

# Bi-Monthly Legal News

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# INTERNATIONAL

## UPDATES FROM THE UN

### **UN General Assembly Statement Affirms Rights for All: 66 States Condemn Violations Based on Sexual Orientation and Gender Identity**

On 18 December 2008, a high-level panel discussion on "Human rights, sexual orientation and gender identity" (organized by the Permanent Missions of Argentina, Brazil, Croatia, France, Gabon, the Netherlands and Norway), was held in the UN General Assembly. The General Assembly adopted a groundbreaking statement confirming that international human rights protections include sexual orientation and gender identity, with 66 nations voting for it. It is noteworthy that India did not become a signatory to the statement. It is the first time that a statement condemning rights abuses against lesbian, gay, bisexual, and transgender people has been presented in the General Assembly. The 66 countries reaffirmed "the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity." They stated they are "deeply concerned by violations of human rights and fundamental freedoms based on sexual orientation or gender identity," and said that "violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity."

Source: Human Rights Watch Press Release

<http://www.hrw.org/en/news/2008/12/11/un-general-assembly-address-sexual-orientation-and-gender-identity>

## INTERNATIONAL NEWS

### **Pope opposes non-discrimination on grounds of gender identity and sexual orientation**

In an end-of-year speech to senior Vatican staff, Pope Benedict XVI said that mankind needed to be saved from a destructive blurring of gender. He warned that blurring distinctions between male and female could lead to the "self-destruction" of the human race. The Catholic Church opposes gay marriage. The Vatican had earlier said that the proposed United Nations resolution decriminalizing homosexuality went too far. "Unjust discrimination" against gay people should be avoided, but the use of wording such as "sexual orientation" and "gender identity" in the text would "create serious uncertainty in the law", it said. Lesbian Gay Bisexual Transsexual (LGBT) activists and groups world wide strongly condemned such regressive comments made by the Pope and PLD expresses its solidarity with protesting voices.

Source: BBC News <http://news.bbc.co.uk/go/em/-/1/hi/world/europe/7797269.stm>

### **First gay PM for Iceland cabinet**

Iceland has announced a new government that will be headed by the modern world's first openly gay leader. Ms. Johanna Sigurdardottir was named the new prime minister by the country's coalition political parties. Ms. Sigurdardottir, a former social affairs minister, is the member of the Social Democratic Alliance. The 66-year-old's appointment as interim leader - until elections in May – can be seen as a milestone for the gay and lesbian movement. Ms. Sigurdardottir has never hidden her sexuality and married her companion Jonina Ledsdottir in 2002. Ms Sigurdardottir, one of Iceland's most popular politicians, was first elected to Iceland's parliament in 1978 and was given her first ministerial office - social affairs - in 1987.

Source: BBC News <http://news.bbc.co.uk/1/hi/world/europe/7863923.stm>

## **INTERNATIONAL LEGAL DEVELOPMENTS**

### **Commencement of the Lubanga trial before the International Criminal Court**

The commencement of the Lubanga trial on 26 January 2009 marked the start of the first ever trial before the International Criminal Court (ICC) as a landmark event in the development of international law. The trial of Mr. Thomas Lubanga Dyilo, a Congolese national charged with the war crimes of enlisting and conscripting children under the age of fifteen and using them to participate in hostilities, finally commenced today at the world's permanent International Criminal Court in The Hague, after numerous delays which lead to a stay of proceedings in June 2008. The trial date was the third attempt by the ICC judges to try Mr. Lubanga who has been in ICC custody since March 2006. The Lubanga trial also marked another 'first' in international criminal proceedings. Ninety-three victims have thus far been granted the right to participate in the case, the first time at an international level that victims will be allowed an independent voice in the courtroom.

Source: International Bar Association, Press Release

<http://www.ibanet.org/Article/Detail.aspx?ArticleUid=200A0A31-7B63-4CBA-95F2-3C3BF08F26BD>

### **Forcibly Sterilized Woman Files International Case against Chile**

On 3 February 2009, a woman diagnosed with HIV filed a complaint against Chile before the Inter-American Commission on Human Rights, an international human rights body, charging that the government failed to protect her from being forcibly sterilized at a state hospital immediately after she gave birth. In a petition submitted by the Center for Reproductive Rights and Chilean-based HIV/AIDS service organization *Vivo Positivo* on her behalf, the 27-year-old Chilean woman argues that the hospital staff because of her HIV status, without even discussing it, let alone seeking her consent. Notably, neither the Ministry of Health nor the Chilean Courts found that the facts of this case amounted to a violation of her human rights, demonstrating apathy towards discrimination that people living with HIV/AIDS continue to suffer. In the complaint, the Center and *Vivo Positivo* have argued that the Chilean government has violated her right to be free from

discrimination, as well as her right to decide the number and spacing of her children, the right to be free from violence, and the right to have access to justice. These rights are guaranteed under the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Source: *Vivo Positivo* Press Release dated February 3, 2009

### **US "global gag rule," revoked**

The "global gag rule," which cut off U.S. aid for any organization that fostered, provided or even advised women about abortion, has been revoked by the new Barak Obama administration. By rescinding the Global Gag Rule, President Obama has stood up for reproductive rights, for individual dignity and autonomy, and for the simple proposition that women's health should be the central concern of women's health policy. For the last eight years, and for almost a decade during the Reagan and George H.W. Bush administrations, the Global Gag Rule withheld critical funds from organizations abroad which, using separate funds provided legal, voluntary abortions, counseled women about abortion, or engaged in advocacy for abortion rights. The imposition of this ideologically motivated rule reduced access to basic reproductive health services and information, and undermined women's health around the world.

Source: *The Huffington Post*

### **Church of England Drafts Women Bishops Legislation**

The Church of England has published a draft legislation that could allow the ordination of women bishops. The proposed measures are scheduled to go up for debate by the church's General Synod governing body in February. The Anglican Church is divided between conservatives who argue that allowing gay and women bishops goes against Bible teachings, and liberals who want a more inclusive communion. Under the draft legislation, male "complementary bishops" would be nominated to minister to those parishes objecting to women bishops. However, the legislation process would mean that there is unlikely to be a female bishop installed before 2014, even if the proposal is finally accepted. Liberal and conservative Anglicans have been at odds since the US Episcopal Church consecrated an openly gay priest, Gene Robinson, as Bishop of New Hampshire in 2003, and Barbara Harris as the US church's first female bishop in 1989. Moreover, The Vatican has warned that any decision to allow the ordination of women bishops could harm reconciliation between Anglicans and Roman Catholics too.

Source: Yahoo News

[http://news.yahoo.com/s/afp/20081229/lf\\_afp/britainreligionanglicanwomen](http://news.yahoo.com/s/afp/20081229/lf_afp/britainreligionanglicanwomen)

### **Spain - Plan for Asset Seizure of Convicted Human Traffickers**

The Spanish government announced a new plan on 12 December 2008 to combat human trafficking, which includes a measure for the immediate seizure of the assets of anyone convicted of involvement in such activities, in particular, those who force foreign women into prostitution. The Integral Plan to Combat Human Trafficking for the Purposes of Sexual Exploitation includes 61 measures aimed at raising social awareness and implementing a zero tolerance policy against human trafficking-related crimes. It also seeks to tackle the causes of these crimes with active cooperation policies involving the countries of origin, transit and destination, and with the participation of NGOs. The full

implementation of the resolution adopted by the Council of Ministers requires legislative reforms and amendments to the criminal code, which means it, will take several months to be in effect. The plan, which has Congressional backing, includes the seizure of all assets and goods owned by pimps, managers or owners of any facilities where sexual exploitation activities are detected.

Source: Inter Press Service News Agency

<http://ipsnews.net/news.asp?idnews=45094>

## **NATIONAL**

### **NATIONAL LEGAL DEVELOPMENTS**

#### **Bill for Unorganized Sector Workers passed**

On 17 December 2008, the historic Unorganized Workers' Social Security Bill, 2008 was passed, that seeks to provide the benefit of health, life and disability insurance, old-age pension and the group accident scheme for unorganized sector workers including farm workers and migrant labourers. It is noteworthy that it has taken the State 60 years to enact social security rights to the most vulnerable section of workers, finally fulfilling the promise of the Directive Principles of State Policy. Another recent legislation, the National Rural Employment Guarantee Act, 2005, also seeks to do so.

Source: *The Hindu*, 18 December 2008.

<http://www.thehindu.com/2008/12/18/stories/2008121859331100.htm>

#### **Gram Nyayalaya Bill passed by Rajya Sabha**

The Gram Nyayalaya Bill 2008, which aims at providing inexpensive justice to people in rural areas on their doorstep, was passed unanimously in the Rajya Sabha on 17 December 2008. These 'village courts' will have first class judicial magistrates called *Nyaya Adhikaris* dispensing justice. The full cost on capital account would be borne by the Central government. These courts will sit at the district headquarters and in taluks. They will go in a bus or jeep to the village, work there and dispose of the cases. The cost of litigation would be borne by the state and not by the litigant. However, tribal areas have not been brought into the purview of this bill.

Source: *The Hindu*, 18 December 2008.

<http://www.thehindu.com/2008/12/18/stories/2008121859351100.htm>

#### **The NIA Act, 2008 and the Unlawful Activities (Prevention) Amendment Act, 2008**

In the wake of the Mumbai terror attacks, the Parliament in December passed two new legislations namely the National Investigative Agency Bill and The Unlawful Activities (Prevention) Amendment Bill which received Presidential assent on 30 December 2008. These anti-terror laws have sought to broaden the definition of terror acts to cover violence related to militancy, insurgency and Left-wing extremism. The NIA Act has concurrent jurisdiction which empowers the central government to decide what

constitutes terror and investigate such attacks in any part of the country covering offences including challenge to country's sovereignty and integrity, bomb blasts, hijacking of aircraft and ships and attacks on nuclear installations. The measures also provide for constitution of special courts to try offences under the NIA Act and to provide for summary trial. The Unlawful Activities (Prevention) Amendment Act defines what constitutes terror acts intended to threaten the unity and sovereignty and to cause terror in people by using bombs, dynamites or other explosive substances or lethal weapons or poisonous gases or chemicals including biological, radio-active and nuclear. Under the UAPA Act, preventive detention of an accused can extend up to 180 days instead of 90 days as at present and no accused can be given bail without the prosecution being heard. Further bail can also be denied if the court feels that the charges against the accused are prima facie true. "Foreign nationals" who have entered the country illegally and accused under this law, shall be denied bail.

Speaking at a conference on terrorism, rule of law and human rights, the Chief Justice of India K.G. Balakrishnan had said on 13 December 2008 that "questionable methods such as permitting indefinite detention of terror suspects, the use of coercive interrogation techniques and the denial of the right to fair trial" cannot be a substitute for a "considered response to the growth of terrorism". Justice Balakrishnan had also said that apprehension and interrogation of terror suspects must be done professionally with adequate judicial scrutiny. "This is required because in recent counter-terrorist operations there have been several reports of arbitrary arrests of individuals belonging to certain communities and the concoction of evidence."

Source: Rediff News - <http://www.rediff.com/news/2008/dec/31/mumterror-government-appoints-internal-security-advisor.htm> ; *The Hindu*, 16 December 2008 - <http://www.hinduonnet.com/thehindu/holnus/000200812161946.htm> & *The Hindu*, 14 December 2008 - <http://www.hindu.com/2008/12/14/stories/2008121459891000.htm>

### **Presidential assent to the CrPC (Amendment) Bill, 2008**

The Criminal Procedure Code (Amendment) Bill, 2008 which received presidential assent in January 2009, has severe implications for some important protections available for women. The amendment restrains the police from arresting a person for criminal offences for which the maximum sentence is up to seven-year imprisonment. The police can simply issue a "notice of appearance" to the accused instead of putting them behind bars. The person can be arrested only if he/she does not appear before the police in response to the notice. Most importantly, once the amended law comes into force, Section 498A of IPC (dowry harassment) will become a toothless penal provision as it has a maximum punishment of three years. Similarly other offences, many of which are used for gender specific crimes and attract a sentence of seven years or less, including voluntarily causing grievous hurt, outraging a woman's modesty, attempt to commit culpable homicide, kidnapping, cheating and death caused by negligence, are impacted. Implementation of some of the provisions of the Protection of Women against Domestic Violence Act will also come under cloud. This amendment to the CrPC has come against the backdrop of a virulent public backlash on the 'misuse' of laws that are perceived as 'favourable' to women. In light of the gross under-reporting of crimes against women,

and the abysmally low conviction rates, the ‘arrest’ of the accused following a criminal complaint serves very often as a deterrent. Its dilution therefore, is a cause of concern to women’s rights advocates. It is ironic, that on the one hand the State is whittling down fair trial protections afforded to the accused in criminal justice in relation to internal security matters, and on the other hand, it is diluting the force of criminal law in relation to crimes against women.

Source: The Times of India, 19 January 2009 -

[http://timesofindia.indiatimes.com/India/Amendment\\_may\\_make\\_dowry\\_law\\_toothless/articleshow/3998702.cms](http://timesofindia.indiatimes.com/India/Amendment_may_make_dowry_law_toothless/articleshow/3998702.cms); The Times of India, 20 January 2009 -

[http://timesofindia.indiatimes.com/India/CrPC\\_Amendment\\_Renuka\\_to\\_fight\\_for\\_women\\_rights/articleshow/4008404.cms](http://timesofindia.indiatimes.com/India/CrPC_Amendment_Renuka_to_fight_for_women_rights/articleshow/4008404.cms) & The Hindu, 20 January 2009 -

<http://www.hindu.com/2009/01/20/stories/2009012060051100.htm>

### **Delhi High Court order on the ‘Kissing Case’**

In a ruling in early February 2009, the Delhi High Court stayed criminal proceedings filed by the police against a couple for kissing in a public place, “despite the Sub-Inspector finding on enquiry that the two Petitioners were husband and wife living in the same place”. The Court observed, “It is inconceivable how, even if one were to take what is stated in the FIR to be true, the expression of love by a young married couple, in the manner indicated in the FIR, would attract the offence of “obscenity” and trigger the coercive process of the law”. While the judgment is welcome affirmation of individual freedoms and liberties, it does reflect the growing trend in moral policing by the state and the Right wing forces. The growing intolerance towards even mild display of heterosexual marital intimacy in public has worrying implications for the liberties of persons in non-marital and queer relationships.

[http://timesofindia.indiatimes.com/Cities/Married\\_couple\\_kiss\\_in\\_public\\_OK\\_HC/article\\_show/4066941.cms](http://timesofindia.indiatimes.com/Cities/Married_couple_kiss_in_public_OK_HC/article_show/4066941.cms)

## **NATIONAL NEWS**

### **Qualified condemnation by the State on attacks on women in Mangalore Pub**

Members of the Sri Ram Sene (SRS), a Hindu ultra-right group on 24 January 2009, forcefully entered into the Amnesia Bar and Restaurant in Mangalore, Karnataka and assaulted women and girls present there, objecting to women consuming alcohol claiming it was against Indian culture. The 28 SRS members involved in the case were arrested but later granted bail. The political leaders across party lines have condemned the violence only in qualified terms - prefixing their condemnation with objections to “pub culture”, thereby rationalizing the subject of SRS ire. The Karnataka Chief Minister failed to categorically condemn the violence against women and the open threats to women’s exercise of Constitutionally guaranteed liberties. Instead, his concern was that the SRS was ‘taking law into their hands’, when in fact the pubs function lawfully and there is no legal restriction against women visiting pubs. So the attack cannot amount to

taking law into one's hands, but certainly does amount to a criminal act. None of the condemnations issued by the leaders have affirmed women's liberties, or expressly condemned the erosion of women's freedoms by the Hindu Right. The continued intimidation and threats by the SRS have restrained all victims and witnesses from filing or assisting in the criminal proceedings against the SRS. Alarming, the state has failed to counter such threats through assurance of victim or witness protection, thereby strengthening the Hindu Right.

Source: (Facts of the incident) IBN Live - <http://ibnlive.in.com/news/mangalore-pub-row-sri-ram-sene-men-get-bail/84145-3.html>.

### **Haryana pays Rs. 1 lakh to sexual abuse victim**

A Class VIII girl student who was alleged to have been sexually abused by a school headmaster in a village in Rewari district of Haryana has been given an interim relief of Rs.1 lakh by the State Government on orders from the National Human Rights Commission. The Commission received the compliance report and proof of payment on January 19. It had ordered the Haryana Government for payment within four weeks after it found that prima facie violation of human rights of the girl had been established.

Source: *The Hindu*, 4 February 2009 -

<http://www.hindu.com/2009/02/04/stories/2009020454200400.htm>

### **Human Rights Watch slams Indian government**

In its 'World Report 2009', Human Rights Watch says India lacks the "will and capacity" to implement many laws and policies. India has routinely ignored recommendations from UN human rights bodies including UN committees on the Elimination of Racial Discrimination and the Committee on the Elimination of All Forms of Discrimination against Women. Children and adults with HIV/AIDS, internal migrants, sex workers, injecting drug users, men who have sex with men, and transgender populations -face widespread stigmatization and discrimination, including denial of employment, access to education and healthcare.

Source: Centre for Health and Social Justice (Delhi) Newsletter and Human Rights Watch - <http://www.hrw.org/world-report-2009>

## **NEW RESOURCES**

### **'Still Out of Focus- Status of India's Children 2008' - HAQ**

HAQ: Centre for Child Rights released a report titled "*Still Out of Focus- Status of India's Children 2008*", the third such status report on children by HAQ. The Status Report highlights the grim realities for children in India in terms of - unequal access to health care, disparities in education, violence against children, juvenile justice, child labour and child trafficking. Further details about the report are available at: <http://www.haqcrc.org/index.php?id=275>. The Summary Report can be accessed at [http://www.haqcrc.org/fileadmin/Publication/Status\\_of\\_Children\\_2008/Executive\\_summary\\_08.pdf](http://www.haqcrc.org/fileadmin/Publication/Status_of_Children_2008/Executive_summary_08.pdf)



## EVENTS

### **PLD - Orissa CEDAW training (11-14 December, 2008)**

A state level capacity building workshop on CEDAW for lawyers, paralegals and social workers was conducted by PLD during 11-14 December, 2008 at Bhubaneswar. During the workshop PLD released a draft of the Oriya version of its resource book on CEDAW, "Restoring Rights to Women". This resource book is available with PLD in English, Hindi, Malayalam and now in Oriya, for use by both NGOs and the Government.

### **National Conference of the Muslim Women's Rights Network (MWRN) (18-20 December 2008)**

The National Conference of the Muslim Women's Rights was held during 18-20 December 2008 at Kolkata, organized by the Muslim Women's Rights Network (MWRN). Kolkata based members of MWRN, namely Mohammed Bazaar Backward Class Development Society and Swayam organized the conference on behalf of the Network.

### **LASSnet Inaugural Conference, Jawaharlal Nehru University (8-11 January 2009)**

Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi launched the Law and Social Sciences Research Network (LASSnet) with an inaugural conference during 8-11 January 2009 held at JNU campus. LASSnet has been constituted to map the field of Law and Social Sciences in South Asia. Its objective is to bring together academics, lawyers and researchers engaged in innovative legal research in South Asia which employs social science methodologies.

### **Launch - Global LGBT youth network (15 January, 2009)**

Lesbian, gay, bisexual, transsexual, intersex and queer young people from all over the world can sign up to send and receive messages with other activists. Members will be encouraged to share their experiences, ideas and expertise, and to work together to solve problems and run projects. The working languages of the list are English, Spanish and French. To sign up to the LGBT Youth World List, visit [www.iglyo.com](http://www.iglyo.com) or [www.ilga.org](http://www.ilga.org) and follow the directions stated.

### **PLD's Training of Trainers in Hindi on CEDAW (29 January-2 February, 2009)**

A 5-day residential workshop for Training of Trainers (ToT) on CEDAW was conducted by Partners for Law in Development (PLD) during 29 January-2 February, 2009 at New Delhi. The 25 participants included gender trainers drawn from various community based organizations from the Hindi speaking states - Jharkhand, Bihar, Orissa, Rajasthan, Uttar Pradesh and Delhi. The ToT workshop focused on the scope of CEDAW, its core concepts and discussed effective approaches and methods for training diverse target groups on CEDAW.

### **Seminar on Economic Rights and Entitlements of Divorced and Separated women (7 February, 2009)**

Seminar on economic rights and entitlements of divorced and separated women including spousal & child support and right to marital property was organized by Economic Research Foundation & the Women's Legal Forum on 7 February 2009 at New Delhi. The Seminar was inaugurated by Smt. Girija Vyas, Chairperson, National Commission for Women; Justice Vikramajit Sen, Judge, Delhi High Court and Ms. Brinda Karat, M.P. Rajya Sabha.

## **FORTHCOMING EVENTS**

### **Musawah - Global Meeting for Equality and Justice in the Muslim Family, Kuala Lumpur, 13-17 February 2009 hosted by Sisters in Islam (Malaysia)**

A Global Meeting for Equality and Justice in the Muslim Family is to be held in Kuala Lumpur, Malaysia during 13-17 February 2009 by *Musawah*, and hosted by Sisters in Islam (Malaysia). *Musawah*, the Arabic word for equality, is a global movement for equality and justice in the Muslim family, was initiated by Sisters in Islam (Malaysia), with a planning committee of Muslim activists and academics from 11 countries. *Musawah* is pluralistic and inclusive, bringing together NGOs, activists, scholars, practitioners, policy makers and grassroots women and men from around the world.