

# Bi-Monthly Legal News

Partners for Law in Development (PLD), Issue -4, 2008

CONTENTS		
NEWS		
1.	<b>INTERNATIONAL NEWS</b> <ul style="list-style-type: none"><li>• UN Recognizes Rape as a Weapon of War</li><li>• Navanethem Pillay confirmed as new High Commissioner for Human Rights</li><li>• Optional Protocol to ICESCR adopted</li></ul>	
2.	<b>NATIONAL NEWS</b> <ul style="list-style-type: none"><li>• New sex education module drafted</li><li>• Indira Jaising Elected to UN Panel</li><li>• Queer Pride Parade organized in Delhi, Kolkata, and Bangalore</li><li>• Law Commission proposes changes in a Hindu woman's right to devolve her property</li></ul>	3. <b>IMPORTANT JUDGEMENTS</b> <ul style="list-style-type: none"><li>• Wife and children to get maintenance from day case is filed</li><li>• Bombay High Court favours a relooking of s.377, IPC</li><li>• Update on Naz Foundation (India) Trust v. Government of NCT, Delhi and Others</li></ul>
EVENTS		
<ul style="list-style-type: none"><li>• National Consultation on Optional Protocol to International covenant on Economic, Social and Cultural rights</li><li>• CEDAW Capacity Building training in Jharkhand and Bihar</li></ul>		

# INTERNATIONAL NEWS

## 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 immediately 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 18<sup>th</sup> 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.escr-net.org/news/news\\_show.htm?doc\\_id=692555](http://www.escr-net.org/news/news_show.htm?doc_id=692555)

## NATIONAL NEWS

### New sex education module drafted

Representatives of State Council Education Research and Training (SCERT) from twenty states met in New Delhi to review the revised Adolescence Education Programme module developed by The National AIDS Control Organization (NACO) and the Ministry of Human Resources and Development jointly. NACO director general Sujatha Rao said the new module provides children between 10 and 19 years with scientific information and skills to manage their concerns about reproductive and sexual health, besides how to protect themselves from HIV.

The document is available at the NACO website:

[http://www.nacoonline.org/NACO\\_Action/NACO\\_Events/\\_Consultation\\_on\\_AEP\\_with\\_Directors\\_of\\_State\\_Departments\\_of\\_Education\\_and\\_SACS\\_-\\_Scheduled\\_for\\_Tuesday\\_29th\\_July\\_2008\\_at\\_India\\_Habitat\\_Center\\_New\\_Delhi/](http://www.nacoonline.org/NACO_Action/NACO_Events/_Consultation_on_AEP_with_Directors_of_State_Departments_of_Education_and_SACS_-_Scheduled_for_Tuesday_29th_July_2008_at_India_Habitat_Center_New_Delhi/)

However, the new module has been critiqued by the NGOs on the ground that the material is highly problematic in many areas. It is entirely driven by a narrowly defined HIV and AIDS agenda and promotes abstinence and monogamy as solutions for the disease. The document is silent even on biological details of reproduction and information related to safer sex. It addresses issues of gender in the most superficial

terms and there is an assumption that all young people are able bodied and they desire the opposite sex and conform to the gender assigned to them.

**Source: The Hindustan Times; Wednesday 30<sup>th</sup> July 2008**

### Indira Jaising Elected to the CEDAW Committee

Indira Jaising, an eminent Supreme Court lawyer and rights activist from India, has been elected to the United Nation's Committee on the Elimination of all forms of Discrimination against Women (CEDAW). This was the first time India had fielded a candidate for this 23-member committee and the State parties chose 11 candidates from 18 nominees in the field. Indira Jaising, who became the first woman to be designated as a Senior Advocate by the High Court of Bombay in 1986, has been elected for a four-year term beginning 1<sup>st</sup> January 2009.

Also elected to the Committee are Magalys Arocha Domnguez (Cuba), who got the same number of votes as Indira Jaising, Nicole Ameline (France Niklas Bruun (Finland); Xioaqiao Zou (China); Silvia Pimentel (Brazil Victoria Popescu (Romania); Barbara Evelyn Bailey (Jamaica); Violet Awori (Kenya); Soledad Murillo de la Vega (Spain); and Rasekh Zohra (Afghanistan).

**Source:** <http://www.rediff.com/news/2008/jul/31indira.htm>

### Queer Pride Parade organized in Delhi, Kolkata, and Bangalore

On 29th June, 2008, India witnessed the successful completion of simultaneous queer pride marches held in New Delhi, Bangalore and Kolkata. Though gay pride marches have happened in Kolkata earlier, this was the first time they were happening in Delhi and Bangalore with coordinated efforts from queer activists all over the country. The marches were a huge success in all the 3 cities with overwhelming support from the queer community and their friends and family. In New Delhi, around 700-800 people marched on about 2.5kms stretch while singing, dancing and protesting against section 377 of Indian Penal Code which criminalises homosexuality. Due to the legal bar and societal prejudice, around 35 cases of lesbian suicides have been documented till now which makes the issue of legal and societal recognition so much more urgent. The Queer Pride was basically a reason to celebrate the existence of the queer community and to respect their right to live with dignity and human rights.

There was no active hostility as a rainbow group of gay activists, NGO workers, expert professionals, foreign tourists, eunuchs and ordinary people joined the march. Demanding equal treatment and basic rights, India's first national gay pride parade

ended with a tribute to the victims of section 377, a colonial era provision in Indian law that prohibits “carnal intercourse against the order of nature”.

**Source: The Times of India; Monday 30<sup>th</sup> June 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**

## IMPORTANT JUDGEMENTS

### 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 31<sup>st</sup> July 2008**

## Bombay High Court favours a relooking of s.377, IPC

The Bombay HC in a landmark observation has said that the controversial Section 377 of Indian Penal Code that deals with unnatural sex needs a relook. The judges remarked 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.' Though the judge's remarks are not binding, the country's LGBT community welcomed the progressive views of the judge since it was the first time any court in the country has spoken about changing the law.

**Source: The Times of India; Wednesday 23<sup>rd</sup> 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 23<sup>rd</sup> 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 18<sup>th</sup> and 19<sup>th</sup> September 2008 for the hearing with the option of extending it to 20<sup>th</sup> (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 18<sup>th</sup> September 2008

**Source:** [www.lawyerscollective.org](http://www.lawyerscollective.org)

## EVENTS

### National Consultation on Optional Protocol to International covenant on Economic, Social and Cultural rights

A National Consultation on Optional Protocol to International covenant on Economic, Social and Cultural rights was organized by PWESCR on 7<sup>th</sup> July 2008 in New Delhi. The Consultation was organized to discuss the Committee's concluding comments on India's report on Economic Social and Cultural Rights and saw the participation of Maria Virginia Bras Gomes, a member of the Committee along with many other lawyers, activists and social workers from across the country.

### Nigah Queer Fest, 2008

A ten days long queer film festival organised by the Nigah media collective has begun in New Delhi from August 8<sup>th</sup>. 2008 and would continue till 17<sup>th</sup> August, 2008. The festival with its focus on queer families would showcase an international film festival of queer films from all over the world, a photo exhibit, interactive workshops and new publications. The Queer Fest is entirely independent of institutional funding and relies upon individual donations by queer and queer friendly people from India and abroad in its attempt to continuously expand queer positive spaces around us. For more details, refer to <http://www.thequeerfest.com/>

## FORTHCOMING EVENT

### CEDAW Capacity Building Workshop in Jharkhand and Bihar

Partners for Law in Development (PLD), New Delhi is organizing CEDAW capacity building workshops in Jharkhand and Bihar in September, 2008 which aims to build capacity and perspective on gender discrimination and women's human rights at the local and state levels in Jharkhand, and Bihar. These trainings are part of the 3 year project that aims to build capacity, create resource material on CEDAW in Hindi, and undertake field testing.