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# THE GENDER GAZETTE

Paving the Way to Gender Equality  
(Newsletter of Centre for Gender Justice Studies MNLU, Nagpur)

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Gender and  
Constitution

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- Informative Anecdote
- Judicial Pronouncements
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The Centre for Gender Justice Studies presents to you the second edition of Gender Gazette, a newsletter aimed at forwarding the goal of Gender Equality. This edition looks at various nuances involved in the arena of Gender Equality and also includes an Article on the theme of **Gender and Constitution**

"Find your identity, your true self, and live your mission...Your power is your radical self. Find it"

-Aya Chebbi



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## INFORMATIVE ANECDOTE

### Gender Discrimination

Gender-based discrimination is one such phenomenon, majorly a product of gender-based stereotypes instilled in children from an early age. We all know that sex and gender are two distinct concepts, the former being wholly biological and the latter being a product of societal instances. People may be assigned a specific sex at birth and choose to identify as a particular gender which they feel comfortable with as they grow up. However, this choice is impeded when society demands them to act according to the stereotypes associated with their assigned sex. If they don't, they are mocked and discriminated against. Hence, it becomes imperative that we understand what these stereotypes are and how to counter them.

Imagine entering any nursery and practically being able to tell the gender of the three to five-year-old just by glancing at the toys in the room. Boys are surrounded by blue practical toys like vehicles, action figures, and a racetrack, while pink social toys encircle females like dolls, dollhouses, and princess costumes. Parents vastly prefer these toys and themes after the gender of their child is revealed. If the child desires anything outside this bubble, their wishes are either denied or frowned upon by the parents, thus effectively taking away the child's right to choose their gender identity. Toys are not the only objects that differentiate between genders. Advertisements feature young girls wearing pink outfits or toting a pink bag with a horse on it. Boys are portrayed as being active or daring and wearing blue clothing. Toy producers typically use pink for girls' toys and blue for boys' toys. They create gender-specific theme worlds for boys and girls based on prejudices justified by the disparate playing styles of the sexes. Girls are supposed to play with socially-oriented toys like dolls, whereas boys should play with more practical toys like trucks. Thus, color and theme design in toy stores shape the gender profile in its early stages. This creates a stigma in children since early childhood, which carries on throughout their lives and results in them fearing to be themselves.



In addition, the advertisement agencies have not been doing any favors to reduce gender stereotyping. The advertisements for toys or even clothing, to secure the demand in the market, display girls wearing pink dresses, bows, and jewelry, whereas boys are seen wearing a more practical range of clothes, a majority of which are blue in color. This results in new (and liberal) parents conforming to these stereotypes to avoid being singled out in society or their child being mocked or bullied. This is vicious systematic cycle in which these stereotypes continue to prevail, making it difficult for people with differing gender identities to come out and freely be themselves.

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The way that men and women dress is determined by culture and society. Since clothing serves as the primary means of expressing one's identity, cultural standards and expectations are intimately related to what it means to be a man or woman. However, this situation is being resolved to some extent through the fashion industry. Stereotypes can be dismantled



Framed by its feminist foreign policy, Feminist International Assistance Policy and National Action Plan on Women, Peace and Security, as well as through increased investments, Canada has been recognized as a top bilateral donor in supporting women's rights organizations in developing countries, as well as for its efforts to end violence against women and girls.

in the context of the significant role that clothing plays in expressing one's gender identity because clothing is the outward manifestation of that identity. And since fashion is a pioneer in terms of what people wear, it plays a significant role in this system. Nowadays, dressing up is a way to express your identity, regardless of whether you were born male or female. Deconstructing the

idea of "gender fluidity" helps many fashion firms create their seasons. People who are struggling to develop the self-confidence to express their gender identity are given a sense of normalcy by gender-fluid fashion portrayals. This has given the people belonging to the LGBTQIA+ community to come forward and express themselves in a way that is comfortable and accepted by society.

Today's fashion revolutionaries aim to obliterate the masculine/feminine distinction and associated labels rather than feminizing or emasculating men or women. And it refers to gender-neutral fashion. The advent of genderless fashion is gradually starting to blur the distinction between traditional gender roles in the business, from the runways to the high street. In addition to this, in a revolutionary step towards gender neutrality, the government of Spain has issued a new code of conduct for the manufacturers of toys and clothes to stop stereotyping their products to provide a free space for people to choose how they want to dress and what they want to play with. It also allows parents to give their children a clean slate to grow into their own gender identity rather than imposing one on them. Hence, such progressive steps by the government will be a welcome breeze for the new-age liberal and accepting population of this country.



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## THEMATIC ARTICLE

### Gender Equality under the Constitution of India

November 26<sup>th</sup> marks the day the Constitution of India was adopted by the Constituent Assembly and is celebrated as Constitution Day throughout the country. Equality has been enshrined in the Constitution of India since its adoption and is being expanded continuously by the legislature and the judiciary. Part III of the Constitution contains several Articles which ensure gender equality. Article 14 provides for equality before the law and equal protection of laws. Article 15 abolishes discrimination on several grounds, including sex. Article 51-A (e) of the Constitution imposes a fundamental duty 'to renounce practices derogatory to the dignity of women.' There were thirteen women members out of three hundred eighty-nine elected members in the Constituent Assembly. Even though the proportion of women in the Assembly is significantly less than the strength of male members, they have actively participated in debates. They have made immense contributions to drafting the Constitution.

The female members were Durgabai Deshmukh, Rajkumari Amrit Kaur, Hansa Mehta, Begum Aizaz Rasul, Ammu Swaminathan, Sucheta Kriplani, Dakshayani Velayudhan, Renuka Ray, Purnima Banerjee, Annie Mascarene, Kamla Chaudhri, Leela Nag Roy and Malati Choudhury. Additionally, Sarojini Naidu and Vijay Laxmi Pandit have helped and contributed immensely to the drafting of the Constitution. The women members of the Constituent Assembly had fought several odds, worked for the nation, challenged the patriarchal society, and excelled in their lives. Apart from being a member of the Constituent Assembly, they also contributed in other fields.



Durgabai Deshmukh was a member of the Planning Commission of India. She participated non-cooperation movement at the age of twelve years. Being a lawyer by profession, she contributed to the legal aspects of the constitution. Rajkumari Amrit Kaur was the first woman minister with cabinet rank post-independence. She worked as Health Minister in the first Nehru cabinet. She was a member of the Advisory Committee and Fundamental Rights Sub-Committee. Hansa Mehta was president of the All-India Women's conference in 1946 and a member of the Fundamental Rights sub-committee. She had led a campaign to change the United Nations Universal Declaration of Human Rights from 'all men are born free and equal' to 'all human beings are born free and equal.' Begum Aizaz Rasul was the only Muslim woman in the Constituent Assembly. She was a member of the advisory committee on the Fundamental rights and minority subcommittee. She was a UP legislative assembly member and served as Deputy President of the Council (1937-40). She joined Congress when Muslim League Indian branch was dissolved in 1950. She was equivocal with Maulana Azad in condemning the separate electoral reservations based on religion for

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minorities. Ammu Swaminathan was a social worker, freedom fighter, and politician. She was a follower of Mahatma Gandhi and participated in the independence movement. She is known for showing disappointment and displeasure with the size and volume of the Indian constitution. She advocated that the constitution should be concise enough to fit in a common person's pocket.

Dakshayani Velayudhan belonged to the untouchable Dalit and extremely unprivileged class. Despite facing innumerable odds, she excelled, completed her graduation in 1935, and later got elected as the only Dalit woman member of the Constituent Assembly. She worked as a member of the Provincial Parliament from 1946 to 1952. The Pulaya community to which she belonged didn't have the privilege to wear cloth on the upper half of her body. The basic facilities like schools, libraries, hospitals, and other public places were not accessible to this community. She fought for her rights and became the first woman in her community to wear the upper half cloth on her body. She was the first Dalit woman to become a science graduate in India. Women have struggled a lot in various aspects of their life, including financial, social, familial, political, education, health, property, and other basic facilities. Discrimination against women has been continuing for a long time. Women form a common group when discriminated against because gender bias exists in every sphere of life and regardless of place, caste, family, finances, and achievements made by women. During the independence movement, patriarchy prevailed over Indian society encouraging multiple social evils such as dowry, female infanticide, child marriage, and *sati-pratha*, along with no education, health, and basic facilities.

### GenFacts

Despite concerted multi-prolonged efforts in recent times to promote women's empowerment and improve gender equality, as of September 2022, there were only 30 women serving as elected heads of government in 28 countries (out of a total of 193 UN member states).



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## Major Judicial Pronouncements

### X v. GNCTD

**Citation:** 2022 LiveLaw (Del) 988

**Decided on:** 19-10-2022

On October 19, the Delhi High Court ordered the Delhi Government to decide within four months over a request for the transgender community to be recognized as a third gender on DTC bus tickets and a provision for their free transportation. An individual from the transgender community filed a public interest litigation (PIL) alleging that the representation made to the Delhi Government and DTC on August 26 did not receive a response. A division bench of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad decided the case. To identify the transgender population as the third gender on the bus tickets distributed to commuters by conductors, the PIL requested directives from the Delhi Government and DTC. Additionally, it asked for advice on how to offer free transportation on all DTC buses, including clusters, feeders, and minibusses. When ruling on the case, the bench took note of the assertion that the DTC had been requested to consider a representation of a similar demand for free tickets for the transgender community in 2020. However, no decision has yet been made on the representation.

The PIL asserted that transgender people are now not recognized as a third gender since



they identify as a gender that is independent and distinct from male and female. It further stated that this situation must change because transgender people should be recognized as the third gender. The PIL continues, saying that people who identify as transgender are compelled to choose between the two genders when

traveling in: “The conductor routinely chastises such people for choosing the female gender and accuses them of attempting to get free bus tickets, which only makes the misery of the transgender community members worse. The people in the Transgender community are severely traumatized, in misery, and in pain because of this.” Accordingly, the bench directed the Delhi Government to consider the two representations, moved by the petitioner in August 2022 and the earlier one of 2020, within a period of four months. The bench also granted liberty to the petitioner to approach the court again if no decision is made by the State.

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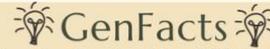
## Dhananjay Chauhan v. State of Haryana

**Citation:** CWP PIL No. 87 of 2022

**Decided on:** 16-09-2022

**Hon'ble Judges/Coram:** Chief Justice Ravi Shanker Jha and Justice Arun Palli

Punjab and Haryana Governments agreed before the Punjab and Haryana High Court to Consider Plea for Setting Up Transgender Protection Cells. Two PILs submitted in support of the creation of transgender protection cells in the two States have been dismissed by the Punjab and Haryana High Court. Dhananjay Chauhan, the petitioner, has also asked for the establishment of a thorough policy on the steps and practices for protecting transgender people in different States. In the petitioner's instance, he claimed that he had previously attempted to contact the authorities in both States through letters and emails, but to no effect. The respondents, which are the States of Punjab and Haryana, respectively, said they would take the petitioner's arguments into consideration and quickly make a decision in line with the law. After hearing from both parties, the division bench of Chief Justice Ravi Shanker Jha and Justice Arun Palli dismissed the petitions, saying that the relevant authorities would be free to review the situation while considering all relevant facts, and they would then accept or reject it per the law.



According to studies, the GDP in 2025 might increase by \$12 trillion annually if all nations performed at the same level as the one in their region that had made the most strides toward gender equality. That would approximately quadruple the projected growth in the share of the global GDP supplied by female employees between 2014 and 2025 under a business-as-usual scenario.

## Tamilselvi v. The Secretary to Government

**Citation:** 2022 SCC OnLine Mad 17792

**Decided on:** 11.10.2022

**Hon'ble Judges/Coram:** R.SURESH KUMAR

The Madras High Court has ordered the State's Department of Health and Family Welfare and Directorate of Medical Education to give third-gender/transgender applicants particular consideration while applying for admission to post-basic (nursing) courses. The decision was made after a transgender woman filed a petition with the court asking that the prospectus for the Post Basic (Nursing) Course and Post Basic Diploma in Psychiatry Nursing Course for the academic year 2022–2023 be quashed because the selection committee had mistakenly listed her as a woman in the merit list.

Justice R Suresh Kumar observed that the non-inclusion of the petitioner in the special category was not just a mere omission but against the principles laid down by the Supreme Court and the Transgender Persons (Protection of Rights) Act, 2019. Had there been the special reservation, as directed by the Supreme Court, provided to the transgender, certainly the petitioner would have been in a top position and would be in a position to get admission in the course concerned, said the court.

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The State argues that the special reservation for transgender was not provided because only a few transgender people live in the state. Therefore, if a particular percentage of seats is reserved, they may get wasted for want of candidates. The court said: "... at least a provisional note could have been made that, even though special reservation has not been made horizontally for transgender candidates, if there is any transgender candidate who makes the application and would be otherwise eligible to be considered on merits that is the minimum eligibility mark obtained by the transgender candidate, that candidate would be treated as a special candidate under the special category of transgender or third gender and accordingly transgender candidate would be considered for admission. At least this kind of special note could have been appended to the notifications or prospectus issued by the respondent, even if that kind of special note was missing in the said notification/prospectus."



The attorney claimed that the court had ordered the center and the state government to treat transgender people as members of the socially and educationally disadvantaged classes of citizens and to extend all forms of reservation in cases of admission to educational institutions and for public appointments in the case of *National Legal Services Authority Vs. Union of India and others*<sup>1</sup>. This was reaffirmed in *K. Prithika Yashini Vs. The Chairman, Tamil Nadu Uniformed Services Recruitment Board*,<sup>2</sup> by a split bench of the Madras High Court. Additionally, it was argued that the prospectus was released without making this reservation even after the court issued these detailed directives and the Transgender Persons Protection of Rights.

On the other hand, the state said that special reservations were not made since there were so few transgender people, and there was a chance that the seats would go empty if no one applied. Thirty of the 40 seats were set aside for female candidates, while ten were designated for male candidates. The court stated that no such reservation had been made for the third-gender applicants in the prospectus, citing the Supreme Court's ruling in the *National Legal Services Authority* case and provisions of The Transgender Persons (Protection of Rights Act) 2019.

### **The Andhra Pradesh High Court will investigate whether a transgender woman may file a complaint under Section 498-A IPC.**

The Andhra Pradesh High Court has received a criminal quashing petition requesting it to investigate whether a transgender woman may report dowry abuse under Section 498A of the IPC. According to the petition, a plain reading of section 498A makes it clear that a complaint with allegations under this section should be made by a "woman," and as a result,

<sup>1</sup> AIR 2014 SC 1863.

<sup>2</sup> W.P.No.15046 of 2015.

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a complaint made under this provision by a complainant who identifies as transgender is not legally admissible. The petition seeks to overturn a criminal case that a transgender woman who claims to be his wife filed against the petitioner.

## Javed v. State of Haryana

**Citation:** 2022 SCC OnLine P&H 393

**Decided on:** 28.10.2022

**Hon'ble Judges/Coram:** Justice Vikas Bahl

The Prohibition of Child Marriage Act of 2006's Section 12 does not apply to Muslim women who are 15 years of age or older and want to marry someone of their choosing with their own free will and agreement, according to the Punjab and Haryana High Court. The comment was made during the hearing of a habeas corpus case submitted by 26-year-old Javed challenging the imprisonment of his 16-year-old wife at a children's home. The court determined that their union was permissible under Islamic law and that the petitioner had legal custody of the detainee.

In support of his claim that he should be granted custody of the detainee under the current circumstances, both parties being Muslims and having conducted Nikah, the petitioner cited *Yunus Khan v. State of Haryana and Others*<sup>3</sup>. After reviewing the pertinent records, the relevant legal arguments, and the detainee's statement given under Section 164 of the CrPC, the single bench of Justice Vikas Bahl ordered her release from Ashiana and custody transfer to the petitioner.

## Any attempt to create a uniform civil code must prioritize women while avoiding harming other genders: Justice Nagarathna.

At the Jharkhand Judicial Academy, the Supreme Court justice gave a speech on "WOMEN'S RIGHTS TO PROPERTY: ROAD TO EMPOWERMENT." When Justice Nagarathna stated that Section 6 of the 1956 Hindu Succession Act had been amended in 2005, "At every level, from civil court all the way up to the Supreme Court, there has been a docket explosion that has affected us all. That is encouraging. However, I would also advise women to resolve their disputes whenever a resolution is possible, whether through mediation or Lok Adalat, in order to repair the family relationship."

Justice Nagarathna said, "The judge has mentioned all of this in the context of gender parity and for restoration of the unit of society, something that is quite specific to India as contrasted to anywhere else in the world." She also expressed that it was pretty apparent that reforms had been made to women's property rights in India to end the practice of systemic discrimination against them. A legal regulation's true goal should be to change social and gender attitudes, even though the theme of gender parity has been at the center of

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<sup>3</sup> 2014 (3) RCR (Cr.) 518

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current inheritance laws. According to empirical research on women's inheritance rights, significant gender bias still exists despite reforms, making it difficult for women, especially rural women, to achieve.

She talked about how personal laws, both uncodified and codified, govern women's property rights in India, but that these laws are religion-specific and that “separate personal laws are based on various religious groupings and sects, and such a plurality is a part of India's diversity.” “However, after fully acknowledging the strong contact between personal laws and the Constitution of India, the law in this respect must be considered and applied in light of the culture of the Constitution. We are all reminded of Article 44 of the Indian Constitution, which refers to a uniform civil code. It is a goal worth pursuing because our nation, comprised of people from various religions, communities, ethnic groups, and tribal groups, faces enormous complexity. Even though article 44 is a DPSP, which allows for significant progress in this area, its absence cannot be used as an excuse to ignore the constitutional restrictions imposed by part three of the Constitution, notably articles 14 and 15 on the subject of gender equality. In reality, specific rights and safeguards may be provided to them under Article 15(3) of the Constitution to ensure that women are safeguarded from all manifestations of discrimination. Any legislation that affects women’s rights should be enacted, applied, or interpreted with this constitutional protection and affirmative action in mind, even if the law is based on the personal law system.



In 2017, the UN Special Rapporteur on the right to health stated that reducing trans identities to diseases aggravated stigma and discrimination. In 2019, the World Health Assembly adopted the eleventh revision of the International Classification of Diseases (ICD-11), which removed trans-related categories from the chapter on mental and behavioural disorders.

### State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai,

**Citation:** 2022 SCC OnLine SC 2239

**Decided on:** 31.10.2022

**Hon’ble Judges/Coram:** Justice Dr. Dhananjay Chandrachud and Justice Hima Kohli

The “Two-Finger Test” was outlawed in rape cases by the Supreme Court on Monday, and those who conducted them risked being found guilty of misconduct. When reinstating the conviction in a rape case, a bench made up of Justices DY Chandrachud and Hima Kohli bemoaned that the “two-finger test” is still used today. “This court has repeatedly condemned the use of the two-finger test in rape and sexual assault cases. The supposedly scientific test is unfounded. Instead, it victimizes and dehumanizes women once again. The two-finger test shouldn't be used. The test is founded on the false presumption that a woman who is sexually active cannot be raped. Nothing is more false than this,” the bench noted as it delivered the ruling.

The “two-finger test,” also known as the pre-vaginum test, should not be used since it has a scientific foundation and cannot be used to support or refute rape accusations. It is patriarchal and sexist to imply that a woman cannot be believed when she claims to have been raped just because she is sexually active. Instead, it re-victimizes and re-traumatizes

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women who may have been sexually attacked and is an affront to their dignity. *Lillu v. State of Haryana (2013) 14 SCC 643.* was cited. Instructions given to the State Governments and the Union Government - Hold workshops for healthcare professionals to ensure that the Ministry of Health and Family Welfare's guidelines are distributed to all public and private hospitals. The sexual history of a woman has no bearing on how credible her testimony is. The bench said, "Suggesting that a woman cannot be believed when she claims she was raped just because she is sexually active is patriarchal. The bench instructed the Union Health Ministry to prevent the two-finger test from being administered to victims of sexual assault and rape. The Court ordered the Union and State governments to ensure that all public and private hospitals receive the Department of Health and Family Welfare's guidelines, which call for the two-finger test.



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## State at Work

### SMILE SCHEME OF 2022

With the recognition of the Transgender community in India through the NALSA judgment of 2014, some bills and schemes were introduced for the community, like the Transgender Protection Bill, to give them the rights any human deserves. The SMILE scheme is introduced for the upliftment and welfare of transgender people.

On February 12, 2022, the Ministry of Social Justice and Empowerment of the Government of India, under the leadership of the Union Minister for Social Justice & Empowerment, Dr. Virendra Kumar, launched the progressive scheme titled “SMILE” with an incentive of providing welfare and security measures to the Transgender Persons and members of the LGBTQ+ Community. The scheme “SMILE” stands for Support for Marginalized Individuals for Livelihood and Enterprise, comprising two sub-schemes, namely, the Central Sector Scheme for Comprehensive Rehabilitation for Welfare of Transgender Persons and Central Sector Scheme for Comprehensive Rehabilitation of engaged in the act of Begging. On the launch day, the Union Minister for Social Justice & Empowerment, . *The*

*Ministry, has ensured that each and every need of the transgender community and persons engaged in the act of begging are taken care of in most professional way. The provision of national portal and helpline will provide necessary information and solutions to the problems of the transgender community and the people engaged in the act of begging.”*

The primary sub-scheme, ‘Central Sector Scheme for Comprehensive Rehabilitation for Welfare of Transgender Persons,’ extensively focuses on providing medical facilities, education, economic aid, and rehabilitation along with general welfare measures for the Transgender Community. By virtue of the progressive scheme, transgender students from Grade 9<sup>th</sup> onwards shall be able to avail of the scholarship till Post Graduation. Furthermore, Transgender Students shall be able to avail of training under the Skill Development and Livelihood programme of the PM Daksh Yojana, that is, *Pradhan Mantri Dakshta Aur Kushalta Sampann Hitgrahi*. Under the SMILE Scheme, approved Hospitals shall conduct Gender-Reaffirmation surgeries in confluence with *Pradhan Mantri Jan Arogya Yojana*, which operates to provide healthcare facilities to eligible beneficiaries. Furthermore, Health Insurance as “Ayushman Bharat TG,” under the Ayushman Bharat Yojana, shall be made inclusive of gender-reaffirmation surgeries for Transgender Persons. The National Health Authority shall ensure the aforementioned due compliance with the Scheme. Each Transgender Person shall be eligible to avail of an insurance cover of Rs. 5 lakhs per year under the Ayushman Transgender Health Insurance initiative. Thus, the SMILE Scheme offers a comprehensive healthcare package to Transgender Persons intending to guarantee their due right to healthcare and well-being. About the provision of housing facilities, the Ministry shall provide shelter homes, that is, ‘*Garim Greh.*’ The shelter homes shall be inclusive of food, clothing, recreational, skill development, and medical support facilities. As a protective measure, Transgender Protection Cell shall be set up under the SMILE Scheme, wherein cases

 **GenFacts**  
Daughters of Bilitis (DOB), the first lesbian rights organization, was formed in september 1955 in San Francisco, USA. the organisation was called Daughters of Bilitis.

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shall be filed against the commission of offenses towards Transgender Persons. Furthermore, the Transgender Protection Cell shall ensure timely investigation, filing of claims, and prosecution of offenders. By virtue of the SMILE Scheme, E-services, such as National Portal and Helpline Numbers, shall be set up for the social welfare and protection of Transgender Persons.

The SMILE scheme is an appreciable and significant step by the government of India to include the marginalized transgender community in society and provide them with the education that was previously denied to them. This will ensure that the transgender community will lead a life of dignity and respect and will not resort to beggary as a means of survival. This scheme is beneficial to the community and a progressive step towards the inclusion of transgender people.



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## Society Through Gender Lens

Society can be defined as a group of people living collectively and sharing similar thoughts, notions, and cultures. Our world has evolved and imparted knowledge through societies. Law originated first to regulate societies. For a prolonged period, societies have passed their



sanctions and imparted culture from generation to generation. These cultures imparted from ages are taken as norms that govern the public and personal life of the people. People live in society and become a prominent part of society as it allocates belongingness and identity. Gender plays a profound role in shaping societies and their norms. The conventional approach of gender is male and female; however, we need to

understand that gender is different from sex. Gender can be described as a complex system of roles, expressions, identities, performances, and qualities given gendered meaning by society. Gender characteristics can change over time and vary between cultures, whereas sex is the biological and physiological characteristics of males and females. Most societies take gender and sex synonymously, but there has recently been awareness regarding it.

For a prolonged period, the long and persistent gender inequality has led to a deficiency in gender justice in society. Society has outcasted the unprivileged and granted the privileged the resources that deepen the economic and social inequality in society. For instance, the outcast of women from education and the non-recognition of LGBTQ+ people from their identity has widened the gap of social and gender justice, where genders have the means and opportunity to grow and fairly represent themselves. Access to justice also faces setbacks due to persistent and prolonged discrimination and societal inequality. It is said that with time, societies change and take a new turn in the process of social change. With revolutions, interaction, and sharing of knowledge through agents of social change, societies have reformed so as the norms. Law is the dominant factor that brings social change. Laws passed to ban social evils like Sati, child marriage, and allowing education to women, etc., have played a fundamental role in making the society realize the evil norms. In due course of time, the apex court has taken various steps to inculcate the spirit of gender justice and narrow down the prominent inequality. The best examples are *Vishaka v. State of Rajasthan*<sup>4</sup>, *Lata Singh v. State of Uttar Pradesh*<sup>5</sup>, *Justice (Retd) K S*



The "Los Angeles Advocate," founded in 1967, is renamed "The Advocate." It is considered the oldest continuing LGBTQ publication that began as a newsletter published by the activist group Personal Rights in Defense and Education (PRIDE) in 1966.

<sup>4</sup> (1997) 6 SCC 241)

<sup>5</sup> Writ Petition (crl.) 208 of 2004

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*Puttaswamy v. Union of India*<sup>6</sup>, *Arun Kumar v. Inspector General of Registration, Tamil Nadu*<sup>7</sup> and *Navtej Singh Johar v. Union of India*.<sup>8</sup>

Several rules or norms passed from generation are often so stringent that it takes years to break them. Sometimes, even the law can also not break the norms of society. For example in the *Indian Young Lawyers' Association v. State of Kerala*<sup>9</sup>, the Apex Court allowed menstruating women to enter the temple; however, a woman still faces an outcast if she tries to enter the temple. In the same way, even after the decriminalization of homosexuality,



LGBTQ+ couples still face discrimination from society. The point we need to understand is that distinct change, either in law or society, will not be able to achieve gender equality. It's the efforts of both social and legal factors that have to stop work in a coexisting manner to achieve the goal. Society has to acknowledge that with

changing times, it has to discard its practices and adopt contemporary and gender justice-oriented acts to achieve the goal. In this process, the law must be an asset, not a blockage. Without a balance between the operational perspective of social changes and law, gender justice will be hard to achieve and implement.

### Violence Against Women: Is violence a “Natural” part of Humans?

When we try to answer whether violence is a ‘natural’ part of being human, we may come across many conflicting opinions from anthropology, sociology, and psychological perspectives. Some say that violence is a natural trait of human beings. They give reasons such as our closest ancestors (chimpanzees) were violent, and they fought many smaller groups in order to keep their dominance intact; human bodies and brains are designed in order to kill and so are aggressive involuntarily; a non-civil state consists of violent beings (as said by Thomas Hobbes), etc. Other theorists dismiss these theories, and they say that humans are compassionate, peaceful, and non-violent, with exceptions. We have traits of cooperation, and when we hear news of some crime, it generally involves a few people instead of thousands simultaneously. If we think this clearly, it is true that humans have the instinct to stay calm and, when faced with conflict, can resolve it better without involving violence. However, it is also one undeniable understanding that all persons have some aggression within. It does not impact or affect everything they do but indeed exists within.

<sup>6</sup> (2017) 10 SCC 1

<sup>7</sup> W. P. (MD) No. 4125 of 2019

<sup>8</sup> (2018) 10 SCC 1

<sup>9</sup> (2019) 11 SCC 1

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If violence is not an instinct of human beings, why is it that there is such a kind of gendered violence on a spree in the world? It is no secret that gender-based violence is prevalent in human society. It exists in various forms and places (homes, workplaces, businesses, etc.). As we visited anthropological theories above, it might be fair to do so here. Males and females are built differently from each other. Male members are biologically more muscular than females. This made it easier for the former to inflict force and power over the latter, even from the times of our animal ancestry. Besides this, their physical differences made it easy for males to hunt and bring food. Accordingly, someone had to stay in the shelter (probably a big tree branch) and nurture the young. This routine continued so efficiently that if females did something other than the work she was 'supposed' to do, it was seen as unacceptable by the males in dominance. Dominance came to the males because they believed that they did the work females could not or were not to do. This is how there was gender inequality. Male dominance, whenever challenged, was tried to win over by violence. Even today, if a woman disagrees with the man of the house, she is physically or sexually beaten till she submits. This part of her 'submitting' is, I believe, a significant part of violence against her. A woman has always been considered below men and is always asked to follow his orders. This inequality acts as a major contributor to the victimization of women. It makes them vulnerable to violence by men. While in the present times, women are trying to raise their heads and become self-independent; to some types of men, it is a threat to their authority. And from that, we keep on hearing news such as sexual harassment, rape, forced marriages, and so on.

In the Indian legal system, several provisions are women-related legislation. The Indian Penal Code 1860, which is general legislation for crimes in India, has specific provisions for the protection of women. Offenses such as bigamy, cruelty, rape, sexual harassment, voyeurism, etc., are criminalized under this statute. Another legislation that brought a revolutionary change in the lives of women in India is The Protection of Women from Domestic Violence Act 2005. Along with specific shortcomings, this special legislation has given women a way to fight any violence committed against them by anyone in the domesticity of a home. This Act does not just protect wives but all women who would be facing abuse in their homes. Section 3 of this Act defines domestic violence, and this covers sexual violence. Among many judicial decisions, one recent judgment by the Supreme Court of India is particularly of significance. In the case of *Independent Thought v. Union of India* (2017) 10 SCC 800, the Court increased the age of consent to 18 years for sexual intercourse in marriage. Before this, if a man is married to a girl under 18, if she is above 15, and they have sexual intercourse, then it would not be constituted as rape. After this judgment, sexual relations with a girl below 18, even in marriage, will be considered rape.

Even after all the provisions available in the legal texts, many women don't seek the protection of the law. Some women face domestic violence and sexual/physical violence but



The theme for International Women's Day 2023 is "Cracking the Code: Innovation for a gender-equal future". This theme emphasizes the importance of bold, transformative ideas, inclusive technologies, and accessible education in combating discrimination and the marginalization of women globally.

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remain quiet about it at times. They are either scared to speak up or are forced to remain silent about anything that happens to them. Suppose it's something that happened inside the home. In that case, there are reasons that make a woman stay quiet about her situation, such as her children, her inability to stand on her own feet if she decides to leave her husband, lack of support from her natal family and her in-laws, lack of exposure to the legal protection available, apprehension of harm at the instance of her husband if she did something, and so on. The reason why an unmarried woman may stay silent if her partner abuses her sexually (or in any other way for that matter) may include- her fear of exposure of their relationship (the conservative Indian society believes it to be dishonoring if a woman has sexual relations before marriage), fear of family, family pressurization to keep her relationship a secret, possible records of pregnancy/abortion, threats given by the partner about their intimacy and so on.

Thousands of women might be facing this horror in the ease of their home and being unable to speak about it as it is the husband's marital/conjugal right, and so, she gets forced into going through this any time her husband wants her to. Women in India are practically helpless when it comes to marital rape. As was seen above, it is rape only when committed against a minor girl. For the rest of the women population, there is no concept of consent in marriage concerning a sexual relationship. It blows my mind when I think that it could be possible that women I know could have been the victim of this horror but never recognized last spoke about it. There is no legal protection from marital rape, and it is refused to be considered as a concept due to the apprehension that there could be frivolous cases filed in the court of law by women and also that it goes against the sacred value of marriage.



# THE GENDER GAZETTE

## INTERNATIONAL GENDER EVENTS

### Women and Youth in Trade Protocol in the AfCFTA

The Assembly of the Heads of State and Government of the African Union committed “to broaden inclusiveness in the operation of the AfCFTA through interventions that support young Africans, women, and Small and Medium Enterprises (SMEs) as well as integrating informal cross-border traders into the formal economy by implementing the simplified trade regime.”



In line with the directives of African leaders, the AfCFTA Secretariat is undertaking preparatory work towards the negotiations and development of the AfCFTA Protocol on Women and Youth in Trade. The Protocol is expected to address the specific constraints and barriers women face when trading on the continent. It will create an environment that allows women to utilize the AfCFTA by accessing broader markets, improving

their competitiveness, and participating in regional value chains.

With respect to this Protocol, there was a conference held on the Women in Trade for Africa. The AfCFTA Conference on Women and Youth in Trade, taking place at the Julius Nyerere International Centre, commenced in Dar Es Salaam in the United Republic of Tanzania under the patronage of Her Excellency Samia Suluhu Hassan. The Opening Statement was made by H.E. Wamkele Mene, who emphasized the conference's importance as a landmark occasion to include the needs of women and youth in the AfCFTA Protocol on Women and Youth. H.E. Dr. Monique Nsanzabaganwa, the Deputy Chairperson of the African Union Commission, also said, *“It is critical to foster an inclusive and sustainable socio-economic development agenda that is anchored on the people who are to benefit from such development. It is also important to ensure the effective implementation of supporting policies and programmes.”*

The AfCFTA Conference on Women and Youth in Trade offers a robust platform to engage all stakeholders, including women and youth entrepreneurs and businesses, on the challenges they face as cross-border traders. Still, also on the solutions, they would like the AfCFTA, and more specifically, the Protocol on Women and Youth in Trade, to bring for them. Other high-profile speakers included H.E. Jewel Howard Taylor, Vice President of the Republic of Liberia and H.E. Sahle-Work Zewde, President of the Democratic Republic of Ethiopia, and H.E. Ameenah Gurib Fakim, former President of the Republic of Mauritius. Three plenary sessions were held on Supporting Women’s and Youth’s Leadership in Trade, Reflecting on Challenges Women and Youth face in Cross Border Trade in Africa, and Promoting Financial Inclusion for Women and Youth in Trade.

# THE GENDER GAZETTE

## International Events relating to Gender in Europe

**Spain assents to restrict toy producers from utilizing traditional gender stereotypes in their commercial advertisements.** The government of Spain has approved a new code of conduct that forbids toy companies from utilizing sexist tropes in their advertisements. Businesses will no longer be able to suggest that their items are designed for boys or girls by using the colors blue or pink. The “self-regulatory code” would work to “prevent bias, gender norms, and the sexualized depiction of young girls,” according to a statement from the nation's consumer affairs ministry.

**Italian children shouldn't inevitably inherit their father's surname, rules the Constitutional Court.** The Constitutional Court of Italy has declared that children should not always be given their father's last name. The court ruled that the child should bear both parents' surnames if the parents cannot agree on a surname. A long-standing custom in Italy that mandates that all infants are given their father's name at birth will be abolished by this decision in May 2022. The court found that both parents should have the option to pick the surname and that the historical custom is “discriminatory and damaging to the identity” of the children. To comply with the court's decision, new legislation has now to be approved by the Italian parliament.

**The EU agrees to implement a 40% quota for women on big company boards by 2026.** To guarantee that women hold at least 40% of the seats on big company boards, the European Union has decided to adopt gender quotas. By mid-2026, the law compels listed firms in all 27 EU member states to have women hold at least 33% of all board director positions or 40% of non-executive board seats. Companies that don't have enough women on their boards risk being penalized and having their director nominations revoked for breaking the law.

“Diversity is not only about being fair. It also stimulates development and creativity. Ursula von der Leyen, president of the European Commission, stated in a statement that there is a compelling commercial argument for having more women in senior positions. Many women are competent for top positions; they ought to be able to obtain them.

**Spain is the newest country to provide equal remuneration for national team football players of both genders.** The Spanish football organization has declared that players would be paid equally for representing their nation, male or female. The five-season deal will also ensure that Spain's national teams have equal access to transportation, meals, and lodging. On Tuesday, the Royal Spanish Football Federation (RFEF) stated that “the incentives obtained in percentages will be equalized.” According to federation president Luis Rubiales, “the women players on the national team will now enjoy an advance on bonuses, precisely the same as the men's squad.”



According to research by the Gay and Lesbian Vaishnava Association (GALVA), it was around 3102 B.C. (during the Vedic Age) that homosexuality or non-normative sexual identity was recognised as “tritiya prakriti”, or the third nature.

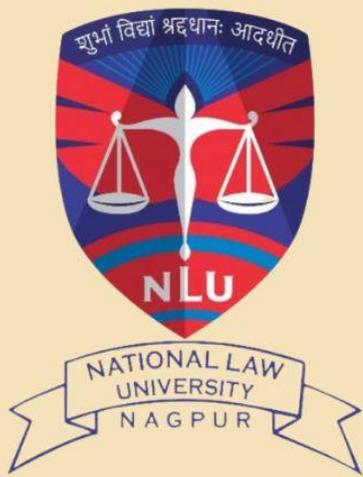
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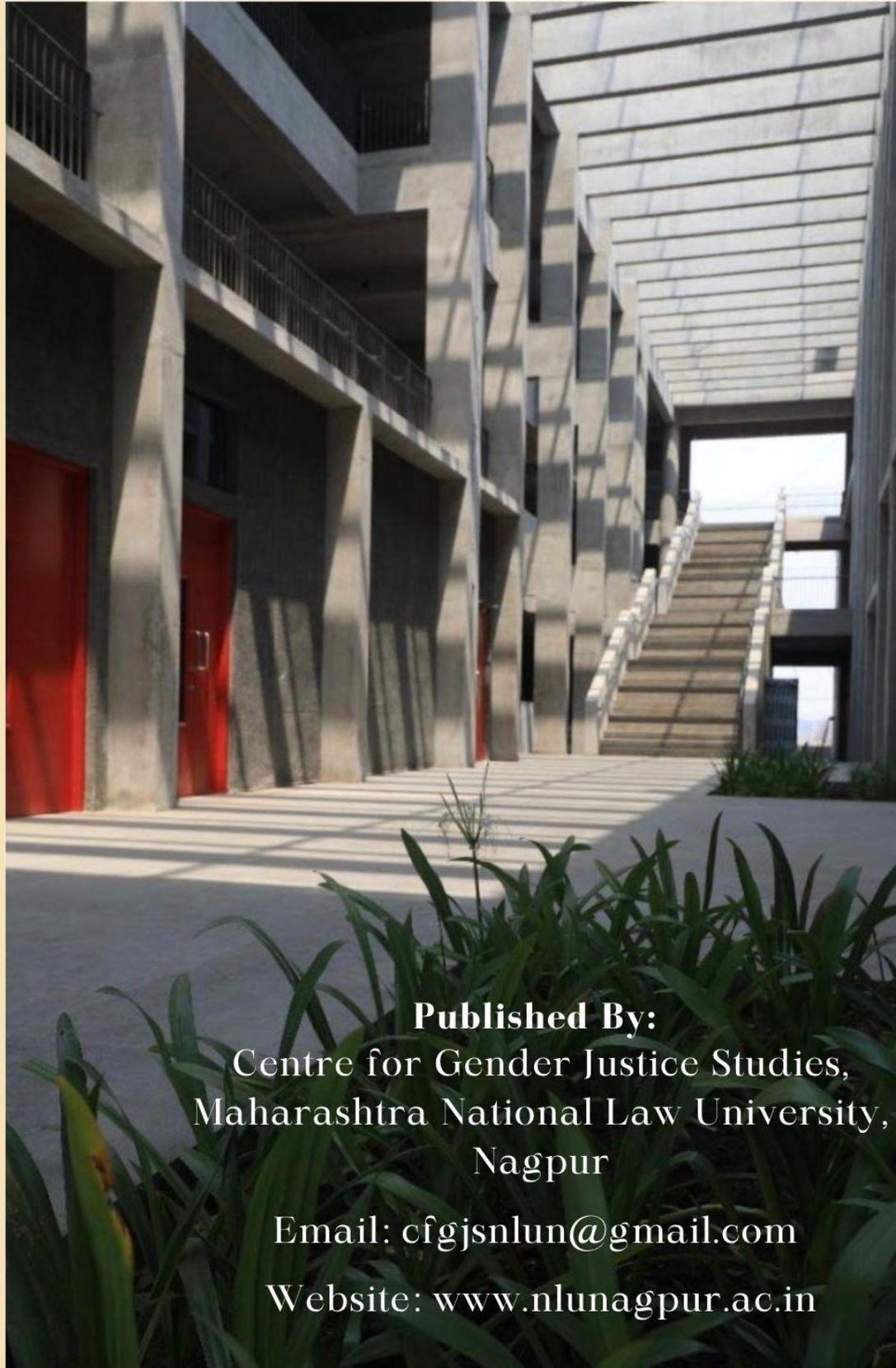
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