

# Monthly Legal News

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## INTERNATIONAL NEWS

### Incorporation of the NGOs' joint submission in OHCHR Report for India's review under the Universal Periodic Review (UPR) mechanism of the Human Rights Council

The Office of the High Commissioner for Human Rights (OHCHR) of the United Nations has incorporated the joint submission sent by the Partners for Law in Development (PLD) along with 16 other organizations and individuals in its summary report of 37 stakeholders' submissions to the Human Rights Council for its Universal Periodic Review (UPR) of India in its 1<sup>st</sup> session in April, 2008. They have included both the concerned issues, viz. the failure of communal violence bill to prevent state impunity and the criminalisation of homosexuality under section 377 of the Indian Penal Code. The Report also focuses attention on other urgent concerns raised by joint submissions by People's Forum for UPR presented by Asia Centre for Human Rights, Women's Research and action group along with 23 other NGOs etc. The Report is available along with other submissions at

<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/INSession1.aspx>

## NATIONAL NEWS

### Law Commission recommends lowering the age of marriage for boys from 21 to 18

The Law Commission of India, in its 205<sup>th</sup> Report on the proposal to amend the Prohibition of Child Marriage Act (PCMA), 2006 and other allied laws, has recommended that child marriage below 18 for both girls and boys should be prohibited and that marriages below the age of 16 be made void while those between 16 and 18 be made voidable. However, to ensure that young women and children are not left destitute, the Report recommends that provisions relating to maintenance and custody should apply to both void and voidable marriages. Thus, the age of marriage for both boys and girls should be 18 years and subsequently amending section 2(a) of PCMA in order to define 'child' as 'a person who has not completed 18 years of age'. The Report further recommends that the age for sexual consent should be 16 for all young girls, regardless of marriage and the exception to the rape Section 375 of the Indian Penal Code be deleted. Finally, it recommends that registration of marriage of all the communities, viz. Hindu, Muslim, Christians, etc, be made compulsory

Moreover, in its 204<sup>th</sup> Report, the Commission has recommended the inclusion of 'father' in the category of Class I heirs so as to be entitled to claim a share of the property left behind by his son/daughter who died intestate. In order to make the

succession laws in tune with other laws like Senior Citizen Welfare Protection and Maintenance Act, 2007, it is thought expedient to elevate the father to Class I heir so as to safeguard the interest of the elderly people.

**Source:** <http://lawcommissionofindia.nic.in/reports/report205.pdf>  
<http://lawcommissionofindia.nic.in/reports/report204.pdf>

### Gender Budgeting gets reflected in the Union budget, 2008

Yearning to have an inclusive and gender sensitive annual budget, the Ministry of Finance has announced a series of programmes and initiatives geared to improve the socio-economic condition of the marginalized women. The budget increased the tax slab for women from Rs. 1.45 lakhs to Rs. 1.80 lakhs and agricultural women have also got a relief in form of the loan waiver since the Central government has waived the financial loans of the agricultural farmers who have taken loans from government banks and financial institutions. Further, there has been a 24% increase in allocation to the budget of the Ministry of Women and Child Development to the tune of Rs. 7,200 crores while gender budgeting cells have been set up in 54 departments and ministries of the government. Also, Life Insurance Corporation of India (LIC) would also cover all women Self Help Groups (SHGs) linked to the bank and offer them easy insurance schemes at very low premiums.

**Source:**

[http://timesofindia.indiatimes.com/India/Its\\_a\\_gender\\_sensitive\\_budget\\_Renuka/article\\_show/2827694.cms](http://timesofindia.indiatimes.com/India/Its_a_gender_sensitive_budget_Renuka/article_show/2827694.cms)

### Supreme Court facilitates filing of PILs by women who are victims of violence and harassment

According to the new eligibility guidelines published by the Supreme Court, women facing harassment at their in-laws' home or at any other place, can directly write to the Supreme Court and their letters would be entertained as Public Interest Litigations (PILs). In order to reduce the number of PILs being filed in the Court, it has come out with detailed guidelines about the maintainability of petitions. Though no petition involving individual or personal matter shall be entertained as public interest litigation, incidents of torture resulting from moral policing by village panchayats, especially for ostracising couples in inter-caste marriages where one of them belong to a backward class, would be admitted as PILs. Letter-petitions (letters written by the aggrieved parties to the Supreme Court directly without filing a petition in the registry) would ordinarily be entertained as PIL and have been categorized under 10 heads which are:

- Atrocities against women, especially harassment of bride, bride burning, rape, murder, kidnapping etc.

- Harassment or torture of villagers by co-villagers or by police from persons belonging to SC or ST or economically backward classes
- Bonded labour matters
- Neglected children
- Non-payment of minimum wages to workers
- Harassment of jail inmates (not to include petitions for parole)
- Refusal of police to register case, harassment by police and custodial death
- Environmental pollution, wildlife and maintenance of heritage and culture
- Petitions from riot victims and those seeking family pension

All letter-petitions received in the PIL cell would be scrutinised and if found meeting the eligibility criteria, would be placed before a judge nominated by the Chief Justice of India for inquiry. If the judge finds the letter PIL suitable, only then it would be put up for hearing in an open court..

Source <http://timesofindia.indiatimes.com/Women-facing-harassment-can-write-to-us-SC/articleshow/2760077.cms>

## IMPORTANT JUDGEMENTS

### Supreme Court rules in favour of remarried widow's right to inherit her deceased husband's property

The Supreme Court has held that a Hindu widow can inherit her dead husband's property even after remarriage. In *Cherotte Sugathan (D) by Lrs. Vs. Cherotte Bharati and Others* (decided on 15/02/08), the Court observed that after the 2005 amendment to the Hindu Succession Act, 1956 allowing women an equal share in the joint family property, the bar under the Hindu Widows Remarriage Act, 1856 could not be sustained. It was an appeal filed by Cherotte Sugathan and others challenging a Kerala High Court order that granted one share of the property to their father's widow Cherotte Bharathi despite her having married again. Dismissing the appeal, the Bench ruled that since the amendment to the Hindu Succession Act, the widow became an absolute owner of the deceased husband's property to the extent of her share in it. This provision would have an overriding effect on the bar prescribed under the Hindu Widow Remarriage Act of 1856 which had declared that a widow's right by way of maintenance or by inheritance over her dead husband's property would cease in the event of her remarriage. Interpreting a number of earlier rulings, the Apex Court observed that the Hindu Succession Act had "brought about a sea change in shastric Hindu law. Hindu widows were brought on equal footing in the matter of inheritance and succession along with male heirs" and would have overriding effect over the text of any Hindu law, including in its fold even the Hindu Widow Remarriage Act.

**Source:**

<http://www.southasianmedia.net/cnn.cfm?id=472571&category=Women&Country=INDIA>

### No 'gifts' will be deemed as 'dowry' unless given as a consideration for marriage

The Supreme Court in *Ran Singh and Others vs. State of Haryana* (decided on 30/1/08) has held that customary articles given to the bridegroom's relatives at the time of marriage or during the birth of a child will not come within the ambit of 'dowry' under the Dowry Prohibition Act, 1961. While acquitting the parents-in-law of a woman, who accused them of harassing her for dowry, the Court observed that "there are three occasions related to dowry. One is before marriage, second at the time of marriage and third at any time after marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties. Other customary payments, e.g. given at the time of the birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression 'dowry'". Justice Arijit Pasayat ruled that no present made at the time of marriage to either party in the form of cash, ornaments, clothes or other articles will be deemed dowry unless it was made as a consideration for the wedding.

**Source:**

<http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2008020360520100.htm&date=2008/02/03/&prd=th&>

### A PIL filed in Delhi High Court to amend the Transplantation of Human Organs Act, 1994

In the aftermath of the multi-million rupees kidney racket expose in the National Capital Region, a Public Interest Litigation (PIL) has been jointly filed in Delhi High Court, by social activist Rahul Verma and advocate Rakesh Prabhakar, on February 12, 2008 to order the government to amend The Transplantation of Human Organs Act, 1994, in order to rectify the major loopholes in the complex Act so that the rampant illegal organ trade can be checked. The Act 'provides for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs'. It illegalises the buying and selling of human organs and makes cash-for-kidney transactions a criminal offence. However, the critique of the Act mainly consists in section 9(3) which states that live donors who are not near relatives but are willing to donate kidneys to the recipients "by reason of affection or attachment towards the recipient or for any other special reasons," are permitted to do so, provided that the transplantations have the approval of the Authorisation Committee, established under the Act. This provision has been subject to gross misuse and has become a handy tool for the unscrupulous doctors to lure poor

people to sell their kidneys in lieu of a measly sum of money in extremely hazardous conditions. The petition seeks to remove the said provision.

Further, the PIL wants the Court to direct the Central and the State governments to scrap the high custom duties and taxes imposed on the dialysis kit, which constitutes one of the main reasons that forces the patients and their relatives to move towards illegal transplantation. Also, the court should give direction to Central and State governments, the Health and the Law Ministries and the Medical Council of India to make a fund for the chronic renal failure patients to support them in their treatment and to make it mandatory for the government hospitals to provide full-fledged facility with absolutely free or minimal charges to the kidney failure patients. Thus the petition urges the government to treat renal failure on public health priority and to fund low-cost dialysis.

Besides this, it has also asked the government to initiate comprehensive cadaver programme for donation of human organs, modeled on the eye donation campaign. It stated that "all district hospitals and medical colleges should create, within an approved time frame, the infrastructure and protocols needed both for counseling next-of-kin of brain dead patients and to retrieve donated organs,".

**Source:** <http://www.newstrackindia.com/newsdetails/2392>

### Bombay High Court decides against second wife's claim to family pension

In *Leelabai Vitthalrao Bhegade vs. Union of India & Ors.* (decided on 21/02/08), the Bombay High Court has held that a second wife has no claim over the family pension of a government employee. The Court dismissed a petition filed by a Pune resident, Leelabai Bhegade who claimed to be the second wife of Vithal Bhegade, a retired employee of the Pune Ordnance Factory in 1983 and died in 2000, followed by his first wife Laxmi in 2002 while Leelabai had laid claim to the family pension after his death. The government rejected her plea. The Central Administrative Tribunal, too, dismissed her application and she approached the high court. She contended that the ration card, as well as electoral rolls, showed Leelabai as Bhegade's second wife. The Union government, cited a series of laws as well as provisions against bigamy, especially the Hindu Marriage Act, 1955. Section 11 of the Act provides that a second marriage by a Hindu during the lifetime of his/her spouse will be deemed null and void. Further, Rule 21 of the Central Civil Service (Conduct) Rules bars a government employee from entering into a second marriage when his or her spouse is still alive. Thus, the High Court ruled that the appellant being the second wife of the deceased was not entitled to the family pension.

**Source:**

[http://timesofindia.indiatimes.com/India/Second\\_wife\\_has\\_no\\_claim\\_on\\_family\\_pension\\_HC/articleshow/2831842.cms](http://timesofindia.indiatimes.com/India/Second_wife_has_no_claim_on_family_pension_HC/articleshow/2831842.cms)