



Bi-Monthly Legal News
Newsletter Digest 2008

Partners for Law in Development
(PLD)

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IMPORTANT RESOURCES 2008

- *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women*
By Hanna Beate Schöpp-Schilling, Editor, Cees Flinterman, Associate Editor. Published by The Feminist Press at CUNY, December 2007
- *Women Hold Up the Sky: Manual and 8 Drama Videos produced by PDHRE.* <http://www.pdhre.org/videoseries.html>
- *CEDAW Benchbook* by Amparita Sta. Maria. <http://cedawbenchbook.org/>
- "Fundamentalisms in Asia-Pacific": Published by Asia Pacific Forum for Women, Law and Development (APWLD).
<http://www.apwld.org/publication.htm>
- Staying Alive - Second Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act 2005: Published by Lawyers Collective.
<http://www.lawyerscollective.org/wri/publications/staying-alive-2>

INTERNATIONAL

UPDATES FROM THE UN

Issue -1, March 2008

Increase in CEDAW Committee Sessions

The General Assembly approved (by a near unanimous vote with one abstention) the UN GA Third Committee's Draft Resolution to increase the number of sessions of the CEDAW Committee from 2 sessions to 3 sessions per year. The General Assembly agreed to authorize the Committee to hold 3 annual sessions of three weeks each, with a one-week pre-session working group for each session, for an interim period effective from January 2010, pending the entry into force of the amendment to article 20, paragraph 1, of the Convention.

Source: IWRAW Asia Pacific

The OHCHR is now the Secretariat to CEDAW

The Secretariat for the CEDAW Committee has also been transferred from the DAW in New York to the OHCHR at Geneva, which is where the CEDAW sessions will normally be held from Jan 2008 onwards. The website of the OHCHR will now also host a section on CEDAW. All official updates and alerts are now available from the OHCHR website, and not the DAW website.

India's review at the Universal Periodic Review of the Human Rights Council

The newly constituted **Human Rights Council (HRC)**, a human rights monitoring body of the United Nations replacing the Commission on Human Rights, is mandated to undertake a **Universal Periodic Review (UPR)** of the member countries' human rights conditions and processes. In this scheme, HRC will have its **1st session of UPR on 7 – 18th April, 2008 at Geneva** and India has been scheduled as one of the 16 countries chosen for review. Apart from submissions from the Indian Government on the human rights record, UPR will also consider submissions on the same by the NGOs which have already been sent to them.

Source: <http://www2.ohchr.org/english/bodies/hrcouncil/upr/index.htm>

India's review at the Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. At its **40th Session from 28th April – 16th May, 2008 at Geneva**, CESCR will review India's report on the

implementation of economic, social and cultural rights and how the government has advanced the same. In this regard, submissions from the NGOs will also be considered in reviewing the government's record.

Source: <http://www2.ohchr.org/english/bodies/cescr/cescrs40.htm>

Issue -2, April 2008

Incorporation of the NGOs' joint submission in OHCHR Report for India's review under the Universal Periodic Review (UPR) mechanism of the Human Rights Council

The Office of the High Commissioner for Human Rights (OHCHR) of the United Nations has incorporated the joint submission sent by the Partners for Law in Development (PLD) along with 16 other organizations and individuals in its summary report of 37 stakeholders' submissions to the Human Rights Council for its Universal Periodic Review (UPR) of India in its 1st session in April, 2008. They have included both the concerned issues, viz. the failure of communal violence bill to prevent state impunity and the criminalisation of homosexuality under section 377 of the Indian Penal Code. The Report also focuses attention on other urgent concerns raised by joint submissions by People's Forum for UPR presented by Asia Centre for Human Rights, Women's Research and action group along with 23 other NGOs etc. The Report is available along with other submissions at

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/INSession1.aspx>

Issue -3, May 2008

UN Convention on the Rights of Persons with Disabilities, 2008 has come into force

This landmark treaty aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, and to promote respect for their inherent dignity. The treaty was adopted by the UN General Assembly in December 2006 and came into force on 3rd May, 2008, after the 20th ratification by Ecuador, triggering the entry into force of the Convention and its Optional Protocol 30 days later. Though the Convention was one of the fastest treaties ever negotiated at the United Nations, a lot needs to be done in terms of getting the treaty widely ratified by States and ensuring effective monitoring of the fulfillment of State obligations. For more details, refer to <http://www.un.org/disabilities/>

India's review at the Universal Periodic Review (UPR) of the Human Rights Council (HRC)

On 10th April, 2008, India's human rights record was reviewed at the 1st session of the UPR of the Human Rights Council (HRC), a newly constituted human rights monitoring body of the United Nations at Geneva. India was asked about the ratification of the Convention against Torture (CAT) by India, existence of the Armed Forces Special

Powers Act and the related concern of impunity, communal violence and the state of religious minorities, violence against women and the over all discriminatory attitude towards women and finally about the continuation of section 377, Indian Penal Code, 1860, which criminalizes homosexuality. The final report of the working group is available at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_8_26_India_E.pdf

India's periodic review at the 40th Session of the UN Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights considered India's second to fifth periodic report of India on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in its 40th session in May, 2008. After reviewing India's national report as well as the shadow report prepared by NGOs, the Committee adopted a series of concluding observations urging India to take all the necessary steps and action to fulfill them before the next review in 2011. The Committee made detailed observations regarding India's poor and ineffective implementation of gender just laws and policies and how widespread gender inequalities, cultural stereotypes and personal laws of minority groups continue to prevail, thereby affecting negatively the equal enjoyment of economic, social and cultural rights by women. The complete concluding observations are available at:

<http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.IND.CO.5.doc>

Issue -4, August 2008

UN Recognizes Rape as a Weapon of War

The United Nations Security Council has unanimously adopted a resolution after a day-long debate on women, peace and security which demanded an end to persistent sexual violence during armed conflict, calling it a war crime and a component of genocide. It is increasingly realized that women and girls are consistently targeted during conflicts "as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group." The 1820 resolution demands that all parties immediate stop sexual violence against civilians and begin taking measures, from the training of troops and upholding of military discipline procedures, to protect women and girls.

Further, it states that sexual violence crimes should be excluded from amnesties reached at the end of conflicts and the States should also strengthen their judicial and health-care systems to provide better assistance to victims of violence. Secretary-General Ban Ki-Moon opined that the problem had reached "unspeakable and pandemic proportions" in some countries and announced that he would soon appoint a UN envoy tasked entirely with advocating for an end to violence against women.

Source: <http://www.un.org/news/dh/pdf/english/2008/19062008.pdf>

Navanethem Pillay confirmed as new High Commissioner for Human Rights

The United Nations General Assembly has confirmed the appointment of Navanethem (Navi) Pillay, of South Africa, to succeed Louise Arbour as the United Nations High Commissioner for Human Rights on 28 July 2008. Ms. Pillay's four-year term will start on 1 September 2008. Ms. Pillay has served as a judge on two of the most important international criminal courts in the modern era, spending eight years with the International Criminal Tribunal for Rwanda, including four years as its President, and then the past five years on the International Criminal Court in the Hague. She has also been very active in supporting women's rights, and was one of the co-founders of the international NGO Equality Now, which campaigns for women's rights. She has also been involved with a number of other organizations working on issues relating to children, detainees, victims of torture, and of domestic violence as well as a range of other economic, social and cultural rights.

Source: <http://www.ohchr.org/EN/NewsEvents/Pages/NewHC.aspx>

Optional Protocol to International Covenant on Economic Social and cultural Rights approved

The United Nations Human Rights Council has approved by consensus an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 18th June, 2008 and the resolution will now be tabled with the General Assembly for adoption in their next meeting in September 2008. The adoption of the Protocol by the UN Human Rights Council brings the possibility of international justice one step closer for millions of excluded people, groups, communities and peoples worldwide.

The Optional Protocol adopted by Council today includes a number of provisions, including the competence of the UN Committee on Economic, Social and Cultural Rights to receive and consider communications alleging violations of the economic, social and cultural rights, undertake inquiry procedure on the receipt of reliable information indicating grave or systematic violations of the Covenant as well as can request the State Parties to take interim measures in cases of emergency in order to avoid possible irreparable damage to the victims of the alleged violations.

Source: http://www.eschr-net.org/news/news_show.htm?doc_id=692555

Issue -6, December 2008

CEDAW Committee General Recommendation No. 26 on migrant women workers

The Committee Elimination of All Discrimination Against Women affirmed that migrant women, like all women, should not be discriminated against in any sphere of their life and issued the General Recommendation No. 26 on some categories of women migrant workers, who may be at risk of abuse and discrimination. The Recommendation affirms

the applicability of the human rights enshrined in the Universal Declaration on Human Rights (UDHR) on the rights of migrant women, irrespective of the cause of their migration (which are enumerated in GR 26). All women migrant workers are entitled to the protection of their human rights which include the right to life, the right to personal liberty and security, the right not to be tortured, the right to be free of degrading and inhumane treatment, the right to be free from discrimination on the basis of sex, race, ethnicity, cultural particularities, nationality, language, religion or other status, the right to be free from poverty and to an adequate standard of living and the right to equality before the law and to benefit from the due processes of the law.

UNHRC urges Japan to restore dignity to World War II "Comfort Women"

The UN Human Rights Committee considered Japan's report on its implementation of the International Covenant on Civil and Political Rights (ICCPR) on 15 October and called on the Government of Japan to restore dignity to the survivors of Japan's military sexual slavery system. The Committee recommended that: "The State party should accept legal responsibility and apologize unreservedly for the 'comfort women' system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to adequately compensate all survivors as a matter of right, educate students and the general public about the issue, and to refute and sanction any attempts to defame victims or to deny the events."

Source: Amnesty International

<http://www.amnestyusa.org/document.php?id=ENGNAU200811037951&lang=e>

Review of 15 years of the work of Special Rapporteur on VAW

The SRVAW mandate was established in 1994 to seek and receive information on VAW, respond to situations and recommend measures for protection from violence and for the elimination of VAW. Since its inception two independent experts have held the mandate – Prof Radhika Coomaraswamy [1994-2003] and Prof Yakin Erturk [2004-2009]. As the term of the second mandate holder comes to an end, a review of the 15 years of work of the mandate has been conducted to take stock of the gains and the future potential and challenges before the mandate. On the International Day for the Elimination of Violence against Women (November 25, 2008), the United Nations Special Rapporteur on Violence against Women, the Office of the United Nations Special Adviser on Gender Issues and Advancement of Women (OSAGI) and the United Nations Population Fund (UNFPA) co-organized a panel to discuss the preliminary findings of '*15 Years of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences [1994-2009]: A Review*'. The review will form an attachment to the final annual report submitted by Prof Yakin Erturk to the Human Rights Council in 2009, and will also be available as a UNFPA publication.

INTERNATIONAL NEWS

Issue -1, March 2008

Supreme Court of Nepal's directive on enactment of law regarding Right to Confidentiality in relation to HIV and judicial Guidelines on the same

A landmark decision is given by Supreme Court of Nepal to bring the law to maintain confidentiality of HIV infected and affected, women and children related cases. It has not only issued a directive order, but has also brought a guideline to address a vacuum of law and also fixed the date to activate the guideline and also created mechanism of monitoring and coordination to ensure the implementation of guideline.

Nepal's Supreme Court rules on Gay Rights

Nepal's Supreme Court has ordered the government to scrap laws that discriminate against homosexuals. The court ordered that sexual minorities should be guaranteed the same rights as other citizens. The Supreme Court ruled that "the government of Nepal should formulate new laws and amend existing laws in order to safeguard the rights of these people. Lesbian, gay, bisexual, transsexual and inter-sex are natural persons irrespective of their masculine and feminine gender and they have the right to exercise their rights and live an independent life in society."

Source: BBC News

Issue -3, May 2008

Nepal: the making of a new secular republic

On 28th May, 2008, Nepal declared itself as a federal democratic republic after abolishing the 240 years rule of Nepal's monarchy. The newly elected 575-member Constituent Assembly (CA) unanimously passed a proposal tabled by Prime Minister Girija Prasad Koirala and gave the erstwhile King Gyanendra 15 days to vacate the Royal Palace, which will soon be turned into a public museum. In the recent elections to the CA in April, 2008, the former rebel Maoist party led by their leader Prachanda won majority of the seats and is set to draft a new constitution in order to elect a President and a Prime Minister. The Nepal's CA is historic not just because of the abolition of the monarchy and the majority support to Maoists, but because of many novel steps taken to ensure diversity and inclusive representation of persons from all walks of life, including most significantly, a feminist lawyer Sapna Pradhan Malla, President of Forum for Women, Law & Development (FWLD) and gay rights activist, Sunil Babu Pant, founder and former director of Blue Diamond Society.

Source: <http://www.hindu.com/2008/05/29/stories/2008052950050100.htm>

http://news.bbc.co.uk/2/hi/south_asia/7364776.stm

Issue -5, October 2008

Nepal Supreme Court delivers a landmark ruling in the Kumari 'goddess' case

A Nepali tradition of locking a young pre-pubescent girl in a palace and worshipping her as a "living goddess" received a setback when the country's Supreme Court ruled that she has the right to go to school. The court's verdict was in response to a complaint from local lawyers that keeping a young girl confined in a palace in Kathmandu's medieval quarters was a violation of her rights. "The court ruled there were no historic or religious documents that state the child should be denied the rights of education, movement etc. She should not be denied these things just because she is the Kumari." Furthermore, the "living goddess" concept is facing redundancy given that Nepal is now officially a secular republic run by ultra-leftist ex-rebel Maoists keen to do away with the country's "feudal" practices.

Source: <http://afp.google.com/article/ALeqM5gOiyJDv9KV8-dJNJMDilOhWwye1g>

Issue -6, December 2008

French 'virgin' ruling reversed

A French court of appeal has overruled the decision to annul the marriage of two Muslims because the bride had lied about being a virgin. They are now effectively married again, although both partners said they accepted the original judgment. That verdict triggered strong outrage among some feminists, who said that upholding virginity as a pre-condition to marriage amounted to a "fatwa" against women's liberty. The husband had argued that the wife had breached the wedding contract, and gained his consent on the assurance that she was a virgin. The woman had admitted doing so and accepted the earlier annulment. Under the French civil code, a marriage can be annulled if a spouse has lied about an "essential quality" of the relationship. But Justice Minister Rachida Dati ordered a review of the verdict, which was referred to in some quarters as "a real fatwa against the emancipation of women" and "a ruling handed down in Kandahar". Feminists had argued that the annulment was unfair because a woman would not be able to cancel her marriage on the same grounds.

Source: <http://news.bbc.co.uk/2/hi/europe/7733601.stm>

China - Domestic Violence - Court Guidance Text for DV Cases

The Institute of Applied Laws under the Supreme People's Court drafted a "Court Guidance on Cases Involving Domestic Violence in Marriage" to establish guidelines for resolving some issues in cases of domestic violence. The Guidance covers a broad area, including the definition of domestic violence, the basic principles in marriage and family cases concerning domestic violence, personal safety protection measures, evidence, property division, child support, etc. The Guidance provides safety protection measures for victims and further issues regulations for practical conditions, checkups, judicial content, implementation and responsibilities to protect personal safety. Many local and

intermediate courts have used the Guidance as reference in cases and have cited it in their rulings.

Source: http://www.womenofchina.cn/Issues/Rights_Protection/206783.jsp

Indonesia passes anti-porn bill

An extremely polarised debate ensued in Indonesia as its Parliament passed a far-reaching Anti-pornography law which enjoys support of some Islamic parties that are 'concerned at the moral degeneration of their society', but has equally, been condemned by many parliamentarians and eminent persons. There have been numerous protests against this law by artistes, women, non-Muslim minorities which fear censorship to indigenous and minority cultural traditions, and gay and trans-gendered persons – who fear victimization, and unwarranted moral policing. Even when the Parliament proceedings were on, about 100 legislators staged a walk-out because the bill's definition of pornography was too broad and they strongly felt that it went against Indonesia's tradition of cultural plurality and diversity. Violators under this law would face up to 12 years in prison and hefty fines. A widespread consensus has emerged about the need to mobilize people and educate them on the provisions of the law.

Sources: The Jakarta Post, 6th November, 2008 & <http://news.bbc.co.uk/go/em/-/1/hi/world/asia-pacific/7700150.stm>

New Law Against Buying Sex in the UK

The UK Home Office is set to criminalise paying for sex with a woman "controlled for another person's gain" i.e. paying for sex with prostitutes who are controlled by pimps or are in brothels. In the UK Buying or selling sex is legal but soliciting and pimping are not. Under these provisions, men will be prosecuted if they pay for sex with such women. Ignorance that woman was being controlled is not to be a defence and conviction will carry hefty fine and criminal record. Men who knowingly pay for sex with trafficked women may face rape charges and first-time kerb crawlers would face prosecution as well as 'naming and shaming'. This measure is being mooted as a step to reduce 'demand' for trafficked women who are 'effectively held as slaves', according to the UK Home Secretary, Ms. Jacqui Smith. The Home Office said police would get powers to close brothels. Currently they can only shut premises associated with prostitution if anti-social behaviour or when Class A drugs are involved. Critics of the government's proposals say they will simply drive customers elsewhere, rather than tackling the problem.

Sources: http://news.bbc.co.uk/2/hi/uk_news/politics/7735908.stm & <http://www.guardian.co.uk/society/2008/nov/19/prostitution-law-trafficked-women-smith>

Conservative UAE Gets Its First Female Marriage Official

Fatima Saeed Obeid al-Awani, 33, a married mother of two children became the first ever Muslim woman allowed to conduct marriages in the oil-rich United Arab Emirates and throughout the conservative Gulf. She was named to the post of a "maazoun" in the UAE capital of Abu Dhabi by the Justice Ministry. She now becomes the first woman to be

allowed to write up marriage contracts throughout the conservative Gulf, but she is not the first woman "maazoun" in an Arab state -- Egypt has already broken ground in that area. In March 2008, Abu Dhabi got its first woman judge and in February the number of women in the cabinet was doubled to four. Last year Abu Dhabi got its first female Emirati taxi driver.

Source: http://www.gulfinthemedial.com/index.php?id=441558&news_type=Top&lang=en

Surrogacy succour for gay couples

In 2007 in India for the first time a gay couple from Israel was able to have a baby through surrogacy. This year again, recently another Israeli gay couple experienced parenthood through this means in India as laws in their country prohibit surrogacy for gays. The couple said they had two options – India or US, but they chose India as it was cheaper and they believed that their money “would help a woman here much more than elsewhere”.

Source: <http://in.news.yahoo.com/32/20081118/1056/tnl-surrogacy-succour-for-gay-couples.html>

Punishment for torture to domestic workers

On November 28, a Sessions Court in Malaysia has convicted the Malaysian employer of a domestic worker of Indian origin for assault and noted the employer’s behaviour as “sadistic”. Earlier on November 20, the Malaysian Court of Appeal enhanced the sentence of another employer for raping his 19-year old domestic help. These are significant developments as far as the protection of the human rights of migrant/trafficked women domestic workers are concerned. Last year, in the US a multi-millionaire Indian couple, the Sabhnani’s were found guilty of torture and ‘inhuman cruelty’ to their two Indonesian helps, and sentenced severely by a jury in Long Island, New York.

Sources:

http://www.nst.com.my/Current_News/NST/Friday/National/2414042/Article/index.html & <http://www.indiatime.com/2007/12/18/nri-couple-found-guilty-of-maid-torturing-now-face-decades-behind-bars/>

NATIONAL

NATIONAL LEGAL DEVELOPMENTS

Issue -1, March 2008

First ever conviction for rape in a communal violence: Bilkis Bano's case

In a historic judgement on 18th January, 2008, the Mumbai Sessions Court convicted 11 accused in the Bilkis Bano's rape case to life imprisonment for murder, gang rape and rape of a pregnant woman in the Gujarat riots in 2002. One Constable was also sentenced to 3 years imprisonment for framing false records and refusing to lodge Bilkis' first complaint with the police, the FIR. On 3 March 2002, Bilkis Bano and her family were attacked by two dozens of men who gang raped her and killed four women and four children of her family including her daughter of three and a half years old. Though the Court acquitted 7 people, mainly police personnel and Bilkis has asked the independent central investigating agency, the CBI to appeal against the same. The widespread occurrence of rape and sexual violence during mass violence/ communal riots go unrecognized and un-redressed for several reasons – the collapse of law enforcement machinery, complicity of state agencies resulting in refusal to record or investigate, and destruction of evidence [as in the case of Bilkis], as well as lack of victim and witness protection. It took Bilkis Bano 6 years of courage and tenacity, to pursue her case in spite of constant threats to her and her family. With the active intervention of the National Human Rights Commission, the Supreme Court's proactive decision transferring her trial outside Gujarat and support from the women's movement, Bilkis sustained her fight for justice. Her victory is landmark for gender justice in India and for the women's movement for it finally recognizes widespread use of sexual violence as a weapon in communal conflicts and impunity attached to such crimes.

Source: The Hindu, 22 January, 2008

Supreme Court grants succession right to live-in partner in an insurance claim

The Supreme Court has granted succession certificate to a woman after the death of the man she was living with despite the fact that his legally-wedded wife was alive. The court based this decision on the fact that the live-in partner was mentioned as the nominee in the man's provident fund and life insurance policies. Both the wife and the deceased's partner filed petitions before a Madhya Pradesh trial court seeking right of succession to his properties. The trial court rejected the wife's claim, but the high court reversed the decision saying there was no evidence to substantiate the partner's claim that there was a customary divorce between the deceased and his legally-wedded wife. The Supreme Court upheld the partner's claim and observed that although the High Court was right in deciding about subsisting marriage between the deceased and his wife, it was wrong in

denying succession certificate to his partner for the purpose of collecting provident fund and life insurance amounts. Whatever be the status of the live-in partner, there was no doubt about the legitimacy of the four children born out of her relationship with the deceased.

Source: The Times of India, 24th January, 2008

Supreme Court holds that long term cohabitation leads to a presumption of marriage

In *Tulsa & others vs. Durghatiya & others* (15th Jan, 2008), Supreme Court observed that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case and where the partners lived together for long spell as husband and wife, there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place.

Source: <http://www.supremecourtcaselaw.com/latest.asp>

Issue -2, April 2008

Law Commission recommends lowering the age of marriage for boys from 21 to 18

The Law Commission of India, in its 205th Report on the proposal to amend the Prohibition of Child Marriage Act (PCMA), 2006 and other allied laws, has recommended that child marriage below 18 for both girls and boys should be prohibited and that marriages below the age of 16 be made void while those between 16 and 18 be made voidable. However, to ensure that young women and children are not left destitute, the Report recommends that provisions relating to maintenance and custody should apply to both void and voidable marriages. Thus, the age of marriage for both boys and girls should be 18 years and subsequently amending section 2(a) of PCMA in order to define 'child' as 'a person who has not completed 18 years of age'. The Report further recommends that the age for sexual consent should be 16 for all young girls, regardless of marriage and the exception to the rape Section 375 of the Indian Penal Code be deleted. Finally, it recommends that registration of marriage of all the communities, viz. Hindu, Muslim, Christians, etc, be made compulsory

Moreover, in its 204th Report, the Commission has recommended the inclusion of 'father' in the category of Class I heirs so as to be entitled to claim a share of the property left behind by his son/daughter who died intestate. In order to make the succession laws in tune with other laws like Senior Citizen Welfare Protection and Maintenance Act, 2007, it is thought expedient to elevate the father to Class I heir so as to safeguard the interest of the elderly people.

Source: <http://lawcommissionofindia.nic.in/reports/report205.pdf>
<http://lawcommissionofindia.nic.in/reports/report204.pdf>

Supreme Court facilitates filing of PILs by women who are victims of violence and harassment

According to the new eligibility guidelines published by the Supreme Court, women facing harassment at their in-laws' home or at any other place, can directly write to the Supreme Court and their letters would be entertained as Public Interest Litigations (PILs). In order to reduce the number of PILs being filed in the Court, it has come out with detailed guidelines about the maintainability of petitions. Though no petition involving individual or personal matter shall be entertained as public interest litigation, incidents of torture resulting from moral policing by village panchayats, especially for ostracising couples in inter-caste marriages where one of them belong to a backward class, would be admitted as PILs. Letter-petitions (letters written by the aggrieved parties to the Supreme Court directly without filing a petition in the registry) would ordinarily be entertained as PIL and have been categorized under 10 heads which are:

- Atrocities against women, especially harassment of bride, bride burning, rape, murder, kidnapping etc.
- Harassment or torture of villagers by co-villagers or by police from persons belonging to SC or ST or economically backward classes
- Bonded labour matters
- Neglected children
- Non-payment of minimum wages to workers
- Harassment of jail inmates (not to include petitions for parole)
- Refusal of police to register case, harassment by police and custodial death
- Environmental pollution, wildlife and maintenance of heritage and culture
- Petitions from riot victims and those seeking family pension

All letter-petitions received in the PIL cell would be scrutinised and if found meeting the eligibility criteria, would be placed before a judge nominated by the Chief Justice of India for inquiry. If the judge finds the letter PIL suitable, only then it would be put up for hearing in an open court..

Source:http://timesofindia.indiatimes.com/Women_facing_harassment_can_write_to_us_SC/articleshow/2760077.cms

Supreme Court rules in favour of remarried widow's right to inherit her deceased husband's property

The Supreme Court has held that a Hindu widow can inherit her dead husband's property even after remarriage. In *Cherotte Sugathan (D) by Lrs. Vs. Cherotte Bharati and Others* (decided on 15/02/08), the Court observed that after the 2005 amendment to the Hindu Succession Act, 1956 allowing women an equal share in the joint family property, the bar under the Hindu Widows Remarriage Act, 1856 could not be sustained. It was an appeal filed by Cherotte Sugathan and others challenging a Kerala High Court order that granted one share of the property to their father's widow Cherotte Bharathi despite her having married again. Dismissing the appeal, the Bench ruled that since the amendment to the Hindu Succession Act, the widow became an absolute owner of the deceased husband's

property to the extent of her share in it. This provision would have an overriding effect on the bar prescribed under the Hindu Widow Remarriage Act of 1856 which had declared that a widow's right by way of maintenance or by inheritance over her dead husband's property would cease in the event of her remarriage. Interpreting a number of earlier rulings, the Apex Court observed that the Hindu Succession Act had "brought about a sea change in shastric Hindu law. Hindu widows were brought on equal footing in the matter of inheritance and succession along with male heirs" and would have overriding effect over the text of any Hindu law, including in its fold even the Hindu Widow Remarriage Act.

Source:

<http://www.southasianmedia.net/cnn.cfm?id=472571&category=Women&Country=INDIA>

No 'gifts' will be deemed as 'dowry' unless given as a consideration for marriage

The Supreme Court in *Ran Singh and Others vs. State of Haryana* (decided on 30/1/08) has held that customary articles given to the bridegroom's relatives at the time of marriage or during the birth of a child will not come within the ambit of 'dowry' under the Dowry Prohibition Act, 1961. While acquitting the parents-in-law of a woman, who accused them of harassing her for dowry, the Court observed that "there are three occasions related to dowry. One is before marriage, second at the time of marriage and third at any time after marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties. Other customary payments, e.g. given at the time of the birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression 'dowry'". Justice Arijit Pasayat ruled that no present made at the time of marriage to either party in the form of cash, ornaments, clothes or other articles will be deemed dowry unless it was made as a consideration for the wedding.

Source:

<http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2008020360520100.htm&date=2008/02/03/&prd=th&>

A PIL filed in Delhi High Court to amend the Transplantation of Human Organs Act, 1994

In the aftermath of the multi-million rupees kidney racket expose in the National Capital Region, a Public Interest Litigation (PIL) has been jointly filed in Delhi High Court, by social activist Rahul Verma and advocate Rakesh Prabhakar, on February 12, 2008 to order the government to amend The Transplantation of Human Organs Act, 1994, in order to rectify the major loopholes in the complex Act so that the rampant illegal organ trade can be checked. The Act 'provides for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs'. It illegalises the buying and selling of human organs and makes cash-for-kidney transactions a criminal offence. However, the critique of the Act mainly consists in section 9(3) which states that live donors who are not near relatives but are willing to donate kidneys to the recipients "by reason of affection or

attachment towards the recipient or for any other special reasons," are permitted to do so, provided that the transplantations have the approval of the Authorisation Committee, established under the Act. This provision has been subject to gross misuse and has become a handy tool for the unscrupulous doctors to lure poor people to sell their kidneys in lieu of a measly sum of money in extremely hazardous conditions. The petition seeks to remove the said provision.

Further, the PIL wants the Court to direct the Central and the State governments to scrap the high custom duties and taxes imposed on the dialysis kit, which constitutes one of the main reasons that forces the patients and their relatives to move towards illegal transplantation. Also, the court should give direction to Central and State governments, the Health and the Law Ministries and the Medical Council of India to make a fund for the chronic renal failure patients to support them in their treatment and to make it mandatory for the government hospitals to provide full-fledged facility with absolutely free or minimal charges to the kidney failure patients. Thus the petition urges the government to treat renal failure on public health priority and to fund low-cost dialysis.

Besides this, it has also asked the government to initiate comprehensive cadaver programme for donation of human organs, modeled on the eye donation campaign. It stated that "all district hospitals and medical colleges should create, within an approved time frame, the infrastructure and protocols needed both for counseling next-of-kin of brain dead patients and to retrieve donated organs,".

Source: <http://www.newstrackindia.com/newsdetails/2392>

Bombay High Court decides against second wife's claim to family pension

In *Leelabai Vitthalrao Bhegade vs. Union of India & Ors.* (decided on 21/02/08), the Bombay High Court has held that a second wife has no claim over the family pension of a government employee. The Court dismissed a petition filed by a Pune resident, Leelabai Bhegade who claimed to be the second wife of Vithal Bhegade, a retired employee of the Pune Ordnance Factory in 1983 and died in 2000, followed by his first wife Laxmi in 2002 while Leelabai had laid claim to the family pension after his death. The government rejected her plea. The Central Administrative Tribunal, too, dismissed her application and she approached the high court. She contended that the ration card, as well as electoral rolls, showed Leelabai as Bhegade's second wife. The Union government, cited a series of laws as well as provisions against bigamy, especially the Hindu Marriage Act, 1955. Section 11 of the Act provides that a second marriage by a Hindu during the lifetime of his/her spouse will be deemed null and void. Further, Rule 21 of the Central Civil Service (Conduct) Rules bars a government employee from entering into a second marriage when his or her spouse is still alive. Thus, the High Court ruled that the appellant being the second wife of the deceased was not entitled to the family pension.

Source:

http://timesofindia.indiatimes.com/India/Second_wife_has_no_claim_on_family_pension_HC/articleshow/2831842.cms

Issue -3, May 2008

The Supreme Court orders fresh probe into 14 Gujarat riot cases

In a recent directive, the Supreme Court has ordered fresh probe into 14 Gujarat riot cases through a Special Investigation Team (SIT) in order to ensure free and fair trial. The Court stayed the trial in these cases on petitions filed by the National Human Rights Commission and the Citizens for Justice and Peace (CJP), which sought a probe by the Central Bureau of Investigation (CBI) and transfer of the cases outside Gujarat since they apprehended that the trial if conducted in Gujarat would not be free and fair, as witnesses were being threatened. The cases included the Gulberg, Ode and Sardarpur massacres, and the Naroda Gaon, Naroda Patiya, Baranpura, Machipith, Tarsali, Pandarwada and Raghovpura killings. The SIT would consist of 3 officers from Gujarat and 2 from outside Gujarat.

Source: The Hindu, 26th March 2008

<http://www.hindu.com/2008/03/26/stories/2008032658150100.htm>

Office of Chief Justice of India to be covered within the ambit of RTI

A Parliamentary Committee on Ministry of Law and Justice, in its report placed in Parliament made it clear that all the constitutional authorities, including the Chief Justice of India (CJI), would come under the ambit of the Right to Information Act, 2005. In its 25th report, the Committee said that “except the judicial decision making, all other activities of administration and the persons included in it (judiciary) are subject to the RTI Act.” Interpreting Section 2 (h) of the Act”, the Committee opined that “the definition of public authority is very clear that all the constitutional authorities come under the definition of public authority. All the three wings of the state — the executive, the legislature and the judiciary — are fully covered under this Act, since all organs of the state are accountable to the citizens of India in a democratic state.”

Source: The Hindu, 1st May, 2008

<http://www.hindu.com/2008/05/01/stories/2008050160211300.htm>

The CrPC amendments passed by the Union Cabinet

The Cabinet has approved certain major amendments in the Code of Criminal Procedure (CrPC) aimed at bringing relief to litigants and those accused of petty offences and is about to table the proposal in the Parliament for ratification. The changes relate to the procedure of arrest, right of the arrested person to meet an advocate of his/her choice, investigation of rape cases and recording of statement in electronic form. The amendments are the following:

- Under Section 41 of CrPC, it proposes that the police officer may, instead of arresting a person charged with committing a cognizable offence that is punishable with

imprisonment up to 7 years, issue a notice of appearance, asking him/her to cooperate with the police officer in the probe.

- Another amendment in Section 41 proposes that every police officer while making an arrest shall “bear an accurate visible and clear identification of his/her name.” When any person is arrested and interrogated by the police, he/she shall be entitled to meet an advocate of his/her choice during interrogation, though not throughout interrogation.
- The amendment in Section 54 makes it mandatory for the police to conduct examination of an arrested person by a medical practitioner.
- In Section 164, the amendment proposes that any confession or statement made under it may also be recorded by audio-video electronic means in the presence of the advocate of the person accused.
- In Section 167 an amendment authorises a magistrate to extend further detention in judicial custody of an arrested person on production of the accused either in person or through the medium of electronic video linkage.
- An amendment in Section 173 proposes that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer-in-charge of the police station. Trial of rape cases shall also be held, as far as possible, by a woman magistrate and preferably in a fast track court.
- Under Section 309, an amendment makes adjournment of cases in the court more difficult.

Source: The Hindu, 3rd May, 2008

<http://www.hindu.com/2008/05/03/stories/2008050359641700.htm>

Supreme Court upholds the 27% OBC quota in state higher educational institutions

The Supreme Court has upheld the law enacted by the Centre in 2006 providing a quota of 27 per cent for candidates belonging to the Other Backward Classes in Central higher educational institutions. But it directed the government to exclude the ‘creamy layer’ among the OBCs while implementing the law. This has thus paved the way to giving effect to the *Central Educational Institutions (Reservation in Admission) Act, 2006*, from the academic year 2008-2009. A five-Judge Constitution Bench headed by Chief Justice K.G. Balakrishnan and including Justices Arijit Pasayat, C.K. Thakker, R.V. Raveendran and Dalveer Bhandari, also held the 93rd Constitution Amendment as valid which inserted Article 15(5) in the Constitution to enable the Centre and the States to enact laws concerning quotas.

The Court opined that “the 93rd Amendment Act does not violate the basic structure of the Constitution so far as it relates to State maintained institutions and aided educational institutions. Article 15(5) of the Constitution is constitutionally valid and Articles 15(4) and 15(5) are not mutually contradictory.” While agreeing with the decision to exclude the minority institutions from Article 15(5), the court held that the Act does not violate Article 14 as minority educational institutions are a separate class and their rights are protected by other constitutional provisions.” However, it also viewed that the creamy layer should be excluded from the socially and educationally backward classes. The

creamy layer principle would not apply as far as the Scheduled Castes/Scheduled Tribes are concerned. Though the Bench did not consider the applicability of the 93rd Amendment to private unaided institutions, Justice Bhandari did mention it in his judgement.

Source: The Hindu, 11th April, 2008

<http://www.hindu.com/2008/04/11/stories/2008041161220100.htm>

Delhi High Court starts hearing the final arguments in the Naz petition

Final arguments have begun in the Delhi High Court on the petition seeking decriminalisation of homosexuality in India by reading down of Section 377 IPC to exclude private sexual acts between consenting adults. The petition was first filed in 2001 by Naz Foundation (India) Trust, an NGO working on HIV/AIDS, but it was rejected in 2004 by the Delhi High Court, on grounds that the petitioner has no locus standi. Naz appealed to the Supreme Court which remanded the case back to the Delhi High Court, saying that it was an important matter that had to be heard expeditiously. The case now positions petitions from Naz India, along with Voices Against 377, a group lobbying for change in the law on grounds of human rights of sexual minorities including gay people, hijras and kothis, against the government, Joint Action Committee, Kannur, an NGO that opposes all HIV/AIDS prevention efforts and B.P.Singhal, who is opposing on grounds of traditional morality. The case has surfaced contradiction in the government's stand on the petition. While the petition is opposed by the Home Ministry, on the grounds that changing 377 will open the floodgates of delinquent behaviour, the Health Ministry acting through the National AIDS Control Organisation, is supporting the petition. The final arguments have started and a decision is expected soon.

Source: Queer Media Watch

<http://qmediawatch.wordpress.com/2008/05/21/reports-on-day-one-of-final-delhi-hc-hearing-in-the-sec377-case/>

Issue -4, August 2008

Law Commission proposes changes in a Hindu woman's right to devolve her property

The Law Commission for the first time has recommended that self-acquired property of a married Hindu woman without an heir would simultaneously pass on to her parents as well as to her husband's family. In case the parents of a woman are no more, a part of her property would go to the heirs of her father. It would involve amendment in Section 15 of the Hindu Succession Act (HSA).

The proposed amendment in HSA would finally differentiate between inherited and self-acquired property of a Hindu woman. Presently, Section 15 only prescribes that if a property is inherited from her husband or father-in-law, it would go to her husband's heirs and if the property is inherited from her parent, the same would not devolve to her husband's heirs, but to the heirs of her father.

Source: The Times of India; Wednesday June 11 2008

Wife and children to get maintenance from the day case is filed

The Supreme Court has ruled that wives, children and even parents deserted by their husband, father and children, respectively, will be entitled to get maintenance from the date they filed the application for maintenance in the trial court. This ruling reverses a standard judicial practice to grant maintenance from the date of verdict on the application made under Section 125 of the Criminal Procedure Code, which provides for interim arrangement for sustenance of the dependents pending decision on a matrimonial dispute.

This judgment by a Bench comprising Justices C K Thakker and D K Jain came on a petition filed by a mother of nine, who after three decades of marriage to a bank cashier, faced an uncertain future being deserted by him. Except for the youngest daughter left along with the mother to fend for themselves, the husband lived separately with the rest of the children.

Source: The Times of India; Thursday 31st July 2008

Update on Naz Foundation (India) Trust v. Government of NCT, Delhi and Others

The matter *Naz Foundation (India) Trust v. Government of NCT, Delhi and Others*, Writ Petition (Civil) No. 7455 of 2001 challenging the constitutional validity of Section 377, Indian Penal Code, came up on 23rd July 2008, before the Bench of Chief Justice A.P Shah and Justice Muralidhar of the Delhi High Court.

The Chief Justice enquired into the status of parties and noted that of the respondents, Ministry of Health has filed an affidavit in support of the petitioner while the Ministry of Home has opposed them. The Court further noted that of the three interveners, one, i.e, Voices against 377, supports the petitioner while the other two - B.P Singhal and JACK oppose the petition.

The DB then asked whether pleadings were complete and the estimated time that parties would take to complete their arguments. On this basis, the Court set aside 18th and 19th September 2008 for the hearing with the option of extending it to 20th (Saturday), if necessary. The Court directed the parties to file written submissions as well as submit compilation of judgments and other documents one week before the final hearing.

The matter is now listed for 18th September 2008

Source: www.lawyerscollective.org

Issue -5, October 2008

Problematic reference to s.377 IPC in a case of alleged paedophilia

In its judgment acquitting the accused of paedophilia, the Bombay High Court Division Bench observed in relation to Section 377, IPC, that *'there are lots of changes taking place in the social milieu and many people have different sexual preferences, which are even not considered to be unnatural. Therefore it is high time that the provisions of law which was made more than a century ago, is looked at again.'* This statement was projected in the media as a progressive judicial opinion against criminalization of homosexuality through retention of Section 377. While we agree with the position on decriminalisation of homosexuality, we feel that such a reference is inappropriate and highly problematic in the context of an alleged case of paedophilia. The High Court's observation against Section 377 in a case of alleged paedophilia reinforces the artificial conflict between child rights and queer rights. Such an observation neglects to take into account the travesty of justice caused by the absence of a law on child sexual abuse, as a result of which Section 377 is used as a partial remedy for prosecuting cases of non peno vaginal penetration of children by adults. Many child rights, queer rights, women's rights and human rights groups feel that the Court ought to have directed attention towards the protection gap on child sexual abuse, and the wrongful justification by the state for retaining Section 377. RAHI Foundation, an organization working with adult survivors of child sexual abuse has stated in an open letter that the answer to addressing child sexual abuse "is not to advocate for an existing law that provides partial legal remedy and also otherwise violates rights of adults, including gay men, to consensual non-abusive sex. A law that violates the rights of one section of society cannot be effective in protecting rights of another." In this context, it is important to note that the present petitions filed in the Delhi High Court by Naz Foundation and Voices Against 377, seek to read down section 377 and not scrap the entire section for this reason alone. The prayer to read down the law seeks to bring adult consensual same sex acts in private, particularly in respect of homosexuality, out of the purview of criminality but to retain s.377 only for the purpose of safeguarding children from sexual abuse. As Lesley Esteves, a queer activist notes, "the petition does not in fact ask for Section 377 to be scrapped entirely because the gay community in India recognises that in 60 years, India has failed to create laws that punish child sexual abuse. Hence children's lawyers are forced to use Section 377, a vague law relating to adults which can only be used in case of penile penetration, and hence is a poor deterrent for pedophiles".

WCD Minister plans to introduce new Bill on Acid Attack in October

The Minister for Women and Child Development, Renuka Chowdhury, says the government plans to bring the Bill titled Prevention of Offences (by acids) Act 2008, before the parliament next month. The draft bill has been prepared by the National Commission for Women (NCW) moots for setting up a board to provide assistance to the victim in the form of interim relief of an amount upto Rs 5 lakhs, after having been prima

facie satisfied that a case of acid attack has been made out. Any further sum of money as approved by the Board from time to time shall be towards the treatment of the victim, subject to a maximum of Rs 30 lakhs.

Women who reject lovers, husbands or employers are often targeted by men using easily available and cheap chemicals like acids. The outcome of acid attacks is often not murder but life-long torture in the form of permanent disfigurement or scarring of the face. The perpetrators frequently get away with minor punishments - under the current law the punishment is not so severe if the victim does not die. The Supreme Court had expressed concern that victims are not getting justice. This legislation would classify acid attacks as a "most heinous form of offence".

Sources: <http://news.webindia123.com/news/Articles/India/20080918/1056635.html> & http://news.bbc.co.uk/2/hi/south_asia/7623816.stm

Update on Naz Foundation (India) Trust v. Government of NCT, Delhi and Others

The final hearing on the case has commenced in the Delhi High Court on September 18. The petitioner Naz Foundation and one of the interveners, Voices against 377 made their final submissions in the Court. The Union Government has been directed to submit its position on the S. 377, after being given time to reconcile the contradictory positions between the Union Home Ministry that supports the law and the Health and Family Welfare Ministry that views it as an impediment to HIV/ AIDS prevention amongst "men who have sex with men".

Abortion beyond first trimester: Debate about amendment to the Medical Termination of Pregnancy Act, 1971

On August 4, the Bombay High Court rejected Niketa Mehta's plea to abort her 26 weeks old foetus which might have developed a serious congenital heart defect on birth. The court observed that medical experts did not express any "categorical opinion that if the child is born it would suffer from serious handicaps." Mehta also sought an amendment to the Medical Termination of Pregnancy (MTP) Act so that pregnancy can be terminated even after 20 weeks if doctors believe that the child, if born, will have serious abnormalities, so as to render it handicapped. The division bench of Justice R M S Khandeparkar and Amjad Sayed observed that they could not alter the provision as it was the job of the legislature. The MTP Act allows abortion till 12 weeks of a pregnancy, and subject to medical complications regarding the health of the pregnant woman or the child when it is born, abortion is permitted also in the period between 12 to 20 weeks. Beyond 20 weeks, pregnancy may be terminated only if two registered gynaecologists or obstetricians testify that it is immediately necessary to save the life of the pregnant woman.

The Niketa Mehta case has initiated a nationwide debate on various legal and ethical issues involved in abortion of fetuses suspected to have congenital ailments or disabilities.

Union Health Minister Anbumani Ramadoss has decided to re-examine the Medical Termination of Pregnancy (MTP) Act, 1971, and explore the possibilities of addressing the issue through an amendment. He has set up a committee comprising of former Indian Council of Medical Research (ICMR) chief and top biotechnologist Dr NK Ganguly and health secretary Naresh Dayal to look into the possibility of increasing the period for MTP from 20 weeks to 24 and relaxing the conditions for such MTPs. The committee is expected to submit its report in five months, based on which the ministry may then move an amendment.

Source: <http://www.dnaindia.com/report.asp?newsid=1188983> & <http://www.indiaabroad.com/news/2008/aug/04abort.htm>

Issue -6, December 2008

Dowry Cruelty Conviction Possible without Specific Charge

The Supreme Court has held that Court can convict an accused for dowry harassment and cruelty even if there is no specific charge of that offence. The Bench said: “Section 498-A was added to the India Penal Code in the backdrop of the growing menace of dowry-related cases in which women were subjected to cruelty and harassment and were forced to commit suicide. This section lays down that if the husband or his relative subjects a woman to cruelty, then he/she is liable to be punished with imprisonment for three years and a fine”. The Bench further said: “Section 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or his relatives which may result in suicide or grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coercing the woman or any person related to her meet the unlawful demand for dowry of property of valuable security...An accused can be convicted of dowry offence with which he may not have been specifically charged and than an error, omission or irregularity in the framing of charge by itself is not sufficient for upsetting the conviction.” For purposes of conviction under Section 498-A, it was sufficient to prove that the woman was subjected to cruelty by her husband or his relatives.

Source: Rashtra Mahila. August 2008.p.4

Surrogate Japanese baby stuck in a legal tug-of-war in India

A legal tug-of-war happened over the custody of a surrogate child born in India occurred when the Japanese parents got separated while the baby was still in the womb of the surrogate Indian mother. The Japanese mother refused to have anything to do with the baby, and the surrogate mother post delivery of the child had nothing further to do with the matter. When the father and grandmother arrived in India to take the Japanese baby home from Jaipur, a local NGO took the matter to court to restrain the baby being taken out of the country. This led to the legal tussle, which was further complicated with the legal obstruction to obtain a passport for baby Manji in the absence of her mother. The Supreme Court eventually intervened in the matter to grant the custody of the child to her

grandmother, and issued directions to the Regional Passport Office in Jaipur to issue an “identity certificate” to Baby Manji Yamada, to enable her to get a Japanese visa and fly with her grandmother to Japan. The Court also issued notice to the Indian Council for Medical Research (ICMR) to confirm the position in national guidelines for accreditation, supervision and regulation of ART (Assisted Reproductive Technologies) clinics that hold surrogate babies to be legitimate children of the biological father.

Sources: <http://www.hindu.com/2008/08/15/stories/2008081555241300.htm> & http://indiatoday.digitaltoday.in/index.php?issueid=73&id=19050&option=com_content&task=view§ionid=4

Update on Naz Foundation (India) Trust v. Government of NCT, Delhi and Others

On November 7, 2008 the The Delhi High Court Division Bench comprising Justice A.P. Shah and Justice S. Muralidhar reserved the judgment on conclusion of arguments by all parties to the petition. The petitioner, Naaz Foundation, argued that continuation of the penal provision (Section 377) against homosexuality in the Indian Penal Code violated Articles 14, 19 and 21 of the Constitution. The Union Home Ministry and the Health and Family Welfare Ministry took contradictory stands in Court with the former opposing the petition and the latter supporting it. Additional Solicitor-General P.P. Malhotra said homosexuality was a disease and if it was legalised it would further accentuate AIDS in the country. Senior BJP leader B.P. Singhal is an intervener opposing the petition, on similar grounds. The bench sought evidence in support of the argument of the respondents, noting that, “In several countries where ban has been lifted (on gay sex), no one has claimed that the act is injurious. Even WHO (World Health Organisation) does not say that it causes injuries to people involved in such acts.”

Source: The Hindu, 8th November, 2008

<http://www.thehindu.com/2008/11/08/stories/2008110857330400.htm>

SC asks NCW to report on condition of widows in Brindavan

A Supreme Court bench comprising Chief Justice K G Balakrishnan and Justice P Sathasivam directed the National Commission for Women (NCW) to submit its report within 3 months regarding the condition of widows and orphan women staying in the ashrams in Brindavan. The petitioner had alleged that these women have been abandoned by their families and are forced to live in deplorable conditions, falling prey to all forms of exploitation and the government must take immediate steps to look after these women.

Source: <http://www.indlawnews.com/NewsDisplay.aspx?57f17e7b-3ca8-4c8b-be38-e35ef1e58994>

Maharashtra legalises live-in relationships

Drawing heavily from the recommendations of the Justice (ret'd) S Mallimath Committee formed by the Centre to suggest reforms in relation to criminal procedure, the Maharashtra state cabinet has given its green signal to amend Section 125 of Criminal

Procedure Code (CrPC) to extend protection to the pecuniary interests of the 'other woman'. However, it still needs the Centre's approval to become a law. According to the amendment proposed by Maharashtra, the definition of the word 'wife' under Section 125 needs to be changed to include a woman who was living with a man like his wife for a “reasonably long period” (though this term has been left ambiguous). This amendment would cover the interests of women involved in polygamous or live-in relationships. state law department officials explain the need for such an amendment, by observing that most bigamy cases lead to problems for the 'other woman' not recognised by law in presence of the official wife.

Source: The Times of India; Tuesday, 9th October, 2008

<http://timesofindia.indiatimes.com/articleshow/3575090.cms>

NATIONAL NEWS

Issue -1, March 2008

Steps to integrate rather than add gender to the new 5 Year Plan: Towards Inclusive Growth

In the context of the formulation of **Eleventh Five Year Plan** (2007-2012), a **Committee of Feminist Economists (CFE)**, was constituted by the Planning Commission on **29th March 2007** to include the analysis of women’s location in each chapter, so that women’s perspective is explicitly recognized and integrated in to sectoral programmes and policies. This mechanism of professional interaction for engendering public policy has been initiated for the first time in the history of planning in India by Dr. Syeda Hameed. The practice of clubbing women with children in a separate chapter of Plan document ignores the relevance of gender perspective in all sectors of the economy and treats women as subjects of welfare rather than economic agents in development.

Source: http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_fec.pdf

Delhi High Court Serves notice to Union Ministries on sex change issue

A Public Interest Litigation (PIL) seeking guidelines for **non-discrimination against persons who undergo sex change** has been filed in the Delhi High Court. The petitioner, social activist **Rahul Verma**, contends that such persons who undergo sex change midway in their lives do so as a natural process of events beyond their own control, should be treated as a separate category but with all the benefits that are available to other members of society and further, they should also be provided **free medical treatment** by the government. The Delhi High Court issued notices to the Union Home and Health and Child Welfare Ministries and the Delhi Government, and directed them to file their replies on the PIL by 5th May, 2008. The petitioner cited in his petition two known instances out of many, in which women found to have undergone gender change and were punished for no fault of theirs.

Source: <http://www.thehindu.com/2007/12/21/stories/2007122153850400.htm>

Debates on Sex Education Manual

A revised sex education manual of the **UNICEF-National Aids Control Organisation (NACO)** is expected to come out quite soon after incorporating inputs from the civil society organisations and the teachers. The previous manual prepared by UNICEF-NACO had run into **controversies** after it was introduced in **11 State Boards**, due to being too 'explicit' and was therefore banned by those States. While drafting the revised manual, the petitions committee visited various states to discuss the manual with representatives from NGOs, teachers and principals. The women's rights organizations and sexuality groups have supported the **incorporation of sex education in the school curriculum** on the grounds that sex education plays a vital role in creating an aware and confident individual who knows about her choices. They also recommend that the **manual incorporate same sex desire**, its prevalence and normalcy so that the young adult is not traumatized by her sexual preference. The present manual, hence, will be put for field-testing before being distributed to the teachers for training in classrooms. Another sex education manual, by **CBSE-UNFPA**, is also being revised after receiving feedback from teachers. The revisions on the 2005 version include deletion of certain explicit terms; and addition of new topics on: **gender sensitivity**, **respect** for opposite sex, perspectives of life-skills, how to **cope** with the **stress** and the **role of teachers** and counselors in preventing substance-abuse among school children.

Source: http://www.lgbt-education.info/en/news/local_news/news?id=140

Issue -2, April 2008

Gender Budgeting gets reflected in the Union budget, 2008

Yearning to have an inclusive and gender sensitive annual budget, the Ministry of Finance has announced a series of programmes and initiatives geared to improve the socio-economic condition of the marginalized women. The budget increased the tax slab for women from Rs. 1.45 lakhs to Rs. 1.80 lakhs and agricultural women have also got a relief in form of the loan waiver since the Central government has waived the financial loans of the agricultural farmers who have taken loans from government banks and financial institutions. Further, there has been a 24% increase in allocation to the budget of the Ministry of Women and Child Development to the tune of Rs. 7,200 crores while gender budgeting cells have been set up in 54 departments and ministries of the government. Also, Life Insurance Corporation of India (LIC) would also cover all women Self Help Groups (SHGs) linked to the bank and offer them easy insurance schemes at very low premiums.

Source:

http://timesofindia.indiatimes.com/India/Its_a_gender_sensitive_budget_Renuka/articleshow/2827694.cms

Issue -3, May 2008

Extension of NREGS to all districts of India

From 1st April, 2008, the National Rural Employment Guarantee Scheme (NREGS) has been extended to all 604 districts of the country. The scheme, which came into existence in 2005, was aimed at enhancing the livelihood security in the rural areas by providing 100 days of guaranteed employment in a financial year to every household whose adult members volunteer to do unskilled manual work. The Union Government announced that in 2007-08, a total of 3.10 crore households demanded employment, against which jobs were provided to 3.08 crore. The first priority would be to ensure transparent and corruption-free implementation of the programme since there have been reports of leakages and diversion of funds by some State governments in the social audits of the NREGA.

Source: The Hindu, 2nd April, 2008

<http://www.hindu.com/2008/04/02/stories/2008040257890100.htm>

National Commission for Women has prepared a draft bill on acid attacks

The National Commission for Women (NCW) has drafted a *Prevention of Offences (by Acids) Bill, 2008* to provide stringent punishment to those indulging in acid attacks and compensation to the victims. According to NCW, acid attacks could be termed an act of gender-based violence that could lead to permanent disfigurement, debilitation and eventual death. The treatment was costly and very often the victim was left to fend for herself since at present there was no statutory provision for compensation. Hence, the draft Bill was needed to establish a board that would decide on financial and other reliefs.

The bill proposes that after the prima facie satisfaction of a case of acid attack, the board would be empowered to order an interim financial relief of up to Rs.5 lakhs within 30 days from the date of receipt of application and the payment would be sent directly to the hospital where the victim was being treated. Any further sum approved by the board and the monitoring authority from time to time should be used for the treatment of the victim, subject to a maximum of Rs. 30 lakhs. If the victim died, the board could order a compensation of Rs.2 lakhs to the legal heirs, preferably her children. This would be in addition to any expense incurred on treatment of the victim. The board could also announce measures for rehabilitation, legal aid or any other special needs of the victim for which a sum of up to Rs.5 lakhs could be given. The draft Bill also recommends imprisonment for a minimum of 10 years extending up to life and a fine of Rs.2 lakhs to Rs.5 lakhs to the guilty.

Source: The Hindu, 3rd May, 2008

<http://www.hindu.com/2008/05/03/stories/2008050355931300.htm>

Women's Reservation Bill tabled in the Parliament

On 6th May, the UPA government tabled the Constitution (108th Amendment) Bill, 2008, namely the Women's Reservation Bill, in the Rajya Sabha, after nearly 10 years of the

bill lying in limbo. The Bill seeks to provide one-third of the seats to women in Parliament and State Assemblies. Amidst protest from certain political parties, the bill was introduced in the parliament and then sent to a Standing committee on Law and Justice which has been set up to deliberate on this issue and give recommendations to the Parliament. Earlier, the Committee had no woman member but now 4-5 women have been nominated by different political parties to be part of the same. The committee has laid down the modalities to take on board views of not only political parties but also of the public. Regional sittings are to be held in Chennai, Kolkata and Mumbai during June.

Source: The Hindu, 7th May, 2008

<http://www.hindu.com/2008/05/07/stories/2008050758190100.htm>

Centre to set up a commission to rehabilitate Bhopal gas victims

The Centre has agreed “in principle” to set up an empowered commission to rehabilitate the survivors and victims of the Bhopal gas leak that happened in Dec, 1984. It is in “in principle agreement with the demand for a specially empowered commission to carry out medical, economic, social and environmental rehabilitation of the victims and would soon take the initiative to work out the modalities,” This Commission would subsume the committees on various rehabilitation aspects constituted by the Supreme Court, the Centre, the Madhya Pradesh government and the Madhya Pradesh High Court and other courts. Also, the Madhya Pradesh government is being asked to prepare a detailed plan of action for schemes for rehabilitation of the victims with estimates of the funds required. However, the government did not agree on the demand for legal action against Union Carbide and Dow Chemicals for environmental and health damage and soil and water contamination.

Source: The Hindu, 30th May, 2008

<http://www.hindu.com/2008/05/30/stories/2008053061201500.htm>