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BEYOND THE BINARY CATEGORIES OF GENDER: An Analysis of 'Gender Mainstreaming' Policies and Practices of National Law Universities in India

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BEYOND THE BINARY CATEGORIES OF GENDER: An Analysis of ‘Gender Mainstreaming’ Policies and Practices of National Law Universities in India

Ritabrata Roy* & Shreya Arneja**

[Abstract: In this article, we have critically assessed the gender-mainstreaming policies of six major National Law Universities (NLUs) in India by analyzing the Self-Study Reports (SSRs), submitted by these universities for NAAC accreditation, under the rules of Government of India. Additionally, we have looked into the overall comprehensiveness of the notions of ‘gender-mainstreaming’. We have primarily argued that ‘gender-mainstreaming’, in its present form is largely limited to the classical concept of ‘gender binaries’. Thereby it is somewhat oblivious of the intersectional analysis of gender, as a fluid social construction. Furthermore, we have also pointed out major implementation lacunas in the present scheme of ‘gender-mainstreaming’. We are of the opinion that this ironical situation can be redressed a double measure of revamping the definition of ‘gender-mainstreaming’ by broadening its scope to include the issue of LGBTQ discrimination, coupled with introduction of some strict compliance measures at the organizational level.]

I

Introduction

‘Gender’ as a concept has undergone overwhelming transformations over the past fifty years. What primarily originated as a movement to confer political rights to women in United States of America over a century back,¹ has now revamped its goals towards truly becoming a voice for the marginalized.² Indeed, the present

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¹ Judith K Cole, *A Wide Field for Usefulness: Women’s Civil Status and the Evolution of Women’s Suffrage on the Montana Frontier 1864-1914*, 34 AM. J. LEGAL HIST. 262 (1990).

² Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241 (1991).

notion of gender has long transcended the dichotomous boundaries of male and female, which dominated the academic and political discourses during first wave of the feminist movement. Summarizing this aspect, Nivedita Menon comprehensively remarks:

‘In this second decade of the 21st century, we all know that feminism is not in fact about “women” but about recognising how modern discourses of gender produce human beings as exclusively “men” or “women”. In other words, feminism requires us to recognise that “women” is neither a stable nor a homogeneous category. But nor are caste, race or class, stable or homogeneous categories’.³

Such endeavors to fragment the universal notion of ‘womanhood’ have resulted in creating various intrinsic concepts within the ‘gender’ compass. These relatively new developments, premised mainly on the theory of intersectionality have strongly questioned the static reality of gender as a homogeneous notion.⁴ The subject of this paper is one such aspect that has evolved from this modern view of gender, namely ‘gender mainstreaming’.⁵

Primarily touted as an intrinsic tool to promote gender equality, gender-mainstreaming has been relentlessly seeking to ensure realization of gender equality as an integral dimension of the developmental programmes and policy-making process of any organization.⁶ Irrespective of its initial success, the policy has frequently come under scrutiny, mainly from intersectional feminists on grounds that, it has resulted into a paradoxical irony of re-establishing the patriarchal notions of sex-based gender roles, something this policy was grounded to eradicate.⁷

At the backdrop of these criticisms, we seek in this research to investigate into the *success-story* of the ‘gender mainstreaming’ policies within some of the premier institutions of legal education in India. We will primarily analyze the question, as to what extent have these institutions implemented the measures of gender-mainstreaming within their policy matters? Additionally, we will critically explore the viability of the concept of ‘gender-mainstreaming’ as a whole, in relation to the broader intersectional notion of gender, being a fluid social construction.⁸

The paper is divided into five sections. In section II, we will briefly outline the concept of ‘gender-mainstreaming’, looking into its advent and journey till date.

³ Nivedita Menon, *Is Feminism about ‘Women’?: A Critical View on Intersectionality from India*, 50(17) EPW 37 (2015), at 37.

⁴ Anna Carastathis, *The Concept of Intersectionality in Feminist Theory*, 9 PHIL. COMPASS 304 (2014).

⁵ Victor Rego Diaz, *Gender Mainstreaming*, 21(3) HIST. MATERIALISM 247 (2013).

⁶ Gulay Caglar, *Gender Mainstreaming*, 9 POLITICS & GENDER 336-344 (2013).

⁷ Sophie Jacquot, *The Paradox of Gender Mainstreaming: Unanticipated Effects of New Modes of Governance in the Gender Equality Domain*, 33 WEST EUR. POL. 118 (2010).

⁸ Carol Lee Bacchi, *‘Gender/Ing Impact Assessment: Can It Be Made to Work’*, in Carol Bacchi and Joan Eveline, MAINSTREAMING POL. (2010).

Section III, will present a critical study regarding the gender-mainstreaming policies of six of the premier legal education institutions in India. It will primarily involve a critical assessment of the institutions' policy matters with regards to gender ratio of their students and staff members, whether the concerned institutions have conducted detailed gender analysis during the last five years and what specific measures have been adopted to promote gender equality in these institutions? In Section IV, we will highlight the challenges that intersectionality presents to the dichotomous binary premise of these gender-mainstreaming policies. Here, we will revisit the findings to assess their feasibility in the context of the intersectional challenges. Section V, will conclude the research with recommendations that can be adopted in future to address the shortcomings found by the study.

This research is mainly based on secondary data which is collected from the websites of the universities and the accrediting body in question. Further, various scholarly articles and library of University of Sussex, are also referred.

II

Gender-Mainstreaming

The United Nations Economic and Social Council (ECOSOC) defines 'gender-mainstreaming' as:

'Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislations, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of the policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality'.⁹

Largely, the notion emphasises upon achieving the goal of incorporating gender issues within all major developmental policies of different institutions, which constitutes the market economy. Gulay Caglar, mentions, that these policies are mainly aimed at 'making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic and societal spheres...'.¹⁰ Therefore, gender-mainstreaming policies are mainly designed to promote equality of opportunity through a process of inclusion.¹¹ This is primarily sought to be

⁹ Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations* 18 HARV. HUM. RIGHTS J. 1 (2005), at 4.

¹⁰ *Supra* note 6 at 338.

¹¹ *Supra* note 5.

achieved by incorporating a gendered perspective into policies, programs, and projects within any organisation.¹²

The need of such *upliftment* measures started to be recognised within the contemporary literature in the late 1970s. It was largely due to the frustration created by the failure of the efforts of the second wave feminists to attain the goals set by the prevailing gender equality programmes.¹³ Such frustration catalysed a major shift away from the existing WID approach in the then feminist movement, which greatly focussed on specific reservations for women within different sectors of the society, towards an approach of Gender and Development (GAD).¹⁴ This new approach primarily called for a complete revamp of organisational strategies in favour of integrating the 'gender question' into major policy matters of the organisations. It also relinquished the prevailing idea of viewing women as a special interest group within the developmental sphere, needing particular accommodation.¹⁵ Such reservation strategies were, mainly, adopted by the 'Women in Development' (WID) approach. However, they failed to question existing gender biases within the organisations.¹⁶ Alternatively, GAD drew attention to the impact of relations between women and men between different organisational development policies. Its primary aim was to change the entire narrative of developmental measures to prevent inequality between women and men.¹⁷ Hence, it called for incorporating the essence of substantive equality within the organisational setting.

Gradually, these 'gender-mainstreaming' approaches started to get its much-needed impetus from major international organisations, such as, the International Labour Organisation (ILO), ECOSOC, among others.¹⁸ As a result, many important organisations worldwide, started to incorporate these values within their departmental policies. Such initiatives, chiefly, included:¹⁹

¹² *Supra* note 6.

¹³ *Supra* note 9.

¹⁴ *Id.*

¹⁵ *Supra* note 6.

¹⁶ Aruna Rao, GENDER AT WORK: THEORY AND PRACTICE FOR 21ST CENTURY ORGANIZATIONS (2016).

¹⁷ *Supra* note 9 at 2.

¹⁸ ILO, Bureau for Gender Equality, *Gender Equality and Decent Work: Good Practices at the Workplace*. (Oct. 2005). Available at: http://www.ilo.org/gender/Informationresources/Publications/WCMS_087647/lang--en/index.htm#:~:text=Gender%20Equality%20and%20Decent%20Work%3A%20Good%20Practices%20at,into%20their%20institutional%20structures%2C%20policies%2C%20programmes%20and%20activities (last visited 5 Jul. 2020).

¹⁹ European Social Fund, *European Standard on Gender Mainstreaming in the ESF: Analysis*, (April 2014). Available at: <http://standard.gendercop.com/implementation/analysis/index.html> (last visited 5 Jul. 2020).

- undertaking gender analysis to understand the prevailing inequalities between men and women
- carrying out gender budgeting to allocate *necessary* resources, and
- enabling means to initiate a process of institutional change

However, whether such integration policies have been able to create a substantial impact worldwide, in attaining the envisaged goals, is widely contested by many scholars.²⁰ It is beyond the scope of this research to objectively analyse such impact in greater details. This paper is rather concerned with performance of some of the elite institutions of higher legal education in India regarding formulating and implementing various gender-mainstreaming policies.

III

The Study

Overview

For the purpose of this study, we have investigated the most recent 'Self-Study Reports' (SSR) of six premier National Law Universities (NLUs) in India.²¹ These are comprehensive reports which are prepared by the universities themselves, and submitted to National Assessment and Accreditation Council (NAAC), as a part of the accreditation process.²² Copies of these reports are available in the respective official websites of these universities. We have mainly studied these reports on the following counts to assess the policies of the university regarding gender-mainstreaming:

- undertaking gender analysis
- carrying out gender budgeting and allocation of necessary resources
- enabling means to initiate a process of institutional change

It is noteworthy that, though there are twenty-three national law schools in India, SSRs of only these six universities were available in their websites. This is largely because many national law schools are currently undergoing or yet to apply for their NAAC accreditation. Interestingly, there were a couple of other national law schools

²⁰ Marysia Zalewski, "I Don't Even Know What Gender Is": A Discussion of the Connections between Gender, Gender Mainstreaming and Feminist Theory 36 REV. INT. STUD. 3-27 (2010).

²¹ Govt. of India, NAAC - Home. Available at: <http://www.naac.gov.in/> (last visited 5 Jul. 2020).

²² TIOL News Service, *Education - NAAC Puts in Place Revised Accreditation Framework* (Aug. 2017). Available at: [Education%20-%20NAAC%20puts%20in%20place%20Revised%20Accreditation%20Framework.pdf](#) (last visited 7 May, 2020).

which have received their accreditations but their SSRs are not currently available on their websites.

Important limitations of the study

For ensuring uniformity and clarity, we have not referred to any other policy documents of these institutions, outside the SSRs, and the official enclosures to them. Further, this study is only an indicative one, primarily done for the purpose of analysing the success of the gender-mainstreaming policies in these institutions. Therefore, we strongly encourage similar other studies to be done in the future for obtaining more comprehensive data. Finally, since we have not adopted the quantitative route in conducting this study, in our opinion the numbers (only indicative for the limited scope of this research) will be an unlikely impediment for our findings and subsequent analysis.

Important findings

We have provided the important findings of this study in a tabulated format below. The table will help the readers to compare, critically, the progress that these institutions have made in the last ten years with regards to formulating and implementing different gender-mainstreaming policies. We have subsequently presented our critical comparative analysis of the findings.

<i>Sl. No.</i>	<i>Name of the Institution</i>	<i>Undertaking detailed gender analysis</i>	<i>Gender Budgeting and allocation of resources</i>	<i>Enabling means for initiating situational changes</i>
I	NALSAR University of Law, Hyderabad	The university has adopted various measures to increase gender diversity within its staff members and also in its student intake. Presently, the university maintains 30% (Horizontal) reservation for girls in admission to its flag-ship programme, B.A., LL.B. (Hons.). However overall,	The university has conducts regular gender audit.	The university has gender-specific accommodation facilities for students and staff members. The university has various committee in place for catering to the gender-specific needs of its students and staff members. Further, it has a very robust policy against any forms of sexual harassment on campus. The university also offers various programmes aiming at gender sensitization from time to time. These include: <ol style="list-style-type: none"> a. Panel Discussions b. Various gender specific courses

Sl. No.	Name of the Institution	Undertaking detailed gender analysis	Gender Budgeting and allocation of resources	Enabling means for initiating situational changes
		45-50% girls are admitted to all the courses taken together. With regards to the staffs, the university has 25% in Faculty and 30% in non-teaching staff who are women.		c. HR conclaves aiming at gender sensitization and so on.
II	National Law University, Odisha, Cuttack	The university has adopted various measures to increase more female students in each of the courses offered. With regards to the under- graduate students, the university maintains 39.6 percent sex ratio. Whereas, in the post graduate courses, the ratio increases to 44 percent. Also, in terms of the appointment of the staffs, the university tires to maintain a 50 percent sex ratio.	The University has not conducted gender audit.	These measures include: 240 capacities of women-only single occupancy rooms, specialised medical facilities for the female students/staffs and operational sexual harassment cells. The university has assigned specific mentors for the students for all kinds of psycho-social guidance. Specific dietary requirements for the female students in the cafeteria and hostels are maintained. Further, NLUO have established its Sexual Harassment committee that aims at gender sensitization in campus and deny any possibility of harassment in campus.
III	Hidayatullah National Law University, Raipur	According to the report 45-47 % of girl students pursuing the	The university conducts regular	The university has separate hostels, common rooms and rest rooms for male and female students.

Sl. No.	Name of the Institution	Undertaking detailed gender analysis	Gender Budgeting and allocation of resources	Enabling means for initiating situational changes
		B.A.LL. B. (Hons.) and LL. M. courses. However, no such percentage on gender ratio of the staff members is mentioned.	gender audit.	The university has set up specific committee and grievance redressal boards to address specific grievances from the students. However, nothing has been mentioned regarding redressal of the gender specific grievances of the staff members. No specific details of the gender sensitization programme have been mentioned in the report. The report mentions that women students have participated in the sporting activities. However, no specific details have been mentioned on how they are encouraged to do so. There are no specific hostels for working women on campus.
IV	Chanakya National Law University, Patna	Women constitute approximately 50% of the total students. No specific details on the gender ratio among the faculty and staff members is provided in their report.	CNLU has not conducted formal gender audit.	The university has conducted a Training Programme on Women Rights on 1 st December 2013. CNLU is fully residential university. Students reside in separate halls of residence meant for men and women. The university has constituted Gender Sensitization Committee against Sexual Harassment (GS CASH Committee) to address complaints arising from sexual harassment.
V	Rajiv Gandhi National University of Law, Patiala	According to the report 60-70 % of girl students pursuing the B.A.LL. B. (Hons.) and LL. M. courses.	RGNUL has not conducted formal gender audit.	The university has well-equipped health centre having 24x7 healthcare/emergency facility provided by qualified team of doctor, nurse and ward-boys. For in-patients there are

Sl. No.	Name of the Institution	Undertaking detailed gender analysis	Gender Budgeting and allocation of resources	Enabling means for initiating situational changes
		<p>The percentage on gender ratio of the staff members is mentioned 59% Male and 41% Female</p>		<p>separate-male and female wards. RGNUL Legal Aid Clinic in association with Department of Child Development organized One Day Seminar on Female Foeticide (August 2012) National Seminar on Gender Issues in India: Sensitization, Reflection and Solutions organized in collaboration with National Human Rights Commission October 2012. The RGNUL Campus has state-of-the-art fitness centre. The University has engaged the services of two trainers (male and female) not only to maintain the equipment of the gymnasium but also to help the students during exercise and sports events. The university has also appointed male and female gym instructors for training and guidance. The health centre has both indoor and outdoor facilities. There are separate wards for male /female patients. A qualified lady doctor is available at the University Health Centre to guide and counsel the female students and take care of health issue.</p>
VI	Dr. Ram Manohar Lohia National Law University, Lucknow	<p>Among the staff members about 7.20% is female. According to the report 31.33 % of</p>	The university has not conducted formal	<p>Departments have appropriate facilities for students' common rooms and washrooms for male/female students. Women's day is celebrated and popularized in the University</p>

Sl. No.	Name of the Institution	Undertaking detailed gender analysis	Gender Budgeting and allocation of resources	Enabling means for initiating situational changes
		girl students pursuing the B.A.LL. B. (Hons.) and LL. M. courses.	gender audit	campus every year on the occasion of International Women's day. Both boys and girls are made members of various cultural committees associated with academic, co-curricular and extracurricular activities. Girls and boys participate in various co-curricular activities such as paper presentations, organization of paper contests, group discussions and technical quiz programmes. Lectures on women safety are also conducted. The girl students are assured of their well-being, safety, security and mental health and are encouraged to approach any faculty or PSHC for their grievances.

Analysis

Let us now analyse how each of these aforementioned universities have performed in adopting specific measures towards implementing a comprehensive policy framework of gender-mainstreaming, as recommended by the United Nations.²³

Conducting a detailed gender analysis: It has been widely accepted that, to make gender-mainstreaming a success, not only the ultimate goal of such policies needs to be clearly identified, but also, there has to be clarity on different methods, applied to achieve these goals.²⁴ In this context, the experts have formulated different gender analysis frameworks over the course of time. These frameworks are mainly practical instruments, designed to help their users integrate a gender analysis into social

²³ UN Women, *How We Work: UN System Coordination: Gender Mainstreaming*. Available at: <https://www.unwomen.org/en/how-we-work/un-system-coordination/gender-mainstreaming> (last visited 5 Jul. 2020).

²⁴ Candida March, *A GUIDE TO GENDER-ANALYSIS FRAMEWORKS* 22 (1999).

research and planning.²⁵ It is widely advised that within any organisational report, which presents a gender analysis conducted, the analytical framework that has been adopted during the process needs to be explained with reasons, as part of such report. Doing this, will rather enhance the clarity for the reviewer/reader of such report and its analysis.

It is noteworthy that there are as many as six different frameworks for conducting a detailed gender analysis. Though, all these frameworks aim at promoting the common goal of gender equality by eradicating any forms of gender discrimination, yet they differ in their scope and emphasis.²⁶ Therefore, it is imperative to consider nature of the gender analysis, the organisation seeks to conduct, before adopting any particular method. In this context, gender analysis can be broadly divided into *gender-role analysis* and *gender-relations analysis*.²⁷

Gender-role analysis, views a community mainly in terms of who does what, who has what, and so on. Alternatively, for a gender-relations analysis the focus, primary, is on analysing gender relations between individuals working within the concerned organisation. This includes studying how members relate to each other: what bargains they make? What bargaining power they possess respectively? What they get in return? When they act with self-interest, or when they act altruistically? and so on.²⁸ In this context, there are two important frameworks that have often been used for such investigation.

The first, *Harvard Analytical Framework*, which focusses on the gender-role analysis by critically investigating into particular functions that men and women perform in the concerned organisations. Thus, this framework, rather encourages a researcher to view men and women as separate categories.²⁹ On the contrary, Second, the *Social Relations Approach*, advocates for an intersectional analysis of the power relations between men and women on the basis of different identities of an individual such as class, race, age and gender.³⁰ Additionally, there are four more different frameworks. It is however, beyond the scope of this paper to discuss about these frameworks in greater details.

In the context of the present study, it is imperative to note that though all the above universities have claimed in their SSRs to have undertaken detailed gender analysis, none of them have provided any details of the frameworks, they have adopted while

²⁵ *Id.*

²⁶ *Id.* at 23.

²⁷ *Id.*

²⁸ *Id.* at 27.

²⁹ Adrienne Wiebe, *Applying the Harvard Gender Analytical Framework: A Case Study from a Guatemalan Maya-Mam Community*, 22 CAN. J. LAT. AM. CARIBB. STUD. 147 (1997).

³⁰ Naila Kabeer and Ramya Subramanian (eds.), *INSTITUTIONS, RELATIONS AND OUTCOMES: A FRAMEWORK AND CASE STUDIES FOR GENDER-AWARE PLANNING* (1997).

doing so. Moreover, only three out of the six universities (NALSAR, NLUO, and RGNUL) have specifically mentioned the specific gender ratio among their students and staffs separately. With regards to the rest, however, such information, with relation to the staff-members, is either completely missing or rather vague. Therefore, in our opinion, broadly the desired level of gender analysis that is required for implementing a robust gender-mainstreaming framework in these universities is yet to be achieved.

Conducting formal gender-audit: For a comprehensive implementation of any gender-mainstreaming policy in an organisation, the practice of conducting comprehensive gender audit plays a crucial role. A gender audit is an instrumental practice for management, to assess how well the organisation meets women's needs.³¹ It can assist in the identification of priorities for improvement and can be used to measure progress towards gender-based targets.³² Therefore, gender audits are the natural pre-requisite to determine any gender-specific situational amendments that are necessary to implement a comprehensive gender-mainstreaming policy in the concerned organisation.

Findings of the present study indicates that only two universities (NALSAR and HNLU) have conducted at least one formal gender auditing in the last ten years. This scenario reveals serious lacuna in the implementation process of the gender mainstreaming measures in the organisations. Further, with regards to the threshold of gender-mainstreaming standards recommended by ILO, information provided by most of these universities are acutely unsatisfactory.

Enabling measures for initiating situational changes: The above-analysis further reveals that the universities have indeed taken some plausible measures to promote gender equality. However, one important issue is that, due to lack of proper gender auditing and detailed gender analysis, authenticity of the final outcome of these measures still remains doubtful. The measures taken (barring two universities), rather appear to be formal in nature, lacking in substantive value. This is so, because, majority of these universities have not identified the actual shortcomings, as far as, the 'gender question' within their organisational setting is concerned. Moreover, as we have seen under section II, that gender-mainstreaming measures fundamentally differ from the WID measures, to the extent that while gender-mainstreaming mainly focusses on engaging women within different levels of an organisational policy, WID was limited to providing some role-based reservations for women.³³ The findings of this study, suggest that these universities are still confined within

³¹ International Labour Office, *A Manual for Gender Audit Facilitators: The ILO Participatory Gender Audit Methodology* (2012). Available at: https://www.ilo.org/wcmsp5/groups/public/-dgreports/---gender/documents/publication/wcms_187411.pdf (last visited 7 May, 2020).

³² Kerry Hamilton and Linda Jenkins, *A Gender Audit for Public Transport: A New Policy Tool in the Tackling of Social Exclusion* 37 URBAN STUD. 1793 (2000).

³³ Hilary Charlesworth, *supra* note 9.

the ambit of *special reservations for women* as a part of their gender-mainstreaming policies. Therefore, these practices broadly reflect a much-criticised paradoxical irony of the overall gender-mainstreaming policies to the extent that it fortifies the evils of 'sex-based gender roles'.³⁴

In the next section we will discuss the question, whether gender-mainstreaming has substantially failed to capture the basic essence of intersectional nature of 'gender'? We will argue that the gender-mainstreaming policies have somewhat failed to comprehensively include intersectional aspects of gender which is presented by the second and third wave feminists. Following that, in section V, we will conclude this research with some recommendations for the improvement of the present situation not only with regards to the gender-mainstreaming policies within similar educational institutions but also regarding the policies of gender-mainstreaming as a whole.

IV

Gender-Mainstreaming and Gender Binaries: A Greater Paradox

The premise

The notion of gender has always been a controversial subject. Indeed, throughout its phenomenal journey that spans close to a century, gender has undergone a huge conceptual evolution. Gender was primarily viewed by the classical theorists as a manifestation of an individual's biological anatomy. Such biological connotations of gender are mostly reflected in the works of classical gender theorists such as Talcott Parsons, who strongly associated gender with the sex-based roles that an individual is expected to perform in a society.³⁵ Similar viewpoints were shared by his contemporaries such as Emile Durkheim and Herbert Spencer. Durkheim for example, propounded the controversial concept of women's biological inability to engage in the important matters of public life. Durkheim, therefore, opined that women should be entrusted with the *less important* matters of household.³⁶ Such scholarly opinions, on lines of traditional belief and practices, resulted into fortifying the 'patriarchal sex-based gender roles' within different societies worldwide, which has ever since become an instrumental tool of gender oppression.

³⁴ Sophie Jacquot, *supra* note 7.

³⁵ Talcott Parsons, *The American Family: Its Relations to Personality and to the Social Structure*, FAMILY SOCIALIZATION AND INTERACTION PROCESS (1955).

³⁶ Riaz Hassana, *One Hundred Years of Emile Durkheim's Suicide: A Study in Sociology* 32 AUST. N. Z. J. PSYCHIATRY 168-171 (1998).

Talcott Parsons, for example, claimed that for functioning of a healthy family, gender roles should be segregated and specialised. While men should be entrusted with the role of a breadwinner because of their stronger biological abilities, women should specialise in the role of a homemaker.³⁷ In his words:³⁸

‘It goes without saying that the differentiation of the sex roles within the family constitutes not merely a major axis of its structure, but is deeply involved in both of these two central function complexes of the family and in their articulation with each other’.

The first breakthrough towards the modern understanding of gender, as a ‘social construction’ devoid of an individual’s biological sexes emerged with the ground-breaking research of noted psychologist John Money. Money’s works on this revamped notion of gender is often credited as the catalyst behind the second wave of feminist movement that sought to transform the American societies in the 1960s.³⁹ The *Bible* behind second wave of feminism in Europe is the unprecedented works of celebrated French author, Simone de Beauvoir whose ground-breaking novel “The Second Sex” deserves a special mention in this context.⁴⁰ Though Beauvoir never considered herself as a philosopher, her body of work truly represents her voice against misogynistic patriarchy constant marginalisation of women as an inferior sex, only being glorified as a sexual object.⁴¹ She was highly critical of the contemporary European literary, social, political and religious traditions which had created and perpetuated an environment to justify patriarchal domination and relegation of women as the *inferior* sex.⁴² Thus, Beauvoir arguably pioneered the promotion of unimportant issues of ‘sexual identities’ within the ambit of mainstream political discourse.⁴³ Her works indeed inspired many others such as Kate Millet to explore the question of ‘sexual politics’ in a comprehensive manner.⁴⁴ In her book “Sexual Politics”, Millet called out against the blatant politics that was working in the contemporary society against one sex to benefit the other.⁴⁵ In doing so, Millet also explored the political, ideological, psychological, religious,

³⁷ *Supra* note 35.

³⁸ *Id.* at 22.

³⁹ Vern L Bullough, *The Contributions of John Money: A Personal View* 40 J. SEX RES. 230 (2003).

⁴⁰ Simone de Beauvoir, *THE SECOND SEX* (2015).

⁴¹ Kate Kirkpatrick, *THE GUARDIAN*, *Was Simone de Beauvoir as feminist as we thought?*, (Aug. 2019). Available at <https://www.theguardian.com/books/2019/aug/20/was-simone-de-beauvoir-as-feminist-as-we-thought> (last visited 16 June. 2021).

⁴² *Supra* note 40.

⁴³ Debra Bergoffen, *Simone de Beauvoir*, *STANFORD ENCYCLOPAEDIA OF PHILOSOPHY*, (27 Mar., 2020). Available at: <https://plato.stanford.edu/entries/beauvoir/#SecoSexWomaOthe> (last visited 16 June. 2021).

⁴⁴ Patricia Ticineto Clough, *The Hybrid Criticism of Patriarchy: Rereading Kate Millet’s Sexual Politics*, 35(3) *SOCIOL. Q.* 473 (1994).

⁴⁵ *Id.*

anthropological, historical and literary traditions to investigate women's position as the weaker sex.⁴⁶ Throughout Millet's work there is a strong influence of John Money's notion of difference between (biological) 'sex' and 'gender' (a social construction).⁴⁷

John Money defined gender as, 'one's personal, social and legal status as male or female or mixed on the basis of somatic and behavioural criteria more inclusive than the genital criterion alone'.⁴⁸ Therefore, there is a widespread agreement among the present scholars that gender, being a social construction largely operates on the gender relations based on societal norms in question.⁴⁹ Interestingly, gender, as a social construction can vary from society to society. Interestingly, the term 'society' here needs to be interpreted in a broader socio-cultural framework beyond the commonly-used political parameters.⁵⁰

Manifestations of this gender fluidity have gradually contributed in inception of many critical concepts of gender such as gender assignment and gender identity. These concepts primarily situate gender as a broader construction, beyond binaries of biological sex of an individual.⁵¹ Therefore, it is imperative to briefly outline these concepts here before assessing overall comprehensiveness of the 'gender-mainstreaming' policies.

To begin with, 'gender assignment' is third-party attribution of an individual's gender which is done on the basis of biological cues such as depth of voice, genitals and so on.⁵² This is generally done at birth by a medical professionals. Alternatively, gender identity is rather, an individual's self-determination about their gender.⁵³ Money describes gender identity as, 'the sameness, unity, and persistence of one's individuality as male, female, or ambivalent, in greater or lesser degree, especially as it is experienced in self-awareness and behaviour'.⁵⁴ There are studies that have established this realisation about gender identities that can occur to an individual at

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ John Money, *Gender: History, Theory and Usage of the Term in Sexology and Its Relationship to Nature/Nurture* 11 J. SEX MARITAL THER. 71 (1985), at 78.

⁴⁹ Harriet Bradley, *Introduction*, GENDER (2012).

⁵⁰ Thomas Hylland Eriksen, *What Is a Society?* 11 ETHNICITIES 18 (2011).

⁵¹ Silke Roth and Katherine Dashper, *Sociology in the 1980s: The Rise of Gender (and Intersectionality)* 50 SOC. NP1-NP12 (2016).

⁵² A Fisher *et. al*, *Gender Identity, Gender Assignment and Reassignment in Individuals with Disorders of Sex Development: A Major of Dilemma* 39 J. ENDOCRINOLOGICAL INVESTIGATION 1207 (2016).

⁵³ *Id.*

⁵⁴ *Supra* note 48.

any stages of their lives.⁵⁵ Therefore, a person who is born as a male (assigned on the basis of biological cues), may identify themselves as a part of other gender, by their own choice and awareness. This aspect is comprehensively put forward by the ethnomethodological view of 'doing gender'.

Ethnomethodology opines that individual's gender is not what others attribute to them, but rather what they identify themselves with their interaction and behaviour with others.⁵⁶ Therefore, the ethnomethodological view primarily regards gender as a situation-specific fluid notion that can be constructed and reconstructed by the actions of an individual.⁵⁷ As Zimmerman points out that individuals are constantly in the process of 'doing' their gender.⁵⁸ This broadened notion of gender potentially attracts critical discourses on other allied issues such as, queer politics, within its fold. There is a growing demand, mainly from intersectional feminists in favour of including different forms of discriminations and violence against homosexuals and queers within the ambit of gender discrimination.⁵⁹ Simultaneously, it has to be borne in mind that, though strong patriarchal values of a society continue to nurture these discriminatory practices, however, the very nature of patriarchy itself has gradually evolved towards society-specific subjectivity.⁶⁰ This brings us to Nivedita Menon's observation, mentioned in section I, that neither feminism nor gender is only about women-specific issues.⁶¹ In the next paragraph, we will see how, despite this massive evolution, policies of 'gender-mainstreaming' fail, in important respects, to include these broader aspects of gender.

The paradox

Despite receiving widespread admiration from scholars worldwide, about a decade ago, of-late gender-mainstreaming has come under scrutiny more often. Critics are uncertain whether institutionalisation of the mainstreaming policies have actually resulted in hindering the larger goals of gender equality by weakening existing women groups.⁶² One such significant criticism comes from Mark Pollack, who noted that implementation of gender-mainstreaming policies has been

⁵⁵ Sue Rankin and Genny Beemyn, *Beyond a Binary: The Lives of Gender-nonconforming Youth* 17 ABOUT CAMP. 2 (2012).

⁵⁶ Suzanne J Kessler, *Introduction*, GENDER: AN ETHNOMETHODOLOGICAL APPROACH (W McKenna, ed., 1978).

⁵⁷ Candace West and Sarah Fenstermaker, *Doing Difference*, 9 GENDER & SOC. 8 (1995).

⁵⁸ Candace West and Don H Zimmerman, *Doing Gender*, 1 GENDER & SOC. 125 (1987).

⁵⁹ Mark A Walters *et. al.*, *Group Identity, Empathy and Shared Suffering: Understanding the "Community" Impacts of Anti-LGBT and Islamophobic Hate Crimes* 26 INT. REV. VICT. 143 (2020).

⁶⁰ Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, FEMINIST POSTCOLONIAL THEORY (Reina Lewis and Sara Mills, eds., 2003).

⁶¹ *Supra* note 5.

⁶² *Supra* note 7.

disappointing, particularly with relation to systematic integration of a gender perspective within the policy matters of most organisations including the prominent international organisations (IOs).⁶³ The study further suggested that such reluctant approach was primarily reflected with regard to efforts of implementation and adherence to basic principles of gender-mainstreaming, as far as, the member-states of the European Union are concerned.⁶⁴

In a similar way, findings of the present study also reflects that nothing has changed substantially with regard to gender-mainstreaming measures, even after thirteen years of Pollack's study. Lack of conducting a systematic 'gender audit' in majority of the aforementioned universities along with inconsistent data on gender diversity of staff members and students symbolises such failure. However, there are other areas of criticisms, as far as 'gender-mainstreaming' is concerned. The other line of criticisms points out that the very premise of these policies has resulted in a paradoxical outcome of re-affirming the notion of 'gender roles', something gender-mainstreaming was originally promoted to eradicate.⁶⁵

Additionally, in this research, we intend to point out another paradox that the 'gender-mainstreaming' in its present shape appears to have drifted. It concerns the relatively restricted interpretation of 'gender' that the present policies of gender-mainstreaming are premised on. A critical analysis of ECOSOC's definition of the term clearly reveal that basic idea of 'gender-mainstreaming' mainly rests upon the biological connotations of gender. 'Gender-mainstreaming', in its present form, specifically calls for:

'...a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of the policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated'.⁶⁶

Unfortunately, specific mention of words such as 'men and women' in this definition hardly leaves any scope of broadening the ambit of gender-mainstreaming to include various marginalised communities such as transgenders and homosexuals. Furthermore, this classical approach reflects lack of any critical engagement with the intersectional literature on 'gender'. This deficient analytical engagement is also reflected in the aforementioned SSRs under section II above. Out of cumulative 1000 pages of these six reports, there is not even a single reference of

⁶³ Emily Hafner-Burton and Mark Pollack, *No Revolution: The Disappointing Implementation of Gender Mainstreaming in the European Union*, 6 EUR. POL. & SOC. & AM. POL. SCI. ASSOC. NEWSLETTER 11 (2007).

⁶⁴ *Id.*

⁶⁵ Kirsty Milward *el. at.*, *Gender Mainstreaming Critiques: Signposts or Dead Ends?*, 46 (4) IDS BULLETIN 75-81 (2015).

⁶⁶ *Supra* note 9 at 4.

any mainstreaming measures that have been adopted by any of these universities for students or staffs belonging to the LGBTQ community.

Moreover, neither of these reports clearly project whether these universities have conducted any inter-departmental research to determine the number (percentage) of students or staffs belonging from LGBTQ community. A recent study has revealed high level of discomfort that LGBTQ students face, when it comes to acknowledging their gender and sexual identity within their college campus.⁶⁷ Additionally, these reports do not provide specific details regarding any academic seminars, dialogues or discourses conducted in these universities on broader issues of sexuality in the last ten years. What appears to be more appalling is that despite this clear lacuna, under the present scheme of gender-mainstreaming guidelines, some of these universities and similar institutions could secure higher scores on the success scale.

In our opinion, to increase comprehensiveness and efficiency of the 'gender-mainstreaming' policies, such anomalies need immediate redressal from both policy-making and implementation standpoints. Therefore, under section V, we will conclude the paper with some valuable recommendations that can be adopted to rectify the situation in the immediate future.

V

The Way Ahead

At its inception, gender-mainstreaming policies were primarily touted as essential tools to do away with the long-standing practices of gender discrimination, particularly, within an institutional setting. As opposed to the previous approach of (WID), the policies were distinctive in their approach. They particularly intended to present some comprehensive methods to include the all-important 'women question' within regular policy matters. Such integrative measures were meant to ensure the collaborative efforts of men and women together, towards achieving the ambitious goals.

However, what was presented as a recipe for certain success in the trailer, faded out very soon from the box office of reality. The major reasons behind this failure range from being too ambitious to sheer reluctance reflected in the SSRs and policies from being properly implemented at the organisational level. One of the primary examples of such lacklustre approach of implementation of these measures can be

⁶⁷ Sweta Akundi, *How Comfortable Are Indian Queer Students with Coming out in Schools?* THE HINDU (22 Jun., 2020) available at: <https://www.thehindu.com/society/indian-lgbtqia-students-coming-out-in-schools/article31890410.ece>.

observed in the study conducted in this research. The study reveals how most of the national law schools, included in this study, have failed miserably to comply with the basic measures of implementing gender-mainstreaming *vis-à-vis* 'gender auditing' within their organisational setup in the last decade. This failure has, mostly, rendered their other gender-mainstreaming measures rather futile.

Further, the paper has raised another fundamental question about the comprehensive feasibility of gender-mainstreaming as an inclusive approach. Premising our argument with some noted feminist scholars, we have argued that the linguistic scope of 'gender-mainstreaming' as inclusive policies, is itself questionable. This is the reason that these policies rather allow for a restricted interpretation of the term 'gender'. The interpretation mainly views 'gender' in the classical sense, of being mainly a manifestation of an individual's biological sexes. In section IV, we have presented a brief outline of the incredible evolutionary journey of 'gender' from being associated mainly to biological traits to a social construction of the representation of an individual's behavioural choice. At present, this contextual fluidity of the 'gender' calls for inclusion of other forms of discrimination of non-binary nature, such as acts of discrimination and violence against homosexuals and transgenders as extended forms of gender violence and discrimination. In the wake of these findings, we firmly believe that it is unfortunate for 'gender-mainstreaming', not to include these broader aspects of the term within its *inclusive* ambit. Therefore, we feel, it is imperative, to recommend the following measures to be adopted to rectify these ironical paradoxes:

- There is a dire need to rework the definition of 'gender-mainstreaming' to the extent of including the intersectional aspect of gender within its analytical ambit. This will ensure to broaden the horizon of the policies to redress other forms of gender discriminations such as violence against transgenders, homosexuals and so on.
- As a complementary measure, awareness regarding these issues should significantly be enhanced, particularly within any institutional setting. This can be achieved through conducting various academic discourses, researches and workshops to bring these issues in public forum without any stigma. It will also address the controversial *normative* character of 'gender-mainstreaming'.
- Regular 'gender-audit' needs to be conducted within the institution, as a part of its good practice. This will help to create and maintain a systematic Gender Diversity Database (DBB) within the concerned institution.
- Such auditing should be conducted by adhering to a particular gender-mainstreaming framework. Detailed reasons of adhering to such framework should also be mentioned in the report prepared by the institution.

- To ensure such compliance, an external reviewing committee has to be created, which will be entrusted with reviewing such audit reports, at least twice in every five years.
- In our opinion, every institution (both public and private) should be mandated to furnish such periodic reports in their respective websites for public reference.
- Further, in cases of any complain-redressal, an internal body has to be created. Such body will work in tandem with the external review committee in the process of any complain redressal.

It is noteworthy that, this research is merely an indicative one towards many such future researches that ought to be conducted. There are huge possibilities of finding and establishing more such marginalised corridors and ways of gender-mainstreaming policies. However, despite the logistical drawbacks of this research, we believe that it will encourage future researchers to bring similar issues to the mainstream analytical framework.