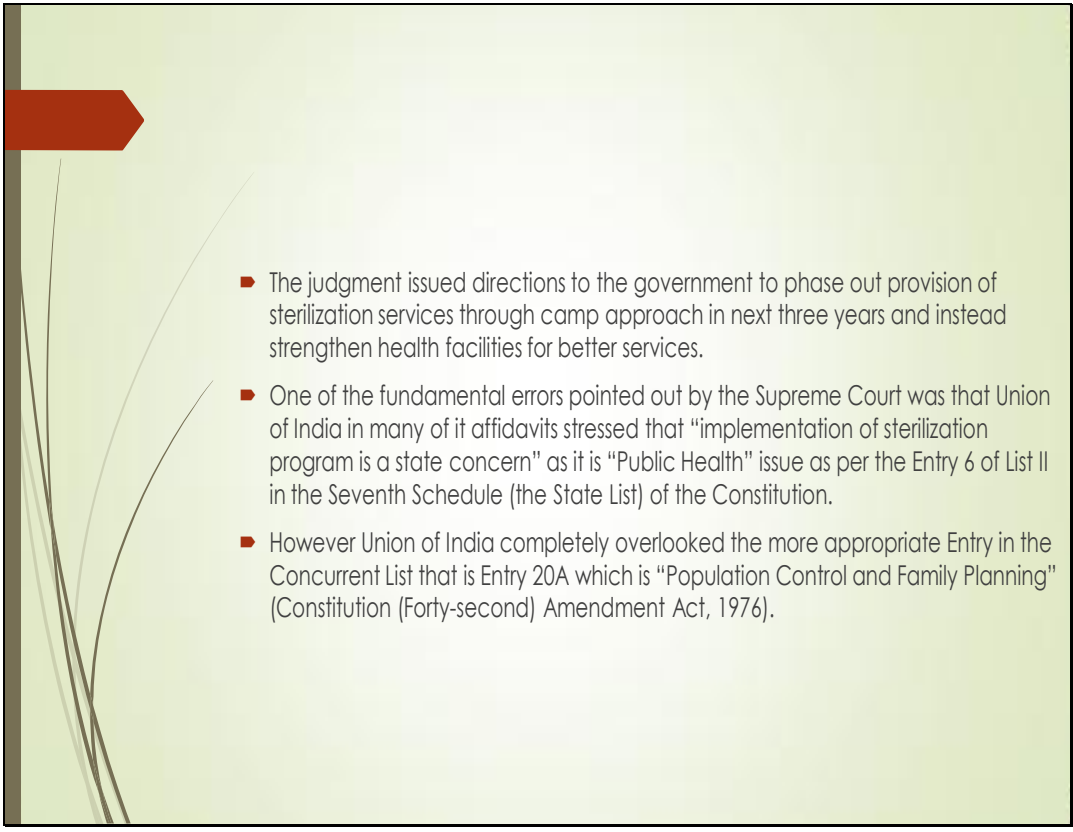
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- The hue and cry at all levels forced the state to establish a one person Judicial Commission of Inquiry headed by a retired District Judge Ms. Anita Jha.
 - As per the Anita Jha Commission's Report, evidence from the victims and their families, CMHO, BMO, civil society groups clearly revealed the violations of the guidelines laid down by the Hon'ble Supreme Court in Ramakant Rai vs. Union of India & Ors. and guidelines laid down by Ministry of Health and Family Welfare in Standard Operating Procedure for Sterilization Services (2006, 2008) leading to the death of 13 women, and serious illness of many more.


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- All the families were landless and their main source of income was daily-wage work. Many women who lost their lives had up to 3 children. Some of them, with infants as small as 3 months old, had undergone the sterilization surgeries.
 - A woman from Baiga Protected Tribal Community was brought to the camp on pretext of treatment for weakness but was sterilized instead. She like the other women was operated upon and left on mattress unconscious. The woman died leaving behind three small children.
 - The violence that took place in this camp against women and the fact that a woman has little or no control over her body, but despite that policy makers see her as the very reason of population growth.
 - Further, her status in the Indian society makes her the perfect scapegoat for the vertically implemented family planning programme, which is solely focused on Sterilization giving little weight to the ability of women to use other forms of contraception.



The Judgment

- In *Devika Biswas Vs Uoi and Others* (Writ Petition (Civil) No 95 of 2012) the honorable Supreme Court of India passed a much-awaited landmark judgment on 14th September 2016. The judgment concluded a five-year long fight against the mass sterilization drives.
- The judgment noted that evidence of poor quality of care during sterilization camps leading to deaths in several cases has been reported from other states including Chhattisgarh, Uttar Pradesh, Kerala, Rajasthan, Madhya Pradesh and Maharashtra during the course of hearing.
- The Supreme Court recognized deaths, failures, complications and coercion as a result of female sterilization have implications for women's Rights to life.

- 
- The judgment issued directions to the government to phase out provision of sterilization services through camp approach in next three years and instead strengthen health facilities for better services.
 - One of the fundamental errors pointed out by the Supreme Court was that Union of India in many of its affidavits stressed that "implementation of sterilization program is a state concern" as it is "Public Health" issue as per the Entry 6 of List II in the Seventh Schedule (the State List) of the Constitution.
 - However Union of India completely overlooked the more appropriate Entry in the Concurrent List that is Entry 20A which is "Population Control and Family Planning" (Constitution (Forty-second) Amendment Act, 1976).

- 
- The court pointed out that Government of the Union of India must take ownership of the family planning programme, which is matter of 'Concurrent list' of the constitution. The responsibility of success and failure of the family planning must rest squarely on the shoulders of UOI and it cannot 'pass the buck to the state government.
 - The judgment also directed the union government as well as the state to undertake regular audits to be conducted of failures and deaths and Annual Reports of the Quality Assurance Committees must include details of such audits held and remedial steps taken.
 - The quantum of compensation fixed under the Family Planning Indemnity Scheme (FPIS) deserves to be increased substantially and the Government of India and the State Government thereof must equally share the burden.



Conclusion

- The Indian Government's efforts toward population control through sterilizations is ill-informed and based upon a patriarchal structure which does not take into account important intersections of gender, socio-economic status, or location (rural or urban) of the people upon which the policies are implemented.
- By mapping the course through which the Family Planning Programme in India came into being, one can see that it has its roots in the Malthusian theory of Population Growth and Control. Many countries including the country it originated in, have negated the theory and have gone for a more humanistic approach towards family planning, focusing more on education, abolition of child marriage, behavior change information and communication

Obstetric Violence and Disrespectful Care



Rajgarh District, Madhya Pradesh



Raipuriya Village, Rajgarh District



5

Obstetric violence and disrespectful maternity care

By

Debasmita Ghosh
HRLN, Guwahati

What is Obstetric Violence (OV)

It is of gender-based violence which occurs during facility-based obstetric care which leads to violation of women's rights including-

- rights to equality
- freedom from discrimination, information,
- integrity, health, and reproductive autonomy.

Cont...

Obstetric violence can be manifested through-

- the denial of treatment,
- the disregard of a woman's needs and pain,
- verbal humiliations,
- invasive practices,
- physical violence,
- unnecessary use of medication,
- forced medical intervention detention in facilities for failure to pay,
- dehumanizing or rude treatment and discrimination or humiliation based on race, ethnic or economic background, age, HIV status, gender non-conformity, among others.

Obstetric violence and disrespectful maternity care in India:

- OV is very common in India. Women face verbal abuse and discrimination; made to deliver on the floor due to lack of beds; not provided pain relief to avoid prolonged births and invasive procedures are performed on them without their knowledge or consent.
- It is found that a large section of women that face obstetric violence belong to lower socio-economic backgrounds. They have to resort to public facilities for birth and expect such behaviour, and therefore do not think it is abnormal, illegal or ethically wrong. But this normalisation is an unacceptable reality that needs to enter the larger discourse.

Some of the reported incidents of OV:

- In 2015, three infants died in Uttar Pradesh's Balia district after their mothers were forced to deliver on the floor even though beds were available at the primary health centre. National Human Rights Commission (NHRC) has taken suo motu cognizance and issued notices to the state government and concerned officials. But the fact is that obstetric abuse is not limited to remote villages or distant towns, it happens quite often in big cities as well. (Times of India, dated 25th Nov, 2015)
- Similarly a nurses in a Delhi government hospital threatened to slap a pregnant woman if she screamed during labour and handed her the unwashed body of her still-born in a polythene bag. HRLN filed a case in the Delhi High Court, which ordered the government to pay Rs 10,000 to the mother as an interim measure (Times of India, dated 25th Nov, 2015)

International legislation on Obstetric Violence:

Venezuela:

- In 2007, Venezuela became the first country in the world to define the concept of obstetric violence.
- The definition of obstetric violence used was the one that appears in **Article 15(13) of Venezuela's Organic Law on Women's Right to a Violence-free Life, which was the first to define this form of violence.**
- The definition of obstetric violence in that law is as follows: "... the appropriation of a woman's body and reproductive processes by health personnel, in the form of dehumanizing treatment, abusive medicalization and pathologization of natural processes, involving a woman's loss of autonomy and of the capacity to freely make her own decisions about her body and her sexuality, which has negative consequences for a woman's quality of life."

• **Mexico:**

In Mexico, between 2009 and 2012 the National Human Rights Commission received 122 complaints related to obstetric violence. Due to these complaints, the government has recently added "obstetric violence" to the "General Law of Women's Right to a Life Free from Violence."



- **Argentina:**

Argentina has recognized women's right to not be subjected to obstetric violence, the violence exercised by health personnel on the body and reproductive processes of pregnant women, as expressed through dehumanizing treatment, medicalization abuse, and the conversion of natural processes of reproduction into pathological ones. Argentina's legislative decision to frame this abuse and mistreatment of women under the rubric of gender-based violence permits the identification of failures in both the healthcare system and women's participation in society

International Conference



- In 2014, the World Health Organisation released a statement titled, Prevention and Elimination of Disrespect and Abuse During Facility-Based Childbirth.
- In 2016, WHO published new guidelines for improving quality of care for mothers and newborns in health facilities, which included an increased focus on respect and preservation of dignity.

Indian laws for the protection of sexual and reproductive rights

That Article 21 of the Constitution includes a fundamental right to health. The Supreme Court has held that the right to health is a “most imperative constitutional goal.” (***Consumer Education and Research Centre v. Union of India, (1995) 3SCC 43; Mahendra Pratap Singh v. State of Orissa, AIR 1997 Ori 37***).

- In ***Laxmi Mandal vs Deen Dayal Hari Nagar Hospital & Ors. (172 (2010) DLT 9)***

The Court recognized adequate maternal care and safe delivery mechanism.

International Conventions

- India is a signatory to the **International Covenant of Economic, Social and Cultural Rights (ICESCR)** which requires states under Article 12 to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”
- In General Comment 14, the ICESCR further states, “health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life with dignity.”

HRLN intervention in Assam

Tombi Bibi Vs State of Assam: 2055/16

Tombi Bibi is the mother-in-law of the deceased Farida Begum. Farida Begum was admitted at CHC for her delivery. Farida was verbally abused by the GNM of the CHC and right after her delivery, GNM asked Farida to shift from labour room to maternity ward by herself. No assistance or stretcher was provided to Farida. When Farida got up from the labour bed all by herself she fainted and fell down. Later, Farida's family helped her to get shifted to maternity ward.

After few hours, Farida wanted to urinate. But she was denied bed pan. On her way to bathroom she fainted again and fell down again. Farida started bleeding heavily and after few hours she died due to excessive bleeding.

- HRLN filed a writ at Gauhati High court because of violation of Right to life and right to health
- The Hon'ble High Court granted an interim relief of Rs. 20,000/- to the petitioner. The case is still pending.

Ending Child Marriage:
Legal Strategies for the enforcement of the Prohibition of Child
Marriage Act, 2006

By

Jayna Kothari
Centre for Law and Policy Research

The PCMA, 2006

Prohibits marriage where the girl is less than 18 years and the boy is less than 21 years of age

§3 - Voidable Marriages

- Child marriages are voidable at the option of the child/either child.
- A petition to nullify the marriage is to be filed within two years of the child attaining majority.
- Even minor children may void their marriage, through a guardian or next friend.

§12 and §14 - Void marriages

- §12 - Child marriages are null and void when a **minor** child is
 - Taken or enticed from his/her lawful guardian
 - Compelled (by force or deceit) to go from a place
 - Sold for marriage, sold after marriage, trafficked or otherwise used for immoral purposes.
- §14 - Marriages entered into in contravention of a injunction) permanent or temporary) of a court under §13 are void.

In *Amnider Kaur v. State of Punjab and Ors.*, (2010 Cri.L.J. 1154), the Punjab & Haryana High Court held that where the marriage of a minor was contracted, it falls under section 12 (a) as she was enticed out of the keeping of her lawful guardian and is void

§5 and 6 - Children

- Children born out of child marriages which may be declared void, will be considered legitimate children.
- Upon declaring the marriage void, custody of the born child can be decided by the district court.

PCMA (Karnataka Amendment) Act, 2016 26th April, 2017

- Amendment brought about on the recommendations of the Justice Shivraj V Patil Committee Report on Prevention of Child Marriages in the State of Karnataka
- Makes all child marriages solemnised after the entry into force of this Act *void ab initio*.
- Makes imprisonment for a minimum period of 1 year in §§ 9, 10, 11 and 13.
- Allows for police officers to take cognizance of child marriage *suo motu*.

§4 – Maintenance

- Is to be granted at option of the District court passing orders to nullify the marriage.
- To be paid by the male contracting party (if he is a major) or his parents/guardians.
- Orders may also be passed with respect to the girl's residence post voiding the marriage

§13 - Injunctions to prevent child marriage

- Judicial Magistrate First Class or a Metropolitan Magistrate may grant a permanent or temporary injunction upon a complaint by a Child Marriage Prohibition Officer, or any person with a reason to believe a child marriage is about to take place.
- The court may also take *suo motu* cognizance of a possible child marriage
- Temporary injunction may be granted without providing opportunity of being heard, keeping in mind urgency.
- Permanent injunction may not be granted without providing opportunity of being heard.

§§ 9 and 10 - Offences and Punishments

All offences are cognizable and non-bailable

Section	Offence	Punishment
§9	Male adult (over the age of 18) being a contracting party in a child marriage	RI up to 2 years or fine up to 1 lakh rupees or both
§10	Solemnising a child marriage (a person who perform, directs, conducts or abets while knowing it was a child marriage)	RI up to 2 years or fine up to 1 lakh

§§ 11 and 13 - Offences and Punishments

All offences are cognizable and non-bailable

Section	Offence	Punishment
§11	Promoting or permitting solemnisation of child marriages/negligently preventing to stop it, by a person in charge of a child. Includes attending/participating No woman is punishable under §11.	RI up to 2 years or fine up to 1 lakh
§13(9)	Knowingly disobeying an injunction of a court against child marriage	Imprisonment (either) for 2 years or 1 lakh rupees fine or both

Independent Thought v. Union of India

- The Supreme Court in October 2017 held that Exception 2 to Section 375 of the Indian Penal Code, the provision that defines the offence of rape, which states that “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape*” must be read down and the age of consent must be read to 18 and not 15 for the purpose of the Exception.
- Criminalized Child Marital Rape
- Recognised the sexual and reproductive health rights of young girls.
- Held that the PCMA 2006 is a secular law and would override all personal laws.

§16 - Child Marriage Prohibition Officers

- Appointed by State Governments either for the whole state or for various jurisdictions within the state.
- He may be vested with the powers of a police officer
- CMPO may be assisted (on request of the State Government) by members of that jurisdiction who have a record of social service or officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation.

CMPO's Duties

- To prevent solemnisation of child marriages
- to collect evidence for the effective prosecution of persons
- to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages
- to create awareness and to sensitize the community of the evils of child marriage.

Legal Strategies for Implementation of the PCMA

- Filing annulment petitions – to annul child marriages already solemnized
- Seeking injunction orders – to stop child marriages
- Maintenance, protection from domestic violence, custody orders
- To activate the CMPOs and police officers
- Child marital rape – to file criminal cases under Section 376
- Push for legal reform – to make child marriages void (like Karnataka)

7

**Improving Access to Contraceptive Information
and Services**

By

Y.K.Sandhya, SAHAYOG



Overview of the presentation

- Introduction
- Commitments to improving access to contraception - London Summit on Family Planning 2012
- The Indian Family Planning Programme
- What is actually playing out - Voices from the ground
- Summing up



Introduction

- 200 million women and girls in developing countries who want to delay or avoid pregnancy are getting pregnant because they do not have access to modern methods of contraception.
- For many of these women, the inability to choose and access family planning cost them their lives.
- Avoiding unintended pregnancies reduces the number of unsafe abortions - one of the main causes of maternal deaths.



Commitments to improving access to contraception - London Summit on Family Planning 2012

- Despite efforts, progress on enabling women and girls to access contraception had largely stagnated.
- The London Summit was a way to generate global commitments to increase access to family planning and accelerate the achievements of MDGs 4 (reducing child mortality), 5 (improving maternal health) 5b (reproductive health) and 6a (HIV prevention).
- The Summit was visualised as building on the momentum created by the UN Secretary General's Global Strategy for Women and Children's Health.
- It was an opportunity to generate global commitments to support countries own ambitions to make **high quality, voluntary** family planning services more **available, acceptable and affordable**.



Goal – Ambitious and Powerful

1. The summit's vision was to ensure that women in developing countries can have the same access to family planning services, information and supply - **without coercion, discrimination and violence** - as women in the developed world
2. Make affordable lifesaving contraceptive information, services and supplies available to an additional 120 million women and girls in the world's poorest countries (defined as those with a Gross National Income of 2,500 USD or less) - a group of 69 countries by 2020. It also sought to sustain coverage for 260 million women with quality FP which would enable them to delay, space or limit births



3. By enabling 380 million women and girls to use contraceptives between 2012 and 2020 the Summit aimed to bring about a –

- ✓ Reduction in maternal deaths by 2,00,000
- ✓ Reduction in infant deaths by 3 million



Principles Laid down

- **Universal access to voluntary** family planning information, services and supplies within the context of broader programmes to achieve sexual and reproductive rights and health related MGDs
- **Equity** by ensuring that the poorest and most vulnerable women and girls have the same access to quality services and supplies as those in developed countries
- Country owned and led focused on national priorities, conditions and needs
- High impact, sustainable intervention designed to increase access for with capacity to extend to the broader continuum of care for RMNCH
- Additional financing for use by country systems, catalytic investments to trigger greater domestic financing, policy and delivery commitments
- Partnership at the country level to include non-state sector as an important contributor to service delivery

- 
- Innovations in financing, systems and service delivery including integration and addressing quality and demand side barriers
 - Funding for efforts that can transform family planning and delivery results
 - Commitment to results, transparency and accountability

Barriers Identified

Governments, civil society and communities were called to tackle the barriers which prevent women and girls using family planning, such as:

- Inadequate political commitment
- Inadequate, inconsistent and unpredictable funding
- Demand limited by social, cultural, policy and financial barriers
- Lack of commitment of increase and improve services
- Weak procurement and supply chains
- Limited supply of quality products and lack of access to a broad range of methods from which to chose
- High price of mid to long-acting and reversible contraceptive methods and lack of skilled providers

The Indian Family Planning Programme

India 's population policy is:

- obsession with population control,
- encourages a target based approach with incentives
- There is a lack of women's autonomy in reproductive decision-making,
- Female sterilisation, a terminal method, has for decades, remained the mainstay of the national programme and has been promoted aggressively.

Take a look at the numbers:

- Use of any modern method of contraception – 47.8%
- Female sterilization – 36% (has remained unchanged in 10 years)
- Male sterilization – 0.3% (has drop from 1% 10 years back)
- Current users told about side effects – 46.5%

What is playing out on the ground: Headlines since Jan 2018

- Varanasi doctor leaves syringes inside woman's body during sterilisation operation
- Woman found pregnant 16 days after sterilization in Uttarakhand
- Woman dies in the operation theatre- Dungarpur, Rajasthan
- ANM reveals that they are forced to get women for sterilization
- Urinary bladder of two women accidentally cut during sterilization procedure in Jharkhand
- Garhwa District in Jharkhand, officials are being rebuked for not having completed their targets – could complete only 2250 female sterilizations by 15th Jan 2018 against the target of 72,000 for the 2017-18 FY



Summing Up

- **Our contraceptive programme is not rights based**
- Abuse and coercion run deep in India's family planning programme
- Violations of SRHR are the norm –no choice, no informed consent, no focus on acceptability, limited availability, lack of quality and no accountability
- Neither does it address gender based discrimination
-Women are still seen as 'soft targets'

8

Coercive Population measures

By

Sarita Barpanda

Coercive Population Measures

Javed & Ors. v. State of Haryana, Supreme Court AIR2003 SC3057



Sarita Barpanda

Introduction.....

- India's reproductive health policy is firmly rooted in state enforced discriminatory practices.
- The state continuously denies women control over their reproductive choice through services like mass hysterectomy, unethical sterilization, and abolition of adolescent sexual reproductive health education and policies like the two child norm;
- From 1951 to 2001, India's population grew from 360 million to 1020 million. This growth has been characterised as a '**population explosion**'. The antidote, we are told is the punitive enforcement of the two-child norm.



- All nations typically go through three phases:
 1. the first of high birth rates and high death rates, (From 1901 to 1921, birth rates were high and death rates were high, subsequently after 1921 population remained stable, and both birth rate and death rate were equal).
 2. the second of high birth rates and low death rates and (from 2001 onwards birth rate has declined marginally, however death rate have fallen to 1/3rd of what it was).
 3. the third of low birth rates and low death rates.
- After World War II, advances in health technology – including the discovery of antibiotics – caused a dramatic decline in the death rates. This caused population to grow at an unprecedented rate. Eighty four percent of India's population increase took place during this period.
- What is commonly not known is Total Fertility Rate (TFR) i.e. the average number of children a woman would have, came down from 6 in 1951 to 3.2 in 2001. Yet the population continues to grow not because of the family size but because of, what is called, 'population momentum'.
- This is an accelerated in-built growth due to the high percentage of young people (60 percent) in the population who, even as they have fewer children, produce large quantum increases. This takes place despite the fact that family size is declining across the board for rural and urban families and for poor and middle class families alike.

- There is also a common myth and misconception that poorer people and particularly those in rural areas and slums are having too many children and there were many superficial comparisons made with China and its so called successful one-child norm policy.
- China's TFR drop from 2.8 in 1979 to 2.0 in 1991 was comparable to Kerala's TFR drop from 3.0 in 1979 to 1.8 in 1991, the difference being that as compared to China's atrocious human rights record, in Kerala there was no coercion.
- Kerala emphasised and focused on education and development.
- How- ever the Chinese decline also stemmed from the emphasis placed on education by the Chinese Communist Party during the prior decade - 1970-1979.

ICPD Cairo Conference 1994

- There was a paradigm shift from population control to reproductive health soon after the Cairo Conference. Nations realized that education, development, empowerment of woman and welfare and protection of children was a better way to lower the family size rather than punitive disincentives. It also emphasized that the focus would be on quality of life and that there would be no force, coercion, incentives or disincentives.
- India taking a cue from the Cairo Conference introduced the target free approach and the national population policy (NPP) 2000. the NPP, 2000 was a policy document which shifted from 'emergency model' family planning approach and introduced the target free, '**client focused gender sensitive' 'demand driven instead of command driven'** approach.

Javed & Ors. v. State of Haryana, Supreme Court AIR 2003 SC 3057

- The two-child norm came in by a side wind. A few of the states like Haryana, Rajasthan, Odisha, Bihar and others, took a decision to disqualify people from contesting local elections. This was a purely political decision, which impacted many of the poor who had more than two children and were unable to contest elections. There also was a directive from the government due to which many were disbarred from holding government jobs.
- Persons who were disqualified from contesting Panchayat elections in Haryana filed a petition in the Supreme Court impugning the constitutionality of the state notifications laying down the norm.

Facts

- Under Sections 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994, no person with more than two children could serve in local government as Sarpanch or stand as a member of a Panchayat Samiti or Zila Parishad.
- The disqualification provision went into effect one year after the Act was passed. Thus, the birth of any children conceived up to three months after the Act's passage would not serve to disqualify their parents from the government posts; this was intended to give adequate time for people to learn of the law.
- In addition, the Act included a provision for resolving disputes about whether individuals were disqualified under the law. One stated objective in passing this law was to promote the Family Welfare/Family Planning Programme, which aims to promote the two-child norm and encourage family planning methods to limit family size.

Facts.....

- The Petitioners, all individuals who had been disqualified under the Act, argued
 - (i) that the provision is arbitrary and hence violative of Article 14 of the Constitution;
 - (ii) that the disqualification does not serve the purpose sought to be achieved by the legislation;
 - (iii) that the provision is discriminatory;
 - (iv) that the provision adversely affects the liberty of leading personal life in all its freedom and having as many children as one chooses to have and hence is violative of Article 21 of the Constitution; and
 - (v) that the provision interferes with freedom of religion and hence violates Article 25 of the Constitution."

Outcome

- According to the Supreme Court, the Act satisfied due process requirements by postponing the enforcement date by one year, thus leaving space for the birth of any children conceived around the time the Act was passed, and by providing adequate procedures for disputing one's disqualification under the Act.
- Article 14 of the Constitution prohibits arbitrary classifications and discrimination based on sex, race, class, caste, religion, and place of birth. The constitutional test for acceptable classifications is that the resulting categories must be intelligibly different and the classification must be reasonably related to an object of the statute.
- Here, the Court found that the distinction between people with two children and people with more than two children was clear and non-arbitrary. Because the statute aimed to promote the two-child norm, the Court found it was rational to distinguish between people with only two children and people with more than two, and to bar the latter from serving in the enumerated local government positions.

- The Supreme Court found no fault with the State of Haryana for having enacted the legislation, and further stated that it is for others to emulate.
- The court was clearly of the opinion that the impugned provision was neither arbitrary nor unreasonable nor discriminatory.
- The court further statedthe disqualification contained in Section 175(1) (q) of Haryana Act No. 11 of 1994 seeks to achieve a laudable purpose - socio-economic welfare and health care of the masses and is consistent with the national population policy. It is not violative of Article 14 of the Constitution.
-In our view, disqualification on the right to contest an election by having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.

Concerns against the judgment

- The decision of the apex court in Javed v/s. State of Haryana is a classic example of how mistakes can be made while dealing with an intricate social issue. First it relied on an obsolete 1960s Club of Rome framework and characterised "the torrential increase in the population....as more dangerous than a Hydrogen bomb" (Russel). The truth is that India has experienced the sharpest fall in decadal growth from 23.81 in 1991 to 21.34 percent in 2001. This is the lowest population growth rate since Independence.
- Secondly, it refers to the five year plans (the first to the seventh (ending 1991) which emphasised on punitive disincentives) and fails to notice the land- mark departure in approach in the Cairo Conference (1994) with the emphasis on development, quality of life and women welfare and the rejection of disincentives.
- Thirdly, the court failed to notice that none of the grounds taken in the petition related to the impact on women. Towards the end of the judgment under the title "incidental questions" reference is made to the impact on women but even these are dismissed out of hand. The court was not informed that population experts throughout the country were unanimous in their view that the impact on poor women would be immediate and severe.

Implications and Fallout

- Research shows Orissa, Rajasthan, Haryana and Madhya Pradesh that the norm to disqualify candidates had led to the desertion of wives and families, seeking of abortions with the associated abortion related health risks, giving away of children for adoption and initiation of new marriages by male elected members. Women bear the brunt of the disqualification clause.
- For breach of the two-child norm several states have even put together a package of punitive measures which includes exclusion from elections, exclusion from ration cards, kerosene and other BPL incentives, denial of education in government schools to the third child and withdrawal of welfare programmes for SCs/STs.

- The two child norm has impacted the lives of the poor women in India. The Total fertility is 2.1 percent and among illiterate women as compared to 1.99 percent for the middle classes. The infant mortality rate among SCs, STs and OBCs is 83, 84 and 76 percent respectively as compared to 62 percent for others. These sections have a high wanted fertility rate due to the prevailing high infant mortality rate.
- Clearly, to impose the two-child norm is to widen the inequality gap among the people as the disincentives would disproportionately impact on the already deprived population. More terrible, the two-child norm would provide an impetus for an increase in sex selective abortions and female foeticide, worsening the alarming decline in the child sex-ratio noticed in the 2001 Census.

- Till date Rajasthan, Andhra Pradesh, Odisha, Maharashtra, Gujarat, Uttarakhand, and Bihar have two-child policies in place, ranging in their degrees of punitive outcomes when breached.
- As of September 2017, Assam became the eighth state to effect a two-child policy, with possibly the most punitive measures yet – barring anyone with more than two children from running for any kind of elections, holding a government job, or being eligible for government schemes and entitlements, such as nutritional entitlements for pregnant women who are below the poverty line.
- In October 2017, Jharkhand also announced its intention to follow the two-child norm with regard to eligibility in elections.
- All of the aforementioned states have high levels of impoverished communities from scheduled castes and tribes, and have bad records with regards to female literacy and school drop-out rates.

Conclusion

- The two-child norm is coercive, oppressive, discriminatory and ill- conceived maneuver that targets poor people and women, doing little to address pressing issues such as the unmet need for contraception and unsafe abortions resulting from unintended pregnancies.
- Despite stereotypes and misconceptions, many impoverished people do not *want* to have large families, but they are prevented from being able to space their pregnancies by being denied access to affordable, confidential, and dignified contraceptive options. In addition to this, contraceptive methods such as condoms and even oral contraceptive pills are still stigmatised and are associated with false notions of promiscuity. India's conservative attitudes regarding sex, the family, and relationships, results in many people being ashamed or unwilling to discuss contraceptive options.
- The answer to ensuring dignity, health, and autonomy to all the people of India – not just those who can afford and are able to access private healthcare – is a rights-based, women friendly approach to reproductive health. The need of the hour is to shift the discourse from demographic goals to individual needs.

9

Understanding latest amendments in Criminal Law

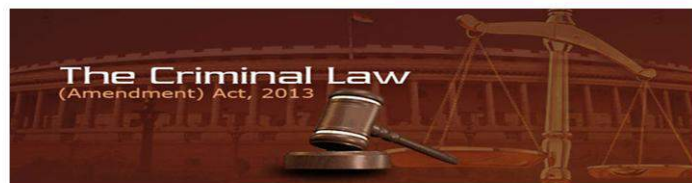
By

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Understanding latest amendments to criminal law



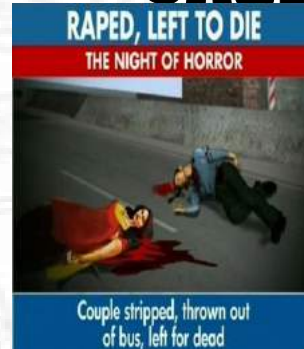
BY
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NIRBHAYA GANG RAPE CASE

State v. Ram Singh and another.

- THE UNFORTUNATE EVENT
- PUBLIC OUTCRY
- CONSTITUTION ON VERMA COMMITTEE
- DEATH OF THE NATION'S BRAVEHEART
- CRIMINAL LAW ORDINANCE (FEB, 2013)
- CRIMINAL LAWS AMENDMENT ACT, 2013
- March 2013, Ram Singh found dead in prison
- In Aug, 2013 one of the accused (Allegedly the most brutal of all), a minor given three years sentence in a reformatory
- The other four accused convicted under Sections 302, 120-B, 365, 366, 376(2)(g) and Section 377
- Judgment announced on Sept 13, 2013 by Add. Sessions Judge of Special Fast Track Court.
- Death penalty to all.



Amendments in IPC

- Clause seven to Section 100
- Section 166A
- Section 166B
- Section 228A(1)
- Section 326A and 326B
- Section 354, 354A, 354B, 354C and 354D
- Sections 370 and 370A
- Section 375, 376, 376A-E
- Section 509



Section 100. When the right of private defence of the body extends to causing death

“The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

- First- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
- Secondly- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
- Thirdly- An assault with the intention of committing rape;
- Fourthly- An assault with the intention of gratifying unnatural lust;
- Fifthly- An assault with the intention of kidnapping or abducting;
- Sixthly- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release
- **Seventhly- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”**

Section 166A. Public servant disobeying direction under law

Section 166A: Whoever, being a public servant,-

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.
- As per Schedule 1 of The CrPC, 1973 refusal to register an FIR in any of the above offences is a cognizable and bail able offence.

Section 166B. Punishment for non-treatment of victim

Section 166B: Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

ACID ATTACKS Sections 326A and 326B



Voluntarily causing grievous hurt by use of acid etc.

- **Section 326A.** Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:
- Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:
- Provided further that any fine imposed under this section shall be paid to the victim.

Voluntarily throwing or attempting to throw acid

- **Section 326B.** Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.
- Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.
- Explanation 2.— For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

Section 354A. Sexual harassment and punishment for sexual harassment.

1. A man committing any of the following acts—
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. a demand or request for sexual favours; or
 - iii. showing pornography against the will of a woman; or
 - iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both



Section 354B. Assault or use of criminal force to woman with intent to disrobe.



Source: www.astis.com

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

IPC- Section – 354 C Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have no expectations of being observed by a perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of term which shall not be less than one year but may extend up to three years and shall also be liable to fine, and be punished on the second or subsequent conviction with imprisonment of either description for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine

Exp. 1- For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victims genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public



Source: sunnewsnetwork.ca

Exp. 2- Where the victim consents to the capture of the images or act, but not to their dissemination to third persons, such dissemination will be an offence

Section – 354D Stalking

(1) Any man who-

- i. follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- i. It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or
 - ii. It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
 - iii. In the particular circumstances such conduct was reasonable and justified.
- Punishment: First conviction 3 years, subsequent conviction 5 years.



Trafficking of a Person Section 370.

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by

First.-- using threats, or

Secondly.-- using force, or any other form of coercion, or

Thirdly.-- by abduction, or

Fourthly.-- by practising fraud, or deception, or

Fifthly.-- by abuse of power, or

Sixthly.-- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.-- The expression "exploitation" shall include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.-- The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then such public servant or police officer shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life, and shall also be liable to fine.'

Exploitation of a Trafficked Person



'370A. (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.'

CATEGORIZATION OF RAPES UNDER THE IPC

STATUTORY RAPE (Clause sixthly of S. 375)

- ❖ With a girl below 18 years of age
- ❖ Now under POCSO boys below 18 years of age also protected against sexual assault.

AGGRAVATED FORMS OF RAPE [S. 376(2)]

BRUTAL RAPE (S. 376A)

MARITAL RAPE (S. 376B)

ABUSE OF AUTHORITY (S. 376C)

GANG RAPE (S. 376D)

SECTION 376. PUNISHMENT FOR RAPE

Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever,—
 - a. being a police officer, commits rape—
 - i. within the limits of the police station to which such police officer is appointed; or
 - ii. in the premises of any station house; or
 - iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
 - b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
 - c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
 - d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - g. commits rape during communal or sectarian violence; or
 - h. commits rape on a woman knowing her to be pregnant; or
 - i. commits rape on a woman when she is under sixteen years of age; or
 - j. commits rape, on a woman incapable of giving consent; or
 - k. being in a position of control or dominance over a woman, commits rape on such woman; or
 - l. commits rape on a woman suffering from mental or physical disability; or
 - m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
 - n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

BRUTAL RAPE Section 376A

Punishment for causing death or resulting in persistent vegetative state of victim.

- 376A. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life or with death

MARITAL RAPE

What constitutes Marital Rape

- Sexual intercourse or sexual acts by a man with his wife below 15 years of age. (Exception 1 To Section 375)

Punishment: 7 years to life imprisonment

- Sexual intercourse by a husband upon his wife living separately under a decree of separation or otherwise without her consent (Section 376B).

Punishment: Minimum 2 years, may extend up to seven years

Legal protection against marital rape

- Amounts to sexual violence under the Protection of Women against Domestic Violence Act, 2005.
- Amounts to cruelty (physical and mental) under Section 498, IPC.



ABUSE OF AUTHORITY SECTION 376C

Sexual intercourse by person in authority.

376C. Whoever, being—

- a. in a position of authority or in a fiduciary relationship; or
- b. a public servant; or
- c. superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or
- d. on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him,

such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

GANG RAPE (S. 376D)

- When a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than 20 years but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
- **Provided** that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
- Provided further that any fine imposed under this section shall be paid to the victim.

SECTION 376E. PUNISHMENT FOR REPEAT OFFENDERS

Whoever has been previously convicted of an offence Punishable under Section 376 or Section 376A or Section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be Punished with imprisonment for life which shall mean Imprisonment for the remainder of that person's natural life, or with death.

LIVE LAW.IN
Death Penalty to three convicts in the Shakti Mills Gang Rape Case, Section 376(e) IPC applied for the first time

Amendments in Cr.PC

- Proviso to Section 26 (a)
- Proviso to 54(a)
- Provisos to 154(1)
- Certain words inserted in proviso to Subsection 1 of Section 160
- Proviso to 161(3)
- Section 164(5A)
- Section 173(2)(i) (h)
- Section 197(1) Explanation inserted.
- Section 198B inserted
- Proviso to Section 273
- Section 309(1) substituted
- Section 327(2) amended
- Sections 357B and 357C inserted.

Amendments in Indian Evidence Act

- Section 53A
- Section 114A
- Section 119
- Proviso to Section 146

10

**The transgender persons judgement by the Supreme Court
of India
NALSA Vs UOI & Others**

The transgender persons judgement by the Supreme Court of India NALSA Vs UOI & Others



Contemporary developments in the law relating to violence
and discrimination against women and transgender persons
19th to 23rd June, Goa
HRLN and the Center for Constitutional rights

Trans Identities in India

Collective living

- Hijra
- Thirunangai

Regional religious identities

- Shivshakti,
- Jogappa/Jogthi
- Aravani

Gendered sexual identities

- Kothi
- Mangalamukhi

Secular Trans Identities

- Nupimanbi
- Transwomen
- Transmen

- Gender queer and gender fluid
- Intersex

Hijra



Nupimaanbi



Shivashakti, Jogappa, Jogthi



Kothi and Mangalamukhi



Transwomen and Transmen



Gender queer



Intersex



Justice K.S. Paniker Radhakrishnan Justice Arjan Kumar Sikri

April 15, 2014 Judgement

- o NALSA(National Legal Services Authority of India)
– primary petitioner
- o Poojya Mata Nasib Kaur Ji women Welfare society
And
- o Lakshminarayana Tripathi.

Special features of this Judgement

- Declared Transgender people – third gender
- Constitutional rights equally applicable
- Right to self- identity
- Socially and economically backward classes – provide reservation in education and jobs
- Institute Transgender Welfare Boards in States
- Provide health care in Govt., Hospitals including free SRS
- Non- recognition of civil rights marriage, adoption etc –discriminatory
- Insisting SRS is illegal
- State should Address stigma and do Public awareness
- Judgement should be in the light of MOSJE Report of the Expert Committee on the Issues related to Transgender persons 21, July 2014,

Legal Progress based on NALSA Vs UOI

- Preetika Yashini –
Tamilnadu become
Police Officer with
the order of
Tamilnadu High
Court based on
NALSA Vs UOI



Legal Progress based on NALSA Vs UOI

- Sonia Sheik – acid attack survivor able to get her first round of compensation 3 Lacs by the order of Hyderabad high court based on NALSA Vs UOI



Legal Progress based on NALSA Vs UOI

- Reshma Prasad from Bihar – SC order - Direction to centre for third column PAN – to link to Aadhaar for accurate identity proof



Legal Progress based on NALSA Vs UOI

- o Grace Bhanu– Dalit Trans Activist
Tamilnadu got seat
in Engineering
& Tareeka Bhanu got
seat in Medicine with
the order of
Tamilnadu High
Court based on
NALSA Vs UOI



Legal Progress based on NALSA Vs UOI

- o Swati Bidhan Baruah
moved Guwahati
High Court –
constitute a
Transgender
Welfare Board as
per NALSA Vs UOI



Policy level Progress based on NALSA Vs UOI States

o States which come out with Policies till now

- ❖ Kerala
- ❖ Maharashtra
- ❖ Karnataka
- ❖ Chattisgarh
- ❖ Andhra Pradesh
- ❖ Jammu & Kashmir

Policy level Progress based on NALSA Vs UOI States

o States still working on Policies

- ❖ Delhi
- ❖ Telangana
- ❖ Assam
- ❖ Bihar
- ❖ Odisha
- ❖ West Bengal

Policy level Progress based on NALSA Vs UOI Other State Actors

- UGC issued circular 29.10.2014 to all the Universities country to enrol transgender students
- NIRDPR – Inclusion of Transgender Persons in the schemes under:
 - ❖ DDU-GKY
 - ❖ MGNREGA
 - ❖ RSETI

Challenges :

- Indian Penal Code 377
 - British Law of 19th Century
 - Anti-sodomy law: “unnatural sex”
 - Police use it to threaten trans people who are often more visible than LGB communities on the street
- Hyderabad Eunuchs Act of 1919
 - Criminalizes underage castration
 - Denies hijras right to adopt and raise children
 - Forced registration of hijras within this region
- Rape Laws
- Reservation in Education and Employment
- Name and Gender Change policies

Rights of Transgender Persons Bill, 2014

- Reservation in private as well as public education and jobs
- (2% quota)
- Designated transgender courts to oversee all cases involving transgender people
- Transgender commissions to be established at both national and state level
- Designated employment exchange (bureaucratic office) for transgender people
- No transgender child will be removed from family without due process in competent court
- Penalty of 1 year imprisonment and 100,000 INR for hate speech against trans people
- Bill approved unanimously by India's Rajya Saba (upper house)
- Bill never brought for debate in India's Lok Saba (lower house)

Transgender Persons (Protection of Rights) Bill, 2016

- Defines transgender as self-identified intersex only
- Provides for screening committees to determine gender identity (doctor, lawyer, social worker, state official, two community members)
- Provides no reservation in education or employment
- Makes it easier for families to transfer their transgender or gender non-conforming children to state-run facilities
- Criminalizes begging and enticement of begging (traditional occupations of hijras, jogappas, etc.)

Rally: Hijra Teehee Bacha, 2016

- First protest of the Bill in the nation held in Hyderabad
- Marches to protect hijra culture and badhai system
- 3000 hijra and trans women from across the state of Telangana attended
- Group unites different hijra communities against the Bill



Strategies: Round table discussions



**Strategies:
Moot court**



**Strategies:
Advocating with Parliamentarians**



Strategies: Press events



Strategies: Social Media Campaign

For any Transperson, identifying themselves is an important part of their coming out process and it is important that people support and respect that

— RACHANA MUDRABOYINA,
TELANGANA HJRA INTERSEX TRANSGENDER SAMITHI

THIS BILL IS UNDEMOCRATIC!!

**NEITHER OF THE TRANS PEOPLE,
NOR FOR THE TRANS PEOPLE,
NOR BY THE TRANS PEOPLE.**

THIS BILL MUST GO!!

#STOPTRANSBILL2016



Strategies: Social Media Campaign



My body!
My experience!
My sexuality!
My choice!



Self-determination is a Human Right!

Stop
Trans Bill
2016!

17th Dec, 2017
Parliament Street
New Delhi

"Gender is the poetry each of us makes out of the language we are taught."

- Leslie Feinberg,
(Trans Liberation: Beyond Pink or Blue)

Strategies: National Protest in Delhi



**Regional
Protests:
Tamil Nadu**



**Regional
Protests:
Kerala**



**Regional
Protests:
West
Bengal**



**Regional
Protests:
Assam**



**Regional
Protests:
Karnataka**



Changes: Transgender Persons (Protection of Rights) Bill, 2018

- As a result of these protests major changes have been made to the Transgender Persons Bill
- Now defines transgender as “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-women (whether or not such persons has undergone sex reassignment)”
- Medical screening requirement dropped
- Includes definition of discrimination
- Provides for civil rights like marriage and adoption
- Includes protection under all criminal laws
- Includes education and job reservations, insurance schemes
- Provides that private insurance must cover medical expenses of transitioning
- DRAFT OF BILL NOT YET PUBLICLY CIRCULATED

Unresolved Issues with the Changed Bill

- Still criminalizes begging and enticement to begging
- No inclusion of educational and job reservations
- Still no definition of discrimination
- No mechanisms for redressal of trans legal issues
- Proposed National Transgender Council will have no binding authority to enforce its decisions

Ongoing Trans Activism:

- o Collectives Advocating Change to the transgender bill while implementing the NALSA judgement:
- o Women Against Sexual Violence and State Repression (WSS)
- o National Alliance for People's Movements (NAPM)
- o Sambora (a transmen group)
- o Telangana Hijra Intersex Transgender Samithi (THITS)
- o #TransRightsNow
- o Anam Prem Trust
- o Human Rights for Law Network

Ongoing Trans Activism

- o National Institute for Rural Development and Panchayat Raj is working on a national level transgender research and policies while lobbying for changes in the bill
- o NCCI (National Council for Churches India) is writing manuals for Indian churches on working with trans people
- o Humsafar Trust is working on Transcend, a project to tap corporate social responsibility funds to create livelihood options for trans people

Ways to support the Trans Movement

- Join the fight on social media (Facebook and Twitter):
 - #StopTGBill2016
- Issue statements about India's Transgender Bill from your collectives and organizations
- Engage in comparative research on laws and policies that affect transgender people
- Engage in comparative socio-economic, political, and anthropological research of Trans movement

11

**Human Trafficking: Latest Studies and
Information for the development of a PIL**

By

-Jitendra Chaturvedi
Founder & Chief Executive
DEHAT, Bahraich-UP

12

Marital Rape

**Human Rights Law Network
2018**

Marital rape

Human Rights Law Network
2018

1

Rape and Marital rape

- Rape or marital rape is in violation of not only individual's dignity but also of the society as a whole.
Difference between rape and marital rape:
- Rape is recognized as a crime in the society, Marital rape is not.
- Rape: unmarried person
- Marital rape: married person

2

Indian Penal Code, 1860

Section 375. Rape – A man is said to commit “rape” if he:

Exception 2 – Sexual intercourse or sexual acts **by a man with his own wife, the wife not being under fifteen years of age, is not rape.**

3

Child Marriages

4

Wife not being **under fifteen years** of age, is not rape

Independent Thought Vs. UOI (2017 10 SCC 800)

While **we are not concerned with the general question of marital rape of an adult woman but only with marital rape of a girl child between 15 and 18 years of age in the context of Exception 2 to Section 375 of the IPC**, it is worth noting the view expressed by the Committee on Amendments to Criminal Law chaired by Justice J.S. Verma (Retired). In paragraphs 72, 73 and 74 of the Report it was stated that the **out-dated notion that a wife is no more than a subservient chattel of her husband has since been given up in the United Kingdom**. Reference was also made to a decision of the European Commission of Human Rights which endorsed the conclusion that **“a rapist remains a rapist regardless of his relationship with the victim.”**

5

It is quite clear that a rapist remains a rapist and marriage with the victim does not convert him into a non-rapist. Similarly, a rape is a rape whether it is described as such or is described as penetrative sexual assault or aggravated penetrative sexual assault.

It must be remembered that those days are long gone when a married woman or a married girl child could be treated as subordinate to her husband or at his beck and call or as his property.

6

Exception 2 to Section 375 of the IPC creates an artificial distinction between a **married** girl child and an **unmarried** girl child with no real rationale and thereby does away with consent for sexual intercourse by a husband with his wife who is a girl child between 15 and 18 years of age.

7

Merely because child marriages have been performed in different parts of the country as a part of a **tradition** or **custom** does not necessarily mean that the tradition is an acceptable one nor should it be sanctified as such. Times change and what was acceptable the few decades ago may not necessarily be acceptable today.

8

There is therefore no doubt that the impact and effect of Exception 2 to Section 375 of the IPC has to be considered not with the blinkered vision of the days gone by but with the social realities of today. Traditions that might have been acceptable at some historical point of time are not **cast in stone**. If times and situations change, so must views, traditions and conventions.

9

In effect therefore the practice of early marriage or child marriage even if sanctified by tradition and custom may yet be an undesirable practice today with increasing awareness and knowledge of its detrimental effects and the detrimental effects of an early pregnancy. Should this traditional practice still continue? We do not think so and the sooner it is given up, it would be in the best interest of the girl child and for society as a whole.

10

Constitutional morality forbids us from giving an interpretation to Exception 2 to Section 375 of the IPC that sanctifies a tradition or custom that is no longer sustainable.

The view that marital rape of a girl child has the potential of destroying the institution of marriage cannot be accepted.

Viewed from any perspective, there seems to be no reason to arbitrarily discriminate against a girl child who is married between 15 and 18 years of age.

11

Young girls are married in thousands in the country, and as Section 13 of the PCMA indicates, there is an auspicious day – *Akshaya Trutiya* - when mass child marriages are performed. Such young girls are subjected to sexual intercourse regardless of their health, their ability to bear children and other adverse social, economic and psychological consequences. Civil society can do just so much for preventing such child marriages but eventually it is for the Government of India and the State Governments to take proactive steps to prevent child marriages so that young girls in our country can aspire to a better and healthier life.

12

Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to Section 375 of the IPC to now be meaningfully read as: “Sexual intercourse or sexual acts by a man with his own wife, **the wife not being under eighteen years of age**, is not rape.

13

Marital Rape

14

Justice Verma Committee Report on Marital Rape

- Legal prohibition on marital rape should be accompanied by changes in the attitudes of the prosecutors, police officers and those in the society.
- Marital relationship between the perpetrator and the victim is not a valid defense against the crime of rape.
- Recommended the removal of the exception of rape.

15

International case law

- 51 countries have criminalized marital rape
- Supreme Court of Nepal
Forum for women, law and devp vs. His Majesty's Government of Nepal.

"the classification of the law that an act committed against an unmarried girl to become an offence and the same act committed against a married woman not become an offence is not a reasonable classification"
- European Court of Human Rights: in *C.R. vs UK*
A rapist remains a rapist regardless his relationship with the victim.
- Canadian Supreme Court: in *R. vs. J.A*
The relationship between the accused and the complainant "does not change the nature of inquiry into whether the complainant consented to sexual activity."

16

Solutions /PIL

For transgender persons right

Solutions/PIL

For Transgender Persons Rights

1. Procedure for changing gender identity to be based on dignity.
2. Gender neutral toilets
3. Education- This is a number one priority
4. Inheritance Rights
5. Protection of Traditional practices
6. Transgender marriage
7. Segregation and Security with dignity in Jails and Hospitals- No solitary confinement for transgender persons.

8. Reservation and Scholarships public and private sector
9. Problem of elderly transgender people.
10. Uniformity in Govt. Schemes (Pension, housing etc.)
11. Purpose of Screening Committee (Since NALSA judgment has given rights for Self Identification)
12. GO 20 Scheme launched by Andhra Pradesh government

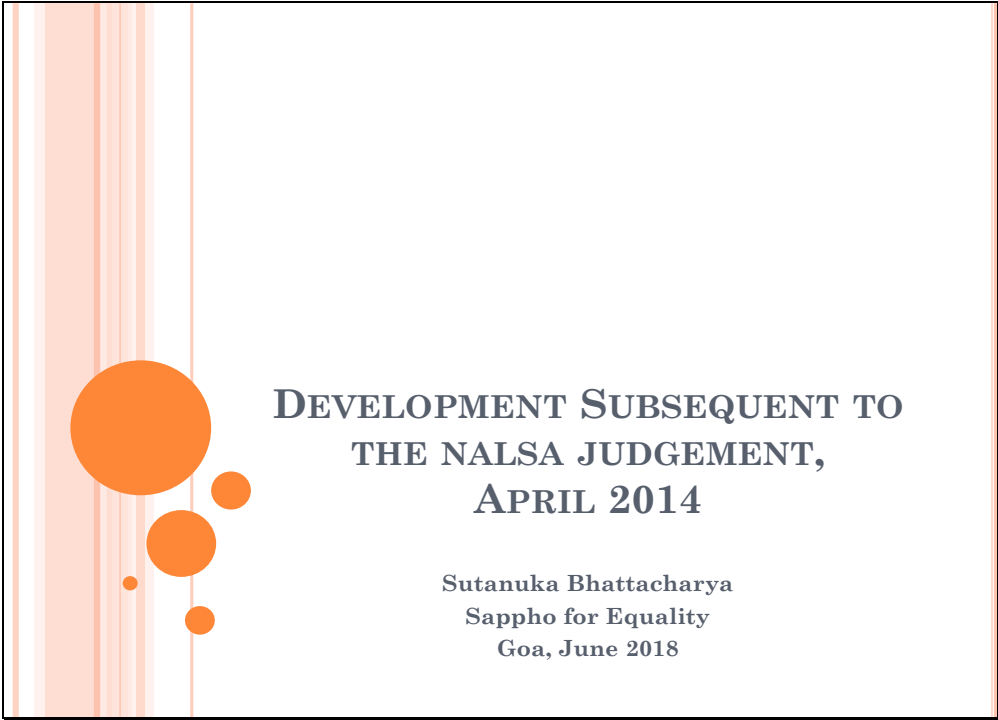
13. GO 16- There will be a Screening Committee, the members of committee would be:
 - a) Gynecologist
 - b) Psychiatrist
 - c) Endocrinologist

14

**Development Subsequent to the NALSA
judgment,**

April 2014

**Sutanuka Bhattacharya
Sappho for Equality**



PENSION AND OTHER SCHEMES FOR TRANSGENDER PERSONS

(AS ON OCTOBER 2017*)

- Karnataka—In Oct 2013, the Karnataka government initiated the Mythri pension scheme for trans persons in the state.
- Odisha—Trans persons have been given BPL cards and schemes that provide free housing, 100 days of paid work annually, pensions and loans to start up their own businesses. They would also be entitled 5 kg of food grains every month under India’s National Food Security Act.

* Trans Rights in India, A Policy Brief by the YP Foundation
(<https://static1.squarespace.com/static/5837d4b3725e25680b8b758e/t/5ac3021b758d46d5fbb41c8/1522729539201/Longformat%2Billustrations+web.pdf>)



PENSION AND OTHER SCHEMES FOR TRANSGENDER PERSONS

(AS ON OCTOBER 2017*)

- Kerala—State Policy for transgender persons was announced in 2015. Pensions above the age of 60 were announced. Kochi Metro Rail Limited authorities came forward offering jobs to transgender persons. University of Kerala has also announced a trans policy promising safeguards against ragging, discrimination, special facilities, awareness programmes and barrier free access to education.
- Tripura - In 2015, the government announced pension schemes of Rs. 500 for trans people in the state.

* Trans Rights in India, A Policy Brief by the YP Foundation
(<https://static1.squarespace.com/static/5837d4b3725e25680b8b758e/t/5ac3021b758d46d5fbd41c8/1522729539201/Longformat%2Billustrations+web.pdf>)

SOME HIGH COURT JUDGMENTS THAT USED THE NALSA

- Nangai vs The Superintendent Of Police on 17 April, 2014, Madras High Court
- Shivani Bhat vs State Of Nct Of Delhi & Ors on 5 October, 2015, Delhi High Court
- K.Prithika Yashini ... vs The Chairman on 3 November, 2015, Madras High Court
- Ashish Kumar Misra (Advocate) [P.I.L.] ... vs Bharat Sarkar Thru. Sachiv ... on 15 April, 2015, Allahbad high Court
- Ganga Kumari vs State & Ors on 13 November, 2017, Rajasthan High Court Jodhpur
- Atri Kar vs The Union Of India & Ors on 16 March, 2017, Calcutta High Court

LAWS CRIMINALISING TRANSGENDER PERSONS

- The Immoral Traffic (Prevention) Act, 1956
- Soliciting
- Anti beggary laws
- Section 377 of Indian penal code
- Karnataka Police Act (36A. Power to regulate eunuchs)
- Public Nuisance - Section 268 in The Indian Penal Code




ABSENCE OF LAWS


- Sexual assault and anti rape laws
- Anti-discrimination laws
- Marriage / partnership law
- Inheritance laws
- Adoption laws




ISSUES PERTAINING TO LIVES AND RIGHTS OF TRANS AND GENDER VARIANT PERSONS

- Lack of recognition and acceptance by the larger society
 - Under-presentation of trans masculine and gender variant communities in media, law, state policies
 - Lack of recognition and violence by natal families (including “corrective rape” by family members)
 - Transgender and gender non-conforming youth and children face bullying and harassment at educational institutions resulting in high dropout rates
- 


ISSUES PERTAINING TO LIVES AND RIGHTS OF TRANS AND GENDER VARIANT PERSONS

- Lack of trans-friendly infrastructure and trans-sensitive staff members at educational institutions, medical institutions etc
 - Lack of livelihood opportunities
 - Many transgender persons face heavy discrimination while seeking employment
 - Lack of trans-friendly environment and policies in work places
- 

ISSUES PERTAINING TO LIVES AND RIGHTS OF TRANS AND GENDER VARIANT PERSONS

- Lack of health insurance provisions for transgender persons especially those who are undergoing gender affirmative therapy
 - No standardised process for changing identity documents
 - Lack of physical and mental health care support system
 - Lack of support system for elderly transgender persons
- 

ISSUES PERTAINING TO LIVES AND RIGHTS OF TRANS AND GENDER VARIANT PERSONS

- Transgender persons face discrimination in public places which include lack of trans-friendly toilets
 - Lack of positive media presentation of issues pertaining to lives and rights of trans gender variant persons
 - Lack of awareness among the transgender community members about gender-sexuality, health care and rights
 - Lack of research and documentation about needs, discrimination and violence pertaining to the lives and rights trans and gender variant persons
- 

14

Presentation on emerging challenges of witch hunting

**PRESENTED BY :
SMT. ALAKA SAHU,
SECRETARY,SEVA**

About Witch hunting

Witch hunting means any women who has been branded as witch by person or persons in belief such women has the power to harm any one or that she allegedly have such intention or having the belief that she has bad eyes or evil eyes or could do black magic or that she, by mantras can harm people or society at large in any manner.

Legislative provision related to witch hunting

- . There is no specific and particular national level legislation for witch hunting hence the provisions under the IPC 1860 can be used as an alternative for the victim. The different sections invoked in such cases are Sec.302 which charge for murder,

Sec.307 attempt for murder, Sec 323 hurt, Sec376 which penalizes for rape and Sec.354 which deals with outraging a women's modesty.

Legislation about the Witch Hunting in Odisha

The legislation which deals with the witch hunting in Odisha is Odisha prevention of witch hunting Act (OPWH Act)2013 came into effect on 25th April 2014.

States of India Witch hunt being prevalent

Witch hunting is prevalent in 12 state of India which are situated in state like Jharkhand ,Bihar,Haryana, West Bengal,Madhya Pradesh,Maharastra,Gujarat, Odisha,Chhattgarh,Assam,Rajastan and UP.

Status of Odisha in the whole country

Odisha remain 2nd in terms of registering numbers arising from witch craft in the country for the past few years this despite promulgation of Odisha prevention of witch hunting Act in 2013 to check the social menace widely prevalent in the tribal dominated-districts of Mayurbhanja, Rayagada,Koraput,Ganjam, Gajapati, Sundargarh, Malkanagiri, Keonjhar

Cases Registered in Odisha

In 2015,58 cases were registered which went up to 83 in 2016 an increase of 83% in 2017. 99 case have already been registered under the OPWH ACT.

Keonjhar district with 49 cases is being in hosted of the witch branding violence followed by Nabarangapur were 42 cases have been registered.

Steps taken in order to combat the situation in Odisha

To tackle the cases of witch hunting the Rapid Response Team is working in Block level. At least 26 RRT teams been set up till now. These RRTs will comprise child development programme officer, medical officer, inspector in charge of police station, one office bearer of block level federation of Self help groups. The teams take steps to prevent any such types of incidents in remote tribal villages and for minimizing offence in collaboration with local police and other agencies besides making awareness activities.

people have been killed in witch hunting as per Government reports

As per the Govt, the most recent report indicates that about 339 people were killed in the year 2017 in the name of witch hunting and around 2,500 women murdered for witchcraft during 2001-2014. These data shows the recorded cases, there are many instances which have never been recorded as due to the fear.

- **Status of different states in witch hunting**

As per the report of National Crime Record Bureau (NCRB) 2017, in Jharkhand there were 82 witchcraft related murders in Haryana around 46 cases of witch-hunting was reported, where as in Andhra Pradesh and Odisha 53 cases were reported, in Madhya Pradesh 37, in Chahatisgarh 35, in Maharastra 41 and in West Bengal and Maghalaya 9 and 11 respectively . According to NCRB ,Govt of India the instances of witch hunting has increased when compared to previous years data.

- **Important Interventions**

- Reaching an uniform understanding of the issues.
- Critically analyzing the legal provisions with its impediments.
- Gaining information about the prevalent situation on the issue across various states of the country.
- Facilitating cross learning the key stakeholders.
- Outlining the way forward on awareness building, legal remedy, capacity building and other governance perspectives on prevention, prohibition and redressal of the crimes.

Witch Hunting in Jharkhand

WITCH HUNTING IN JHARKHAND



INTRODUCTION

- The concept of witch hunting has its traces in past , may it be primitive age , medieval age , modern age and now industrial age , the concept of witchcraft and the incidence of witch – hunting has been witnessed.
- The concept of witch hunting initially aroused in Europe and till date it is being continued with tragic consequence .
- Later on women were held responsible for all calamities and it be famine , flood , a epidemic diseases which cause death of lives stock.
- It occur due to lack of education , basic health care facilities and ignorance , they involve in such crime . Or it's a well organize action against women?
- Sometime the witch doctor or tantric they suspect some person of practicing sorcery if they experience some unnatural incident or ailment which ultimately lead to act of witch – hunting " the PIL contends.

WITCH – HUNTING IN INDIA

- India is a land where the women are treated as symbol or are consider as a token of their community , family , caste and all other diverse divisions.
- Where people on one hand worship them in name of godness on the hand kill them considering them a witch .
- It assume that for their own betterment they kill the innocent member of society and also they consider as different names like – CHUDAIL , DAYAN , TOHNI , ETC .
- IN the name of witch – hunting people kill the innocent women , rape them , and also for the acquire the property .
- When the concept witch was discussed people thought or ugly women with a broom who can fly , who can disappear.

SOME INSTANCE OF WITCH – HUNTING IN PAST FEW YEARS

- AS per the report of National crime Record Bureau (NCRB) 2008 , in JHARKHAND there were 52 witchcraft related murder , in Haryana around 26 of witch – hunting was reported , whereas in Andhra Pradesh and Orissa 23 cases were reported , in Madhya Pradesh 17, in Chhattisgarh 15 , in Maharashtra 11 and in west Bengal and Meghalaya 4 and 3 respectively . According to NCRB , government of India the instances of witch – hunting has increased when compared to pervious year data .
- Also as per Human Right committee report in last 15 years approximately 2, 500 women in were killed in name of witch- hunting. Previously it was seen that witch- hunting is only associated to women but in 2013 in Orissa police reported a case where a boy was killed as he was accused of practicing witchcraft . And also in Assam were a girl was raped in name of witch- hunting in 2011.

* In 2015 and 2016 the crime against women and witchcraft is 32% and 27% which violates the right of women .



WITCH- HUNTING DEATH RATIO

VICTIMS OF SORCERY TAG



The house of ▲
Biren Basumatary
in Milanpur village
where the elderly
couple were killed

Family members
at the house of ▲
Govinda Rabha
in Auguri village.
Pictures by Pree-
tam B. Choudhury



● **June 20, 2013:** Lepsri Narzary, 42, killed and her body dumped in a paddy field at Bhatipara near Kokrajhar

● **June 6:** Seventy-year-old man killed and buried at Korebari village under Salbari police station in Baksa district

● **Feb. 19:** Chekon Basumatary, 58, headman of Samugaon village in Chirang district, killed

● **Nov. 21, 2012:** Lakhiram Brahma, 55, and his wife Naleb, 50, killed at Tangshigami village in Chirang

LEGISLATIVE APPROACH TO WITCH – HUNTING

- There is no specific and particular national level legislation that penalizes witch hunting hence the provision under the Indian penal code 1860 can be used as an alternative for the victim.
- *The different section invoked in such cases are sec . 302 which charge for murder , sec 307 attempt for murder , sec 376 which penalizes for rape and sec 354 which deals with outraging a women’s modesty.
- *Apart from the provision under Indian penal code different states have come up with different legislation to tackle the problem of witch –hunting
- *Jharkhand followed it and established “ Anti witchcraft Act” in 2001 to protect women from inhuman treatment as well to provide victim legal recourse to abuse . Basically section 3 , 4 , 5 and 6 of concerned Act talk about the punishment which will be granted if any one identify someone as witch , tries to cure the witch any damages caused to them .
- * Bihar though being most backward was the first state in India to pass a law against witch hunting in the year 1999 , which was named “ prevention of witch (DAYAN) practices ACT .

FAILURE to address WITCH - HUNTING



- SOCIAL issue –

- Well planned activity
- Means to grab property and control
- Whole community is engaged
- Poor and inaccessible area affected with extremists
- No comprehensive awareness and education program

POOR IMPLEMENTATION OF PREVALENT LAWS

- state which have enacted laws and not effective as it lacks of national legislation .
- Also due to the quantum of punishment which is granted to the accused is lesser than a gravity of the crime they have committed , up to 1 year with a fine of RS . 1000 ,

PIL AGAINST WITCH – HUNT

- CUTTACK , NO 1: The modish Rationalist society has filed a PIL in the high court following spurt in witchcraft murder in the state despite enactment of law to curb it .
- * AN offence under the new law is started as non- bail able and invites as imprisonment up to three years and a penalty of RS 1, 000 for abetting and provoking witch hunting .

stop



witch hunts

Quest

RACIAL BIODIVERSITY



***Using Law to Access Justice for the
Intellectually Disabled Orphans in State
Care***

By

**Dr. Asha Bajpai
Prof . Of Law, TISS , Mumbai**

***Using Law to Access Justice for the
Intellectually Disabled Orphans in State Care***

Dr. Asha Bajpai

Prof . Of Law, TISS , Mumbai

August 23, 2010, Mumbai Mirror

- Mumbai Mirror broke the story of abuse and starvation deaths of intellectually and physically disabled children
- Five kids died in two months at the orphanage near Shahapur before 18 others were rescued on August 24.
- Chief Justice of the Bombay High Court, took Suo Motu cognizance and instituted a PIL 182/2010
- appointed Dr. Asha Bajpai amicus curiae
- 5-member committee formed
- Along with divisional members conducted study of all MDC Homes in Maharashtra.

Status Report- Major findings

- Region wise, District wise, Home wise Status Report of MDC Homes submitted
- Girls sexually abused in another home near Mumbai
- Negligence in Aurangabad
- Uneven distribution of MDC Homes in Districts-
- Majority of the children in MDC Homes over 18 years old
- Insufficient grant-in-aid of Rs 1140 per child. (Rs. 825 to be spent on the child- including food, medicine, clothing, oil etc. - and Rs. 315 towards fixed costs like staff salaries, building rent, electricity and water etc.)
- 35 deaths in one year- Pulmonary Tuberculosis, Septicemia, Hypothyroidism, Cardiac Arrest, beatings .
- No IQ test, structured education programme, staff training, schooling, transport, telephone, toys, proper bedding, medical facilities, untrained staff , emergency funds, rehabilitation, awareness of CSA, malnutrition

Situation at the time

- Girls, Boys alleged to be raped , molested, starved, physically abused, tortured, made to work a child labour
- Children showing physical and mental impact of their ordeal
- Children showing signs of PTSD- referred to KEM Hospital- placed in adult psychiatric ward
- Non- implementation of laws- Failure of JJ system-Missing Children, No District Advisory Boards, Child Protection Units, District Protection Units and Inspection Committees-
- No rules to JJAct in Maharashtra

Major Impact of PIL 182/2010

- The DWCD revised its licensing norms including online registration
- The department of Social Justice was involved asked to provide services to children in MDC Homes across the state.
- The State issues a GR asking all MDC Homes to develop Individual Care Plans for each child in their care.
- The Directorate of Health Services involved to provide regular health check ups to children in MDC Homes across the State under the School Health Project.
- Norms laid out for participation of mentally challenged, hearing and speech impaired children in criminal trials.
- State rules for the JJ Act (amended 2006) notified.
- Moratorium on opening of new homes in the State

Major Impact contd..

- 3 homes shut down. exit plan for Homes being closed
- Benefits of Bal Sangopan Yojana scheme made available to children in MDC Homes
- Protocols for training, inspection, licensing and dealing with child sexual abuse and malnutrition
- Children before CJS- conviction
- Sensitization of Civil Surgeons
- Increase in grants
- Trainings and capacity building of DWCD officers
- Medical emergency fund and petty cash provided to Homes
- Children with IQ over 70 moved out of MDC Homes to general homes

Major Impact contd..

- Inclusion of MDC Home children in Government schemes (SSA) – NIOS, Niramaya Scheme
- **Child Protection Policy and Code of Conduct** framed for the staff of MDC Homes and for teachers and staff of Special Schools for dealing with children with disabilities was formed
- Compensation to 35 children sanctioned
- Security arrangements at MDC Home, Mankhurd improved- Fencing and gates put up through the PWD Department, leakages repaired etc.

Challenges

- Sudden transfer of the MDC Homes to the Social Justice department
- Serious lack of understanding regarding the needs, problems, rehabilitation opportunities and rights of special children at all levels.
- No vision or policy towards social re-integration of such children.
- No precedent or proper procedures to enable Intellectually disabled children to give evidence in a safe and sensitive environment.
- Understaffed Homes
- Staff lack skills and sensitivity to work with such children.
- Lack of adequate linkages for vocational training, job placement or workshops
- Constant follow-up on compliance of HC orders required.

Replication of Chunauti Model

- Replication of project Chunauti model in all 19 MDC homes in *"Maharashtra as per HC Order dated 20th March 2015- Principal Secretary, Women & Child Welfare Department and Social Justice Department to ensure that the Chunauti rehabilitation model is replicated in all the MDC Homes in Maharashtra"*
- Process of replication completed

Children rescued

- 35 children Placed together
- Question of Rehabilitation

Objectives of Chunauti

- support and services to overcome the trauma of abuse and exploitation faced by 35 children.
- provide counseling, Therapy, life skills, education and future planning towards rehabilitation and social re-integration to 93 minor children in MDC Home, Mankhurd
- create a replicable adaptable model of intervention for rehabilitation and reintegration, deinstitutionalization, independent living to help these children develop to their maximum potential
- build capacities of staff in MDC Homes in positive disciplining, care-planning, child rights, dealing with child sexual abuse etc.
- advocate for legal and policy reforms in the best interests of intellectually challenged children in MDC Homes in the State.

Major Interventions



Achievements under Project Chunauti

- The project has so far reached out directly to 112 children but indirectly to 60000
- Assessments done and individual care plans developed
- 29 children provided with formal education. 7 girls pass NIOS exams
- 23 options explored for future rehabilitation and social reintegration- 4 children offered training and placement opportunities by a collaborating NGO
- Educational options based on children's capacities helped build confidence and open options for social rehabilitation
- Linkages established with MSSDS to provide viable vocational options
- Two children been moved to a home for regular children where he has been given a new identity and opportunities.
- 7 more children with IQ over 70 identified.
- model of intervention has emerged which can be adapted for replication in other MDC homes

outcomes of the replication process

- All children happy, provided with good quality care and dignified standards of living
- All children assessed and care plans prepared
- Children provided with a range of educational options such as inclusive education, special education, daily living skills, NIOS etc. depending on their capacities
- Children above the age of 14 provided with employable skills and other vocational skills as per capacity
- Bedridden children receiving quality, life-long care
- Children and staff are empowered to report any kind of abuse at the Institution
- Periodic training for staff being conducted
- Regular monitoring of the Institutions including children's progress
- Linkages established for employment and independent/ group /supervised living
- Children move towards independent living as much as possible

Released from JJ System

- 3 children trained
- Ready for deinstitutionalization, independent living
- Released by CWC
- Joined Jobs
- More children ready and waiting

18

Domestic violence and dowry death cases

By

Anweshi Counselling Centre



Anweshi Women's Counselling Centre

Towards a gender just, democratic and violence free society

Founded in 1993

Organisation committed to the cause of women

Major Objectives

- Elimination of Gender Discrimination and violence against women
- Empowerment of women at all levels
- Ensures safety both in domestic and public spheres.

Areas of Intervention

- Counselling
- Aims at empowering the victims by fostering more equitable gender relations
- More than 450 cases are filed every year and a major share of them are settled in favour of victims

Domestic Violence

- Domestic Violence is a very deep and all pervading issue which is the main reason for the unhealthy and torturing atmosphere in the family.
- This affects children - Growing Criminal tendency
- Dowry demands and alarming situation of liquor addiction are the additional reason for increasing domestic violence.

D V & Dowry death Cases in Kerala

	Dowry Death(304 (B))	D V
2007	22	3976
2008	25	4135
2009	21	3976
2010	21	4788
2011	15	5377
2012	32	5216
2013	21	4820
2014	28	4919
2015	08	3668
2016	25	3445
2017	13	2863
2018 up to March	06	349

D.V & Dowry death Cases in Anweshi

	Dowry Death(304 (B))	D V
2008	06	769
2009	02	1128
2010	03	965
2011	03	921
2012	04	706
2013	03	701
2014	01	770
2015	02	710
2016	04	655
2017	02	469
2018 up to March	01	94

PWDV Act, 2006-Implimentation

Advantages

- This Act was enthusiastically taken up by ordinary and suffering women.
- The interim orders and protection, residence, maintenance etc. for the provisions for which specifically gave rights to women was such a boost.
- This law is not a criminal law, it is a civil law.

Limitations

- The implementation of the law is so bad that all the initial enthusiasm has now almost vanished because the law is now becoming ineffective.
- Now the Courts don't give interim orders. Women don't get maintenance properly.
- The Magistrate Courts were not equipped with this law which had given such an empowerment for women.
- The law says the procedure of the case must be finished with in two months but sometimes it is prolonged more 2 years.

WOMEN (FARMERS) IN FARM SUICIDE FAMILIES

By

Kabir

WOMEN (FARMERS) IN FARM SUICIDE FAMILIES

Current situation &
What needs to be done

Structure of this Presentation

- The broad picture of Farm Suicides – Homicide from apathetic policies
- Invisibilisation of Women Farmers – both in their own suicides, and in farm families with suicides
- Legal matters – legislative & judicial interventions

Story of farm suicides in India

- As per National Crime Records Bureau, **332798** farm suicides in India b/w 1995-2016
- 19968 female farmer suicides have been counted into this reporting
- So, at least 312830 women suddenly left to fend for themselves, their families & their farms
- ***These numbers are under-reported & manipulated***
- Concentration of suicides in those agricultural regions which have adopted a market-oriented paradigm (both for inputs & outputs) – these are also pockets where indebtedness is higher (in terms of no. of indebted households as well as per household outstanding debt)
- **APATHETIC & EVEN ANTI-FARMER POLICIES A MAIN REASON**

Phenomenon of Farm Suicides

- Farming a very risky enterprise with hardly any variable in the control of the entrepreneur
- Land & soil type is a given, climate is a given which is becoming more and more unpredictable, input markets mainly badly regulated private players (seed, pesticides etc.), production stage risks of natural disasters and output markets completely out of the control of farmers:
- Lack of viability & dignity – social status eroded
- Most farm suicides are of tenant farmers in several states – “new age” farmers who also get desperately misadventurous
- Community ethos had eroded – individualistic, competitive farming
- Sense of “Honour” still there – creditor notices & public naming/shaming matter
- Social factors are further marginalising forces – women farmers, dalit farmers, adivasi farmers etc.
- **ADVERSE VARIABLES CAN BE EASILY TRACED BACK TO APATHETIC POLICIES & SOMETIMES, ANTI-FARMER POLICIES**
- This is with regard to credit coverage, prices, unsustainable technologies, unregulated private players, free trade agreements, risk insurance, disaster compensation, lack of investments etc.

Invisibilisation of women farmers

- Rural women, even though 75% of rural female workers are engaged in agriculture, are not identified as Farmers.
- Farmers are understood to be land-owners, where patriarchy ends up placing property in the hands of men (gender asset gap is quite huge in India) – however, by virtue of labour, 70% of labour put into farming, across crops, is of women. However, they are invisible as Farmers.
- National Policy for Farmers (2007) has expansive definition of Farmer, de-coupled with land ownership
- When it comes to farm suicides, women farmers might be getting classified under “Housewives” category – a very large category of suicides.

Women in Farm Suicide Families

- Women farmers themselves committing suicide (Telangana, Gujarat, TN and WB top the list)
- Couples committing suicides in some cases
- Daughters in debt-ridden families committing ‘pre-emptive’ suicides (Maharashtra)
- Father & Son committing suicides, at different times – mother-in-law and daughter-in-law left to fend for the family
- Increased “**Feminisation of Agriculture**” due to these suicides, in addition to feminisation for other reasons (where women are left to manage the farming enterprise but with even the meagre support that existed for male farmers unavailable for them)

“Those who did not die”

- Social stigma – often accused of having pushed the spouse towards suicide
- Liability of outstanding loans and having to contend with the system & same creditors who pushed the spouse to suicide – the woman does not even know details of borrowals in most cases and has to agree to amounts being quoted
- Contending with the State – often, no recognition of “genuineness (?)” of suicide – verification by official teams – different states have different compensation mechanisms/amounts
- Education of children – girl children are pulled out of schools and colleges – worry about safety of the girl child
- Often, no support networks to fall back on (SHG membership etc.)
- **CONTINUING WITH THE SAME FARMING PARADIGM THAT BROUGHT ON THE DISTRESS**, but often without the recognition that she is a farmer (no credit-worthiness) – many quickly turn to farm labour

Denial of Land Rights

- Property rights governed by personal laws and customary practices – Hindu Succession Amendment Act 2005 provides for equal rights for women.
- Irrespective of the law, societal practices deny this right to women.
- (There are no gender disaggregated land records maintained in the country)
- Young widows in farm suicide families are often thrown out, in case they stake a claim in the property – it is seen that they live in the same villages in rented houses, working as labourers
- Older women are bypassed, with sons getting the land in their name
- Even if women do acquire land title, patriarchy could come in the way – some agricultural operations are seen exclusively as a male domain – the system might still not reach out to them with govt support systems and schemes

Legal Issues

- Prevention, Relief & Rehabilitation

PREVENTION

- There are no legislation-backed “farmers’ rights” in India (only residual rights in a seed breeders legislation called Protection of Plant Varieties & Farmers Rights Act) – even at the International Level, it is only now that a [UNHRC Declaration on “Rights of Peasants & Other People Working in Rural Areas”](#) is being evolved
- One Private Member’s Bill (by Dr M S Swaminathan) on [Women Farmers’ Entitlements](#) that was introduced in 2012 in Rajya Sabha. Not passed.

Legal Issues

PREVENTION

Judicial interventions exist – like the Supreme Court PIL that HRLN deals with (SLPC 29910 of 2014) – all state governments, RBI & Gol have been made respondents

[6/7/2017](#): Court acknowledged that a line of action has been adopted by Central Govt to secure livelihood of individuals involved in Agriculture (crop insurance, crop loans, prices, model land leasing law, doubling of farmers’ income etc. etc.) – that time needs to be given to government to pursue its schemes – next hearing on 6th July 2018

Relief & Rehabilitation

- No laws. Only administrative orders & no statutory rules – [Different GOs in different states](#)
- No rehabilitation exists for such families in most states
- In Telangana (GO 194 of 2015)– ex-gratia amount to the widow (5 lakhs) + one-time settlement to creditors (1 lakh) – education, housing, pensions & economic support
- AP (GO 62 of 2015): 3.5 lakhs ex gratia, loan settlement to 1.5 lakhs + additional benefits
- *For pursuing the implementation of such GOs, MAKAAM (MAHILA KISAN ADHIKAAR MANCH) ANANTAPUR IS USING DISTRICT LEGAL SERVICES AUTHORITY WITH LIMITED SUCCESS*

Our current efforts

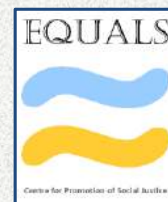
- Two Bills created for enactment – big campaign underway : 1. Farmers’ Freedom from Indebtedness Bill 2018 & 2. Farmers’ Right to Guaranteed Remunerative Minimum Support Prices for Agricultural Commodities Bill 2018 (available at www.aiksc.com)
- These Bills cover debt relief, disaster relief, institutional credit cover for all real cultivators, regulation of cost of inputs, promotion of sustainable agriculture to prevent debt build up, R&R for farm suicide families, guaranteed remunerative prices, increased and improved procurement, protection from dumping through free trade agreements etc.
- Another Bill being created – Women Farmers Entitlements Bill. To cover Recognition/Identity to Women Farmers, Equal Resource Rights, Entitlements on par with male farmers for schemes/services, special schemes for collective ecological agriculture including in leased in lands etc. (www.makaam.in)

Women and Disabilities: law relating
to violence and discrimination

A presentation for:
“Contemporary Developments in the
Law Relating to Violence and
Discrimination”
Amba Salelkar
June 2018

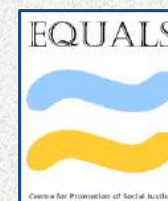
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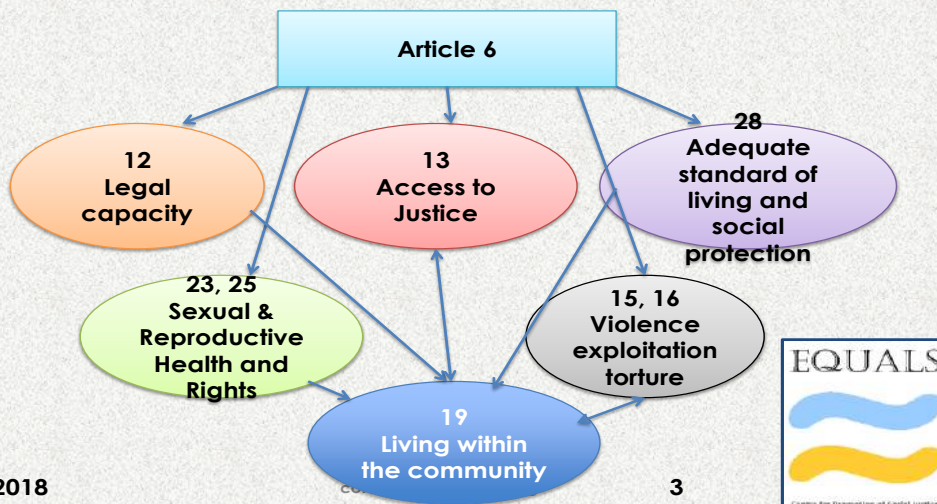


Outline

- Discuss the context of discrimination and persons with disabilities, and women with disabilities.
- Discuss some of the provisions of the newly enacted Rights of Persons with Disabilities Act, 2016, and intervening in situations of violence.



The CRPD and WWD



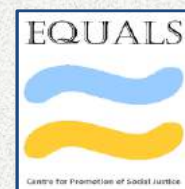
Anti discrimination

Section 3 (3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

2018

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4



Discrimination on the basis of disability

“Discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation

2018

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5



Reasonable Accommodation

“reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a **disproportionate** or **undue burden** in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others

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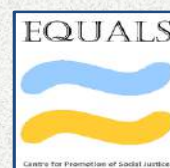
Article 6 – Section 4

The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

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7



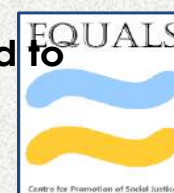
Article 19 – Section 5

- 1) The persons with disabilities shall have the right to live in the community.
- (2) The appropriate Government shall endeavour that the persons with disabilities are
 - (a) not obliged to live in any particular living arrangement; and
 - (b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living **with due regard to age and gender.**

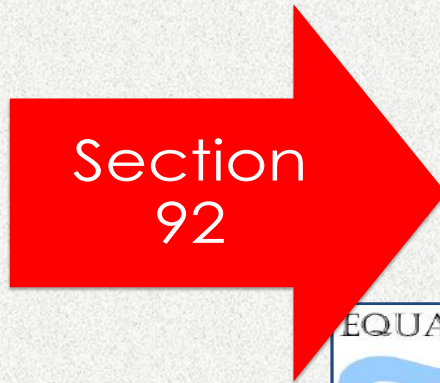
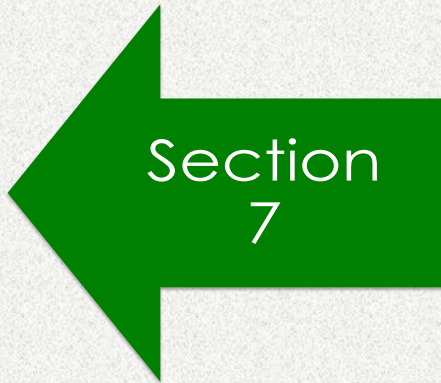
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Article 13, 15, 16 – protection of women from violence, access to justice



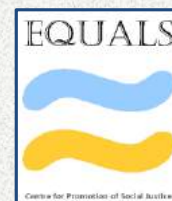
Orders of Executive Magistrate (Section 7)

Any person or registered organization can file application to the Executive Magistrate

Executive Magistrates appointed under Section 20, Code of Criminal Procedure, 1970

District:

1. Collector
2. Joint Collector
3. District Revenue Officer
4. Revenue Divisional officer
5. Tahsildar



Orders of Executive Magistrate (Section 7)

What?

**Act of
abuse,
violence or
exploitation**

When?

**has been,
or is being,
or is likely to
be
committed**

Who?

**against any
person
with
disability**



Orders of Executive Magistrate (Section 7)

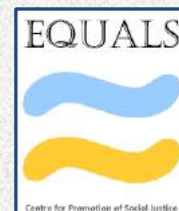
How is person protected?

Protective
custody of
person with
disability, if the
person desires

Remedies

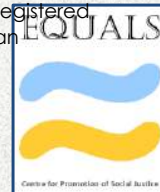
Maintenance to
the person with
disability

Rescue the person,
authorizing either police or
registered organization to
provide shelter



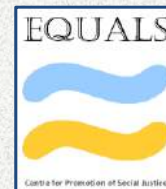
Criminal offences (Section 92)

- (a) **intentionally insults or intimidates** with intent to humiliate a person with disability in any place within public view;
- (b) **assaults or uses force** to any person with disability with intent to dishonour him or **outrage the modesty of a woman with disability**;
- (c) having the actual charge or control over a person with disability **voluntarily or knowingly denies food or fluids to him or her**;
- (d) being in a position to dominate the will of a child or woman with disability and uses that position **to exploit her sexually**;
- (e) **voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device** of a person with disability;
- (f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to **termination of pregnancy without her express consent** except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability.



Sectoral demands

- Disaggregated data to be maintained on gender, disability and other intersections.
- Hold Government accountable for the failure to include women with disability
- Social Audit (Section 48) of existing schemes



“Marriage allowance schemes”

Persons with disabilities are given Rs. 25,000 on marriage in order to “encourage” normal people to marry persons with disabilities.

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15



Manual Scavenging: Judgments
from the Courts and Legal
Strategies for PILs"

K B Obalesha

**Member, State Monitoring Committee on
PEMSR ACT 2013, Govt Of Karnataka
State convenor, SKKS-Karnataka
Founder Secretary, Thamate, Tumkur,
Karnataka,**

The Death Chain Continues...While cleaning manhole, septic tanks even though after SC Judgment and central Legislations



Kutti, Ravi & Babu

Manual Scavengers died in KGF, Kolar while cleaning a soak pit of a home belonging to a Central Government Employee.

Arjuna & Mahadeva

Died in Sakaleshpur while –Hassan cleaning a soak pit



Deaths of manual scavengers – not even a statistic or a memory

- Two underaged UGD laborers Rajesh and Santhosh just 19 years old boys of Hubli Town died while cleaning a UGD



Conti...



Yakoob Yalakapati



- Yakoob from Dharwad town in Karnataka - a Municipal Contract laborer died while cleaning a manhole

Justice still a long way off.....



- Bhoja of Paduvcinamitthu village of Mangalore died along with his friend Stanley while cleaning a private toilet pit year 2012
- In the postmortem report, it is clearly mentioned that Bhoja died due to suffocation in the toilet pit.
- Local police refused to file a complaint against the house owner. Instead, the family of the victim was threatened by the police.



What is manual scavenging?

Manual Scavenger: means a person engaged or employed , any individual or a local authority or agency or contractor, for manually cleaning, carrying , disposing of ,or otherwise handling in any manner, human excreta in insanitary latrine or an open drain, or Pit into which the human excreta from the insanitary latrines is disposed of, or on railway truck or in such other specs of premises,



What is manual scavenging?

Manual Scavenging is a caste-based and hereditary occupation for Dalits (Untouchables) in the Indian subcontinent

Within this system Dalits have been assigned tasks and occupations which are deemed ritually polluting by other caste communities Manual scavenging has been assigned as the traditional occupation of a section of SCs, specifically the Madiga and allied community

Who are manual scavengers



CONTI...



Open defecation



What are Law challenges

Provisions	1993 act	2013 PEMSAR ACT
Prohibition of Dry/Insanitary Latrines	"dry latrine" as any latrine, other than a water-seal latrine	"insanitary latrine", in a more specific manner, as one which requires human excreta to be cleaned or otherwise handled manually, before complete decomposition, either in situ or in an open drain or pit into which the excreta is discharged or flushed.

CONTI..

Definition of Manual Scavenger	a person employed for "manually carrying human excreta"	a person employed for "manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which human excreta from insanitary latrines is disposed of, or on a railway track, Before the excreta fully decomposes..."

CONTI..

Prohibition of hazardous manual cleaning of sewer & septic tanks in the 1993 Act.	No Provision	Clause 7 prohibits
Penal Provisions	1st contravention- upto 1 year of imprisonment 2000/-.	For violation of provisions of prohibition of insanitary Latrines and manual scavenging 1st contravention- up to 1 year of imprisonment and fine up to Rs. 50000/-, or both. Double in case of 2nd and subsequent offences. For violation of provisions of prohibition of hazardous cleaning of septic tanks and sewers 1st contravention- up to 2 years of imprisonment and fine up to Rs. two lakh. In 2nd and subsequent offences - 5 years and fine up to Rs. Five lakh, or both

CONTI...

Offences to be Cognizable and Non-bailable	Cognizable	Cognizable and non-bailable
Jurisdiction of Courts	Metropolitan Courts Magistrate or Judicial Magistrate of the 1st Class	Executive Magistrate may be conferred powers to the or Judicial Magistrate of the 1st Class

CONTI..

Identification of Manual Scavengers and their Rehabilitation	No provision for survey and identification	Detailed provisions for identification.
Implementation mechanism	DM or SDM is to be appointed as executive authority for implementation of the Act.	Appropriate Govt. shall confer powers on local authority and District Magistrates to carry out provisions of this Act.

CONTI..

Vigilance Mechanism	Central and State Govts. may constitute committees of various kinds.	Vigilance and Monitoring Committees shall be constituted at the Sub-division, District, State and Central Levels. National Commission for Safai Karamcharis (NCSK) to monitor implementation of the Act.
Responsibility of Local Authorities to provide Sanitary Community Latrines	No such obligation.	Mandatory.

CONTI..

Cognizance of offence	Upon a complaint made by a person generally or specially authorized in this behalf by the Executive Authority (Section 17(3))	Upon a complaint is made by a person. (Clause 10)

**No of Rural Manual Scavengers in India:
1,68,066 (SECC 2011)**

States/ UTs Name	Number	States/ UTs Name	Number	States/ UTs Name	Number
MAHARASHTRA	68163	MIZORAM	1025	SIKKIM	51
MADHYA PRADESH	23105	ODISHA	886	HARYANA	42
UTTAR PRADESH	17390	UTTARAKHAND	483	TRIPURA	21
KARNATAKA	15375	ANDHRA PRADESH	388	HIMACHAL PRADESH	11
PUNJAB	11951	TAMILNADU	334	CHHATTISGARH	3
BIHAR	7268	NAGALAND	274	GUJARAT	2
DAMAN AND DIU	6277	TELANGANA	165	MANIPUR	1
JHARKHAND	4153	DADRA & NAGAR HAVELI	142	LAKSHADWEEP	1
RAJASTHAN	3498	MEGHALAYA	113	GOA	0
JAMMU & KASHMIR	2904	KERALA	100	ASSAM	0
WEST BENGAL	2526	PUDUCHERRY	66	CHANDIGARH	0
ARUNACHAL PRADESH	1286	ANDAMAN & NICOBAR ISLANDS	62	NCT OF DELHI	0

Key out comes of Karnataka

- SKKS & HR organizations, social Movements 10 years Tireless Advocacy In Karnataka Have got few key Out comes
- 56 Descend MS family Got Rs.10.00L as for SC Judgement
- 45.000 contract Sweepers are Regularizing as Direct ULB employees from 2017
- 2016 All ULBs, Private sector and GP sweepers Minimum wages Hiked Rs.6000 to 18,000/-

Conti..

- All over Karnataka ULBs safaikarmacharie Contract system is banned w e f Aug 2017(out sourcing)
- 457 Urban Manual scavengers Identified
- 472 Rural Manual scavengers Identified
- 256 Identified MS got OTC Rs.40,000/-
- State, District and sub Divisional Vigilance committees formed for Monitoring Implementation of act
- Safaikarmachari Development Corporation formed

What is the way forward to eliminate this inhuman practice?

- A wider campaign by Dalit, Human Rights and Progressive social movements for eradication of the practice of manual scavenging is needed demanding a comprehensive implementation of the 2013 Act and 2014 SC Judgement
- The Forum demands comprehensive interventions for building dignity and self-respect among scavenging community including education, health, housing, alternative skill generation and employment and social security.

Conti..

- Law has to be effectively enforced. How to break the mind-set of caste in the officials, political class and citizens?
- Govt should Allocate adequate fund for Building UGD and Technology for cleaning Drainages and Railway tracks
- Create ECO system toilets Or flush out sewage system toilets

Challenges

- Govt of India is Making Larger campaign 24*7 on India Is shining in Digital, software, economically, made in India, BUT!
- Why Govts have not Planning for constructing sanitary/ sewage system across the India Even after thousands of scavengers Died while cleaning manholes?
- Why Urban development is Not ready for converting Insanitary latrines to sanitary latrine? 2.6 Million
- Why all over India Urban and rural development departments denied in Implementing supreme court Judgement 2014?
- There is Lots of celebrities and Politicians are there for advertising, **swacha Bharath** ! But No one Not ready for Talk about manual scavenging and peoples who are scavengers suffering from serious of health issues, Not provided basic facilities as for courts judgments and Law.

