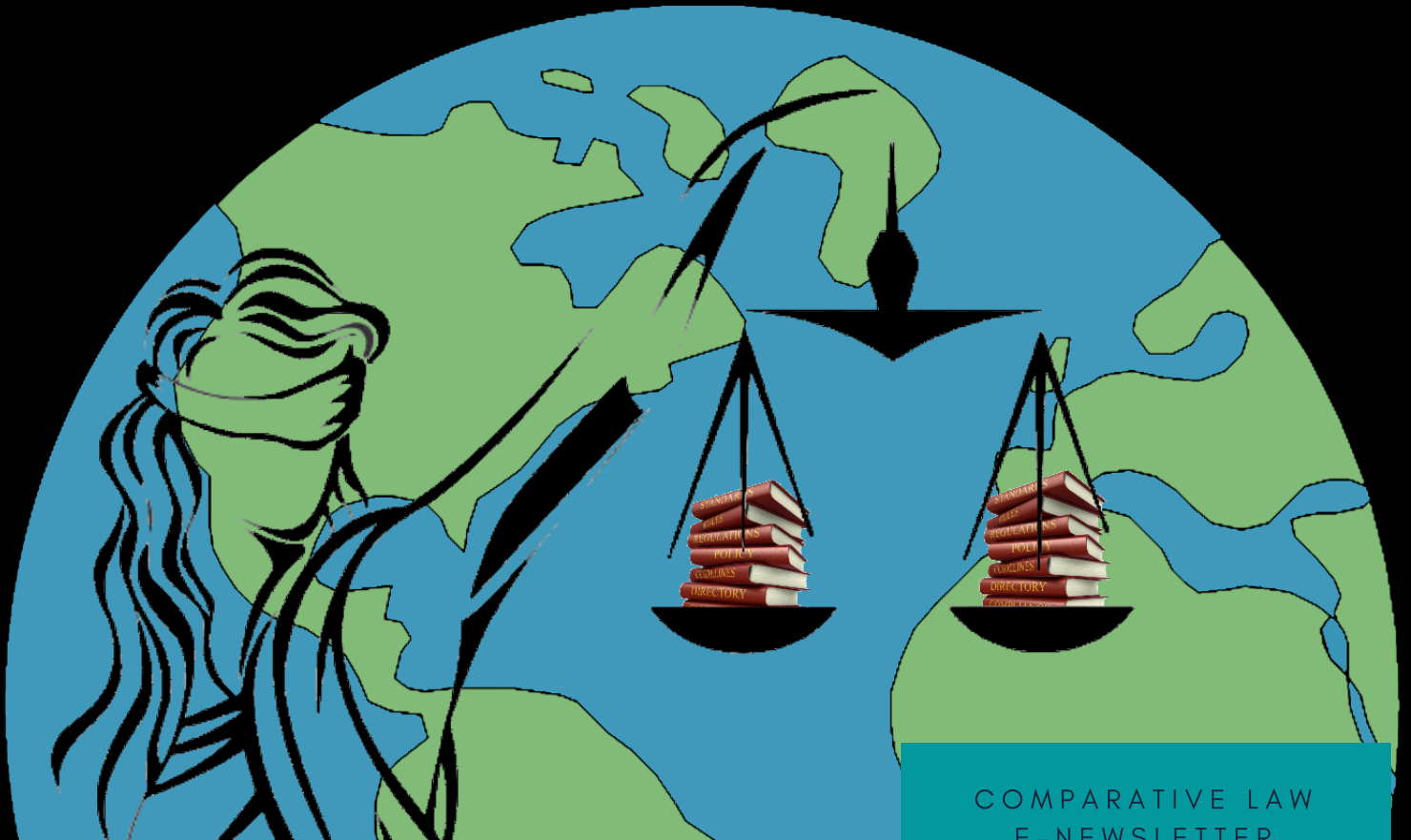




MAHARASHTRA NATIONAL LAW UNIVERSITY AURANGABAD

COMPARATIVE LAW E-NEWSLETTER

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ABOUT THE NEWSLETTER

Devoted to the study of comparative and transnational laws and legal systems, the Comparative Law Newsletter (CLN) is an open access, peer-reviewed and refereed newsletter published monthly by the Maharashtra National Law University Aurangabad. It embraces analytical, theoretical, empirical and socio-legal attempts surrounding the public and private law aspects of various legal systems. It aims to encourage comparative legal studies in the transnational context of legal history, theory, philosophy, legal cultures and traditions, by tracking the developments in the field across the world. The newsletter seeks works that are dynamic and interdisciplinary in nature with specific display of comprehensive knowledge on the subject matter.

COMPARATIVE LAW
E-NEWSLETTER

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FROM THE VICE-CHANCELLOR'S DESK

Maharashtra National Law University, Aurangabad has been established by the Maharashtra Government in pursuance of Maharashtra National Law University Act, 2014. It came into operation in the year 2017 and since then has been thriving to achieve academic excellence. The University has in the past hosted national level seminars and conferences and has been visited by legal luminaries who have enhanced and furthered the objective of making this institution of national importance.

I strongly believe that it is the students, faculties and the non-teaching staff who plays a pivotal role in the over-all development and growth of an institution. It is under able guidance and constant support of judges, eminent legal practitioners and academicians, that the institution is on its path of achieving excellence in the field of legal education. This newsletter is one such initiative undertaken by the faculty members and students of Maharashtra National Law University, Aurangabad. This newsletter aims to bring about various discourses related to comparative laws. It will be theme-based monthly newsletter which will promote and enhance academic deliberations from the members of legal fraternity. In an era where development is rapidly taking place and law is ever-expanding and growing, the need for such inter-disciplinary approach has to be seriously undertaken.

I am glad to present this newsletter to the legal fraternity and civil society and encourage young scholars, academicians and students from various law schools in the country to contribute actively to be a part of this journey and make this effort a grand success.

I congratulate the team for their untiring efforts during this pandemic situation in bringing this newsletter to light and wish them a success in their vision and endeavour to reach a wider audience and facilitate scholarly discourse in this area.

Wishing you all the very best!

Regards.

Prof. K V S Sarma

Vice-Chancellor, MNLU, Aurangabad.

MESSAGE FROM THE TEAM

We are enthralled to launch the very first newsletter by Maharashtra National Law University, Aurangabad. This occasion marks release of the First Volume, First Issue of the Comparative Law Newsletter. The newsletter is an initiative undertaken by faculty members and students of Maharashtra National Law University, Aurangabad. It is an effort to discuss and bring forward various contemporary discourses and issues related to the domain of comparative laws.

The theme of the First Volume, First issue of the newsletter is Gender Inclusive Legal Framework in Contemporary World. The theme was very carefully thought off and agreed upon by the team members in the light of recent and related events and developments around the world pertaining to this area. The First Volume, First issue is based on contributions by faculty members, students and practitioners, however, we look forward and comprehend, that the upcoming volumes and issues will be based on submissions by academicians, lawyers, young students and other esteemed members of the legal fraternity.

We imbibe upon this journey together, and hope to develop a positive outcome with this effort undertaken to develop a never-ending era of learning and growing. We would like to thank the support and encouragement received by Hon'ble Vice-Chancellor, Prof. KVS Sarma, under whose able guidance this newsletter has been released. We acknowledge the untiring efforts made by the faculty in-charge and the student members who were behind the scene working for the timely release of this newsletter. We would especially take up this opportunity to take a few names, without whose efforts this newsletter would have never become a reality, our student team comprising of Ms. Soumya Thakur, Ms. Nikita Mohapatra, Ms. Chetna Shrivastava, Mr. Abhishek Singh, Mr. Husain Attar, Mr. Devansh Kathuria, Mr. Anubhav Mishra, Mr. Anuj Agarwal, Mr. Sulabh Gupta, Mr. Rohan Kapoor, Mr. Pranay Bhattacharya, Mr. Abhijeet Mittal, Mr. Indronil Chaudhary, Ms. Pranshi Gaur, Ms. Pranali Kadam, Ms. Shreyashi Srivastava, Mr. Siddhant Vyas, Ms. Pavitra Pottala and Mr. Soham Bhosale.

This newsletter is special and memorable for all of us considering that even during this pandemic situation and the challenges we faced in form of lack of physical communication between us, still, our resolve and dedication resulted in the timely release of the newsletter as decided. We are utterly grateful and thankful to everyone who has been a part of this initiative in any form. Hopefully you will enjoy reading it and keep supporting and encouraging us in the near future.

Thank You.

Enjoy Reading and Keep Growing!

Ms. Neha Tripathi and Ms. Soumya Rajsingh,

Faculties In-charge, Comparative Law Newsletter

Student Team: Ms. Soumya Thakur, Ms. Nikita Mohapatra, Ms. Chetna Shrivastava, Mr. Abhishek Singh, Mr. Husain Attar, Mr. Devansh Kathuria, Mr. Anubhav Mishra, Mr. Anuj Agarwal, Mr. Sulabh Gupta, Mr. Rohan Kapoor, Mr. Pranay Bhattacharya, Mr. Abhijeet Mittal, Mr. Indronil Chaudhary, Ms. Pranshi Gaur, Ms. Pranali Kadam, Ms. Shreyashi Srivastava, Mr. Siddhant Vyas, Ms. Pavitra Pottala and Mr. Soham Bhosale.

ARTICLES

A Salute to the Struggle for Women's Suffrage

Mr. Aishvary Vikram, Advocate,
Ms. Neha Tripathi, Assistant Professor of Law, MNLU,
Aurangabad

The Women's Equality Day is celebrated in the United States on 26th August since 1973. This date marks the implementation of the 19th amendment to the US Constitution. It is this amendment which recognised the voting rights of women. As this date is due in August, a small reference to the history of the struggle for women's suffrage in various countries is inevitable. It is relevant to point out that several chronicles in the history of humankind capture the struggle for justice and equality. It was the age of enlightenment and renaissance in the 17th and 18th century, which redefined our approach for self-determination. During this period, humanity retrieved their inherent rights and effectuated equality before the law. Social, political, and economic justice was considered fundamental to human existence. Discrimination based on status, race, political affiliation, and creed was questioned and defaced. However, no matter how much mettlesome and audacious these struggles may look at the first blush, most of them ignored gender justice. These struggles, although for a good cause, seems to have inherently subdued the contribution of women.

For instance, even the Magna Carta in the year 1215, much before the era of enlightenment and renaissance, failed to recognise gender equality. Interestingly, it only acknowledged the rights of "all free men of the kingdom", possibly because a woman for centuries was considered a chattel or property of a man. In the United Kingdom, women were denied voting rights for a prolonged period. After half a century of struggle and protest, it was only in the year 1918 and 1928 that the laws sanctioned the women's suffrage.

The first legislation was the Representation of People Act, 1918, which allowed women to vote at the age of 30 with some property and educational qualifications. However, it was not at par with men's suffrage as a man could vote at the age of 21 without any such restriction. In 1928, the Parliament passed another legislation, namely the Representation of People (Equal Franchise) Act 1928 which gave women equal suffrage as of men. John Stuart Mill, who is one of the finest jurists of all times, during his lifetime advocated women's suffrage, and ultimately his desire was realised after 47 years from his death in 1873.

Likewise, in the United States of America, the revolutionary 1776 Declaration of Independence, an outcome of the American's struggle against the colonial rule of Great Britain, proclaimed that 'all men are created equal'. No such declaration was made for women. Before the advent of the 19th amendment in the year 1920 to the US Constitution, there was no uniformity in women's suffrage. In many states, such voting right was limited to school or municipal elections and had specific property and educational qualification. The 19th amendment declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex". This amendment allowed more than 8 million women to step out of their houses and step in deciding the political faith of their own country in the presidential election of 1920.

In France, the 1789 Declaration of the Rights of Man and of the Citizen, born out of the French Revolution and inspired by the American Revolution, proclaimed that "men are born and remain free and equal in rights". This political bias in favour of men was criticised and mimicked by the then French activist Olympe de Gouges, who in 1791 charted the Declaration of the Rights of Woman and the Female Citizen pointing out the rights of women. This Declaration is still considered one of the most significant milestones in the history of gender justice. However, back then, as a result of her writings, she was convicted of treason and executed.

In France, after several protests and political movements, the women's suffrage became a reality only in 1944. It seems to be quite strange that the country which gifted the Statue of Liberty, a replica of the Roman goddess, denied equal voting rights to women till 1944.

Similarly, various other countries such as Brazil allowed women to vote in 1932, Turkey recognised it in 1934, Japan permitted it in 1945, Greece recognised it in 1952, China and Mexico sanctioned it in 1953, Egypt allowed it in 1956, and Switzerland in 1971. In all these countries, women struggled and protested to gain fundamental political equality in the form of right to vote.

Fortunately, with India's independence, the Constituent Assembly recognised the rights of women while drafting the Constitution. The preamble of our Constitution envisaged equality of status and opportunity, and justice, social, economic, and political. Article 15 of the Constitution specifically prohibits discrimination based on sex. Article 15(3) further empowers the State to make special provisions for women and children. Article 39(1) of the Directive Principles of State Policy under the Constitution casts a duty on the State to treat men and women equally while framing policies. In the context of voting rights, Article 326 grants universal suffrage to Indian citizens above the age of 21.

With time the society has progressed, now in most democratic countries right to political equality is a reality, at least under law. Most states now allow women to contest and vote in the elections. Few countries that have recently allowed women to vote are Saudi Arabia in 2015 and Afghanistan in 2009. Nevertheless, in certain countries, due to conservative social restrictions, polling booths far away from the place of residence, violence at polling booths, illiteracy, and unawareness, the true extent of women voting rights are not yet unleashed. Despite all the odds, women still take the effort to cast their vote. In 1979, the United Nations passed the Convention on the Elimination of All Forms of Discrimination against Women,

wherein Article 7 mandated elimination of discrimination against women in exercise of their voting rights. Interestingly, there is one country wherein there is no voting rights including no voting rights of women, that is the Vatican City. Wherein the Pope acts as the head of the State and is elected by the College of Cardinals. On a concluding note, the next time, when some of us enjoy our election day as a holiday, we must remember and acknowledge the historical struggle of women to gain this right, and must cast our vote despite all the odds.

Legal Language and Gender Inclusion

Ms. Soumya Rajsingh, Assistant Professor of Law, MNLU,
Aurangabad

LESLIE M. ROSE

The law lives through language and we must be very careful about the language we use.

Gender is a socially constructed characteristic. Gender neutrality seeks to avoid gender bias while gender inclusion attempts to consider every gender. Inclusion can only be possible when there will be the complete eradication of the biasness. This can be said that both the concepts work in the same direction to strive for equality in society. Language has played a very important role in the evolution of laws through civilisations. Language is a social phenomenon and through language social institutions including legal one are established. Linguistic knowledge can facilitate our understanding of the substance of the law. The area where knowledge of language and linguistics have made greatest impact in legal interpretation because it eventually results in the entitlement of the belongingness of different stakeholders. The relation of law and language, with respect to gender representation is essential, as it reflects the notion of equal acknowledgment.

Many a time we have encountered legislations that use masculine nouns and pronouns to refer to subject(s) whose gender is unclear or variable, or to groups that contain people who are not actually men. For example, the U.S. Declaration of Independence states that "All men are created equal." Generations of Americans have been taught that in this context. This style of writing of any law is not typical to Americans only; rather this problem is more of a universal character. We often find these types of linguistic expression in the Indian statute as well, where the expectation is to derive an implied understanding; meaning thereby the word "men" should be read as including men, women, and the other gender. Other common instances of gendered language include words that assume connections between jobs or roles and gender (like "policeman") and language conventions that differ depending on the gender of the person being discussed (like using titles that indicate a person's marital status). This type of expression raises a question on the legal status of the employee of the other gender.

The reality is in legal writing; masculine language has traditionally been used to refer to people regardless of their gender.

The contemporary world is on the way to create a gender inclusive legal framework in this respect. Though the critique to gender-neutral legal language consider the whole issue to be a trifling issue but there have been many significant efforts to overcome this to facilitate a more gender-inclusive legal framework. The most important fact related to this is, these efforts are not merely social or theoretical rather institutional. Starting from the international organisation like The United Nations to regional organisation like the European Union time and again facilitated the gender neutral legal writings. The United Nations have issued guidelines to use gender-neutral language in the affairs of the organisation. On the other hand the European Parliament in the year 2008 have adopted multilingual guidelines on gender-neutral language as one of the first international organisations in taking initiative in this area.

Talking about states initiative, there are instruments like The Dictionary of Occupational Titles, made available on-line by the U.S. Department of Labour, provides many examples of job titles free from gender stereotyping, including "fisher" (fisherman), "worker" (workman), "appliance repairer" (repairman), and "salesperson" (salesman). Canadian cabinet approved the Federal Plan for Gender Equality, presented to the Fourth United Nations World Conference on Women in 1995 which has given considerable importance to change in gender-neutral legal language. Many other countries also have given importance to developing a gender-neutral legal language.

Talking about India, this 'thought' of facilitating a gender-neutral legal writing has not been institutionalised yet. Indian legal framework, a few decades back was more concentrated on gender-specific laws, like legislation on domestic violence or dowry prohibition or rape to give protection to one section of the society. With the pace of time, when the need was felt, gender-neutral laws are being advocated. What has not been considered popularly till now is, to facilitate the gender neutral legal language, to achieve gender inclusion. The major legal system of the worldwide the US, Canada along with India has accepted the status of other gender apart from the traditional understanding of the same. Some have been achieved by its courts and some though rewriting the existing laws, but the reality is now, the notion of Gender is not the same which is traditionally being understood. Hence, the moot question is, "In order to build a gender-inclusive legal framework, what is the need?" Only to make laws as a tool for protecting a section's right against the popular section of the society or changes the way and the tool for writing the laws i.e. language to build a gender neutral system. What is more effective for the acknowledgment of their socio legal identity?

DRAWING A LINE BETWEEN INCARCERATION AND ABUSE: UNINHABITABLE CONDITIONS OF WOMEN IN DETENTION

Mr. Pranay Bhattacharya, 4th Year Law, Student,
MNLU, Aurangabad

“It is not merely a question of women receiving equal treatment to men; in the prison system equality is everywhere conflated with uniformity; women are treated as if they are men.”

Women in Prison: A Thematic Review, UK, 1997.

The prison system across jurisdictions and countries, particularly India often hide violence and depravity against women behind the bars. Incarceration of women prisoners are being neglected due to uninhabitable conditions and victimization due to unstable conditions, abuse by inmates, mental and health problems amongst others. In this view, the write-up will focus on the incarceration and abuse faced by women prisoners and particularly eliminating any possible abuse they might face behind the bars.

Prison conditions and the period of sentence tend to have more mental impact on women than men. Studies have shown that women are more likely to suffer from anxiety, depression, drug problems and suicide attempts in prison. After a recent case of Sally Challen in the UK a devastating impact of coercive relationships and the lack of legal protection for victims of domestic abuse who are driven to offend were revealed. Almost 60% of women supervised in the community or in custody, who have an assessment, have experienced domestic abuse; the true figure is likely to be much higher. Most women in prison are there for non-violent offences.

Therefore, the Prison Reforms Trust (an Non Profit Organisation working in UK) propose a new statutory defence for those whose offences are driven by their experience of domestic abuse, adapted from the defence in Section 45 of the Modern Slavery Act 2015 for victims of human trafficking or modern slavery who are coerced into offending. One of the most important aspects of prison reforms should be a reduction in women prisoners who have been coerced into offending.

Hence, it is important to make sure women don't fall in as the victims of substance abuse and trauma as an aggravated impact of their background on them. Interventions within women's prisons must be tailored to ensure adequate safety measures must be adapted to make sure that they address distinctive problems suffered by women, address the underlying causes and keep them safe from the offending behavior of inmates.

Taking the account, the figures reflecting prison abuse the UK government has considered trauma informed interventions crucial with an aim to prevent the re-triggering of trauma which could lead to further violent or destructive behavior such as self-harm or violence among prison staff or other prison inmates.

Analyzing the above problems in the prison administration system across the world the conditions of female prisoners should be assessed in a trauma informed manner tailored to their respective backgrounds so that their abuse does not lead to further traumatisation among prisoners and the staff.

To resolve the above problems, there are various International Rules and Standards governing the Rights of Prisoners such as the International Covenant on Civil and Political Rights, Standard Minimum Rules for treatment of Prisoners

(Standard Minimum Rules, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are some of the major international guidelines determining the general rights as well as inherent right to be treated with dignity. But, in contrast, the Indian domestic laws and regulations of incarceration such as Indian Penal Code, 1860; Prison Act, 1900; Identification of Prisoners Act, 1920 are flawed with absence of exclusive protection and intervention mechanisms for protecting the rights of women prisoners behind bars.

However, the Model Prison Manual prepared by Bureau of Police Research and Development Ministry of Home Affairs Government of India lays down a progressive guideline for jail authorities under Chapter XXIV (Women Prisoners), which states that “women offenders shall, as far as possible, be confined in separate institutions specially meant for them.

Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements.” Further, women prisoners shall be protected against all exploitation and their special needs to be meted out. Therefore, the document’s implementation in keeping its objectives alive by states will go a long way in improving the prison condition for women in India.

The existing enclosures for women should be renovated in a manner to ensure all the requisite facilities such as segregation, protection, child-birth and family care, health care, training and rehabilitation, and most importantly interventions that distinguish women coerced into offences and their subsequent removal from prisons.

GENERAL STRAIN THEORY: DOES VICTIM HAS A GENDER?

Mr. Anubhav Mishra, 4th Year Law, Student,
MNLU, Aurangabad

“If you act like a victim, you are likely to be treated as one”

-PAULO COELHO

The legal person is considered as genderless include both male and female and under penal laws same punishment is awarded on the basis of crime committed irrespective of gender. Contrary to the approach the General strain theory (hereafter GST) has explained the relation between crime and delinquency and accepted the thought that the crime is influenced by a negative thought. Human mind is considered as source for emergence of thought and every mind is unique and thereafter reacts differently even in same situation. Potential emotion may include disappointment, depression, guilt, fear and among all anger is more influential.

Criminologists’ believes that strain lead to crime has more impact on male in countries like India as females have more social support, are potentially monitored by family and are less associated with

delinquent peers. Punishment in school, parental discipline, and peer interaction can be considered as initial phase where a male is more possibly to interact with delinquency as a outcome of having less resources for non-delinquent coping and on the other hand females are more likely to utilize social support when confronted by stress and such reason for mens rea as comparison to men. The male and female may show similar reaction to a particular strain but the society from the birth starts treating a male with strong control over emotions and hence it increases the burden on men where they cannot share their strain with others due to societal pressure.

Before posting a story on social platform it is pertinent to understand the background story and its future consequences. Family strain, peer strain, neighborhood strain, school strain and mental-physical victimization are considered as prominent strain which leads an individual to commit crime to match the desire as presented before by the society. As per traditional strain theory explains crime as a response and in consonance raised because of frustrations and strain form inability to achieve expected economic goals. As the time changed the goal and outcomes are not just limited to income pr middle class status. The GST also includes goal blockage and inability to achieve valued goals such as respect and masculine status, autonomy and desire for excitement.

Various researches have produced the evidence that during the time of distress and strain, it appears that females are more susceptible to interpersonal stressors whereas males show vulnerability to peer strain and victimization. The Indian system is suffering from the modern cause behinds GST such as trial by media and social media platforms which has created an atmosphere in the country that diverted the main issues and objective of Feminism and movement to create social stigma where both genders are considered and treated equally and have similar social, economical and legally on the other hand Pseudo feminist desires to fabricate a world regime by just women which later become a kind of strain and reason for distress.

Recently the most burning issue of Boys locker room example where social media ruined the life of a young male just because of fake rumors related by opposite gender and leads him to commit suicide. The intention behind citing such example is just to show how a male is also as vulnerable as its counterpart and without any investigation and evidence how society by following the trend creates such strain so that it leads to such drastic step.

The changing dimensions of societal need are changing and similarly the social behavior. Reaching to conclusion after adequate proof and calling "all men are same" is not a sign of progressive society but contrary to that leads to destruction. The General Strain Theory is based on the assumption that with changing desires the behavior changes but passing verdict against the gender for of act committed by individual may push in that peer where one can more possibly interact with delinquency and hence GST leads to the question that who should be blamed for the commission of delinquent act the society or peer or those who are blindly passes the verdict without knowing the strain?

Job Rights and Equal Opportunities

The discrimination faced by trans people has remained as one of the major concern for human rights activists in India. The stigma that they face leads to lack of opportunities and a form of exclusion from benefits and acceptance. Also, wage inequality, on-the-job discrimination, hiring biases lack of legal resources, inability to access documents and benefits which are denied always create a wall between trans people and employment opportunities. They also remain to be the marginalised sections of the society which is still one of the greatest challenges. Further, the Transgender Bill which is pending has also not acknowledged the fact that this community is still socially and economically backward and the rights should be provided in that manner.

Apart from this, the right to health, work, love, prayer, education and to stay connected with others, is the prerogative of every individual without attached terms and conditions. Therefore, equal access to benefits at the workplace should be promoted for them to live a productive and healthy life.

Right to get Married: An anomaly

As far as the 'Marriage Project' is concerned, it may garner both support and criticism from the queer community.

However, considering the fact that Indian society is completely family-oriented, one progressive step in mainstreaming queer rights is legalising same-sex marriage. Across the world, Thirty countries and territories including Taiwan, South Africa, Portugal and the UK, have enacted national legislation allowing homosexual people to marry.

Though, Section 377 has been decriminalised, there is no law in India which legally recognises a marriage between a couple of same-sex. Laws in India are yet to recognise the same set of rights and responsibilities for married homosexual couples that they do for heterosexual married couples. Moreover, In India, two consenting adults of any sexuality or sexual orientation can have a 'social marriage; but there are no legal safeguards of their rights. Also, homosexual couples in India do not have any legal rights such as registration of marriage, inheritance, succession, and adoption,

QUEER FREEDOM: THE ROAD AHEAD OF SECTION 377 DECRIMINALISATION

Mr. Husain Attar, 4th Year Law, Student, MNLU, Aurangabad
Mr. Abhishek Singh, 4th Year Law, Student, MNLU, Aurangabad

Introduction

Two years ago, a five-member Bench of the Supreme Court ruled that Section 377 of the Indian Penal Code (IPC), violated India's constitutional morality. The landmark judgement reversed an earlier ruling that had criminalized the community and finally a discussion on Queer Freedom was alive. Justice Indu Malhotra, one of the five judges who read out four concurrent verdicts, said that the society owes the LGBTQ+ community an apology for the historical wrongs perpetrated against it. It has been two years, since the judgement has been pronounced and it can be rightly said that "Queer freedom" is still a myth.

maintenance of the spouse and children, and guardianship among others. Right to choose a partner is a fundamental right, which was recognised by the Supreme Court of India in *Shakti Vahini v. Union of India and others* (2018). There is, therefore, no reason for not extending this right to marry to the homosexual couples apart from blind prejudice and lack of understanding of the homosexual community. Therefore, it is also a failure on the part of the legislature that they have not brought amendments to the existing laws related to marriage, adoption, inheritance, etc. to give equal rights and status to LGBTQ community people.

Judiciary: Filling the Vacuum

The Kerala High Court has accepted a hearing of a case petitioned by Mr. Nikesh Usha Pushkaran and Mr. Sonu MS in January 2020. They got married in a Kerala temple in July 2018 and have been living together since, but they feel discriminated against as they don't have the same legal rights as other couples do. They also feel they lack social acceptance. Though the text of the Special Marriage Act, 1954 does not exclude homosexual unions from its ambit expressly, Section 4 and Schedules 2-4 to the Act carry a heterosexual undertone in its language as it shows marriage as an affair between a male and a female or between bride and bridegroom. The HC has asked Centre and state government to respond to the petition, and the couple now awaits a hearing. If the writ petition is successful, it will be a pathbreaking victory for a community which continues to face discrimination, humiliation, psychological damage, mental torture and prejudice from the society.

Conclusion

In order to remove the social stigma from the society it is important to begin with small steps by changing the environment around ourselves and accepting the LGBTQ community as a part of our society because a law made for them will only be successful if it is appreciated by each and every individual in the society and not just for the sake of giving rights to them. But at present, we need to ask ourselves if we are ready and welcoming enough to accept them and their freedom as a part of our community.

STATE v. SARVJEET SINGH

Mr. Rohan Kapoor, 4th Year Law, Student,
MNLU, Aurangabad

Complainant: Ms. Jasleen Kaur

Accused: Sarvjeet Singh

Competitive Court: Metropolitan Magistrate (Mahila Court) Tis Hazari Courts, New Delhi

CNR Number: DLWT02-010257-2015

Filing Number: 69993/2015

Introduction

"Gender Inclusive Framework"; a framework where all the genders should be treated equally. The above phrase means that all the genders should be treated equally, but there are some instances where we can clearly observe that a "specific gender" is given due coverage by the society. The following case is an illustration that how the society passed their own decision based upon the gender of the victim and the accused even before the beginning of the proceedings.

Facts of the Case:

On 23.08.2015, near Aggarwal Chowk, Tilak Nagar, Delhi, the accused came on a bike came from the wrong side when the traffic light was red and his bike was about to hit the complainant and the complainant argued, to which accused started abusing the complainant in filthy language and passed comments upon the complainant and mumbled something and went from there.

It is further alleged that in the meantime, complainant took one picture of accused and one picture of accused with his bike along with its number plate. When accused saw complainant clicking his picture, he criminally intimidated the complainant. It is further alleged that complainant made a call on 100 number and gave her written statement to the police when they came on spot and present case was lodged against the accused.

Issues Raised:

- Whether the accused is guilty under Section 354A[1] of IPC?
- Whether the accused should be punished according to Section 506[2] and Section 509[3] of IPC?

Arguments by the Prosecution:

The State has contended that all prosecution witnesses have supported the case of the prosecution and therefore the accused persons deserve to be convicted and sentenced as per law.

Arguments by Counsel for the Accused:

- The council argued that the testimony of complainant cannot be relied upon completely as the incident happened in the middle of the road where many people had gathered and witnessed the incident, however, no one other than complainant was cited in the present case.
- It is further argued that the present case has been filed just 'to gain publicity on social media' by the complainant as on the same day of incident instead of talking to police and helping in investigation, complainant updated photograph on her Facebook page and was praised for her action.
- It is further argued that complainant has not provided sufficient proof to prove her allegations against the accused persons. Hence, the counsel for the accused prayed that benefit of doubt should be extended to the accused and he be acquitted.

Judgement:

- It is pertinent to mention herein that there are various contradictions and improvements in the version of the complainant, her additional statement given to the police, her statement U/s 164 Cr.P.C[1]. and her deposition before the court. Moreover, in her examination-in-chief she has qualified her above stated statement with the fact that the accused made the lewd statements while making an obscene gesture.

- Indisputably, a conviction on the sole testimony of the prosecutrix[1] can be sustained, however, in the present case, the complainant has made material improvements in her statements.
- In view of the same, the testimony of the complainant is not trustworthy and casts a serious doubt on the case of the prosecution. Moreover, the place of incident was a public road and expected to be crowded at the time of incident and no public witnesses were examined.
- Thus, non-examination of eye witnesses, who could have supported the case of the prosecution, casts a serious doubt on the case of the prosecution. Therefore, benefit of doubt[2] has to be extended to the accused.

Analysis:

Despite winning, Sarvjeet Singh (accused) underwent severe stigma and mental. Prior to the judgement of the Hon'ble Court, one of the big media houses gave Sarvjeet Singh the Title "Delhi ka Darinda". He lost several job opportunities because he had become famous and could not travel outside the city without police's permission. Meanwhile, the complainant was rewarded by former Delhi commissioner for her bravery. She was so much engaged in her life that she never got time to show up once on any trial. After five years of financial and mental breakdown, now it has been proved that the accused Sarvjeet Singh is not "Delhi ka Darinda".

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1. STATE V. SARVJEET SINGH
 2. Sexual harassment and punishment for sexual harassment.
 3. Punishment for criminal intimidation. If threat be to cause death or grievous hurt, etc.
 4. Word, gesture or act intended to insult the modesty of a woman.
 5. Recording of confessions and statements.
 6. A female prosecutor
 7. The state of accepting something/someone as honest or deserving of trust even though there are doubts
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LEGAL SEX CHANGE PROCEDURES AND THE REALISATION OF SELF IDENTIFICATION

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On July 8, 2020, in the matter of Jones David Hollister, the Oregon Court of Appeals ruled that non-binary people across the State of Oregon will be able to secure the correct legal gender designation from their local circuit court, setting a new precedent for transgender and non-binary rights in the state. Jones David Hollister, a non-binary person living in Lane County, Oregon attempted to change gender designation from female to non-binary legally but their request was denied by the Lane County Circuit Court. Hollister appealed the Circuit Court's decision at the Oregon Court of Appeals. Following which, the Court affirmed a change in the gender designation as "non-binary".

The fight for non-binary status started in 2016 when Oregon resident Jamie Shupe became the first person in the US to be recognised as legally non-binary. As it was the case, Shupe did not identify with the conventional gender constructs, i.e., he was neither male nor female. In June 2016, Shupe petitioned at Oregon Court to legally change his sex designation to non-binary, which was later affirmed by Judge Amy Holmes.

In the recent decision, the petitioner filed the application for legal sex change pursuant to Oregon Revised Statutes (ORS) 33.460. The Court in this matter dwelled upon statutory construction of the usage of "sex" in ORS 33.460, to hold that the word doesn't thrive within the four walls of binary gender constructive. The Court adopted a liberal approach in interpreting the provision to manoeuvring the meaning of "gender identity" to expand the contours of "sex" since "affirming to gender identity" is the basis for legal sex change under ORS 33.460.

The decision, though laudable is a far cry from the right of self-identification of gender which lays down the groundwork for a potential gender inclusive framework in any legal system. Relying on the foundation of personal autonomy, the right to self-identification believes in the freedom to make decisions for one self, by oneself and about oneself. It builds a support of human dignity and clarity for gender non-conforming people who have been at the receiving end of historical oppression and hostility.

Article 22 of UDHR mentions personal right of "free development of his personality". The UN Human Rights Committee also observed that "privacy" under Art. 17 of the International Covenant on Civil and Political Rights (ICCPR), includes "the sphere of a person's life in which he or she can freely express his or her identity". A person's gender if anything, is an indispensable aspect of the "identity" that people consider in social construct as well as an important fragment of one's inter personal individuality. Hence, it is the individual—not the government—who has authority to determine the individual's religious identity, political affiliation, and sexual orientation. The right to self-determination provides a firm basis for the right to gender recognition.

To say that individuals have a right to determine their legal gender is not to say that biological aspects of sex are completely irrelevant. However, to the extent that the government has an interest in categorizing individuals based on biological aspects of sex, it must do so in a way that comports with the proportionality principle that undergirds human rights law.^[i] For this purpose, it is of paramount importance to introduce legal framework which are devoid of procedural or medical preconditions. The Office of UN High Commissioner for Human Rights in 2015 recommended "issuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce." Similarly, the World Health Organisation in its 2015 report emphasized to "take all necessary legislative, administrative, and other measures to fully recognize each person's self-defined gender identity, with no medical requirements or discrimination on any grounds."

Despite the positive efforts, the responses of States have been largely disappointing. For example, though deep rooted in the Due Process Clause of the Fourteenth Amendment to the US Constitution, Oregon's law (ORS 33.460) ignores the prominence of this basic human right by holding surgical and hormonal treatments as a prerequisite to legal sex change. The presence of such legislative and procedural hurdles, pose hazards to physical and mental health as observed in the November, 2017 report of the World Professional Association for Transgender Health. Back home, in India, the situation is unfolding with mirrored similarity. Though no particular framework exists for non-binary persons, the 2014 judgment of *NALSA v. Union of India*, noted that the right to self-determination an inherent part of Article 21 (Right to life) of transgender, delineating it as forming the groundwork of personal autonomy and self-expression. Though, the complete realisation of this dictum has been met with legislative and implementation contradictions. The Transgender Persons (Protection of Rights) Act, 2019 accompanied by its draft rules have implicitly revoked this right. The issuance of certificate of identity for transgender is conditional upon undergoing sex reassignment surgery (SRS) and the procedures prescribed therein to be carried out under the executive scrutiny.

The prerequisites of SRS and psychological evaluation for gender identification are essentially at crossroads with the complete realisation of the right to self-determination of a transgender.

The only positive node developing, in stark contrast to this regressive framework, would be the steps, the Government of Canada has undertaken to expunge the barriers by eliminating the exercise of executive leeway and scrutiny. The procedure relies on statutory declaration and a practising physician's letter authenticating the reasons for change of sex designation, thereby leading to the realisation of the right to self-determination which is inherent to an individual's dignity and worth.

It is an existing argument under the universal equal protection notion and some existing statutory laws that non-binary rights will be realised. Judiciary in some places has persistently maintained their ethics whilst looking beyond statutory law and existing interpretation to settle the qualms of birth assigned gender and self-identity.

A fundamental right to self-identification is the natural next step of universal legal jurisprudence which would avert courts from certification of any gender beyond the individual's sincerely held beliefs of gender. The sincerely held belief should be at equal pedestal since gender, like religion, is a concept that is intimate and unique to each individual. As rightly pointed out by E. E. Cummings "It takes courage to grow up and become who you really are." So, isn't that courage worth protecting?

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1. Moshe Cohen-Eliya & Iddo Porat, Proportionality and Constitutional Culture,⁵⁹ *American Journal of Comparative Law* 463 (2011).

SURROGACY (REGULATION) BILL, 2020

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Introduction

The practice of surrogacy has always been a debated topic in India. The renting/borrowing of a womb often opens the debate about morality and the legal implications which surround the practice of women profiteering from their bodies. It can be argued that the practice of surrogacy empowers women and makes them independent and self-sufficient, however as the case may be the practice of surrogacy often gets exploited, for more than the object it seeks to achieve. Buying and selling of babies for prostitution is often reported, it is also sometimes the case where the intending parents abandon the new-borns and the surrogate mothers are left on their own, further, the women often take to becoming surrogate mother for a number of times even with deteriorating health. In the year 2002, India legalised commercial surrogacy, making India live up to its title of 'the surrogacy capital of the world,' but the above-mentioned problems continued and therefore, in its 228th report, the Law Commission of India recommended prohibition of commercial surrogacy and allowing only altruistic surrogacy. The Surrogacy (Regulation) Bill, was proposed for the first time in the 2016, but it lapsed. The Surrogacy (Regulation) Bill, 2019, was reintroduced and passed in the Lok Sabha and was referred to the Select Committee of Rajya Sabha. The latest bill includes all the recommendations made by the committee, and has been approved as The Surrogacy (Regulation) Bill, 2020, by the cabinet.

What does the bill provide?

The bill provides a distinction between 'altruistic' and 'commercial' surrogacy. It also provides for definition of 'intending couple' (medically certified infertile) and 'intending woman' (who is a widow or a divorcee, between the age of 35-45), among other definitions. **(Section 2)**

The bill lays down the five purposes for which surrogacy is permitted, i.e., gestational surrogacy (surrogate mother will not provide the gametes), altruistic, any medical condition and banning the commercial form of surrogacy. The bill only allows married Indian citizens between the ages of 23 and 26 to 50 and 55, respectively for females and males, who do not have a biological, adopted child or a child through surrogacy. This potentially excludes foreigners, single people, and homosexual couples from taking up a surrogate child. The bill also lays down the eligibility for women who want to become surrogate mothers, restricting them to be close relatives of the intending couples. It only allows married, willing women between the age of 25-35 years, having a child of their own to become surrogate mothers. It also states that the surrogate child will be entitled to all the rights available to a natural child under any law for the time being in force. **(Sections 4-10)**

The bill provides for 'registration of surrogacy' clinics by appropriate authorities and its related procedures, 'registration of certificates' valid for three years subject to renewal, and 'cancellation or suspension of registration,' etc. **(Sections 11-14)** The bill deals with National and State Boards, its members, the function of the board, etc., **(Sections 15-32)** It provides for who is an appropriate authority and its functions. **(Sections 33-35)**

The bill also states that it penalises any person imprisonment up to 10 years and fine up to 10 lakh for advertising or undertaking commercial surrogacy in any manner, disowning or exploiting the surrogate child or mother, selling or importing human embryo or gametes for surrogacy purpose and conducting sex selection in any form for surrogacy. **(Sections 36-43)**

The flaws of the Bill

The object that the bill seeks to achieve is to protect the surrogating women from any form of exploitation or abandonment by the intending Indian or foreign couple and curb the practice of buying and selling of children for prostitution and human trafficking. However, putting down strict eligibility for the intending couples and the mothers, and putting a blanket ban on the commercial surrogacy, will do more harm than good.

Article 21 enshrines the principles of Right to Life, Personal Liberty, and Right to Livelihood, however, a blanket ban on the commercial form of Surrogacy is contradictory to this principle. This right stands violated by the bill as it doesn't leave any room for needy women to achieve some financial independence or stability for themselves, the poor women of the country who often depend on this practice for some form of financial assistance will face injustice. Further, it is also in violation of woman's right to trade and profession under Article 19(1)(g).

Further, the eligibility for the intending couples, also puts a question on the right to reproductive autonomy, which includes right to procreation and parenthood. Therefore, the criteria, denies reproductive choices to LGTB, single persons and older couples. The bill also limits the altruistic surrogacy to close relatives, therefore it interferes with a woman's right to control her body, fertility and motherhood choices, as a woman who wishes to help a couple, cannot do so if they are not close relatives.

The bill differentiates between single persons, homosexuals, people belong to a specific age group and the "intending couple" without showing any intelligible differentia between the two, therefore the bill may appear to arbitrary in nature and wouldn't stand the test laid down under Article 14.

The Global Practice

In the United States of America and Argentina, surrogacy requests are decided by independent surrogacy committees. In the United Kingdom, Denmark, South Africa, Canada and Greece, only altruistic surrogacy is allowed. Commercial surrogacy is legally allowed in the countries like Russia, Ukraine, and Thailand. In France, Germany, Spain, Sweden, Italy and Iceland, surrogacy is banned in all forms.

Conclusion

Regulation of Surrogacy in India, was a much needed step to save the surrogate mothers from any form of exploitation that they may face due to abandonment of the child by the intending parents, the deteriorating health due to repetitive pregnancies, and new-borns becoming the victims of human trafficking, and other issues. However, any law or policy must maintain a balance between regulations and rights, and it must make way to provide well-being to all. The Surrogacy (Regulation) Bill, 2020, though optimistic, fails to strike that balance, with its eligibility criteria for the intending couples and the blanket ban of commercial surrogacy. It snatches away the right of women to achieve financial independence and control over her body. It undermines the sexual autonomy, and right to choose of the people.

TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT, 2019, END OF STRUGGLE FOR RESPECT AND DIGNITY: A MYTH

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Introduction

There is a segment of our general public containing people; regularly observed moving on streets, asking for contributions and at times showing up uninvited to marriages and birth occasions, showering blessings of good wellbeing and life span in a trade for cash. A similar network, which is generally dreaded for its 'influence' to welcome mishap on articulation of a revile, sadly, is itself, subject to manhandling, misuse and expulsion. People of this network, named variedly as Eunuchs, Hijras, Aravani, Jogappas, and so forth., in various pieces of our nation, represent gravely underestimated units of our general public; to a great extent disliked, neglected and in a few cases subject to occurrences of outrageous brutality, torment and destitution.

At yet, another end of the spectrum is a group, involving people; who don't carefully adjust with the larger part characterized, "male" and "female" sexual orientations and gender roles. This gathering involves people who may dress and carry on contrastingly to their organically doled out sexual orientations or gender attributes and in specific cases, the individuals who may have experienced difficult surgical operations to coordinate their outer appearances to their recognitions and convictions of self.

The circumstance of this gathering, as well, is the same. However, extensively disjunct, a string of shared characteristic ties these two gatherings; right off the bat, under the name/title, "Transsexual" and besides, sadly, under the intermittent occasions of scorn, embarrassment, segregation and cultural lack of concern, that such people are exposed to on an everyday premise.

Several countries across the world have acknowledged their responsibility towards issues related to gender-identity and sexual-orientation. It is largely accepted that the concepts of gender identity and sexual orientation of an individual are intrinsically intertwined. While the former relates to the inner sense of being male, female or transgender or transsexual person; the latter connotes an individual's enduring physical, romantic and/ or emotional attraction to another person.

Article 1 of Universal Declaration of Human Rights, hereinafter referred to as 'UDHR ' states that all human beings are born free and equal, furthermore Article 6 of the Declaration read along with Article 16 of the International Covenant on Civil and Political Rights, hereinafter referred to as 'ICCPR' recognize every individual's right to life ,it also imposes a responsibility on every state not to deny the said right. Article 5 of the UDHR and Article 7 of the ICCPR provide that nobody will be exposed to torment or to pitiless barbaric or corrupting treatment. Further, Article 12 of UDHR and Article 17 of the ICCPR provide that nobody will be exposed to discretionary or unlawful impedance with his privacy, family, home or correspondence, and that everybody has the privilege to assurance of law against such obstruction or assaults.

ANALYSIS

- FUTILE RIGHT OF SELF-IDENTIFICATION OF GENDER

In the case of NALSA v. Union of India, the Hon'ble Supreme Court held that the right of Self-identification of gender is protected under the purview of Article 19 1 (a) and 21 of the Indian Constitution, which deals with Freedom of speech and expression and right to life and personal liberty, which includes right to human dignity, respectively. The court in NALSA judgement opined that constitutional dignity of human rights is something which ensures the normative unity of human rights.

The section 4 of Transgender Person Act, 2019 provides the Right of Self-identification, wherein the section 5 and 6 of the Act mandates the application to be made before District Magistrate for issuance of Certificate for gender identity. The Certification of the gender, inter alia, by District Magistrate is the contravention of rights protected under the Indian Constitution.

Furthermore, section 7 of the Act mandates the submission of certificate of sex change surgery, issued by "Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery," to the District Magistrate for revised certificate. Currently, India has no medical rules and regulations regarding the transgender person health care services, including sex reassignment surgery.

- LACK OF SUPPORTIVE PROVISIONS RELATED TO EMPLOYMENT AND EDUCATION

The section 9 of the said Act prohibits establishments from discriminating the transgender persons in the matter related to employment, promotions and other issues. The section 13 mandates educational institutions, funded or recognized by government, to provide education and opportunities in sports and other activities without any discrimination.

The Act is poles Apart from the NALSA judgement, which advised the government to bring affirmative actions for transgender persons.

The court held that 'the state is obliged to take measures so as to treat these trans people as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in both educational institutions as well as for appointment in the public offices'.

- DISPARITY BETWEEN THE PENALTIES FOR OFFENCES AGAINST TRANSGENDER AND CISGENDER

Chapter VIII of the Act deals with offences related to forced or bonded labour, wrongful restraint, forced removal from place of residence or village, harm to life, safety or health and physical, sexual, economical, verbal or mental abuse. Further, it penalises above mentioned offences with imprisonment not less than 6 months, which can go up to 2 years. However, it becomes pertinent to note that rigorous punishments are provided under Indian Penal Code, 1860 for the similar offences caused to cisgender. Whereas, Transgender person Act, 2020 provide milder and lighter punishments.

Furthermore, the act also doesn't address the issue of atrocities committed by family member which compels transgender persons to leave their home.

Conclusion

The act thereby strengthens the long standing stigma that being cisgender is ordinary, whereas being transgender is an exception. The terra firma reality is that the Act doesn't provide reservation in either Employment or Education and the disparity in the intensity of punishment given to offenders committing offence against transgender in comparison to cisgender draws transgender out of the mainstream. Hence, it can be concluded that the act failed to secure the constitutional rights of trans community and need some crucial changes.

PROTECTION OF TRANS RIGHTS: THE NEED OF THE HOUR

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"All human beings are born free & equal in dignity and rights"

(Article 1 of the Universal Declaration of Human Rights)

The Covid-19 pandemic has disrupted almost all the countries in the world. While every government is striving to fulfil the major concerns, it has almost turned a blind eye to other minority groups such as the trans community. This community was already struggling for their basic human rights, and their situation is further aggravated by the pandemic.

Violence faced by the community has increased globally. Recently a native El Salvador transgender seeking asylum in Guatemala to flee from gender-based violence and persecution was killed. Day-to-day discrimination is a norm for the trans community in Panama due to the implementation of a quarantine schedule which mandates a segregation between men and women prescribing alternate days to go outside.

The plight of transgenders is vastly visible in India. The 2011 Census shows that there are at least 4,88,000 transgenders in India. Yet, it is speculated that many have not disclosed their identity in fear of stigma, discrimination, and systemic harassment. The community is also prone to social boycott and presently the pandemic has worsened their reach for basic healthcare and livelihood support. Although, their right to self-determination was affirmed by the Hon'ble Supreme Court in its judgement, National Legal Services Authority v. Union of India (AIR 2014 SC 1863), it was not realized in the recently debated Transgender Persons (Protection of Rights) Act 2019. The gender non-conformity and deprivation of their right to self-identification has disabled them from access to essential medical care.

Lack of trans male and trans female wards in hospitals has led to several harassment cases. The community also faces various health challenges like HIV and in such times their need for the antiretroviral therapy might not be prioritized. Majority of its population does not even possess basic documentation in the form of Identification card (Aadhar), voter ID or ration card. Hence, they remain outside the scope of any social relief schemes provided by the government. To sustain themselves, they are mostly forced into beggary or illicit prostitution due to poverty and lack of education.

While India struggles to provide protection to the trans community to in terms of livelihood and social security, the recent U.S. Supreme Court judgement was a glimmer of hope. The June 2020, U.S. Supreme Court ruling in *Bostock v Clayton County* protected the civil rights of LGBT workers from discrimination in the workplace and held it as a violation of Title VII of the Civil Rights Act of 1964. Before this, it was legal in more than half of the states to fire or deny benefits to workers who identified as gay, bisexual, or transgender. Justice Neil Gorsuch opined, "An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

President Trump had tweeted in July 2017 that the United States Government would not accept or allow transgender individuals to serve in the U.S. Military. The *Bostock* decision prohibits discrimination against transgender people in civilian employment, and thus gives the military a possibility to return to its own pre-Trump policy of welcoming all personnel regardless of sex, gender or sexuality.

In 2017, Drew Adams had sued the St. Johns County School District because he wasn't allowed to use the boy's restroom. His biological gender was female but he began the transition to male before he enrolled in high school. Despite this the school district relied on old documents which listed Adams as a girl, and said he couldn't use the boy's restroom.

The 11th U.S. Circuit Court of Appeals in *Drew Adams v The School Board of St. Johns County, Florida*, rejected that on August 7, 2020. It laid down, "A public school may not punish its students for gender nonconformity. Neither may a public school harm transgender students by establishing arbitrary, separate rules for their restroom use." The ruling covers schools in Florida, Georgia and Alabama, and could carry the issue to the U.S. Supreme Court. This win reflects a breakthrough for transgender rights that dig deeper than high school bathroom use.

The wall of prejudices which prevents the transgenders from entering into a society of equal treatment must be torn down. We should help to solve their problems, not escalate them. The governments should positively refrain from making any legislation which deprives the trans community of their existing human rights. Special efforts must be taken to prevent any kind of discrimination and violence against the LGBTQ people. The time calls for protection of the most vulnerable members in this community namely HIV patients, old and homeless people. To provide medical relief aids, shelter and other basic necessities is the obligation of not only the government but also the entire society. It will ensure their access to basic amenities in a dignified manner and help to eradicate the discrimination they have faced for years.

ADULTERY LAW CONCERNING WOMEN SYNONYMOUS TO HONOR KILLING

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The world is a family indeed, but when it comes to the redressal of the grievances of the world at a large lot of significant issues are left untouched. The Islamic laws, in one issue or other have turned out to be gender biased, majorly with respect to issues relating to adultery. Adultery is defined globally as “voluntary sexual intercourse between a married person and someone other than that person's current spouse or partner.” As per the reports of United Nation Commission on Human Rights show that honour killing have occurred in Bangladesh, Great Britain, Ecuador, Egypt, India, Israel, Italy, Jordan, Pakistan, Morocco, Sweden, Turkey and Uganda.

Particularly about the adultery laws in Jordan, that are far more gender-biased than the progressive society may even dare to think. According to Jordanian law, sleeping with any unmarried member of the opposite sex is considered adultery which is elaborated under Articles 282–284 of the Jordan Penal Code, with a penalty of one to three years' imprisonment. The penalty shall be severe (Mushadad) if Adultery is committed to the marital home, but the reality is completely different. If a woman is accused of adultery, the law is taken into hands by the family. As per the statistics, Jordan had one of the highest rates of honor killings in the world, murders of women whose relatives believe they have brought dishonor on the family.

CEDAW is the first legal document which provides legal reliefs against the women violence that suffers due to social, religious, cultural tradition and customary practices like honour killing. Universal Declaration of Human Rights has binding to protect the human being. It has to protect the rights, liberty of persons and protect from the heinous types of violence such as honour killing crimes.

Honour killings self-evidently violate the right to life. Provisions safeguarding the right to life may be found in various international human rights instruments, including the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the European Convention on Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and People's Rights (ACHPR). Moreover, the right to life in the context of violence against women is reaffirmed in the Declaration on the Elimination of violence against Women and the Inter-American Convention on Violence against Women.

The law relating to adultery in Jordan is showing no sign of progress when compared with the other laws where the number of cases of adultery are on power with. In India, adultery was an offence until Apex Court judgment in *Joseph Shine v. Union of India* (2018 SCC OnLine SC 1676) but before that also, the rate of honor killing was reduced to great extent. Such paternalism and gender discrimination are reflected in the language of Article 340 of the JPC (Jordan Penal Code). It allows only men to benefit from a reduction of and exemption from penalty for an Honor Crime if they catch one of their ascendants or descendants committing Adultery, or other wrongful acts intruding on the family's honor. Most of the honour killing occurs in the countries where the concept of women as a vessel of the family reputation predominates. This Article of the Code empowers man but nowhere talks about the scenario in which a married woman is raped, what about her basic human right. Here, the rights are violated, but the worst part is she is even in danger of losing her life.

One of the woman activist reported about the raped women accused of Adultery in Amnesty International, “There was one case where a family shot a woman, she was admitted into hospital, and when she was being transferred from surgery to the intensive care unit, they came back and shot her again. The woman had said she wanted to live on her own. She said she'd wear a veil when she went outside...”

In number of other countries discriminatory laws are existed in the National and International laws where by women are not treated equal with men in all matter, it is a sign of indirectly instigating and promoting the perpetration of honor killing against women in the name of customary practices.

But the problem in Jordan is that the laws exist but the implementation of the same is left in hands of the family members itself when it comes to the women. The law is neither accepting the changes like other countries did in due course of time rather being ignorant when it comes to rights of the women per se. Jordan, unlike other Islamic states has taken lead with respect to various laws from time in memorial. But when it comes to adultery Jordan has to come up stringent laws in practice than in paper. The country should ensure that systematic action is taken to intervene to protect women where there is a credible risk of so-called "honour" killing or other form of gender-based violence, including by way of investigation and prosecution, and through the imposition and enforcement of protective orders.

Even we have to make sure that the Jordanian authorities should monitor and advocate for an end to administrative detention in Jordan, including accused of sex outside of marriage, and in cases of "protective custody".

Like as pointed out by Oscar Wilde "Women have a much better time than men in this world; there are far more things forbidden to them" Does it really have to be...Does woman have to wait for social conscienceness to catch up to her need of equal right and safety?

SOCIALLY DISTANCING THE SOCIALLY DISTANT

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Sex work is an umbrella term, portraying the exchange of sexual services for money or reward. Sex work is a work and sex workers deserve the same rights and protection as any other profession does. Before the corona virus pandemic there were already numerous difficulties for those working in the business. Unreliable incomes, risk of violence, and discrimination are just a few. They are amongst the most marginalized groups with extreme sufferings and no security. Though they have historical reality with cultural connotations, there is a still a social stigma attached to the profession wherein it is not even seen as a work. The reason behind there sufferings like poor health, violence and abuse is the criminalization of the sex work. Criminalization consistently undermines sex workers ability to seek justice for crimes against them. It also has a negative effect on other human rights. In countries that ban sex work, sex workers are less likely to be able to organize as workers, advocate for their rights, or to work together to support and protect themselves.

The prevailing neglect and institutional stigma in the society for ages has had a very bad impact on the lives of sex workers and to add to their misery they were faced by the challenge of the global pandemic and their lives took the turn for the worst as the very intimate nature of their works made them the most vulnerable targets of the virus if they keep working and without work and economic security they struggle to survive every day of the pandemic.

In a survey by the International Committee of the Sex Workers in Europe (ICRSWE), it was found out that lives of most of the sex workers in Central Asia and Europe hangs on an economic margins and have very less savings and governmental aid to fall back on therefore are faced with abuse of social and economical rights.

The committee therefore suggests that there shall be more representation of this group in the different pandemic relief schemes of the government.

The biggest hurdle along the globe standing in between the sex workers and their rights is the criminalization of their work in almost all the legal systems. As it has been consistently found across different legal systems that criminalization of their work makes them vulnerable to violent crimes like robbery, rape, assault and murder as they are understood to be easy prey by their attackers as they are deeply stigmatized very unlikely to file complaint or submit their grievances to the police due to the apprehension of getting arrested for their involvement in criminal activity.

Most of the sex workers across various legal frameworks are conflated with illegal human trafficking prohibitions laws for e.g. Sex work in India is conflated with trafficking for sexual exploitation. The principal legislation dealing with trafficking is the Immoral Traffic Prevention Act, (ITPA) supported by Section 370 – 373 of the Indian Penal Code (IPC). It is therefore suggested that to efficiently tackle the abuse of these workers and to come out of the pandemic as an integrated society every legal system should now consider the following:

1. Removing consensual sex workers from the scope of Human Trafficking Laws and recognizing the consensual exchange of sex between adults and rid the sex workers from the stigma associated to them due to the criminalization of their works.
2. Further schemes policies and laws safeguarding them from serious violent crimes against them.
3. Abolish compulsory detention and rehabilitation centers.
4. Establish skill empowerment centers for victims of trafficking for sexual exploitation
5. Introduce healthcare benefits for these people.
6. Recognize reliefs to be directed towards such workers under relief schemes for pandemic.
7. Launch awareness campaigns aimed at getting rid of stigmas associated with such workers.

The society can along with the government work for the rights of such marginalized groups and voice their interest and see them as ordinary citizens and look beyond the stigmatized ideas of their workings to lend a shoulder of support and care to them in the time of crisis like this. We can always learn our lesson of social distancing to fight the pandemic and also reconcile with the socially distant groups to form a more integrated and unified society and be better prepared for such future crisis.



ABOUT MNLU, AURANGABAD

Maharashtra National Law University [MNLU], Aurangabad, was established in the year 2017 in the State of Maharashtra with the objective of imparting quality legal education. The commencement of the University has been based on the aspirations of the people of the Marathwada region for an institution of national importance in Aurangabad.

