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Partners for Law in Development

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UN Updates

UN Summit on Refugees & Migrants held at 71st session of UN General Assembly on September 19, 2016

The 71st session of the UN General Assembly on 19 September held a summit on refugees and migrants to consider the key elements of a global compact for safe, regular and orderly migration, and responsibility-sharing for refugees. In the face of unprecedented large scale movements of refugees and migrants, the summit was the first called by the General Assembly on this topic. The summit agreed that the New York Declaration of commitments applied to refugees and migrants. The commitments underscore the importance of a comprehensive and gender-responsive reception for persons arriving in other countries. Among the commitments are provisions to promote international cooperation, to ensure accurate documentation of large-scale movements and also guarantees of fundamental human rights protections. The Declaration thus recognizes the gendered dimensions of migration and asylum - committing States Parties to responses which mainstream a gender perspective, promote gender equality, combat sexual and gender-based violence, guarantee sexual and reproductive health services, and tackle multiple and intersecting and multiple forms of discrimination. Significantly, the Declaration notes the leadership of women in refugee and migrant communities, committing to ensure their equal and meaningful participation in developing local solutions.

Source: <http://refugeesmigrants.un.org/summit>

Joint Statement by CEDAW, CMW, UN Women and OHCHR calls on States to reaffirm rights of migrant women and girls

In a Joint Statement issued by CEDAW, CMW, UN Women and OHCHR, issued at the UN General Assembly Summit for Refugees and Migrants, the unique problems of rights of women and girls were sought to be given priority. States were urged to comply with obligations under the CEDAW Convention, taking cognizance of the fact that due to work-

force declining and an ageing population migrants are becoming more essential to address labour market needs, and it therefore becomes imperative to identify rights to education, decent environments and health. Gender-responsive and rights-based policies were urged, recognizing that migrant women and girls are often subject to intersecting forms of discrimination.

Source: http://www.ohchr.org/Documents/HRBodies/CEDAW/JointStatement_CEDAW-CMW_AsAdopted19.09.pdf

Report of Special Rapporteur on Right to Food highlights the impact of institutionalized gender discrimination and violence on women's right to nutrition and food

The UN Special Rapporteur on the Right to Food issued a report to the General Assembly on the structural, cultural, legal, economic and ecological barriers that women face in their enjoyment of the right to food. The report identifies how institutionalized gender discrimination and violence impose barriers preventing women's enjoyment of the right to adequate food and nutrition, causing women to experience hunger and poverty disproportionately. Indeed, the report includes data that women account for 70% of the world's under-fed population. While women experience hunger disproportionately, they are also disproportionately represented in farming and subsistence farming contexts. International law fails to fully endow women with their right to food, and the report highlights how the 'archaic language of patriarchy' surrounds the right to food in the Universal Declaration on Human Rights and ICESCR. Moreover in CEDAW and CRC, the right to food is only expressed in relation to pregnant and breastfeeding women. The report further discusses the importance of land, property and intellectual property rights for women to secure food security and the right to food, employment rights and social security for female farm workers, and how corporate models of agriculture are largely incompatible with female participation in and ownership of farming practices. Finally, the report discusses ecological barriers and how climate change impacts women's enjoyment of the right to food.

Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/293/26/PDF/G1529326.pdf?OpenElement>

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/51

Vitit Muntarbhorn appointed as UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

As the 33rd Human Rights Council ended in Geneva, Professor VititMuntarbhorn was appointed for a three-year period as an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

The appointment came in the context of objections by both Russia and the Organization of Islamic Cooperation (OIC).A hostile resolution has been introduced by the African Group of countries in the General Assembly, calling for deferring action on the motion of appointment of the Special Rapporteur, and the suspension of the activities of the new mandate holder, which will be put to vote in November 2016.

Source: <http://ilga.org/vitit-muntarhorn-first-un-independent-expert-sexual-orientation-gender-identity/>

<http://www.news24.com/Africa/News/african-states-demand-un-suspend-lgbt-expert-20161105-353>

Report of the Special Rapporteur on the human right to safe drinking water and sanitation focuses on gendered aspects of the realisation of the right

The conclusion of the 33rd session of the Human Rights Council saw the release of a detailed report on gendered aspects of the right to safe drinking water and sanitation. The report takes cognizance of how gender inequality affects access to safe water and sanitation. The report further stresses on the material and structural determinants of gender inequalities in access to water, sanitation and hygiene. The unique vulnerabilities of women and LGBT people were also highlighted, in the context of understanding of the right to safe drinking water and sanitation as well as hurdles to access.

Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/166/97/PDF/G1616697.pdf?OpenElement>

International Developments

Asia

Sex workers in Taiwan demand right to work, decriminalization of prostitution

The Collective of Sex Workers and Supporters (COSWAS) and advocates for the right of sex workers have asked the Taipei city Government to decriminalise sex work. Prostitution was criminalised in Taipei in 1997, driving prostitution underground, leaving many impoverished and driven to suicide. They held demonstrations and criticised the Mayor for failing to fulfil his campaign promise to start a dialogue on prostitution and government-sanctioned red-light zones in Taipei. Activists laid out their demands, which include urging the Mayor to undertake a review of police department regarding their illegal arrest sex workers, and seek a city-wide dialogue to legalize prostitution.

Source: <http://www.chinapost.com.tw/taiwan/national/national-news/2016/10/19/481467/Taipei-urged.htm>

Pakistan Parliament passes legislation against honour killings and toughens laws on rape

A joint session of the lower and upper house of the Pakistan Parliament unanimously passed legislation against honour killings, removing a loophole in existing law that allows killers to walk free after being pardoned by family members. Under the new law, relatives can forgive convicts in the case of a death sentence, but they would still have to face a mandatory life sentence. The Bill was first introduced in March 2016 but failed to gain traction. The Bill was re-introduced following the murder of a popular media celebrity Qandeel Baloch by her brother in July 2016. An anti-rape law was also passed during the same session that the case

has to be disposed-off within 3 months and if found guilty the perpetrator will serve a mandatory sentence of 25 years.

Source: <http://www.reuters.com/article/us-pakistan-honourkillings-idUSKCN1261OK>

Bangladesh parliament adopts law that limits NGO freedoms & foreign funding

The Bangladesh parliament adopted the highly controversial and internationally criticized Foreign Donations (Voluntary Activities) Regulation Bill 2016 which represses critical human rights work in Bangladesh. The Bill states that the NGO Affairs Bureau (NGOAB), which is under the direct supervision of the Prime Minister's Office, will have the authority to cancel or withhold the legal registration of a non-governmental organization (NGO) or ban its activities for having engaged in anti-State activities, financing extremism and terror activities or for making derogatory comments about the Constitution and constitutional institutions of Bangladesh. The Bill also states that NGOs seeking to receive or use foreign funds must register with the NGOAB and submit reports regularly and seek prior approval from the NGOAB for all planned activities before receiving such grants. This Bill thus imposes disproportionate restrictions on freedoms of expression and association in Bangladesh, in violation of international human rights standards.

Source: <https://www.fidh.org/en/issues/human-rights-defenders/bangladesh-parliament-adopts-ngo-law-aimed-at-eradicating-any>

Saudi women file petition to end male guardianship system

Women in Saudi Arabia have signed an online petition calling for the government to abolish the country's guardianship system, which prevents women from engaging in fundamental tasks without the permission of a male relative. Under the law, all women must have a male guardian, usually their father, husband or brother, whose permission must be granted for anything from marriage to travel, renting a living accommodation, and medical procedures. Saudi Arabia's government agreed to abolish the guardianship system twice – in 2009 and 2013 – after a review by the United Nation's Human Rights Council. It instituted some reforms by, for instance, making it easier for women to work, appointing women to the King's advisory board, and allowing women to vote and run as candidates in municipal elections. However, these reforms had limitations and stopped short of providing women basic rights.

Source: <http://www.telegraph.co.uk/news/2016/09/26/saudis-file-first-ever-petition-to-end-male-guardianship/>

Beyond Asia

Gibraltar parliament amends law to legalise same sex marriage

In a landmark development, the Gibraltar parliament passed Civil Marriage Amendment Bill legalizing civil marriage between same sex couples. This Bill places all couples on the same footing as other couples already married at the registry office. There was also

opposition from different religious communities in Gibraltar who issued a joint statement in January stressing that the traditional concept of marriage as ‘the ‘condition of man and woman, legally united for the purpose of living together and usually procreating lawful offspring’ should be maintained. The Bill includes a provision for Deputy Registrars who do not wish to conduct the marriage of a same sex couple to opt out. There was, however, dissent in Parliament where some of the MPs felt that public officials should be obliged to carry out their duties, independently of their personal beliefs.

Source: <http://chronicle.gi/2016/10/parliament-passes-same-sex-marriage-law/>

Italian Supreme Court recognizes birth certificate mentioning two mothers

In a positive move, the Italian Supreme Court, rejected an appeal seeking to reverse a decision allowing registration of two mothers in a birth certificate. This appeal was against the decision of the Court of Appeal of Turin that overturned the registrar’s decision to not recognize and register a Spanish birth certificate mentioning two mothers. In upholding the registration of two mothers in a birth certificate, the Supreme Court upheld the fundamental rights of minors born, adopted or raised in same-sex families. In this case, the gestational mother was a Spanish citizen, whereas the Italian co-mother donated her egg to the partner, who later became her spouse under Spanish law. The court affirmed that discrimination of a child cannot be justified with the choice of the parents to use donor-insemination or another form of assisted reproductive techniques lawful in that state, but which is not allowed to lesbian couples or not allowed at all in Italy.

Source: <http://www.sexualorientationlaw.eu/151-supreme-court-full-recognition-of-two-mothers-italy>

Columbia referendum rejects peace pact creating new hurdles for women

Columbians in an unprecedented move narrowly rejected a landmark peace pact between the Colombian government and formal rebel group the Revolutionary Armed Forces of Colombia (FARC) that took over four years to negotiate and would have ended five decades of war. The painstakingly written peace pact was developed with considerable contributions from women to embed commitments to gender rights in the country’s post-conflict setting. It included prioritization of women on the agenda for rural development and established measures of special attention for women to access land and formalize land ownership, recognizing the difficulties women face in owning property legally.

Source: <http://www.bbc.com/news/world-latin-america-37537252>

Oklahoma Supreme Court strikes down restrictive abortion law

Oklahoma Supreme Court struck down a law that imposed an unconstitutional restriction on a woman’s right to have an abortion. The law sets new criminal penalties for providers who violate abortion-related statutes as well as individuals who help a minor evade the requirement to obtain parental consent. In addition, the law also required that foetal tissue be collected and preserved from patients younger than 14. The Supreme Court said that

legislation violated the constitutional right to an abortion by placing burdens on providers that are rarely seen by medical providers of other services.

Source: <http://kfor.com/2016/10/04/oklahoma-supreme-court-invalidates-law-restricting-abortion/>

Aruba passes landmark same sex civil partnership law

In a historic move, the Aruba Parliament passed a civil union Bill to amend the civil code related to marriage to include the civil unions of same-sex couples. Although Aruba has recognized civil marriages that were performed in the Netherlands, Arubans couldn't themselves form legal unions on the island nation. The Bill includes clauses such as the right to a spouse's pension in the event of death, as well as the right to make emergency medical decisions. This step makes Aruba the first island in the Caribbean to amend existing laws to allow civil partnerships for same sex-couples.

Source: <https://theperchybird.wordpress.com/2016/09/08/aruba-approves-civil-unions/>

Equal Treatment Authority in Hungary finds rejection of transgender job applicant unlawful

The Equal Treatment Authority of Hungary found discrimination based on gender-identity in a case concerning an employer's rejection of a transgender job applicant as unlawful. The transgender complainant has been living as a woman for six years but had not yet applied for legal gender recognition. She was mocked at the job interview and was rejected when the sales manager saw her credentials bearing a male name. The Equal Treatment Act (2003) forbids discrimination and harassment by employers, health and educational institutions as well as service providers. The Act lists sex, sexual orientation as well as gender identity among the grounds of discrimination, thus providing specific protection for transgender people. Over the past years, several complainants have turned to the Equal Treatment Authority because of discrimination or harassment based on gender identity, but their complaints were either rejected or closed with a settlement. This is the first time the Authority delivered a decision finding discrimination based on gender identity.

Source: <http://en.hatter.hu/news/equal-treatment-authority-rejection-of-transgender-job-applicant-was-unlawful>

Egyptian cabinet approves law against FGM

Egypt's cabinet approved a draft amendment to the law against Female Genital Mutilation (FGM), imposing harsher punishments on the practice and considering it a felony. The draft law classifies FGM as a felony instead of a misdemeanour, punishable with imprisonment between 5-7 years and up to 15 years in case the operation led to a permanent disability or death. The practice, which includes the removal of all or part of the clitoris, is usually done for local girls before reaching puberty. Experts say that severe forms of FGM can lead to life-long psychosexual problems and troubles related to menstruation, sexual intercourse and childbirth. The draft, which has to be approved by parliament to take effect, comes three

months after a teen girl died of illegal female circumcision surgery she underwent in a private hospital in Suez, marking Egypt's first reported death from FGM since 2013.

Source: <http://ecwronline.org/?tag=egypts-penal-law>

National Developments

National News

Union Cabinet approves amended HIV and AIDS (Prevention and Control) Bill, 2014

The Union Cabinet in October cleared the HIV and AIDS (Prevention and Control) Bill, 2014 lists various grounds on which discrimination against people living with HIV is prohibited. Once enacted, it will be illegal to deny, terminate or discontinue the employment of HIV/AIDS patients, or to discriminate or treat them unfairly at work, educational establishments, healthcare settings, while renting property and while applying for medical insurance. Aside from addressing stigma, the Bill also recognizes informed consent and confidentiality in the treatment of HIV/AIDS patients. Further, it will be imperative upon state governments and the Centre to provide anti-retroviral therapy (ART). Redressal mechanisms would include the creation of an ombudsman to look into violations, and compliance officers at work would look into the grievances of HIV-positive people. The Bill also will create a statutory right on every person below 18 years to live in a shared household.

However, the protection for LGBTI community persons living with HIV had been removed in earlier drafts of the Bill and it is unclear what position the government will take on this issue. It is widely accepted that the vulnerability and lack of access or protection for LGBTI people living with HIV is a major cause for the spread of the virus.

Source: <http://indianexpress.com/article/india/india-news-india/hiv-patient-discrimination-bias-punishment-jail-3067463/>

<http://indianexpress.com/article/opinion/columns/hiv-Bill-end-discrimination-aids-awareness-symptoms-3077512/>

Indian Psychiatric Society issues guidelines for doctors on sexual and other ethical boundaries

The guidelines issued by the IPS are intended to train doctors in the light of increasing litigation whereby doctors have been accused of crossing boundaries in the practice of their profession. The guidelines are designed to increase awareness around the fact that even consensual relationships in a power-imbalanced context like that between a doctor and patient is not truly consensual.

Source: <https://www.google.com/url?hl=en&q=http://www.kractivist.org/draft-guidelines-for-indian-doctors-on-sexual-boundaries-issued-vaw/&source=gmail&ust=1478345497425000&usg=AFQjCNFgTmUjV4OUciB0yHdqBP74kb36mg>

<http://www.indianpsychiatricsociety.org/pdf/Draft%20of%20Guidelines%20for%20doctors%20on%20Sexual%20boundaries.pdf>

Law Commission submits report on protection of children from abduction by a parent

The 21st Law Commission of India submitted its very first report on the Protection of Children (Inter-Country Removal and Retention) Bill, 2016. The report recommends a jail term for one year for any parent who wrongfully retains or removes a child from the custody of the other parent. The Report modifies suggestions made by the Women and Child Development Ministry and adds punitive measures. While penalizing the wrongful removal, retention, concealing or misrepresentation of information on the location of a child, the Bill makes an exception for any such act done in an attempt to escape from domestic violence. Data from the report suggests that 68 percent of parents who take away children globally were mothers.

Source: <http://indianexpress.com/article/india/india-news-india/child-abduction-trafficking-law-commission-jail-imprisonment-foreign-country-3090632/>

Delhi Police Commissioner issues internal circular requiring all police officers to report and register missing child information on web-portals within 24 hours

Referring to the mandate of Juvenile Justice Act, 2015, the Delhi Police commissioner issued a circular requiring that police officers report missing children and register details on the official web page within 24 hours of the child being found separated from parents. If this practice was violated, it would be a criminal offence, and could lead to imprisonment upto six months and a fine of Rs.10,000.

Source: <http://timesofindia.indiatimes.com/city/delhi/Report-missing-kids-or-pay-Rs10k/articleshow/55122900.cms>

Writ petition seeking improvement of the Supreme Court's day-care facilities for children

A writ petition was filed by Anandita Pujari, pointing out various deficiencies at the existing day-care facility at the Supreme Court. These included the need to make the facility free, improve ventilation, creation of an open area for children to play in, and the inclusion of children of lady clerks of advocates. The improvements are requested on the basis of the need to ensure that women fully enjoy their right to practice the profession of law. Children of women lawyers and Supreme Court staff are already eligible for admission to the crèche.

Source: <http://www.livelaw.in/jaising-urges-supreme-court-make-creche-facility-free/>

Supreme Court reprimands Maharashtra government for regressive and arbitrary law-making with respect to liquor prohibition in dance-bars

In contentious arguments on the appropriateness of prohibiting liquor in dance-bars in Maharashtra, the Supreme Court opined that the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of women (working therein) Act, 2016 was 'absurd' and 'regressive'. The Court also questioned the legislative mandate to install CCTV cameras on the dance floor. The State responded by claiming that the right to prohibit liquor was absolute and that serving and consuming it was not a fundamental right.

The government also claimed that dance floors were common spaces like stairways and lobbies. The State government passed the legislation to circumvent a 2014 judgment that ordered dance-bars to be opened and for dance to be classified as a profession.

Source: <http://www.thehindu.com/news/national/liquor-ban-in-dance-bars-arbitrary-says-supreme-court/article9131766.ece>

Supreme Court calls on the Central Government to explain the lack of legislative safeguards from custodial torture

UPA ex-law minister Ashwani Kumar's PIL to the Supreme Court seeks court direction for a law to punish police for custodial torture. His committee had recommended a comprehensive law to prevent custodial torture in 2010 but the Prevention of Torture Bill, 2010 had failed to get passed. Till date, India does not have any legislation that defines 'torture' or deals with the reality that people in custody are often tortured for information. This is despite the fact that the country is a signatory to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Source: <http://www.livelaw.in/sc-asks-centres-response-ex-law-ministers-plea-custodial-torture/>

<http://timesofindia.indiatimes.com/india/SC-seeks-Centres-response-on-custodial-torture/articleshow/54533694.cms>

NHRC requires Uttar Pradesh police to submit inquiry report on the mishandling of a gang-rape case in Firozabad

The NHRC hauled up UP Police on the poor handling of a gang-rape case in Faridabad, finding that there was delay in registration of the FIR, poor investigatory follow-up, maligning of the character of the victim, hesitation to arrest the accused persons or even interrogate and also a superficial closure of the case on the basis of character-assassination of the victim. Asserting that every woman has a right to legal protection against the violation of her body, the Commission directed the DIG to assign a team for the recording of victim/complainant statements, her husband and witnesses, as well as medical records. The DIG was also directed to submit a detailed report within 4 weeks.

Source: <http://indianexpress.com/article/cities/lucknow/2013-firozabad-gangrape-case-cops-close-case-citing-victims-character-nhrc-directs-own-team-to-analyse-police-probe-3012428/>

National Judgments

Supreme Court mitigates sentence of the former police head, S.P.S Rathore, for molestation of a minor, the late Ruchika Girhotra

The Supreme Court upheld the conviction of former police head, S.P.S Rathore, for molestation in the Ruchika Girhotra case, yet reduced his 18 month sentence to a paltry 6 month period already served, on grounds of old-age, ailments and past meritorious service. Ruchika had been molested by the accused, who also held position of President of the

Haryana Lawn Tennis Association (HLTA) in 1990, following which she had reported the incident. However, as retribution for complaining, the accused used his official influence to have the minor victim expelled from school and her brother arrested in several theft cases, driving Ruchika to commit suicide in 1993. It was on persistent efforts of Ruchika's childhood friend, the sole witness to molestation that a criminal prosecution ensued, made lengthy with delaying tactics of the powerful accused.

This verdict raises serious concern as it comes 26 years after the molestation, at a time of heightened consciousness about the gravity of sexual abuse of minors by persons in authority and positions of trust. When contextualised in terms of the arduous legal struggle undertaken to bring the ex-head cop to book, the use of high offices for retribution, intimidation and delay, the lenient view of the Court, and the mention of 'meritorious service' in a context that belies it, amounts to nothing short of rewarding a powerful man for obstructing the course of law.

Citation: S.P.S. Rathore vs. C.B.I., 2016 SCC Online SC 985

Source: <http://timesofindia.indiatimes.com/city/chandigarh/Ruchika-Girhotra-case-Family-gives-up-fight-against-ex-Haryana-DGP/articleshow/13733415.cms>

<http://www.livelaw.in/sps-rathore-case-sc-addresses-three-vital-questions-law/>

<http://blog.sconline.com/post/2016/09/23/ruchika-girhotra-case-s-p-s-rathores-conviction-upheld-sentence-mitigated-due-to-old-age/>

Supreme Court mandates the Central Government to actively end mass-sterilization camps as they violate the reproductive freedoms of vulnerable persons

Responding to a PIL filed by a health-rights activist, the Supreme Court directed the Central Government to end mass-sterilization camps. The PIL was filed by Devika Biswas after 53 women underwent a sterilization procedure under highly unsanitary conditions in a district in Bihar in a two-hour session overseen by only one surgeon. As a consequence of this hasty procedure flouting basic medical norms, many of the women operated upon suffered tremendous physical pain and trauma. The core issue in the subsequent PIL was the lack of procedure and accountability in sterilisation procedures.

However, upon examination of affidavits filed by different States, discussion points at high level meetings and data figures on sterilizations conducted in 2013 and 2014, the Court recognized the reality that sterilization programs in India are effectively nothing but a violation of reproductive rights, particularly the poor tribal men and women. The judges observed that the sterilisation procedures endanger the right to life under Article 21 of the Constitution, as they affect the right to health and reproductive rights of a person. In a significant first, Comment No. 22 on the Right to Sexual and Reproductive Health was referred to.

Admonishing the approach of setting informal utilitarian targets at the cost of the reproductive freedoms of vulnerable, the court made supplementary directions, including mandating the government to increase the compensation for sterilization deaths "substantially", as well as to mandatorily explain to the patient, in his or her local language, the impact and consequences of a sterilization procedure. Specifically, the Central government was directed to persuade State Governments to stop holding sterilization camps, and finalize the National Health Policy by the end of 2016.

Citation: Devika Biswas vs. Union of India (UOI), MANU/SC/0999/2016

Source: <http://www.thehindu.com/news/national/end-sterilisation-camps-says-supreme-court/article9108636.ece>

Delhi High Court observes that a decree for restitution of conjugal rights only pertains to cohabitation, not sexual intercourse

In a particular case, the Family Court passed a decree for restitution of conjugal rights, but the appellant/wife preferred an instant appeal as she did not want to be forced to have physical relationship with respondent/husband in execution of the decree. Grievance of appellant/wife as on date is not against the decree of restitution of conjugal rights in favour of the husband but on its execution.

The Court ruled that the object of decree for restitution of conjugal rights is to bring about cohabitation between parties so that they can live at their matrimonial home in amity, and if it is not complied with for a period of one year it becomes a ground to seek dissolution of marriage under Section 13(1A)(ii) of Hindu Marriage Act, 1955.

The Court therefore saw the scheme of the legislation and the purpose of seeking restitution of conjugal rights as a stepping stone to divorce. They found that the purpose behind filing of a petition under Section 9 of the Hindu Marriage Act for seeking a decree for restitution of conjugal rights or filing the execution appears to be not to force the wife to resume cohabitation but through disobedience, to achieve the requirement under Section 13(1A)(ii) of Hindu Marriage Act, 1955 to seek divorce. It was made clear that the passing of a decree for restitution of conjugal rights at the most enforces cohabitation but it does not and cannot enforce sexual intercourse.

Source: <https://indiankanoon.org/doc/154265535/>

Citation: Sudha Gupta vs. Har Prasad Gupta, MANU/DE/2750/2016

Supreme Court rules that women can also be prosecuted against under the Protection of Women against Domestic Violence Act, 2005

A two-judge bench of the Supreme Court has struck down the words 'adult male' from Section 2(q) of the PWDV Act, to allow a complaint to be made against another woman. The judges found that the object of the legislation was to protect women from domestic violence and the reality is that this violence can and is perpetrated or abetted by women as well. The bench felt that this reading is more equitable as per the mandate of Article 14 of the Constitution, as well as the object of the legislation which was a social benefits statute meant to protect women from all forms of domestic violence.

The decision is controversial because whereas it focuses on the objective of the legislation to the exclusion of the socio-economic realities experienced by women, in which they often become soft targets to deflect attention away from prosecuting male family members.

Citation: Hiral P. Harsora vs. Kusum Narottam das Harsora, CIVIL APPEAL NO.10084 of 2016 (ARISING OUT OF SLP (CIVIL) NO. 9132 OF 2015)

Source: <https://indiankanoon.org/doc/114237665/>

http://thewire.in/77445/a-gender-neutral-domestic-violence-law-harms-rather-than-protects-women/?utm_source=jetpack-sharing&utm_medium=whatsapp&utm_campaign=mobile

Orissa High Court rules that ‘residence’ for jurisdiction under PWDV Act includes temporary residence

While hearing a case about a widowed mother taking temporary shelter at her eldest daughter’s home after being compelled to leave her house, the Orissa High Court held that ‘residence’ under Section 27 of the Protection of Women from Domestic Violence Act, 2005 would include both temporary and permanent residence of an aggrieved person. Section 27 of the Act deals with the jurisdiction of a competent court to pass necessary orders under the legislation on behalf of women applicants. The decision of the court therefore makes it easier for women applying for relief under the legislation, despite unstable residential conditions.

A remaining limitation, however, might be posed by the position that “temporary residence does not include a place where the aggrieved person may stay or reside for the purpose of filing a case against another or a place where the aggrieved person has gone on a casual visit, a lodge or hostel or a guest house or an inn where she stays for a short period; rather a place where the aggrieved person was force to reside for the time being in view of the commission of domestic violence”.

Citation: Rabindra Nath Sahu vs. Smt. Susila Sahu, 2016 SCC OnLine Ori 592

Source: <http://blog.sconline.com/post/2016/09/29/temporary-residence-of-aggrieved-person-is-sufficient-to-invoke-jurisdiction-under-protection-of-women-from-domestic-violence-act-2005/>

Supreme Court and Mumbai High Court assert that decisions relating to medical termination of pregnancy should be based on the health of the mother, and therefore are her prerogative

In two separate judicial developments, the right to health and wellbeing of a pregnant mother was asserted at the cost of the restrictive provisions of the Medical Termination of Pregnancy Act, 1971. In the first case of a 24 week pregnant rape-survivor, life-threatening congenital conditions were deemed as relevant by the Supreme Court to allow termination of pregnancy. The second judgment, passed by the Bombay High Court, said that a mother who was pregnant for 12-20 weeks has a right to undergo termination of pregnancy if she felt that continuation of pregnancy would cause grave injury to her physical and mental health.

Section 3 of the Medical Termination of Pregnancy Act, 1971 does not in any circumstance allow termination of pregnancies that have extended beyond 20 weeks. Section 5 however allows termination of pregnancy if it is intermittently necessary to save the life of the pregnant mother. Even for 12-20 weeks old pregnancies, the opinion of two registered medical practitioners is needed for confirming that there is threat to the mother’s health, or that other specified extenuating grounds exist.

In allowing the termination of pregnancy at 24 weeks, the Court took into account the report of a Medical Board which found that the petitioner's health is at grave risk if the pregnancy continued, because of congenital complications emerging from the rape she had suffered. The Bombay High Court ruling, on the other hand, affected women who were pregnant for 12-20 weeks, who required opinion of two medical practitioners for terminating pregnancy. The Court read the provisions the 'grave injury to her physical and mental health' expansively to read mental injury into 'injury'. In this case, the Court was responding to information that women prisoners were not taken to hospitals despite expressing to jail authorities their wish to terminate their pregnancies.

Aside from extending the concept of injury to mental health, the court also said that termination of pregnancy rights were not contingent on marital status, recognizing that pregnancy is closely related to the mother's body and has a profound impact on her life, health and mental well-being. This is why any decisions around pregnancy should be a woman's sole prerogative, irrespective of her marital status, as part of Article 21 of the Constitution.

Citation: Ms. X. vs. Union of India, 2016 SCC OnLine SC 745 (Supreme Court judgment)

High Court on its own Motion vs. The State of Maharashtra, MANU/MH/1886/2016 (Bombay High Court judgment)

Sources: <http://blog.scconline.com/post/2016/07/25/24-week-pregnant-rape-survivor-allowed-to-terminate-pregnancy-in-order-to-avoid-risk-to-her-physical-and-mental-health/> (Supreme Court)

<http://economictimes.indiatimes.com/news/politics-and-nation/women-entitled-to-end-pregnancy-regardless-of-reason-high-court/articleshow/54433759.cms?from=mdr> (Bombay High Court)

Supreme Court upholds Mumbai High Court decision requiring Haji Ali Dargah to allow women pilgrims to enter sanctum sanctorum

The Supreme Court gave the Haji Ali Dargah Trust two weeks time to allow women pilgrims inside the sanctum sanctorum at par with men. The Trust offered to relay the flooring in the dargah, and was told that any failure in completing the entire process after four months of the order could be taken up by aggrieved in the High Court.

The Bombay High Court had held that the ban imposed by the Trust on women devotees was unconstitutional.

Citation: Haji Ali Dargah Trust vs. Dr. Noorjehan Safia Niaz, 2016 SCC OnLine SC 1199

Source: <http://blog.scconline.com/post/2016/10/25/haji-ali-dargah-to-allow-women-to-enter-sanctum-sanctorum/>

Supreme Court clarifies principle of ‘equal pay for equal work’ for all employees, whether temporarily or regularly engaged

The Court unilaterally ruled that the principle of equal pay for equal work applied to all nature of employment, and therefore covered people temporarily engaged as daily wage workers and other casual employees. The bench ruled that all employees are entitled to minimum pay and dearness allowance. The Court also said in a welfare state, someone who is compelled to work at a lesser wage cannot be said to do so voluntarily.

Citation: State of Punjab vs. Jagjit Singh, 2016 SCC OnLine SC 1200

Source: <http://blog.sconline.com/post/2016/10/26/equal-pay-for-equal-work-principle-constitutes-a-clear-and-unambiguous-right-and-is-vested-in-every-employee-whether-engaged-on-regular-or-temporary-basis/>

Supreme Court orders SpiceJet to compensate disability activist for forcibly de-boarding her on account of her cerebral palsy

In recognition of the maltreatment often meted out to disabled persons, the Supreme Court took a firm stand on the rights of disabled persons. The case was filed by Jeeja Ghosh, a disability-rights activist living with cerebral palsy, who had been prevented from attending a conference in Goa as she was asked to de-board the aircraft on account of her disability. This humiliating eviction caused her immense mental trauma.

The Court said that humiliation and emotional trauma of this nature amounted to violence on human dignity and infringed on the fundamental rights available to all persons under Article 14 and 21 of the Constitution. The Court also reflected that the mind-sets of able persons should change from a patronizing attitude towards disabled people to a respectful outlook. Further, guidelines were issued. These include points on requiring that all airports procure assistive equipment in consultation with the Department of Disability Affairs, as well as the incorporation of complaint mechanisms and training/sensitization of staff.

Citation: Jeeja Ghosh vs. Union of India, 2016 SCC OnLine SC 510

Source: <http://www.livelaw.in/people-disabilities-also-right-live-dignity-sc/>

Supreme Court rules that Hindu son can divorce wife on the ground of cruelty if she tries to pry him away from his aged parents

In a highly questionable move, the Supreme Court while confirming the divorce of a Karnataka-based couple said that a Hindu son has a ‘pious obligation’ towards his aged parents and that the wife becomes a ‘part of the family’ once she gets married. The basis for such reasoning was merely ‘Indian culture and ethos’. The court found that if the wife tried to dissuade the husband from the parents, the action amounted to cruelty, by virtue of which the husband can secure a divorce.

The judgment claims that the wife made ‘wild’ allegations of infidelity which were found to be untrue, and was also ‘rescued’ from committing suicide in the nick of time. In great concern for the plight of the husband, the judgment discusses the ‘highly suspicious’ nature of the wife. The evidence provided by the counsel for the husband contained depositions

from neighbours, family members and others who had ‘rescued’ the wife from committing suicide. While condemning the wife’s attempt to commit suicide, the court opined that ‘no husband would ever be comfortable with or tolerate such an act by his wife’ and showed high sensitivity to the ‘poor husband’ who ‘would get entangled into the clutches of law, which would ruin his sanity, peace of mind career’. There was no similar concern for the sanity or well being of the wife in the judgement, notwithstanding the fact of her attempt at suicide.

Citation: Narendra vs. K. Meena, CIVIL APPEAL NO.3253 OF 2008,
http://www.thehindu.com/multimedia/archive/03037/Hindu_son_can_divo_3037056a.pdf

Source: <http://www.thehindu.com/news/national/hindu-son-can-divorce-wife-if-she-tries-to-separate-him-from-aged-parents/article9196572.ece>

Delhi High Court rejects interim maintenance for a professionally qualified woman capable of sustaining herself

Interpreting the object of Section 24 of the Hindu Marriage Act, the Delhi High Court refused to award interim maintenance to a Chartered Accountant claiming maintenance for herself and her two children. The petitioner was claiming 3 lakh rupees per month. The fact that she had a successful practice and could maintain herself for thirteen years was considered as indicative of her self-sufficiency. The Court, however, awarded the claimant Rs. 22,900 per month towards the maintenance of the two children.

Citation: Rupali Gupta vs. Rajat Gupta, 2016 SCC OnLine Del 5009

Source: <http://blog.sconline.com/post/2016/09/07/no-interim-maintenance-to-professionally-qualified-spouse-having-means-to-sustain-oneself/>

Resources

Sustainable Development Goals Report 2016

UN Statistics publishes its Sustainable Development Goals 2016 providing the vital statistical basis for efforts to achieve the SDGs activated last year. The report gives an overview of where the world stands in relation to achievement of the 17 goals. The data and analysis shows where gaps and challenges can be found within the 169 targets.

Source: <https://shop.un.org/node/51837>

UNESCO 2016 Gender Review

The UNESCO Global Education Monitoring Report's 2016 Gender Review provides authoritative data on education performance indicators in line with the Sustainable Development Goals. It outlines how there is urgent need for new approaches in order to achieve the 2030 education agenda, and how education is at the heart of the SDGs. This review recognises the challenges facing girls and women because of the disproportionate overall disadvantage they continue to experience in and beyond education.

Source: <http://unesdoc.unesco.org/images/0024/002460/246045e.pdf>

Report summarizing progress on child rights published jointly by 600 civil society organizations

A 5-year report by “Girls not Brides”, a global partnership of more than 600 civil society organisations committed to ending child marriage and enabling girls to fulfil their potential, published its report on its achievements towards abolishing child marriage. The report summarizes progress made towards the development of global and regional commitments, and provides data on the success of these so far. It is titled - ‘*It Takes A Movement: Reflecting on five years of progress towards ending child marriage*’

Source: http://www.girlsnotbrides.org/reports-and-publications/it-takes-a-movement/?utm_source=Girls+Not+Brides+Newsletter&utm_campaign=392c230a46-Global_newsletter_SEPTEMBER_20169_22_2016&utm_medium=email&utm_term=0_76f9bccc26-392c230a46-346095193

<http://www.girlsnotbrides.org/wp-content/uploads/2016/09/IT-TAKES-A-MOVEMENT-ENG.pdf>

Leading UK peer-reviewed medical journal ‘The Lancet’ releases series on maternal health

The six-paper series aims to consolidate knowledge of maternal health, its successes and failings, within the sustainable development framework. It concludes with a call to action, setting out 5 key targets which need to be met to ensure the progression of broader sustainable development goals (SDGs).

Source: <http://www.thelancet.com/series/maternal-health-2016>

<http://www.wunrn.com/2016/10/maternal-health-2016-the-lancet/>

Gendering Documentation: A manual for and about women human rights defenders

A manual published by Women Human Rights Defenders International Coalition provides a unique tool to truly capture specific violations of human rights against women. It understands the political power of telling women’s human rights defenders’ stories, and is important as a means of resistance.

Source: <http://www.defendingwomen-defendingrights.org/2016/09/04/gendering-documentation-a-manual-for-and-about-women-human-rights-defenders-2/>

<http://www.wunrn.com/2016/10/manual-for-about-women-human-rights-defenders-gendering-documentation-2/>

Indian comic book created where main protagonists are survivors of rape and acid-attacks

Filmmaker Ram Devineni and illustrator Dan Goldman had collaborated in 2014 to create a comic book called Priya’s Shakti where the main protagonist was a female survivor of rape. They are going to now publish a comic book where the main protagonist is a survivor of an acid-attack. The purpose of these comics is to spread awareness in a more receptive manner, through popular culture.

Source: https://www.buzzfeed.com/andreborges/theres-a-comic-book-with-acid-attack-survivors-as-heroes-wri?utm_term=.mbWEBNWW3%23.fuyEqN55z

Obituary

Agniva Lahiri, renowned LGBT social activist from Kolkata, passes away at 37

Agniva Lahiri is known for her work for the transgender community. She founded the NGO in Kolkata called 'People Like Us (PLUS)' and worked tirelessly to create safe spaces for the transgender community in India. She also worked closely with the India HIV/AIDS Alliance, and will be remembered with fondness for her friendly and personal engagement with all who encountered her.

Source: <http://www.allianceindia.org/tribute-agniva-lahiri-life-inspired/>