

# Monthly Legal News

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# INTERNATIONAL NEWS

## Increase in CEDAW Committee Sessions

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

Source: [IWRAP Asia Pacific](#)

## The OHCHR is now the Secretariat to CEDAW.

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

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

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

## Nepal's Supreme Court rules on Gay Rights

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

Source: [BBC News](#)

## INDIA'S HUMAN RIGHTS REVIEW BY THE UN HUMAN RIGHTS MECHANISM

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

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

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

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

The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. At its **40th Session from 28th April – 16th May, 2008 at Geneva**, CESCR will review India's report on the implementation of economic, social and cultural rights and how the government has advanced the same. In this regard, submissions from the NGOs will also be considered in reviewing the government's record.

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

## NATIONAL NEWS

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

In the context of the formulation of **Eleventh Five Year Plan (2007–2012)**, a **Committee of Feminist Economists (CFE)**, was constituted by the Planning Commission on **29th March 2007** to include the analysis of women's location in each chapter, so that women's perspective is explicitly recognized and integrated in to sectoral programmes

and policies. This mechanism of professional interaction for engendering public policy has been initiated for the first time in the history of planning in India by Dr. Syeda Hameed. The practice of clubbing women with children in a separate chapter of Plan document ignores the relevance of gender perspective in all sectors of the economy and treats women as subjects of welfare rather than economic agents in development.

**Source:** [http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11\\_fec.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_fec.pdf)

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

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

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

### Debates on Sex Education Manual

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

of life–skills, how to cope with the stress and the role of teachers and counselors in preventing substance–abuse among school children.

Source: [http://www.lgbt-education.info/en/news/local\\_news/news?id=140](http://www.lgbt-education.info/en/news/local_news/news?id=140)

## LANDMARK JUDGEMENTS

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

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

Source: **The Hindu, 22 January, 2008**

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

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

that there was a customary divorce between the deceased and his legally-wedded wife. The Supreme Court upheld the partner's claim and observed that although the High Court was right in deciding about subsisting marriage between the deceased and his wife, it was wrong in denying succession certificate to his partner for the purpose of collecting provident fund and life insurance amounts. Whatever be the status of the live-in partner, there was no doubt about the legitimacy of the four children born out of her relationship with the deceased.

**Source:** [The Times of India, 24th January, 2008](#)

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

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

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