



# BI-MONTHLY LEGAL NEWS

## Vol. No. 9(IV) July-August 2016

*Partners for Law in Development*

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## UN Updates

### **CESCR issues General Comment on the right to sexual and reproductive health**

The UN Committee on Economic, Social and Cultural Rights (CESCR) issues General Comment no. 22 on the right to sexual and reproductive health (Article 12 of the Covenant). The Comment reaffirms the right to sexual and reproductive health as an integral part of the right to health, recognising the multiple and intersecting forms of discrimination that impede the enjoyment of this right by certain individuals and population groups, in particular LGBTI persons and persons with disabilities. The Comment iterates how sexual and reproductive health are distinct but interrelated to each other, and how fulfilment relies upon the right to make free and informed decisions in the absence of coercion, discrimination and violence. Moreover, the Comment recognises that the highest attainable standard of health is contingent not only on healthcare provision, but also the underlying determinants of health, including 'social determinants', that impact availability, accessibility, acceptability and quality of health related goods and services.

*Source*

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en)

### **CESCR addresses unique gender related challenges in its General Comment on the right to just and favourable conditions of work**

The UN Committee on Economic, Social and Cultural Rights (CESCR) issues General Comment no. 23 on the right to just and favourable conditions of work (Article 7 of the Covenant). The Comment reaffirms trade union rights, the rights to freedom of association and to strike as being crucial for the maintenance of just and favourable conditions of work. Furthermore, the right to just and favourable conditions of work is bi-directionally a prerequisite for and result of the enjoyment of other Covenant rights. The Comment stresses the importance of equivalence of pay for equal work and non-discrimination relating to working conditions on the basis of any protected characteristic. The Comment also recognises the unique challenges faced by women due to their predominance in part-time, informal and domestic sectors of labour, urging measures to be taken to reduce inequities in working conditions on these bases. The Comment continues into exposing unique challenges faced by different categories of workers, including unpaid reproductive labour, outlining a series of obligations on States Parties for implementing, monitoring and reporting Covenant.

*Source*

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en)

### **CRPD issues General Comment on women and girls with disabilities, yet lacks gender balanced representation**

The Committee on the Rights of Persons with Disabilities (CRPD) issued General Comment no. 3 on women and girls with disabilities (Article 6 of the Convention on the Rights of Persons with Disabilities), emphasising the intersectionality and multiplicity of discrimination faced by women and girls with disabilities. The Comment outlines barriers in accessing education, economic opportunities, social interaction, justice and recognition

before the law and in political participation; in addition to barriers relating to autonomy in the context of private and family life, health, sexual and reproductive health. The Comment critiques harmful stereotypes that 'infantilize' women with disabilities, or make presumptions about sexuality, calling attention to the interrelationship between disability and violence against women. It emphasises amongst other things, the need to empower, not pity women with disabilities.

Yet, a recent election of nine members to the CRPD resulted in all-male appointments for the 2017-2020 term, despite the candidature of three women. UN Women issued a statement emphasising the intersecting challenges faced by women with disabilities and expressing concern regarding the diminution of their voices and experiences in the CRPD's future work. Women with disabilities experience a higher prevalence of forced marriage, early pregnancy and female genital mutilation, exacerbated by the fact that the prevalence rate of disability for women (19.2%) is higher than for men (12%). UN Women states it is therefore regrettable that the CRPD may be omitting these voices.

#### *Sources*

##### *CRPD Press Statement:*

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20429&LangID=E>

##### *General Comment no. 3:*

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

##### *UN Women Statement:*

<http://www.unwomen.org/en/news/stories/2016/6/committee-on-the-rights-of-persons-with-disabilities>

### **Special Rapporteur on contemporary forms of slavery notes the vulnerability of women, children, minorities and low caste in its report on debt bondage**

The Report defines and highlights the extent of debt bondage around the world – with discussion on the prevalence in South Asia and ASEAN States – noting that 'vulnerable people, including those belonging to minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, are disproportionately impacted'. Multiple and intersecting sources of discrimination render such groups especially vulnerable to situations of bonded labour. Women and children often become trapped in bonded labour due to debts contracted by or inherited from an authoritative member of the family. The Report also explains how 'indirect bondage' prevails in specific sectors and is exerted on women and children through the male household head.

#### *Source*

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/142/67/PDF/G1614267.pdf?OpenElement>

## International Developments

### Asia

#### **Maldives passes Gender Equality Act**

In a historic move, the Maldives parliament passed the Gender Equality Act. The Act draws from the Maldivian Constitution that forbids any differentiation in freedoms and rights based on gender or any other factor under article 17 and article 20 that guarantee equal protection and benefits under law. The Act seeks to realise the Constitutional guarantees to eliminate discrimination between genders, by outlining the role of government, mandating agencies to assure equal opportunities in employment and equal pay for equal work. It also puts on the onus on the government and media to promote gender equality.

*Source*

<http://english.sun.mv/39119>

### Beyond Asia

#### **Supreme Court of Belize strikes down law criminalising homosexuality**

In a landmark judgement, the Supreme Court of Belize ruled Section 53 of the Belize Criminal Code, which criminalised carnal intercourse against the order of nature with imprisonment up to 10 years, as unconstitutional. LBGT activist Caleb Orozco had in 2010 challenged the law claiming it violates rights guaranteed in the Belizean Constitution, including the right to human dignity, personal privacy, right to equality before the law, equal protection of the law and freedom from discrimination. The Court held that since Belize had ratified the International Covenant on Civil and Political Rights (ICCPR), it was bound by the authoritative interpretation of that instrument. Consequently, the guarantee of non-discrimination on the basis of 'sex' in the Belize Constitution must be read to include sexual orientation. This makes Belize the first nation to decriminalise homosexuality in the Caribbean region.

*Source*

[www.advocate.com/world/2016/8/10/belize-high-court-strikes-down-sodomy-law](http://www.advocate.com/world/2016/8/10/belize-high-court-strikes-down-sodomy-law)

*You can access the judgement at*

<https://caymannewsservice.com/wp-content/uploads/2016/08/Belize-Court-of-Appeal-Judgment-Caleb-Orozco-v-AG-et-al.pdf>

#### **Tanzania High Court rules age of marriage laws as discriminatory and unconstitutional**

In an important legal milestone in the fight against child marriage in Tanzania, the High Court ruled that the legal age for girls to marry should be increased to 18 years, consistent with the legal minimum age for boys to get married. The Court held sections 13 and 17 of the Tanzania Law of Marriage Act, which allow girls to marry at 15 years with parental permission and at 14 years with the permission of a court as unconstitutional and directed the

Tanzanian Government to rectify the discriminatory provision in the Marriage Act within a year. The court ruling follows a series of new legal measures, adopted by the Tanzanian government that criminalises marrying and impregnating primary and secondary school-going girls with up to 30 years of imprisonment.

*Source*

<http://news.trust.org/item/20160712103040-v88ys>

<http://www.reuters.com/article/us-tanzania-childmarriage-idUSKCN0ZK1US>

### **Gambia President declares an immediate ban on child marriage**

Gambian President, Yahya Jammeh, issued a declaration making it illegal for girls to marry before the age of 18, stating that a violation shall carry a sentence of 20 years imprisonment for the groom. President Jammeh added, ‘The girl’s parents will do 21 years in prison and anyone with knowledge of this marriage and not having reported to authorities will spend 10 years in prison. The Imam and those who lead the wedding ceremony will also be sent to prison’. Jammeh stated, ‘We are destroying the future of our children, who should be going to school’. UNICEF data show that 30% of Gambian girls are married before the age of 18, and 9% are married by the age of 15. A Bill was subsequently presented to Parliament and passed into law on 21 July, including a provision that ‘An adult who learns about such a marriage proposal and wilfully fails to report it commits an offence and is liable to imprisonment for ten years’.

*Source*

<http://www.girlsnotbrides.org/gambias-president-calls-for-immediate-ban-on-child-marriage/>

<http://www.africanews.com/2016/07/22/jammeh-s-anti-child-marriage-orders-passed-into-law-by-gambian-parliament/>

### **France court overturns burkini ban; mayors refuse to lift restrictions**

France’s Council of State, the Conseil d’État, has suspended a ban on full body burkini swimsuits (introduced to target Muslim women) on the ground that the ban violated civil liberties, including freedom of movement and religious freedom. The court also said that officials failed to show that the swimwear posed a threat to public order or that it was repressive of women. Although specific to the south eastern town of Villeneuve-Loubet, the ruling is expected to set a legal precedent for nearly 30 seaside towns that have issued similar bans. Yet, with the exception of 2 towns, the majority of mayors in towns that imposed a burkini ban have refused to lift restrictions despite the ruling. The State may now instruct local prefects to force mayors in those towns to withdraw their bans. Human rights groups intend to take legal action against towns that have not lifted restrictions. In 2010, the country became the first in Europe to ban the burqa in public, raising questions over the French state’s targeting of Muslims.

*Source*

<http://www.bbc.com/news/world-europe-37198479>

<https://www.theguardian.com/world/2016/aug/28/french-mayors-burkini-ban-court-ruling>

### **Gender equality and women's voices central to the groundbreaking peace deal between Colombian government and the FARC**

A peace agreement signed by the Colombian government and the Revolutionary Armed Forces of Colombia – People's Army (FARC), is unique in locating women centrally within it. The agreement acknowledges the injustices inflicted upon women during the conflict that has lasted for longer than 50 years. Negotiations of the deal were unique in their inclusion of women's perspectives; millions of whom have been internally displaced; and thousands of whom have experienced sexual violence. A gender sub-commission was tasked with ensuring that women's perspectives were properly represented. LGBTI rights were also considered, possibly for the first time ever in a peace process. The deal, put to a national referendum for approval in October 2016, however was rejected.

*Source*

<http://qz.com/768092/colombian-women-made-sure-gender-equality-was-at-the-center-of-a-groundbreaking-peace-deal-with-the-farc/?platform=hootsuite>

### **Germany rape law: 'No means No' law passed**

The German Parliament unanimously voted to pass a new 'No means No' law, amending previous legislation. Previously, under section 177 Criminal Code, victims were required to establish physical resistance against their assailant in order for the offence of rape to be proven. The new law removes this requirement, intending to cover 'actual situations in which most attacks occur'. The law broadens the definition of sexual offences to include 'groping'. Even as this law paves the way for Germany to ratify the Istanbul Convention, it does not go far enough to address drug rape. While Germany plugs a longstanding legislative gap, it is unfortunately coloured by anti-migrant impulse reflected by the new provisions for deporting sexual offenders, seemingly motivated by the reported sexual assaults by migrant men.

*Source*

<http://www.wunrn.com/2016/10/germany-important-legal-reform-on-violence-against-women-no-means-no-coalition-advocacy/>

<https://theconversation.com/german-rape-law-finally-accepts-that-no-means-no-but-is-a-statute-enough-62640>

<http://www.bbc.com/news/world-europe-36726095>

### **UK Police to record misogyny and harassment against women as hate crimes**

Nottinghamshire Police has announced that crimes ranging from harassment on the street to physical approaches will be recorded as misogynistic hate crimes, which it defines as 'incidents against women that are motivated by an attitude of a man towards a woman, and includes behaviour targeted towards a woman by men simply because they are a women'.

*Source*

<http://www.bbc.co.uk/news/uk-england-nottinghamshire-36775398>

## National Developments

### National News

#### **Khabar Lehriya, a women-run feminist model of rural journalism, begins a rural digital media start-up**

Chambal media, a digital start up, completed a very successful pilot-run of six-months in July. Started by the *Khabar Lahariya* team of rural women journalists in Bundelkhand, Uttar Pradesh, this digital initiative seeks to widen distribution of the newspaper through digital outreach of Chambal media. Like *Khabar Lahariya*, whose core principle is ‘*apnikhabar, apnibhashamein*’ (your news in your native language), Chambal media aims to ensure that local authentic voices reach the largest possible audiences. This, like *KhabarLahariya*, is based on the feminist business model of the initiative being led by women from marginalised socio-economic backgrounds. The digital start-up particularly reverberates with young audiences, and brings stories mainstream media is unable to cover.

*Source*

<http://www.thehindu.com/todays-paper/tp-national/a-rural-digital-media-startup-banks-on-feminist-business-model/article8863427.ece>

#### **A flawed Rights of Transgender Bill, 2016 passed by the Lok Sabha**

Ostensibly to recognise and protect transgender persons, the transgender bill rolls back many of the rights bestowed by the Supreme Court in NALSA vs. UOI. Most importantly, it takes away the right to self-determination of gender identity, instead pathologising it. The Bill requires certification of transgender identity. Despite the Supreme Court holding that transgender persons be entitled to affirmative action on par with Other Backward Caste Constitutional category, the Bill fails to guarantee the rights to residence, non-discrimination in employment, education in government funded or recognized institutions; it also fails to provide legal remedies against discrimination, harassment or sexual violence. The Bill has been criticised and rejected by the transgender communities who call for a participatory process of drafting a law that is in full compliance with the NALSA judgement.

*Source*

<http://www.prssindia.org/uploads/media/Transgender/Bill%20Summary%20-Transgender%20Bill%202016.pdf>

<http://thewire.in/56299/failures-of-the-new-transgender-bill/>

<http://indianexpress.com/article/india/india-news-india/transgender-bill-has-no-provision-for-quota-in-jobs-education-2954328/>

## **Child Labour (Prohibition and Regulation) Amendment Bill, 2012, seeks to legalise labour by children under 14 years**

In a regressive move for child rights in the domains of education, work, play and equal opportunity, the Lok Sabha passed the Child Labour (Prohibition and Regulation) Amendment Bill, 2012, that allows children below 14 years of age to work in family establishments. The premise of the provision is that education and work can go hand in hand, but educationists, child-rights activists, as well as other civil society organizations disagree, as this not only fails to protect children from exploitation but also contravenes the Right of Children to Free and Compulsory Education Act. In a context of poverty and social pressure, it is more than likely that even close family will prefer immediate monetary income at the expense of the child's education and development. Besides, agriculture with the use of chemicals, beedi-making and carpet weaving, are all family run enterprises that put children at risk. Even where the child combines education with work, the high stress of juggling both has adverse consequences for the child's health and will result in dropping out of school. The Bill is strongly critiqued on all these counts, in addition for being contrary to the recommendations of the Parliamentary Standing Committee on Labour.

*Source*

<http://haqcrc.org/news/ngos-fear-new-bill-will-perpetuate-child-labour/>

<http://thewire.in/53128/unveiling-the-facade-of-the-child-labour-act/>

## **Rajya Sabha amends the Maternity Benefits Act, 1961, increasing maternity leave from 12 weeks to 26 weeks**

The Rajya Sabha amendment to the Maternity Benefits Act, 1961 increases maternity leave to six months, and requires private sector to have a crèche at the workplace if they employ more than 50 women employees. The amendment discourages women from having more than two children, by reducing leave in the circumstances to 12 weeks. Like the rest of labour laws, these benefits are available only to women in the organized formal sector, leaving out the informal and unorganized sectors where the largest number of India's women workforce exists.

Maternity and child benefits are necessary to ensure the social welfare of all working women, and given that most women work in informal sectors it is clear that maternity and child benefits require a collective social and state response to ensure that all women, regardless of the nature of work or workplace, are supported.

*Source*

<http://www.thehindu.com/opinion/columns/swagata-raha-on-maternity-benefit-amendment-bill-not-only-the-mothers-responsibility/article8991384.ece>

<http://scroll.in/pulse/813888/maternity-leave-increases-to-26-weeks-but-only-for-a-small-section-of-indian-women>

### **Maharashtra to give women slum dwellers joint ownership rights**

In a move to regularise around 55 slums in the city of Nagpur, the state of Maharashtra moves to recognise over 25,000 slum-dwelling families as legal residents by providing land title for joint ownership between the man and the woman. Commissioner at the Nagpur municipal corporation said, ‘We have given land titles in the past to slum dwellers, but this time the titles will have the name of the woman as well’. This move is aimed at empowering the poorest women with equal rights to property. Hundreds of millions of Indians live in slums, many of whom are under constant threat of eviction. The provision of land rights affords these people security. The Housing and Land Rights Network cautions that, while this move is welcome, it must be accompanied with measures to increase women’s awareness of these rights and to ensure implementation and fulfilment in practice.

*Source*

<http://www.reuters.com/article/us-india-landrights-women-idUSKCN11417B>

### **Proposed Citizenship (Amendment) Bill, 2016, discriminates on the basis of religion and region**

The Citizenship (Amendment) Bill, 2016 was introduced to amend the Citizenship Act, 1955 to render illegal migrants who are Hindu, Sikh, Buddhist, Jain, Parsi and Christians who have fled from Pakistan, Afghanistan and Bangladesh eligible for citizenship. The Bill reduces the residence requirement for naturalization from 11 years to 6. In this way the Bill affords favourable treatment to selected individuals on the basis of religion, to the exclusion of others. If the objective of the Bill is to allow individuals from specified persecuted minorities fleeing to India to be eligible for Indian citizenship, it clearly excludes other persecuted religious minorities such as Ahmadiyyas, atheists, etc.

*Source*

<http://www.thehindu.com/opinion/op-ed/citizenship-without-bias/article9026942.ece>

<http://www.prssindia.org/uploads/media/Citizenship/Legislative%20Brief%20Citizenship%20Amendment%20Bill%202016.pdf>

### **Introduction of the Civil Aspects of International Child Abduction Bill, 2016**

The Civil Aspects of International Child Abduction Bill, 2016, is intended to enact domestic legislation in order for India to accede to the Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention enhances international recognition of rights of custody and mechanisms for the return of removed children. The Bill, if passed, is expected to impact the freedoms available to victims of domestic violence, particularly women, seeking to escape violence with their children. Recent data on the Hague Convention shows that 68% of absconding parents were mothers, the majority of which were fleeing abusive and violent homes.

*Source*

<http://www.thehindu.com/opinion/columns/anil-malhotra-writes-on-rights-for-abducted-children/article9072611.ece>

<http://businessworld.in/article/International-Child-Abduction-And-Domestic-Violence-Why-Children-Are-Sent-Back-To-Violent-Homes/01-09-2016-105113/>

### **Rajya Sabha passes Mental Health Care Bill, 2013**

The Mental Health Care Bill, 2013 passed by the Rajya Sabha intends to bring domestic legislation in line with the UN Convention on the Rights of Persons with Disabilities (ratified by India in 2007). The Bill enshrines the right to mental health care and treatment which is accessible, affordable and of adequate quality. The Bill also emphasises the need for equality of persons with mental illness in access to treatment, legal services, medical records, complaints procedures regarding treatment, and protection from inhuman and degrading treatment. Provisions are included for mentally ill persons to make advanced directives as to the conduct of future treatment should their decision-making capacity be diminished. The Bill makes provisions for the institution of mental health authorities and establishments, including a mental health review commission and board. The Bill decriminalises suicide and declares that survivors of attempted suicide are presumed to be sufferers of mental illness. Finally, the Bill restricts the use of electro-convulsive therapy (ECT) and prohibits its use on child patients.

*Source*

<http://www.downtoearth.org.in/news/rajya-sabha-passes-mental-health-bill-55215>

*Bill summary:*

<http://www.prssindia.org/uploads/media/Mental%20Health/Bill%20Summary-Mental%20Health%20care%20bill.pdf>

*Bill as passed:*

<http://www.prssindia.org/uploads/media/Mental%20Health/Mental%20health%20care%20as%20passed%20by%20RS.pdf>

### **National Judgments**

#### **Supreme Court holds armed forces accountable for ‘encounter’ deaths**

A two-judge bench of the apex Court directed that every death caused by forces in insurgency areas should be comprehensively enquired into, whether the victim was a terrorist, militant or insurgent. It was declared that even alleged ‘enemies’ were citizens of the country and thus entitled to fundamental rights under Article 21 of the Constitution. The contention of the government that such an order would demoralize troops was countered by a reminder of the equally demoralizing reality experienced by civilians living under the fear of guns in a democracy. The court held that it was incorrect to presume that a person was an enemy merely because he was carrying arms in a prohibited area, emphasising instead that the commission of an overtly violent act was necessary to presume guilt.

This judgment is significant for striking at the immunity to security forces under the Armed Forces Special Powers Act, 1958, in wake of which several un-investigated disappearances and deaths in disturbed areas are reported. The ruling is thus a fitting response to the plea of hundreds of families in Manipur for a probe by the Special Investigation Team into 1528 alleged fake encounter cases involving the Army and the police.

*Citation*

*ExtraJdul. Exec.Victim Families vs Union Of India &Anr, WRIT PETITION (CRIMINAL) NO.129 OF 2012*

*Source*

<http://www.thehindu.com/todays-paper/sc-ends-impunity-for-armed-forces-in-disturbed-areas/article8825946.ece>

<http://www.thehindu.com/todays-paper/tp-national/alleged-enemy-is-a-citizen-with-rights-sc/article8826410.ece>

**Delhi High Court determines that there is no upper limit that can be awarded to victim of sexual assault**

In a case of sexual assault of a minor, the Court read in the provisions of the Criminal Procedure Code and the Protection of Children from Sexual Offences Act to determine that there was no upper limit to the compensation that could be awarded to a child. The judgment re-establishes the rights of the male child victim of sexual abuse to compensation, and obliges courts to decide on the amount of compensation based on circumstances and not the limitations of State compensation schemes.

Despite the fact that boys were not recognized under the definition of ‘victim’ of sexual offences in the Delhi Victims Compensation Scheme, 2011, the Delhi High Court awarded 3 lakh by way of compensation to a minor boy who was sexually assaulted by three senior boys in 2013. The plea filed by the victim’s mother cited mental and physical trauma, financial hardships, as well as changes in home and school environments after the incident - all of which were factors taken into account when determining compensation. The case has implications for all other compensation cases under the POCSO Act.

*Source*

<http://indianexpress.com/article/cities/delhi/rs-3-lakh-compensation-to-boy-sexually-assaulted-in-school-delhi-hc-2932297/>

**Bombay High Court waives court fee for mothers claiming maintenance for minor sons**

A 1994 notification issued by the State government, exempted court-fee payments only to mothers seeking maintenance for minor girls, but not minor boys. A PIL filed by Majlis Manch sought parity in exemption, pointing out that this exemption was discriminatory to male children, and more importantly, the only sufferer is the mother as the child would obviously be unable to pay. The PIL also stated that the existing situation deterred those mothers who were unable to pay court fees on the amount claimed as maintenance for the

son. The court extended the exemption to maintenance claims by mothers on behalf of male children, noting that there were multiple better sources of revenue for the court.

The ruling is significant for it acknowledges not only the institutional limitations but also the financial context experienced by mothers seeking maintenance.

*Citation*

PIL/72/2016

*Source*

<http://indianexpress.com/article/cities/mumbai/mother-claiming-maintenance-for-minor-son-wont-have-to-pay-court-fees-orders-bombay-hc/>

<http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGF0aD0uL2RhdGEvY2l2aWwyMjAxNi8mZm5hbWU9UEIMNjQyMDE2MjUwODE2LnBkZiZzbWZsYWc9TiZyanVkJGZ0ZT0mdXBsb2FkZH9MjkvMDkvMjAxNiZzcGFzc3BocmFzZT0wMzEwMTYxNzMwMTg=>

### **Bombay High Court directs blocking of internet searches relating to gender selection**

In pursuance of an agreement by Google India, Yahoo! India and Microsoft Corporation (I) Pvt. not to host and publish information relating to ‘gender selection’, the apex Court said that the three companies must develop a technique that ensures that any advertisement or search introduced into the system will not be projected or seen, through the method of ‘auto-block’. The device will ensure that no one can enter/see any advertisement or message that is prohibited under the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Proposed key words like ‘gender selection’, ‘prenatal sex selection’ and ‘baby gender selection’ would trigger only a warning.

*Citation*

Writ Petition(s) (Civil) No(s). 341/2008

*Source*

<http://blog.scconline.com/post/2016/09/19/search-engines-directed-to-devise-a-method-of-auto-block-in-searches-relating-to-gender-selection/>

### **Mere allegations of infidelity insufficient to rebut the legal presumption of paternity**

The Delhi High Court increased the burden of proof on the husband to rebut the presumption that a child born to a married woman during subsistence of marriage or within 280 days of severance is the legitimate child of the husband. This presumption of paternity is vital for claims of maintenance, to rebut which, the court said that a husband must establish compelling case of non-access to the wife. Therefore, bald allegations of infidelity would not lead a court to impose a DNA test to prove paternity. The court reiterated the established principles, that even if a DNA test proved otherwise, a husband living with a wife during a time of conception would be presumed the legal father of the child.

*Citation*

*W vs. H and Ors*, MAT App.(F.C.) 17/2016 and CM No. 5064/2016, MANU/DE/2216/2016

*Source*

<http://blog.scconline.com/post/2016/09/11/dna-test-to-determine-paternity-cannot-be-ordered-on-mere-allegation-of-infidelity/>

**Calcutta High Court directs State Government to address the practice of witch-hunting**

In a case where the petitioners were driven out of their village on the suspicion of practicing witch-craft, the Court set out guidelines for the State Government to address witch hunting in West Bengal. The directions included the need to form a multi-disciplinary committee of experts to look into and report on the prevalence of the practice with a special emphasis on tribal areas. The court directed the Government to post intelligence officers and constitute special cells of police, for conducting surveillance to detect and file criminal charges against those perpetuating witch-hunting; it also directed that victims be given medical, psychological help and protection as vulnerable witnesses of the crime; recommending that the state government consider a Comprehensive Victim Compensation Scheme under the Code of Criminal Procedure. The judgment imposes a duty upon State officials to take cognizance of the practice, as well as takes steps towards making the justice more victim centric.

*Citation*

*Smt. Moyna Murmu v. State of West Bengal*, 2016 SCC OnLine Cal 4272

*Source*

<http://blog.scconline.com/post/2016/08/08/state-government-directed-to-follow-certain-measures-in-order-to-eradicate-the-evil-practice-of-witch-hunting/>

**Bombay High Court holds ban on women entering the sanctum sanctorum of Haji Ali Dargah as unconstitutional**

A group of Muslim women petitioned the court after one individual was prevented from entering the sanctum of the Dargah to offer prayers. Rejecting the Dargah's contention of women's safety, the court held that the ban was in fact an excuse to avoid taking other safety measures. The court held the denial of entry to violate the fundamental rights of women guaranteed by under Articles 14, 15 and 25 of the Constitution.

*Citation*

*Dr. Noorjehan Safia Niaz v. State of Maharashtra*, 2016 SCC OnLineBom 5394

*Source*

<http://blog.scconline.com/post/2016/08/26/ban-prohibiting-women-from-entering-the-sanctum-sanctorum-of-the-haji-ali-dargah-held-unconstitutional/>

## **Guidelines by Central Information Commission (CIC) to protect lovers from retributive family/societal violence for inter-community marriages**

On an inquiry about rules and procedures under the Special Marriage Act, especially in relation to fraud/ void marriages and the concern for parental consent, the CIC made note of the violent social consequences of inter-caste and inter-religious marriages, to make the following recommendations to the Union and State governments to implement. These included, that an additional column be provided in applications for registration of marriage to allow couples to indicate reasonable apprehensions of threat to their life and liberty; with provision for providing security to the concerned couple. The Commission sought to balance the right to prevent fraudulent marriages, through the notice period, with the greater need to protect the couple from intimidation and real risk to life and liberty under articles 21 of the Constitution. The recommendations included displaying notice to marry on the official website, along with an official warning against assaulting the liberty of would-be spouses, thereby leaving space for genuine objections while protecting the couple's right to marry.

### *Citation*

*Shashi v. PIO, Sub Divisional Magistrate (Civil Lines), CIC/SA/A/2016/001556*

## **Resources**

### **UN Publishes *Human Rights and Traditional Justice Systems in Africa***

This title examines traditional justice systems in sub-Saharan Africa from the perspective of international human rights norms. This publication is intended as a guide for lawyers or legally trained persons involved in human rights work in the region to understand traditional justice systems, recognising their institutional structure and frequent community involvement. Specific human rights concerns are identified, in particular relating to the rights to life, fair trial, non-discrimination, freedom of religion, prohibition of torture, and women's and children's rights. It offers programmatic strategies for education, empowerment, institutional and legislative reform.

### *Source*

[http://www.ohchr.org/Documents/Publications/HR\\_PUB\\_16\\_2\\_HR\\_and\\_Traditional\\_Justice\\_Systems\\_in\\_Africa.pdf](http://www.ohchr.org/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf)

### **The report of the workshop on *The Journey from Victim to Survivor: Challenges for Justice* (on victim-centric justice) organised by CWDS and PLD, is published**

The report on the national workshop on “The Journey from Victim to Survivor: Challenges for Justice”, organized jointly by CWDS and PLD in February 2016 in memory of Professor Lotika Sarkar, was published recently. With participation of women's rights, child-rights, disability rights, minority rights, Dalit rights, queer rights activists and counsellors amongst others, the workshop sought to understand justice in terms of recovery and healing of victims of violence. Victim-centric interventions like compensation, comprehensive crisis support,

shelter-homes and counselling were some themes on which discussion was led by leading activists professionally engaged in such work. Context-centric transformative interventions and community-oriented dialogue were also among the approaches discussed. The report captures the presentations and discussions on each of the themes.

*Source*

<http://pldindia.org/resources/pld-publications/law-society-social-justice/law-society-social-justice/>

### **Council of Europe provides comparison of the Istanbul Convention and CEDAW framework**

The Council of Europe (CoE) published a comparison of measures to prevent and combat violence against women contained in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) frameworks. Drawing from the principles and case law developed by CEDAW and the CEDAW Committee, the Istanbul Convention codifies established international standards, jurisprudence and developments. The document is a tabulated presentation of the Convention, General Recommendations and case law which form the CEDAW framework, and how these are built upon and incorporated into binding legal obligations by the Istanbul Convention.

*Source*

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168059aa28>

## **Obituaries**

### **Revolutionary writer, social activist Mahasweta Devi passes away at 90 years**

The noted writer and revolutionary Mahasweta Devi breathed her last on 28th July, 2016. At 90 years old, she leaves behind a legacy of battling injustice for the most marginalised and oppressed, be it the de-notified tribes in Maharashtra, or farmers suffering land-acquisition at the hands of government authorities.

Her literary works poignantly depicted the oppression perpetrated by upper-caste landlords and organs of the State. Among her more memorable works is *Draupadi*, which tells a chilling story about the rape of tribal women. *Jhansir Rani*, on the other hand, offers a different perspective on the legend, based as it was on the folklore of people who lived in Jhansi. The brilliance of her work might be attributed to the fact that her stories were personally collected by her from the stories and legends of ordinary people. Many of her writings have even been translated from Bengali to other languages.

### **Passionate feminist activist and trainer Sandhya Rao passed away in Bangalore**

Sandhya Rao was a passionate feminist and rights trainer, who travelled across Karnataka to mobilise and build capacities of rural women on legal rights. She set up the Hengasara Hakkina Sangha, a legal rights NGO, through which the legal trainings were sustained, and later handed over the reins of the organization to work on various issues, most prominently the rights of sex workers and ensuring workplace safety for women, evolving policies for corporations, training and guiding ICCs on handling cases of sexual harassment.

*Source*

<http://feministsindia.com/rest-in-power-sandhya-rao/>